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Modalities of dismissal in the Republic of Croatia

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Abstract: The following paper examines the modalities of dismissal in the Republic of Croatia, providing a comprehensive overview of historical developments, as well as the current legal framework regarding the subject matter. An in-depth analysis of objective, subjective, and collective dismissals will be provided herein, tracing their evolution from the 1990s to present day. The paper highlights key legislative reforms and their impact on employment termination practices, offering valuable insights into the labour law legislation in Croatia regulating the various types of dismissals.

Resumen: *El siguiente artículo examina las modalidades de despido en la República de Croacia, proporcionando una visión integral de los acontecimientos históricos, así como el marco legal actual con respecto al tema. Se realizará un análisis en profundidad de los despidos objetivos, subjetivos y colectivos, rastreando su evolución desde los años noventa hasta la actualidad. El documento destaca las reformas legislativas clave y su impacto en las prácticas de despido, ofreciendo información valiosa sobre la legislación laboral en Croacia que regula los distintos tipos de despidos.*

Keywords: dismissal, termination, Croatia, labour law, objective dismissal, subjective dismissal, collective dismissal

Palabras clave: *despido, terminación, Croacia, legislación laboral, despido objetivo, despido subjetivo, despido colectivo.*

I. Introduction

The termination of the employment contract is a sensitive subject, taking into consideration its social, psychological and financial implications on an individual level, as well as a potential broader impact on the labour market and the economy as a whole.

The focus of this paper will be on dismissals as a form of termination of the employment contract, whereby the employer is the party initiating the end of the employment relationship.

Due to the innate imbalance of powers between the employer and the employee as the contractual parties to the employment relationship, dismissals must be firmly governed by the labour law legislation, providing a clear set of rules regulating the process, whilst carefully weighing the economic interests of the employers and offering sufficient protections for employees.

In Croatia, the legal framework governing dismissals has evolved considerably since the country's independence in 1991 (Matković & Biondić, 2003) (Potočnjak Ž., 2014). This paper aims to provide a comprehensive overview of the various modalities of dismissals from the perspective of Croatian labour law legislation, including a historical overview of its changes and the impact of these legislative reforms on the employment termination process in Croatia.

When discussing the historical origin of the relevant labour legislation, it is important to note that in the 1990s the Republic of Croatia underwent a transition from a socialist system which was established in the Socialist Federal Republic of Yugoslavia, to a market-oriented economy. This decade saw the introduction of the Labour Act of 1995, which was a major milestone, setting out the basis for a modern legal framework regulating the employment relationship. Subsequent labour law reforms were conducted in efforts to align the Croatian legal system with the *acquis* of the European Union, which the Republic of Croatia joined in 2013. Since then, the Croatian labour legislation has seen the implementation and transposition of relevant EU regulations and directives, respectively, and has also undergone changes in the post-COVID era in order to effectively respond to the increased needs of both employers and employees for more flexibility in regulating the employment relationship.

This paper will examine the general provisions on dismissals included in Croatian labour legislation as well as the specific rules governing dismissals due to objective reasons, collective dismissals and dismissals for subjective reasons.

By analysing the intricacies of the different types of dismissals and the regulatory framework surrounding them, and incorporating inputs from legal texts, academic theory, competent authorities, case law and practice, this paper sets out to present an in-depth examination of the legal landscape on dismissals in Croatia.

II. Historical timeline of the labour legislation in the Republic of Croatia

In order to further the understanding of the historical and societal context of the evolution of the labour law legislation regulating dismissals in the Republic of Croatia, a brief historical timeline will be presented here, and a more detailed historical overview of specific provisions on dismissals will be provided in the subsequent sections.

2.1. The 1990's: Independence and a transition to a market economy

As mentioned previously, the 1990's were a period of significant political, economic and social changes in Croatia. Following the declaration of independence and the establishment

of an independent Republic of Croatia in 1991, the transition from a centrally planned socialist economy to a market-based system began, necessitating reforms across various sectors, including labour law, to facilitate the shift towards privatization and liberalization and to further economic development (Kosnica, 2023).

The Constitution of the Republic of Croatia, adopted in December of 1990, paved the way for the new framework of labour rights in the market economy, departing from the socialist concepts of the "working people" as a collective and the subordination and restriction of individual rights for the benefit of the collective (Kosnica, 2023).

In 1995, the new Labour Act was introduced (hereinafter: the "Labour Act 1995"), marking the shift from the socialist-era labour laws and representing a comprehensive set of rules governing the employment relationship, including provisions related to dismissals. The Labor Act 1995 represented a significant modernization of Croatian labour law, aligning it more closely with EU standards and international best practices, aiming to strike a balance between the rights of employers and the protection of employees' rights (Matković & Biondić, 2003).

The tumultuous 1990's and the transition to a market economy led to high unemployment numbers, an unstable job market and challenges related to economic restructuring and social (in)equality, opening the floor for new reforms (Matković & Biondić, 2003).

2.2. The 2000's: Alignment with the EU *Acquis*

The 2000's were notable as a period of preparations for Croatia's accession to the EU and were underlined by efforts to align Croatian legislation with existing EU standards, leading to reforms to ensure compatibility with the EU *acquis* (Vukorepa, 2010).

A number of amendments and reforms were introduced to labour laws in the 2000's in order to address emerging challenges in the labour market, to strengthen workers' protections and foster alignment with international standards and best practices. A new Labour Act was introduced in 2009 (effective as of 1 January 2010; hereinafter: the "Labour Act 2009"), enhancing protections against unfair dismissals, specifying clear grounds for dismissals, expanding on procedural requirements for dismissals and mechanisms for dispute resolution between employers and employees (Ministry of Economy, Labour and Entrepreneurship, 2008) (more information on these provisions follow in later sections).

2.3. The 2010's: Accession to the European Union

As of 2013 and Croatia's accession to the European Union, Croatia became subject to EU labour laws and regulations, which also meant further alignment with EU standards was required, both in legislation and court practice.

In an effort to promote fairness, transparency and accountability in employment termination procedures, especially with regards to the procedure governing collective dismissals (Ministry of Labour and Pension System, 2014), a new Labour Act was adopted in 2014 (hereinafter: the "Labour Act 2014").

2.4. The 2020's — Present day: Post-COVID reforms and challenges

The Labour Act 2014 has been amended several times since 2014 (its last amendment effective as of 1 January 2023), and it is the current legal act in Croatia comprehensively regulating employment relationships, labour rights, and dismissals.

Like elsewhere across the globe, the COVID-19 pandemic presented challenges to the Croatian legislators and the Croatian job market. In response, the Croatian government had introduced temporary measures to support businesses and workers (including provisions related to dismissals), aiming to mitigate the impact of the pandemic on the labour market and to provide support to those affected by economic repercussions of the pandemic (e.g., governmental subsidies for retaining employees, restrictions on dismissals during lockdown, etc.) (Deloitte, 2020).

The most recent amendments to the Labour Act 2014 from 2023 see a major redesign of the provisions on remote work and a regulation of platform work, the changes aiming to provide clearer guidelines for employers and employees on their mutual rights and obligations in remote working arrangements (including topics of dismissal and stronger protections of workers' rights) (Croatian Government, 2022).

As elaborated in this section, the labour law landscape of Croatia has evolved significantly since the 1990's until today, with major strides made by the Croatian legislators towards the modernization of the labour legislation and the alignment of labour standards with international and EU standards and practices.

III. An overview of the regulatory framework on dismissals

In this section of the paper, the various types of dismissals under Croatian labour legislation will be enumerated and presented, and an overview of the general statutory provisions related to dismissals will be provided (including information on the mandatory form of dismissals, delivery, applicable notice periods, etc.).

3.1. Types of dismissals

The Labour Act 2014 recognizes the following types of dismissals:

Ordinary dismissal (Croatian: *redovni otkaz*), with a prescribed or agreed notice period, for a justified reason, which includes the following grounds for dismissal (Labour Act 2014, Article 115, Paragraph 1):

a) business-related dismissal; if the need for performing certain work ceases due to economic, technological or organizational reasons;

b) dismissal due to personal reasons; if the employee is not capable of fulfilling their employment-related duties because of some permanent characteristics or abilities;

c) misconduct; if the employee violates obligations from the employment relationship; and

d) unsatisfactory performance during the probationary period; if the employee did not meet the requirements during the probationary period.

Extraordinary dismissal (Croatian: *izvanredni otkaz*), can be enacted immediately, without a notice period, due to especially severe breaches of duty committed by an employee or another particularly important fact, where the continuation of the employment relationship becomes untenable, taking into consideration the circumstances and the interest of both contractual parties (Labour Act 2014, Article 116, Paragraph 1).

Collective dismissals (Croatian: *kolektivni višak radnika*) are highlighted as a separate category of dismissals (as opposed to "individual" dismissal, affecting a single employee), with special, additional procedural safeguards that are put in place due to the number of employees that may be affected by the dismissal (Labour Act 2014, Article 127).

More details on the specific categories mentioned above, as well as on any particularities regarding their historical development, will follow in the upcoming sections of the paper.

3.2. Written form, explanation and delivery

Under Croatian labour law, dismissals must adhere to certain formal requirements in order to be considered valid. Namely, the dismissal must be issued in writing, it must contain an explanation of the grounds for dismissal in writing and it must be delivered to the employee being dismissed (Labour Act 2014, Article 120). These three essential requirements have been implemented since the Labour Act 1995 and have remained in both the Labour Act 2009 and the current Labour Act 2014. Highlighting the importance of the three key components, the Labour Act 2014 prescribes a monetary fine of EUR 8090-13,270 for employers who do not provide their dismissal decision in writing, who do not include an explanation in their decision and/or do not deliver the dismissal decision to the employee (Labour Act 2014, Article 229, Paragraph 1, Point 47).

Dismissals which are not issued in writing are considered null and void (Frntić, D. F., Gović Penić, I., Hanzalek, D., Milković, D., Novaković, N., Rožman, K., & Zovko, V., 2023). However, despite verbal dismissals being invalid and not producing legal effects, the employees who are dismissed in such a manner must still submit a request for the protection of their rights to their employer within 15 days as of this violation of the employees' right to work. If this procedural requirement is not fulfilled on the employee's part, they are precluded from access to the courts (Frntić et al, 2023).

The decision on dismissal must be elaborated, i.e., contain an explanatory section on the grounds for dismissal, which should be expressed clearly. The content of the explanation of the dismissal varies depending on the type of dismissal, but it is important to note that in court proceedings the courts examine the grounds for dismissal on the basis of the explanation provided and the concrete circumstances of the case, not necessarily considering the

type of dismissal proclaimed by the employer in its decision (meaning that, if the dismissal decision is titled as "ordinary dismissal", but contains an explanation indicating grounds for extraordinary dismissal, the courts will examine the dismissal grounds from the perspective of an extraordinary dismissal) (County Court in Zagreb, 2003).

The manner of delivery of the employer's decision on dismissal can be regulated by a collective bargaining agreement, an agreement between the works council and the employer or in the employment by-laws adopted by the employer (Labour Act 2014, Article 132). Should the delivery not be regulated in one of the afore-mentioned acts, the general provisions on the delivery of court decisions contained in the legislation regulating civil proceedings shall apply (Labour Act 2014, Article 132). An important innovation to the regulation of the delivery of documentation relevant to the employment relationship, has been introduced in 2023, for the first time expressly allowing for the option of delivery by electronic means (i.e., via e-mail), provided that the document is made available to the employee, it can be printed/stored and that the employer is able to prove that the document had been duly delivered to the employee, i.e., that the employee had received it. Employer can utilize the electronic means of delivery of a dismissal decision if it is included in one of the previously referenced acts regulating the manner of delivery (e.g., in the employment by-laws) (Labour Act 2014, Article 132).

3.3. Notice periods and severance pay

The minimum duration of the notice periods in cases of ordinary dismissal by the employer are defined in the labour legislation and depend on the previous, continuous length of employment of an employee with the same employer — ranging from a minimum notice period of 2 weeks for employment lasting less than a year to a notice period of 3 months for continuous employment of 20 years. The notice period commences from the day when the dismissal decision is delivered to the employee — with the first day of the notice period being the next day from the delivery (Labour Act 2014, Article 122).

Notice periods are prolonged for 2 weeks / 1 month, for employees who had worked continuously with the same employer for at least 20 years and who have reached the age of 50 / 55, respectively (Labour Act 2014, Article 122).

Conversely, the prescribed statutory minimum notice periods are halved in the event of a dismissal due to the employees' misconduct (Labour Act 2014, Article 122). As already indicated, employees are not entitled to a notice period in cases of extraordinary dismissal.

The right to severance pay, and the minimum and maximum rates of the severance pay are also defined by law. An employee is entitled to severance pay when dismissed after two years of continuous work with an employer. In cases of dismissal due to misconduct there is no right to a severance pay under the law (Labour Act 2014, Article 126).

The statutory severance pay amount is determined in line with the previous length of continuous employment with the same employer, with the minimum amount being one third of an average monthly salary paid to the employee in the three months preceding the end of employment for each year of work with that employer, and a maximum of six average monthly salaries paid to the employee in the three months preceding the end of employment (Labour Act 2014, Article 126).

3.4. Prohibition from dismissal

Certain categories of employees are protected from dismissal under Croatian labour law due to their vulnerable position at the workplace.

Most notably, an express statutory prohibition of dismissal is in place in relation to pregnant women and employees utilizing maternity leave, paternity leave, parental leave, and other types of leave or part-time work due to childcare obligations envisaged under the Law on maternal and parental support measures. The prohibition of dismissal is in force for the entire duration of usage of the mentioned rights and for an additional 15 days following the cessation of the pregnancy or the usage of the rights to leave/part-time work. Dismissals of this category of employees is considered null and void if the employer was aware of the employee's circumstances or if the employee informed the employer of these circumstances within 15 days as of the delivery of the dismissal decision (Labour Act 2014, Article 34). Additionally, a monetary fine of EUR 8090 — 13,270 is prescribed for employers who (attempt to) dismiss this protected category of employees (Labour Act 2014, Article 229, Paragraph 1, Point 18).

Further, employees who suffered a work-related injury or have a work-related illness cannot be dismissed during their temporary incapacity to work, as well as during treatment or recovery from the work-related injury of illness (Labour Act 2014, Article 38).

Where a works council is established with an employer, the prior consent of the works council is required for the dismissal of: a member of a works council; a candidate for the works council (for a three-month period following the elections for the works council); an employee with reduced work capacity due to a work-related injury or illness or an employee with a disability; an employee of 60 years of age (with the exception of an employee of 65 years of age and 15 years of pension insurance); a workers' representative in the employers' supervisory board; and persons included in the list for collective dismissals (more on the prerequisites for collective dismissals in the next sections). The consent of the works council for the dismissal of these categories of employees can be replaced by a court or arbitration decision (Labour Act 2014, Article 150).

A union representative cannot be dismissed while carrying out their duties and six months thereafter, without the consent of the union (Labour Act 2014, Article 188).

Employees conducting a lawful strike in accordance with the law, collective bargaining agreement and union rules cannot be dismissed due to their organization of or participation in a (lawful) strike (Labour Act 2014, Article 215).

Additionally, wide-ranging protections, including protection against dismissal, are granted to persons reporting breaches of law (whistleblowers) as part of the measures aimed at prohibiting retaliation under the Croatian Whistleblowers Act. To this extent, the Labour Act 2014 also envisages that filing an appeal or complaint or participating in proceedings against the employer regarding a breach of law or raising a reasonable suspicion about corruption, are not considered just causes for dismissal (Labour Act 2014, Article 117).

IV. Dismissal for objective reasons

Dismissals for objective reasons or, as they are referred to in Croatian labour legislation, business-related dismissals, are driven by e.g., economic, technological or organizational interests of the employer, and are not affected by the employee's work performance or conduct (i.e., subjective reasons).

Economic reasons represent circumstances that occurred irrespective of the employer's business strategies, which negatively impact the employer who needs to decrease the number of employees to lower operation costs. Case law demonstrates examples of reduction of the scope of business operations, decrease in market size, unprofitability of a certain branch of business, etc (Supreme Court of the Republic of Croatia, 2003).

Contrary to economic reasons, which occur due to external impacts, technological reasons for dismissal happen as a consequence of the employer's own activities, oftentimes directed at improving the current working conditions by introducing new or more advanced technologies and processes (e.g., automatization of work tasks) (Supreme Court of the Republic of Croatia, 2008).

Changes to the internal organizational structures and processes may require shifting work tasks to other positions, merging work tasks, decreasing the number of employees performing certain tasks or cancelling some work positions entirely (Frntić et al., 2023).

It is important to note that the grounds for objective dismissal, if challenged, are examined by the courts taking into consideration solely the conditions / circumstances the employer claimed as justifiable grounds at the time of dismissal (and not after, e.g., when economic conditions could improve after the dismissal) (Frntić et al, 2023).

The upcoming section will provide an overview of the legal framework on dismissal for objective reasons under Croatian labour law, from the Labour Act 1995, through the reforms of Labour Act 2009, and finally, the current regulation of the Labour Act 2014 (this internal logic will also follow the discourse in the subsequent sections on collective dismissals and dismissal for subjective reasons).

4.1. Labour Act 1995

The Labour Act 1995 recognized objective dismissal / dismissal due to business-related reasons in the event that the need for the performance of certain work ceases due to economic, technological or organizational reasons (hereinafter: "objective dismissal") (Labour Act 1995, Article 106).

For employers with 20 or more employees, certain safeguards were imposed in order to enhance the protection of employees being dismissed. These included the following:

1. objective dismissal was permitted solely if the employer could not employ the worker with other work tasks;

2. in deciding on objective dismissal, the employer must have taken into account the duration of the employment relationship, age and maintenance obligations of the employee (i.e., if the employee was supporting minor children and/or elderly or disabled family members) ("social criteria");

3. objective dismissal was permitted solely if the employer was unable to educate or train the employee to work on other tasks, i.e., if circumstances existed where it was not reasonable to expect the employer to educate or train the employee to work on other tasks.

If the employer dismissed an employee due to economic, technological or organizational reasons, the employer was prohibited from employing another employee for the same work tasks for a period of six months thereafter. If the need arose for the performance of these same work tasks, the employer was obligated to offer employment to the employee who had been previously dismissed due to objective reasons (Labour Act 1995, Article 106, Paragraphs 2-8).

4.2. Labour Act 2009

The definition of objective dismissal and the prerequisites listed under (i) and (iii) above had been retained in the Labour Act 2009. Changes were made with regard to the scope of the social criteria, which the employer must take into account when deciding on objective dismissal — with disability added to the existing list (Labour Act 2009, Article 107, Paragraph 3).

4.3. Labour Act 2014

The Labour Act 2014 saw significant amendments to the regulation of objective dismissal in relation to previous legislation. While the definition of objective dismissal remained the same, the requirement for the employer to attempt to educate or train an employee to perform other work or to find alternative employment for the employee in lieu of objective dismissal, wherever this was possible, has been removed from the legislation (Frntić et al., 2023). The Croatian legislator argued that these amendments were motivated by the desire to speed up restructuring processes (Ministry of Labour and Pension System, 2014). Although it may seem that this change would lead to a decrease in the level of protection of employees, the case law on objective dismissals up to that point did not demonstrate a significant number of cases where a dismissal had been deemed unlawful due to the employers' failure to educate or train employees for other work tasks or to find them adequate alterative employment (Frntić et al, 2023).

In terms of the defined social criteria, the disability criterion had been removed from the legislative text in 2014, reverting to the original wording of the subject clause (Labour Act 2014, Article 115, Paragraph 2).

4.4. The (social) criteria when deciding on objective dismissals

As previously indicated, when deciding on objective dismissals for employers with 20 or more employees, the employer must take into account certain criteria — three of these criteria are specifically referenced in the labour legislation: duration of the employment

relationship, age of the employee, and maintenance obligations of the employee (jointly commonly referred to in practice as the "social criteria"). Recent years have seen the emergence and expansion of additional criteria in the dismissal process that are not regulated by law (Gović Penić, 2018). Questions regarding the relationship between the social criteria and these additional criteria and their significance and priority when deciding on dismissals in concrete cases have been at the centre of the discourse on objective dismissals (Gović Penić, 2018).

It is evident from the case law on the subject matter that the courts in Croatia accept the application of additional non-statutory criteria by employers deciding on objective dismissals, as part of the autonomy of employers to determine the suitable candidates for dismissal (Supreme Court of the Republic of Croatia, 2006; 2011). The additional criteria introduced by employers should be work-related, transparently presented and consistently applied (without misuse or discriminatory practices) (Gović Penić, 2018).

In discussing the issue of priority of the three statutory criteria, court practice has effectively confirmed that none of the envisaged criteria has priority status before the others and the employers themselves are tasked with the balancing of the applicable criteria in each individual dismissal case (Frntić et al, 2023).

Furthermore, as a general rule of (labour) disputes, each party is responsible to prove the claims they assert (Labour Act 2014, Article 135); therefore, if the employee claims that their employer did not (properly) apply the statutory or additional criteria for dismissal, the employee should in principle be able to prove their own claims. However, as is often the case, case law varies to a degree, and if the employer does not sufficiently explain the application of the relevant criteria for dismissal in the dismissal decision, the burden of proof lies with the employer to demonstrate that the criteria had indeed been taken into account (Supreme Court of the Republic of Croatia, 2017).

Another problematic point in applying the criteria for deciding on objective dismissals is the relevant scope for the comparison of employees — to this extent, the available court practice does not seem to provide a unanimous answer to this dilemma. It is at least clear that the comparison exercise should encompass all employees employed at the same work position in the entire Republic of Croatia, meaning that the comparison should not be limited just to specific departments or organizational units of the employer (Zlatović, 2019). A decision rendered by the Supreme Court of the Republic of Croatia in 2017 dealt with a case where the employer was a foreign legal entity with branch offices in multiple countries in the SEE region, including Croatia and where the employer decided to terminate a work position held by one employee in Croatia. The same work position was also held by two employees in Hungary and Slovakia, leading to the question whether this foreign employer should conduct a comparison of all three employees in the various jurisdictions, applying the criteria from the Croatian labour legislation. In its decision, the Croatian Supreme Court stated that the purpose of the Croatian Labour Act is to regulate employment relationships in the Republic of Croatia, clearly delineating the territorial scope of application of Croatian labour legislation. The foreign employer in question cannot be "forced" to apply Croatian labour law extraterritorially in foreign jurisdictions and to foreign nationals working therein (Supreme Court of the Republic of Croatia, 2017).

V. Collective dismissals

Collective dismissals have historically been regulated differently than individual dismissals under Croatian labour legislation, with a specific set of provisions including additional procedural requirements in the event of a dismissal of a larger number of employees. The collective dismissals procedure is heavily administrative, includes the cooperation of multiple stakeholders and is particularly sensitive in nature due to the potential impact on the job market, the employers' business operations and considering the human component of a number of people losing their livelihoods or being affected by this process (Frtnić et al, 2023).

5.1. Labour Act 1995

The initial regulation of collective dismissals in the Labour Act 1995 required that at least 20 employment agreements would be terminated in a 90-day period due to economic, technological or organizational reasons (Labour Act 1995, Article 119, Paragraph 1).

In such cases, the employer would be obligated to create a "social plan" in consultation with the competent employment service and the works council established with the employer. The social plan should include information on the grounds for collective dismissal, the number of potentially affected employees and the possibilities to find alternative employment for the affected employees, either with the same or another employer. If there are no options available for alternate employment, the employees may be dismissed pursuant to the law (Labour Act 1995, Article 120).

The employer must notify the employees and the competent employment service of the social plan in writing, at the latest within eight days following the adoption of the plan. Employees cannot be dismissed before the social plan has been provided to the employment service and the expiry of an 8-day period envisaged for the employment services' response regarding the social plan. The employment service may delay the application of the social plan for a maximum of three months, in part or entirely, for important economic or social reasons (Labour Act 1995, Article 119, Paragraphs 2-4).

5.2. Labour Act 2009

The Labour Act 2009 marked a step forward in the closer alignment of Croatian labour legislation on collective dismissals with the EU Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (Gaži Kovačević, 2017).

The collective dismissals under the Labour Act 2009 imply that at least 20 employment agreements would be terminated in a 90-day period, of which at least five employees would be dismissed due to business-related reasons. The collective dismissal therefore includes those employees whose employment relationship would be terminate due to business-related reasons and by mutual agreement of the employer and employee, on the basis of a proposal made by the employer (Labour Act 2009, Article 120, Paragraphs 1 and 2).

The employers' obligation to create a social plan remains; however, the legislator has prescribed additional information that should also be included in the social plan, such as the profession and the work positions of affected employees, the criteria used for the selection of employees for the collective dismissal (which correspond to the previously mentioned social criteria referenced in the section on objective dismissals), the timeline for when the need for these employees would cease and the manner of calculating severance payments and other payments to employees (Labour Act 2009, Article 120, Paragraph 3).

Consultation with the works council and the employment service are also still part of the collective dismissal process. Amendments were made to the relevant provisions, strengthening the position of the works council and the employment service and the period during which the employees included in the social plan cannot be dismissed has been extended to 30 days (Labour Act 2009, Article 122).

5.3. Labour Act 2014

The collective dismissal process has been significantly revised under the Labour Act 2014. While still keeping in alignment with the afore-mentioned EU Directive on collective redundancies, the entire process has been simplified and expedited.

The requirement of creating a social plan has been eliminated from the collective dismissal procedure and the duration of the procedure has been shortened, considering that the 30-day period during which the employer is not allowed to dismiss the affected employees is now calculated as of the day of notification to the competent employment service on the need for the work of certain employees ceasing (Labour Act 2014, Article 128, Paragraph 1). The employment service has the option to extend this period for an additional 30 days if the continuation of employment of affected employees could be ensured in this timeframe (Labour Act 2014, Article 128, Paragraph 2).

Under the current regulatory framework, employers are obligated to undergo the collective dismissal procedure if the following conditions have been fulfilled (Gaži Kovačević, 2017):

- if the need for the work of at least 20 employees *may* (emphasis added by author to distinguish the difference to prior regulation) cease in a 90-day period,
- if the employment contract would terminate on the basis of dismissal due to business-related reasons or a mutual agreement between the employer and employee, on the basis of a proposal by the employer (note that the termination of the employment contract does not need to occur within the mentioned 90-day period),
- if the employment contracts of at least five employees would terminate on the basis of dismissal due to business-related reasons.

Although the employer is no longer obligated to create a social plan, it still must inform the works council on the measures taken in order to find alternate employment for the employees potentially affected by the collective dismissal (Labour Act 2014, Article 127, Paragraph 3).

An important point to stress is that the failure of an employer to consult with the works council on the collective dismissal renders the decision on collective dismissal null and void, i.e., the decision would not produce legal effects (Gović Penić, 2014).

The collective dismissal procedure, albeit quite administrative and technical in nature, has been designed with the aim to balance the opposing interests of protecting workers' rights and enabling the economic and organizational autonomy of employers in the market economy. To this end, the Croatian legislation on collective dismissal has been aligned with the EU *acquis* on the subject matter, striving to achieve this difficult equilibrium between the juxtaposed positions of the parties in the process (Damjanović, 2022) (Gaži Kovačević, 2017).

VI. Dismissal for subjective reasons

6.1. Dismissal due to personal reasons

Dismissal due to personal reasons is characterized by certain permanent traits of the employee or their capabilities, which prevent them from properly fulfilling their obligations from the employment relationship. These dismissal grounds are not to be confused with a negative personal attitude of an employee towards their work, who does not wish to fulfil their working obligations, which constitutes misconduct (which will be elaborated in more detail below) (Dugonjić, 2019).

The following sections will present an overview of the relevant legal provisions on dismissal due to personal reasons under Croatian labour law from 1995 until today, highlighting the most salient material and procedural points related to this category of dismissal grounds.

6.1.1. Labour Act 1995 & Labour Act 2009

The Labour Act 1995 had applied the same subset of specific requirements for employers with 20 or more employees in relation to both objective dismissal and dismissal due to personal reasons, including:

1. dismissal due to personal reasons was permitted solely if the employer could not employ the worker with other work tasks;

2. in deciding on dismissal due to personal reasons, the employer must have taken into account the duration of the employment relationship, age and maintenance obligations of the employee (i.e., if the employee was supporting minor children and/or elderly or disabled family members) ("social criteria");

3. dismissal due to personal reasons was permitted solely if the employer was unable to educate or train the employee to work on other tasks, i.e., if circumstances existed where it was not reasonable to expect the employer to educate or train the employee to work on other tasks (Labour Act 1995, Article 106, Paragraphs 2-5).

These requirements were retained in the Labour Act 2009 and continued to apply until the adoption of the current Labour Act 2014.

6.1.2. Labour Act 2014

Although dismissal due to personal reasons as a form of ordinary dismissal has not been represented in case law as much as objective dismissal and dismissal due to misconduct, its role in the labour law landscape is nevertheless important, considering the sensitive nuances differentiating it from misconduct and justifying a difference in treatment in terms of the length of notice periods and the entitlement of dismissed employees to severance pay.

It should be noted that in cases of dismissal due to personal reasons the employees' inability to perform the work properly is typically a manifestation of some underlying conditions, illnesses, psychological or character traits, insufficient knowledge or experience, for which the employee should not be admonished, as is the case with dismissal due to misconduct (Dugonjić, 2019) (Frtnić et al, 2023).

6.2. Dismissal due to misconduct (1995 — present)

Since the adoption of the Labour Act 1995, the regulation of dismissals due to misconduct has remained largely unchanged, with the same material scope and definition and the procedural requirements for its validity, which will be presented below.

Three conditions, that should be fulfilled cumulatively, have emerged from legal theory and have been transposed into case law on determining whether there is misconduct by an employee in the employment relationship, namely:

— obligations arising from the employment relationship have been defined,

— solely the employee has acted in violation of these obligations, and

— the employee had violated these obligations with intent (Frntić et al, 2023).

The Croatian legislator did not specify what exactly would constitute misconduct in terms of the severity or nature of the violations of the employee's obligations from the employment relationship. However, throughout the years the court practice has solidified the thresholds for (un)acceptable behaviour to a certain extent and thus provides us with useful examples of misconduct, such as: unjustified refusal to act in accordance with the orders of superiors; consistent late arrivals and/or early departures from work; not submitting work reports and not responding to the employer without a justified reason; causing a (third) car accident as a professional driver, etc. (case law examples extrapolated by Frtnić et al., 2023).

6.3. Extraordinary dismissal (1995 — present)

The employer has a justified reason for extraordinary dismissal, without the obligation to respect the agreed or prescribed notice period, if the continuation of the employment relationship becomes untenable, taking into consideration the circumstances and the

interests of both contractual parties, due to an especially severe breach of obligations from the employment relationship or another particularly important fact (Labour Act 2014, Article 116, Paragraph 1).

Extraordinary dismissal may be enacted exclusively within 15 days as of the day of becoming aware of the grounds on which the extraordinary dismissal is based (Labour Act 2014, Article 116, Paragraph 2). This deadline is subjective, i.e., it depends on the moment of gaining knowledge of the facts/circumstances that warrant extraordinary dismissal by the person competent to enact the dismissal decision. Failure to enact the extraordinary dismissal decision within the prescribed 15-day term precludes the employer from dismissing the employee on these grounds. If the employee commits severe violations of their employment obligations in several separate occasions, for calculating the beginning of the 15-day deadline it would be important to determine whether these violations are temporally separate or if the behaviour observed as a whole in continuity represents a violation of the obligations from the employment relationship (Milković, 2023).

The regulation of extraordinary dismissal has not changed since the Labour Act 1995 and the case law is quite consistent with its interpretations of "especially severe breaches" and "other particularly important facts". Examples of severe breaches justifying extraordinary dismissal include destruction or theft of the employers' property, misuse of sick leave, refusal to fulfil obligations from the employment relationship, unjustified absence from work, etc. (Supreme Court of the Republic of Croatia, 2004; 2007). Other particularly important facts that may form the basis for extraordinary dismissal are often based on the loss of trust between the employer and the employee, leading to an inability to continue a productive working relationship (e.g., if an employee working as a guard is charged for theft of another persons' property) (Supreme Court of the Republic of Croatia, 2001).

6.4. Procedural requirements related to ordinary and/or extraordinary dismissal due to misconduct

Prior to ordinary dismissal due to misconduct, the employer is obligated to issue a written warning to the employee on their obligations from the employment relationship, including the warning on the possibility of dismissal should the misconduct continue, unless there are circumstances which warrant dismissal without the prior written warning (Labour Act 2014, Article 119, Paragraph 1).

Additionally, prior to ordinary or extraordinary dismissal due to the employees' misconduct, the employer is obligated to enable the employee to present their defence, unless, again, the circumstances are such that giving the employee this opportunity would not be justifiably expected from the employer (Labour Act 2014, Article 119, Paragraph 2).

The two afore-mentioned procedural requirements for ordinary and/or extraordinary dismissal due to misconduct serves as safeguards for employees, in order to properly determine the facts relevant to the dismissal and to remove any possible misunderstanding regarding the employee's employment obligations (Milković, 2023).

Failure of the employer to provide a written warning on the obligations from the employment relationship does not in itself necessarily lead to the dismissal decision being ineffective, for

example if the employer only warned the employee verbally, the burden of proof will be on the employer to prove that the employee was indeed warned about their employment obligations and the possibility of dismissal should the misconduct continue. If no warning was issued to the employee, circumstances that justify this should be demonstrated (Milković, 2023).

These circumstances that may justify not providing an employee with a prior written warning or an opportunity to present their defence could be related to violent behaviour of an employee, discovering the employee in the middle of a grievous act such as theft or destruction of property, etc.

It is also important to note that according to Croatian court practice the warning on the obligations from the employment relationship issued to the employee is not a decision of an employer which the employee may appeal, i.e., request protection from the courts should they deem the warning inaccurate or unfair (Milković, 2023).

6.5. Dismissal due to unsatisfactory performance during the probationary period

When concluding an employment contract, the employer and the employee may agree on a probationary period for a maximum duration of six months (Labour Act 2014, Article 53).

As of the Labour Act 2009, unsatisfactory performance of an employee during the probationary period has been expressly noted as a justified reason for (ordinary) dismissal, with a specific notice period that must be at least one week (Labour Act 2014, Article 53). This type of dismissal could be considered as a *sui generis* category, taking into account its specific nature; however, it has been classified here with dismissals due to subjective reasons taking into account the wide-ranging autonomy the employer has with its dismissal decision and the fact that in the court practice, this type of dismissal leans more on the subjective characteristics of the employee rather than on objective grounds affecting the employer, when discussing the existing dichotomy between objective and subjective dismissals.

There are two specific issues that arise in practice in connection with this type of dismissal — what is the timeframe for enacting the dismissal due to unsatisfactory performance during the probationary period and what must the explanation of a dismissal decision in this case be and what must it contain?

To this extent, the employers should in principle be able to assess whether the employee has fulfilled expectations set out as part of the employment relationship until the expiry of the probationary period. After the expiry of the probationary period, the employer can no longer use the possibility to dismiss the employee on these grounds. The employer may also dismiss the employee before the expiry of the agreed probationary period, i.e., the probationary period may be terminated prior to its envisaged expiry should the circumstances indicate the employees' unsatisfactory performance (Gović Penić, 2020).

In determining the level of detail the employers must provide in their explanations of dismissals due to unsatisfactory performance during the probationary period, the Supreme Court of the Republic of Croatia was quite clear — the employer does not have to prove that the employee did not satisfy during the probationary period, the mere assessment by the

employer of the employee's (unsatisfactory) work during the probationary period suffices. The dismissed employees cannot contest the validity of the employer's assessment, as it is considered within the employers' autonomy to determine whether the employee's work corresponds to the employer's requirements (Gović Penić, 2020).

VII. Conclusion

This paper has explored the modalities of dismissal in the Republic of Croatia, with an aim of presenting a comprehensive overview of the relevant regulatory framework for academic and practitioners alike, while also providing a critical analysis of the material and procedural scope of the Croatian labour legislation on dismissals. Striking a balance between the protection of employees' rights and the economic interest of the employers in the process of dismissals is a difficult feat, however, it is necessary to counter the power disparities inherent to the employment relationship.

The historical development of Croatian labour law has been marked by an extensive transition from the socialist system to a market-oriented economy in the 1990's. To this extent, the Labour Act of 1995 represented a pivotal moment, laying the foundations for contemporary developments of labour law in Croatia. Subsequent reforms of labour laws, including the provisions on dismissal, were driven by Croatia's accession to the European Union, which required a comprehensive alignment of the domestic legislation with the EU legislative *acquis*.

The analysis of the general provisions on dismissals under Croatian law addressed the overarching regulatory framework common to the various types of dismissals recognized by the Croatian legislator. These provisions reference formal procedural requirements relevant to dismissals, including the matters of the form, explanation and delivery of the dismissal decision, as well as the statutory notice periods and severance pay and the categories of employees protected from dismissals.

Employers must base objective dismissals in economic, technological or organizational grounds, and for those employers with more than 20 employees, a comparison of employees utilizing social criteria or other specific work-related criteria must be conducted.

Collective dismissals are especially sensitive due to their potential larger scale impact on the job market and taking into account the number of employees that may be affected. Procedural requirements for collective dismissals include notification and consultation with works councils and employment services, reflecting the significance of effective dialogue of various stakeholders in order to balance the economic interests of the employer and the protection of employees' rights.

Dismissals for subjective reasons, including the dismissal for personal reasons, dismissal due to misconduct, extraordinary dismissal and dismissal due to unsatisfactory performance during the probationary period, have also been analysed as part of this paper, providing an overview of the relevant statutory provisions and extrapolations on salient points from the court practice of Croatian courts.

As indicated in the introduction, the aim of this paper has been to provide valuable insights into the regulatory framework on dismissals under Croatian labour law. If anything can be gleaned from the tumultuous path of establishing legislation through the transition from socialism to a market economy, through countless ebbs and flows of the labour market, crises, pandemics and the continued efforts towards alignment with EU legislation, perhaps it is this — new challenges and opportunities lie ahead and with joint efforts our study of the legislative frameworks of our respective jurisdictions can contribute to building an equitable labour market and to promoting fairness, transparency and protection for employees.

VIII. References

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