

## BALANCE OF WORK AND EDUCATION

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### I. Common characteristics

1. Usually when we talk about reconciliation of work and life, we associate this primarily with family life, with childbirth and childcare, care for relatives in need. This is extremely important. However, family life is not the only part of a worker's life outside employment. The worker has many other rights and interests that are worthy of protection. Among them is education. I mean **education in general**, not just that related to the professional qualification for the performed or other work.

2. One of the fundamental rights of citizens in the Republic of Bulgaria is ***the right to education***. It has traditionally been highly regarded in our country. It is explicitly enshrined in the three **constitutions** after the Second World War -- in Article 79 of the Constitution of 1947, in Article 45 of the 1971 Constitution and Article 53 of the current Constitution of 1991<sup>1</sup>. It lays down an obligation for the State to encourage education. Such an encouragement is the creation of conditions for combining work with education. It will be discussed here below.

3. The right to education is a subject of an extensive **international recognition**. It is included among ***the fundamental human rights*** in the most important international instruments on these rights.

Article 26 of ***the UDHR*** explicitly proclaims this right and places a number of requirements on the UN Member States to ensure that it is exercised. Among these requirements is that technical and professional education should be generally available and higher education should be equally accessible to all based on merit.

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<sup>1</sup> On constitutional right to education, see **Вълканов, В.** Основните права на гражданите в Народна република България и тяхната правна защита. С.: НИ, 1990, 257—265; **Стойчев, Ст.** Конституционно право на Република България. С.: НИ, 1993, 153—154; **Друмева, Ем.** Конституционно право. 4. изд. С.: Сиела, 20-13, 741—744.

The right to education is also enshrined in Article 13 of *the ICESCR*. This provision includes among the requirements to guarantee this right the accessibility to all of secondary education in its different forms, including technical and vocational secondary education by every appropriate means, as well as the accessibility of higher education to all by every appropriate means.

*The European Social Charter* pays special attention to the right to education. In its Article 9, it establishes the right to vocational guidance, and in Article 10 -- the right to vocational training.<sup>2</sup> The right to education is among the fundamental rights of EU citizens according to Article 14 of *the CFREU*.

**4.** The right to education is regulated in detail in a number of acts of the current **national Bulgarian legislation**. In this case, we are interested in the guarantees for exercising this right and the forms of encouraging the education by the State laid down in the said provision of *Article 53 Const.*, when these guarantees are related to exercising another basic constitutional right of citizens -- the right to work (*Article 48 Const.*).<sup>3</sup> These are the specific rights of workers continuing their education without interrupting their employment. They are part of the EU's great idea of lifelong learning.

The specific rights of workers who continue their education without interrupting their employment are not new for the Bulgarian legislation. For the first time, Council of Ministers Decree No 4 of 1949 established the right to additional leave for workers who continue their education in an evening or part-time training without interrupting their employment. This leave was taken on in the Labour Code of 1951. The Law for a Closer Connection between School and Life of 1959 further developed and enriched it and the details of its legal regime were laid down in CMD No 39 of 1959 on determining the leaves and scholarships for students who continue their education without interrupting their employment. Their current legal regulation is contained in *Chapters VII and VIII of the Labour code* and in *the Ordinance on working time, breaks and leaves*.

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<sup>2</sup> For further details on the right to education in the European Social Charter see **Mikkola, M.** Social Human Rights in Europe. Karleactio, 1972, 622—630.

<sup>3</sup> For the right to work see **Радоилски, Л.** Трудово право на Народна република България. С.: НИ, 1957, 75—85; **Христова, Ел.** Гаранции за правото на труд. – Във: *Въпроси на държавата и правото при разгърнатото строителство на социализма в НР България*. С.: НИ, 1964, 373—392; **Мръчков, В.** Право на труд в НРБ. Москва: Прогрес, 1973; **Мръчков, В.** Българското трудово законодателство и международните трудови конвенции и препоръки. С.: НИ, 1978, 84—97; **Средкова, Кр.** Трудово право. Обща част. С.: УИ „Св. Климент Охридски“, 2010, 126—128.

**5.** Before clarifying the labour law guarantees for reconciling work with learning, it is necessary to establish their basis and, hence, who is the subject to special labour protection through these guarantees.

**The basis** of the special rules in the case under consideration is ***to combine work under an employment relationship*** (exercising the right to work) ***with education*** (exercising of the right to education). Each of these rights is worthy of respect. They have important personal and social significance. Both rights are promoted by the State: the right to work -- in Article 48, para. 1 Const., and the right to education -- in Article 53, para. 6 Const. One form of promotion is to create conditions for their simultaneous exercising.

***Work under employment relationship*** means the existence of an individual employment relationship, a party to which in his/her capacity of an employee is an individual natural person.

***Education*** is a process of acquiring knowledge and skills. This process takes place in specially designed organisational forms -- educational establishments. The connection between the education and the work function exercised under the employment relationship bears no relevance.

***The reconciliation*** of work with training means that the same individual is a party to an employment relationship and performing his/her duties under this relationship, and a party to an administrative legal relationship for acquiring knowledge and skills (education, training) and performing his/her duties under this relationship.

**6. Subject** of the rights under consideration is ***a worker who continues his/her education without leaving the job*** (Article 140, para. 4, para. 5; Article 147, para. 1, item 5 etc. LC).

The main capacity in this case is being a worker. It precedes the capacity of a learner. This conclusion results from three circumstances.

The first is that the training takes place "without leaving the job". This means that a person has already been a party to an employment relationship when he/she begins his/her education without terminating his/her employment relationship.

The second circumstance is that the volume and content of the special protection is conditioned by the employer's prior consent to the training (Article 169, paras 1 and 5; Article

170, paras 1--2 etc. LC). And for the existence of an employer, there must be an employment relationship.

The third circumstance is related to the explicit distinction between workers who continue their education without leaving the job and students who work in their free from study time (Article 141, para. 4 LC). In the second category -- students who work in their free from study time, the main capacity is being a student. The main responsibility of the individual concerned is the learning. He/she works in his/her free from study time<sup>4</sup>, while the worker is studying outside his/her working hours.

The category of persons considered differs also from workers under an employment contract for on-the-job training (Articles 230—233 LC).<sup>5</sup> In their case, the training is in a specific profession or specialty, for which a specific employment contract has been concluded. Training is delivered in the process of work for the employer under the employment contract and by a person designated by the employer.

Special labour rights are granted to a worker who also has the capacity of a student, that is, *a person who is studying in organised forms of education at an educational establishment* -- not in training courses, etc. The rights are granted for each level of education -- primary education, secondary education, higher education in each of its three degrees under Article 42, para. 1 HEA (bachelor, master, doctor) separately.

**7. The social purpose** of the special labour rights of workers, who continue their education without interrupting their job, is *to create conditions for reconciling work with training*. This is achieved by allowing the employee to prepare for and participate in the different forms of the educational process.

**8.** Special labour rights for studying without leaving the job occur under certain conditions (**prerequisites**). Depending on their scope, they can be grouped into two groups:

**a. Common.** They are relevant to all rights. This group includes the requirement for *training without leaving the job*, i.e. overlapping in one person of two legal capacities – a worker, on the one hand, and a student, on the other. That is what was discussed above (see

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<sup>4</sup> For students who work in their free time see Средкова, Кр. Правни форми за въвличане на студентите в общественото производство през свободното от обучение време. – Годишник на Софийския университет. Юридически факултет. Т. 82, № 1, 1991, 218—230.

<sup>5</sup> For this contract see Василев, Ат. – В: Мръчков, В., Кр. Средкова, Ам. Василев. Коментар на Кодекса на труда. 12. изд. С.: Сиби, 2016, 782—806.

point 6). This concerns, for example, the relative ban of night work under Article 140, para. 1, item 5 LC;

**b. Special.** These prerequisites refer to the exercise of certain rights – to paid leave, which will be discussed below.

**9.** The special labour rights of students who study without interrupting their job, are related to the importance of **time** as a physical category of basic legal significance for labour law. This significance is conditioned by the continuing nature of the employment relationship and is reflected in such core labour law institutes like working time, breaks, leave and employment period.<sup>6</sup> These labour law institutes link to the labour rights of students who study without interrupting their job. This is due to the fact that, for a certain period two legal relationships are in force -- on provision of labour force and on education. The task of the law is to create the conditions for this simultaneous enforcement.

## **II. Rights related to working time**

**10.** For the above reasons, the special rights of students who study without interrupting their job are related to the working time. Their **aim** is to enable successful implementation of the educational obligations alongside the work under employment relationships, while ensuring enough free time for recreation and other activities of the workers-students. These rights are granted to all workers of the category considered. Employer's consent to their exercise is not required. They may be exercised *ex lege*.

**11.** Special rights are provided in connection with **the organisation (distribution) of working time**. For the respective category of workers, there is a provision for compliance of the **rotation of shifts** (in case of shift work) with the organisation of the educational process (Article 141, para. 4 LC). The rotation of shifts for them should be *tailored to the educational process*. Compliance of work with the educational process means that it should be performed at a time that is not occupied by classes -- for example, if the worker is taking evening classes, he/she should not be assigned work in the second and third or night shifts.

**12.** The law provides also special rights regarding the **duration of regular working time**. For workers who take **evening classes**, **reduced working time** is established (Article

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<sup>6</sup> For the significance of time in labour law, see Средкова, Кр. Правен режим на работното време. С.: УИ „Св. Климент Охридски“, 1993, 51—61.

169, para. 5 LC). Although regulated as a special type of leave, this is essentially a reduction in the normal working hours of that category of workers. This regime is applicable *during school days*. The length of working time in the case in question is shorter by one hour compared to that for the other workers. The school days are certified by a document issued by the school. Entitled to such a reduction in their working time are workers who work at normal or reduced working time for more than seven hours.

**13.** Very important are the rights that aim **to protect the worker from greater than normal workloads**, from fatigue, from violation of the usual distribution of work and leisure time. Even more important are those rights when the worker has other serious and permanent commitments outside the labour process, such as to study at an educational establishment. In this regard, for them is established:

**a. Ban of night work**

There is a ban of night work for workers who study without interrupting their job (Article 140, para. 4, item 5 LC). The ban is related to the generally unfavourable impact of night work on the human body. This is part of such rule for certain categories of workers in a socially more vulnerable position.<sup>7</sup> For the said category of workers, this vulnerability is determined by the additional load with education along with the work under employment relationship.

The ban of night work is addressed to the employer and prescribes that these categories of workers are not assigned to work at night time. The ban is relative and can be overcome with the worker's consent. Consent is a prior declaration of the worker's intent to renounce the use of the protection provision of Article 140, para. 4, item 5 LC which exempts him/her from the obligation to perform night work. According to Article 7, sentence 1, OWTBL it must be given in writing. The clarity in the relationship between the worker and the employer requires that it be explicit, clear and unambiguous. The worker's consent must be requested by the employer. Once given, consent takes effect throughout the entire period of time during which the grounds for the ban are valid. This follows from the fact that the consent can be withdrawn before the date on which the employee wishes to cease the night work (Article 7, sentence 2 OWTBL). No consent or any declaration of intend of the employer are required for withdrawing the consent. Consent may be withdrawn no later than

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<sup>7</sup> For night work and its restrictions see Средкова, Кр. Правен режим, 177—186; Средкова, Кр. – В: Коментар, 474--477; Мръчков, В. Трудово право. 9. изд. С.: Сиби, 2015, 341—342.

three days before the date on which night work is to be suspended. Withdrawal may also take place after this period if there are good reasons. Good reasons should be those that unexpectedly prevent the worker from notifying his/her employer of his/her reluctance to perform night work -- for example, a change in the schedule of classes. Withdrawal of consent must be in writing, as must be the consent as well. In order to produce its effect, it must reach the employer.

**b. Ban of overtime**

Among those workers who have a special overtime regime are those who continue their education without leaving job. A relative ban on overtime has been established for them (Article 147, para. 1, item 5 LC). This means that they can work overtime only with their prior written consent (Article 8, para. 6 OWTBL). It is required on a case-by-case basis. The rules are the same as for the ban of night work.

**c. Ban of extending the working time**

Analogous and under the same conditions as for night and overtime work is the ban to extend the working time of workers who study without interrupting their job (Article 136a, para. 6 in conjunction with Article 147, para. 1, item 5 LC).

### **III. Educational leave**

**14.** Perhaps the most important part of the special labour rights of workers who study without interrupting their job is the leave. Education without interrupting the job is a prerequisite for providing special leave – an educational leave.

The provision of educational leave has been established as an **international standard** in the ILO legislative practice. The ILO considered paid educational leave a tool for human resource development. Convention 140 concerning Paid Educational Leave of 1974 and the Recommendation 248 of the same name and year are dedicated to it. The Convention obliges States to establish and implement a policy of granting paid educational leave at every level, as well as for public, trade union and civic education, and requires, where possible, that the pay is at the expense of the State and not the employer.<sup>8</sup>

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<sup>8</sup> For further details on the international legal framework concerning educational leave see **Мръчков, В.** Българското трудово законодателство и международните трудови конвенции и препоръки. С.: НИ, 1978, 149—163; **Valticos, N., G. von Potobski.** International Labour Law. Deventer-Boston: Kluwer Law and

Bulgaria has not ratified the ILO Convention 140, however, as it has been clear (see above -- item 4) that the national legislation has preceded the international one by several decades. Currently, it significantly exceeds the standards of the Convention.

At regional European level, the European Social Charter (Article 9) regulates only vocational education -- for acquiring a specific profession in view of working under a particular employment relationship. Bulgaria has not ratified this provision. Because of this fact, and because of the basic circumstance that the acquisition of professional qualification is outside the scope of this presentation, the requirements of the Charter are not discussed here.

**15.** As mentioned above (see item 4), paid educational leave has long existed in Bulgarian labour legislation -- since the mid-twentieth century. One of the major changes in the Labour Code of March 2001 is that from an entitlement this leave turned into a **legal opportunity**. This opportunity becomes an **entitlement** in the presence of two prerequisites:

**a. Acquiring the capacity of "student"** in the respective form and level of educational establishment and including the worker in the respective forms of the educational process;

**b. Employer's consent** to education. Consent is a necessary for the occurrence of only the right to paid educational leave. Where such consent is not available, leave shall be unpaid and for a period equal to half of the one of the paid leave.

**16.** Educational leave may be paid and unpaid.

**Paid** educational leave is a leave during which the worker is paid remuneration by the employer. This remuneration is estimated like the remuneration for the paid annual leave. Leave is not paid if the worker has been absent from classes or did not sit for an exam for unsubstantiated reasons (Article 51, para. 3 OWTBL). The payment is due if the employer has given his/her prior consent to education.

**Unpaid** leave is a leave during which no remuneration is payable to the worker. Such a leave is provided in two hypotheses:

First, when the **law explicitly provides** that the leave is unpaid. This is, for example, the leave to apply at an educational establishment where the worker has been granted paid

leave during the previous year but he/she has failed to get into an educational establishment (Article 170, para. 3 LC).

Second, when *the employer has not given his/her prior consent* to education. In such cases, in addition to the fact that the leave is unpaid, it is provided for a period equal to half of the one of the paid leave.

All educational leaves are treated as **employment and insurance periods** (Article 170, para. 3; Article 171, para. 3 LC). This is an important guarantee for the actual reality of the right to educational leave.

**17.** According to its specific social purpose, educational leave falls into several **categories**:

**a. For an entrance exam at an educational establishment** (Article 170; Article 171, para. 1, item 2 LC). It is provided so that the worker can prepare and sit for the entrance exam, when the admission to the educational establishment is conducted through a competition. The duration of the leave depends on the level of the educational establishment. It is six working days for a secondary school, and for a higher education school or doctorate – 12 working days;

**b. For education.** Such leave is provided in order to enable the worker to prepare and take part in the classes and to attend the exams planned in the curriculum during the current educational course. The duration of this leave is 25 working days per school year for every form and level of education;

**c. For completion of education.** A worker who studies without interrupting his/her job is also granted leave to complete education by passing a matriculation or state exams and defending a thesis or a diploma project.

The worker is first of all entitled to **paid** leave. Its duration is 30 working days. It can be used only once in the year of completion of education.

**Unpaid** leave is also provided for the completion of education. It is regulated in Article 171 LC. Its duration depends on the level of the educational establishment. It is up to four months for completing a higher education, and for the rest -- up to 30 working days. This leave also can only be used once;

**d. For the preparation and defence of dissertation work.** Right to such leave have workers-doctoral students (Article 169, para. 4 and Article 171, para. 1, item 4 LC). The form of the doctoral studies is irrelevant – full time, part-time or preparation on their own. The duration of the paid leave in these cases is six months for acquiring a doctoral degree, and 12 months for acquiring "Doctor of Science" degree. The duration of the unpaid leave is four months when the doctoral studies are carried out with the consent of the employer, and two months -- in the other cases.

**18. The legislation also establishes certain rules on the **procedures for the use of educational leave.****

It should be emphasized above all that the leave is used at a *time determined by the employee*. No consent, permission, etc. by the employer is required. The time of use is determined by the organisation of the educational process -- participation in classes, preparation and sitting for exams, etc. It is determined by a unilateral declaration of intend by the worker in the form of written *application* to the employer, which must indicate the start date and the duration of the leave. It is necessary to attach to it a *certificate* from the educational establishment on the form of training and the period for attendance of classes or exams (MLSP Letter № 84-XX-7 of 8 August 2004). The application must be submitted at least seven days before the expected start of the leave so that the employer can make the necessary organisational arrangements for performing the employee's work during his/her absence.

Educational leave can be used *at one time* or *in parts*. This depends on the needs of the educational process and the decision of the employee (Article 171a LC).

Since the educational leaves have a strict purpose, they are allowed for *the academic year* to which they refer (MLSP Letter No 26-00-198 of 9 July 2001). Educational leave cannot be used when the worker repeats the academic year for unsubstantiated reasons -- for example because he/she did not pass the required number of exams. It is not allowed to postpone unused educational leave or to get financial compensation for it. If a worker is educated on an accelerated curriculum, that is, two academic years for one, he/she has the right to leave for the two academic years separately (MLSP Letters 94-00-72 of 19 February 1993 and 94-31-8 of 31 March 1999).

**19.** The presented here legal regulation of the rights of workers who study without interrupting their job, shows the humane approach of the Bulgarian legislator to rights that are not directly related to the labour process. This legal regulation must be maintained and to the employment relationship -- the worker and the employer.

## ABBREVIATIONS USED

<b>CFREU</b>	-- Charter of Fundamental Rights of the European Union
<b>CMD</b>	-- Council of Ministers Decree
<b>Const.</b>	-- Constitution of the Republic of Bulgaria
<b>EU</b>	-- European Union
<b>HEA</b>	-- Higher Education Act
<b>ICESCR</b>	-- International Covenant on Economic, Social and Cultural Rights
<b>LC</b>	-- Labour Code
<b>MLSP</b>	-- Ministry of Labour and Social Policy
<b>OWTBL</b>	-- Ordinance on Working Time, Breaks and Leave
<b>UN</b>	-- United Nations
<b>UDHR</b>	-- Universal Declaration of Human Rights