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CONSEQUENCES OF UNLAWFUL DISMISSAL: THE ROLE OF THE COURT. LITHUANIAN MODEL

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ABSTRACT

This paper examines the consequences of unlawful dismissal in Lithuanian labour law with particular focus on the role of courts in determining the remedies applied in such cases. The main goal of the research is to assess the limits of judicial competence when deciding on the non-application of reinstatement, the reduction of statutory compensatory payments, and the determination of damages once the dismissal has been declared unlawful. The analysis is based on the hypothesis that the strict and detailed statutory regulation governing the consequences of unlawful dismissal does not necessarily ensure an appropriate balance between the rights and interests of employees and employers. It is presumed that such regulation, despite its formal precision, may create uncertainty in practice regarding the scope of employee protection and the extent of judicial discretion.

The study analyzes international standards on protection against unlawful dismissal, the historical development of Lithuanian labour law, and the interpretation of relevant norms in the case law of the Supreme Court of Lithuania. The research shows that although the legal framework establishes strict statutory consequences, the courts play a decisive role in shaping their practical application through interpretation guided by the principle of proportionality.

KEYWORDS

Employment contract, employment relationship, dismissal, termination, reinstatement, forced absence.

INTRODUCTION

Given that employment relationships are characterized not only by economic but also by social elements, the employee's subordination to the employer, and an imbalance of power – particularly pronounced in situations of disequilibrium of labour supply and demand caused by high unemployment, weak trade unions, and employees' lack of legal awareness – the regulation of such relationships largely depends on the chosen combination of imperative and dispositive provisions of legal regulation. Imperative norms thus become an alternative to agreements between the parties to the employment contract, shifting employment relationships from the sphere of private law towards that of public law.¹ This tendency is particularly pronounced in the legal regulation of the termination of employment relationships, the objectives of which are associated with the implementation of the protective function, grounded in the principles of strict law² and imperative regulatory methods.³

In implementing the international standards enshrined in the Termination of Employment Convention, 1982 (No. 158) adopted by the International Labour Organization (hereinafter referred to as the "ILO Convention No. 158"),⁴ Article 24 of the European Social Charter (revised) (hereinafter referred to as the "ESC"),⁵ and Article 30 of the Charter of Fundamental Rights of the European Union (hereinafter referred to as the "CFREU"),⁶ restrictions on an employer's right to initiate the termination of employment relationships are not limited to the identification of a list of lawful and unlawful grounds for dismissal, nor to the provision of additional substantive guarantees for employees (such as prior notice of termination or severance pay). They also extend to a specific procedural framework for the adjudication of labour disputes (building states institutional capacity), including the transfer of the burden of proof to the employer and the establishment of a relatively high standard of proof. Moreover, where a dispute concerning the termination of employment is resolved unfavourably to the employer by recognizing the termination as unlawful, labour law – unlike in cases of breaches of contractual obligations under civil law – provides for special deterrent mechanisms, namely the obligation to continue the employment relationship by reinstating the employee and

¹ Ipolitas Nekrošius et al., *Darbo teisė. Vadovėlis (Labour law. Textbook)* (Vilnius: Teisinės informacijos centras, 2008), 18–19; Vilius Mačiulaitis, *Darbo sutarties nutraukimas darbdavio iniciatyva nesant darbuotojo kaltės lankstumo ir saugumo aspektu (Termination of labour relations on employer's initiative without any fault on the part of an employee in the aspect of flexicurity)* (PhD diss., Mykolas Romeris universitetas, 2013), 16–17; Justinas Usonis and Tomas Bagdanskis, "Dispozityvumo įgyvendinimas Lietuvos darbo teisėje" ("Implementation of dispositivity in Lithuanian labour law"), *Socialinių mokslų studijos* 3, 2 (2011): 590; Genovaitė Dambrauskaitė, "Civilinių ir darbo sutarčių sąveika" ("Interaction between civil and employment contracts"), *Jurisprudencija* 28, 20 (2002): 13–14; György Kiss, "A New Approach of Flexicurity: The Importance of Pacta Sunt Servanda and Clausula Rebus Sic Stantibus in Employment Relationship": 327–329, 332–337; in: Tomas Davulis (ed.), *Labour law Reforms in Eastern and Western Europe* (Brussels: P. I. E. Peter Lang, 2017); Guy Davidov, "A Theory of the Contract of Employment," *Industrial Law Journal* (2025): 1–2.

² Tomas Davulis, *Lietuvos Respublikos darbo kodekso komentaras (Commentary on the Labour Code of the Republic of Lithuania)* (Vilnius: VĮ Registrų centras, 2018), 137.

³ Ipolitas Nekrošius et al., *supra* note 1, 18–19.

⁴ *Termination of Employment Convention*, Information System on International Labour Standards (1982, No. 158).

⁵ *European Social Charter (Revised)*, Official Gazette (2001, No. 49–1704).

⁶ *Charter of Fundamental Rights of the European Union*, Official Journal of the European Union (2012, No. C 326/391).

the imposition of significant financial consequences on the employer, including an award of average remuneration for the period of forced absence.

Pursuant to Article 218 Section 2 of the Labour Code of the Republic of Lithuania (hereinafter referred to as the "Labour Code"),⁷ if an employee is dismissed from work in the absence of a legal basis or in violation of the procedure set out in laws, the labour dispute resolution body⁸ declares the dismissal as being unlawful, orders reinstatement of the employee and an average remuneration for the period of forced absence, from the date of dismissal to the date of enforcement of the decision but not more than one year, to be paid as well as the pecuniary and non-pecuniary damages to be compensated. The law also directly establishes an exception to this strictly formulated general rule: in case it is established that the employee cannot be reinstated due to economic, technological, organizational or similar reasons, due to the risk of being provided with unfavourable working conditions, or owing to a request from the employer that the employee should not be reinstated, the labour dispute resolution body shall decide to recognize the dismissal as being unlawful; in such cases the employment contract is considered terminated by the decision of the labour dispute resolution body on the day that the said decision takes effect and additional compensation equal to one average remuneration for every two years of the employment relations, but not more than six times the employee's average remuneration, is awarded.⁹

With a view to assessing the limits of the court's competence, this paper seeks to address the following questions: what is the role of the court in deciding on the conditions for the non-application of the reinstatement; whether the court may reduce compensatory payments calculated in accordance with the criteria established by law; and how the issue of damages should be resolved once the unlawfulness of dismissal has been established. For this purpose, the paper emphasizes the fundamental principles of adjudication of labour disputes, determined by the contractual nature of labour relations on the one hand and protection of public interest oriented statutory restrictions on the other. The analysis assesses the role of the courts in applying the consequences of unlawful termination of an employment contract, the influence of this role in ensuring the principle of proportionality, creating a balance between the compensatory and punitive (deterrent) purposes of the instruments in question.

This paper raises the hypothesis that the strict statutory regulations, aimed at imposing significant negative organizational and financial consequences on an employer who has unlawfully terminated an employment contract, and assessed in relation to the enumerated grounds for termination of employment, procedural guarantees, and special rules of burden and standard of proof, not only fail to strike an appropriate balance between the rights and legitimate interests of the parties to the employment relationship, but also undermines the principle of legal certainty. The presumption is put forward that the strict and detailed form of legal regulation chosen when applied in practice lacks legal certainty and is considered misleading regarding the scope of the employee's rights and the discretion of the court.

The paper is structured as follows: the first section introduces international standards, implementing mechanisms of redress in cases of illegal dismissal, as well as

⁷ *Labour Code of the Republic of Lithuania*, TAR (2016, No. 23709).

⁸ Although, in accordance with Article 216 Section 1 of the Labour Code (*Ibid.*, Art. 216 Sec. 1), there are two labour dispute resolution bodies – labour dispute commissions and courts, whose competence on the topics in question is essentially identical, hereinafter the terms "courts" and "labour dispute resolution bodies" will be used as synonyms.

⁹ *Ibid.*, Art. 216 Sec. 4, 6.

interpretation and application of such standards by supervisory bodies; the second section aims to reveal historical evolution of national legal regulation, the challenges of the post-soviet era and the impact of codification; the rules of interpretation of law relating to judicial discretion formulated in case law are assessed in the third section of the paper.

The paper relies on several complementary methods of scientific inquiry. The historical method is used to examine the evolution of Lithuanian regulation governing the consequences of unlawful dismissal. The systematic method serves to analyze the relationship between domestic labour law and international labour standards governing the consequences of unlawful termination of employment. Linguistic and teleological methods are employed to interpret statutory provisions regulating reinstatement, compensation and damages in light of their wording, objectives and underlying principles, particularly proportionality, legal certainty and effective judicial protection. The case-law analysis primarily focuses on the jurisprudence of the Supreme Court of Lithuania, as it ensures the uniform interpretation and application of labour law and provides the authoritative standards governing the legal consequences of unlawful termination of the employment relationship. The cases were selected purposively according to their precedential significance for the development of judicial discretion concerning reinstatement, compensation, pecuniary and non-pecuniary damages, and the application of the principle of proportionality. A limited number of decisions of lower courts are included solely to illustrate the most prominent examples of alternative judicial approaches. The analysis also refers to the case law of international courts where it establishes or clarifies the international legal standards relevant to the interpretation of national labour law.

1. INTERNATIONAL STANDARDS

Protection against unlawful termination of labour relations is recognized by international labour law as employment security oriented essential element of effective implementation of fundamental right to work.

According to both Article 4 of the ILO Convention No. 158¹⁰ and Article 24 of the ESC¹¹ employment relationship shall not be terminated unless there is a valid reason connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, imposing a substantive limitation on the employer's discretion to terminate employment contract.¹²

¹⁰ *Termination of Employment Convention*, *supra* note 4, Art. 4.

¹¹ *European Social Charter (Revised)*, *supra* note 5, Art. 24.

¹² The Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organization (hereinafter referred to as the "CEACR") has emphasized that the requirement of a valid reason constitutes a substantive limitation on the employer's discretion and forms the cornerstone of the ILO Convention's No. 158 protective system (International Labour Organization, *General Survey on the Termination of Employment Convention (No. 158) and Recommendation (No. 166)*, (accessed 4 March 2026) // <https://www.ilo.org/resource/other/general-survey-2027-concerning-termination-employment-convention-no-158-and>; International Labour Organization, *Note on Convention No. 158 and Recommendation No. 166 concerning termination of employment*, (accessed 4 March 2026) // https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/meetingdocument/wcms_171404.pdf). The European Committee of Social Rights (hereinafter referred to as the "ECSR") has also emphasized that Article 24 of the ESC establishes in an exhaustive manner the valid grounds on which an employer can terminate an employment relationship (European Committee of Social Rights, "Conclusions 2012 – Statement of interpretation – Article 24," *Hudoc* (accessed 7 March 2026) // https://hudoc.esc.coe.int/eng?i=2012_163_10/Ob/EN).

Although Article 30 of the CFREU¹³ only establishes the right to protection against unlawful dismissal in general terms and is not explored in secondary sources of law, along with the two international instruments discussed above, it forms a multilayered normative framework: ILO Convention No. 158 provides the most detailed global standard on lawful termination of employment; Article 24 of the ESC adapts these principles within the Council of Europe human rights system; and Article 30 of the CFREU elevates the protection against unlawful dismissal to the level of a fundamental right within the European Union law.

For a valid reason related limitation on the employer's discretion to terminate employment contract to be effective compensatory and deterrent mechanisms providing adequate redress and preventing employers from arbitrary initiatives are essential.¹⁴ Unlike in some common law systems (e.g., under the employment at will model applied in most part of the United States of America or the unfair dismissal regulation established in the United Kingdom), in continental law countries that have implemented the international standards described above, the illegality of the termination of employment contract is derived not from a tort, linking the consequences of dismissal exclusively to damages, but from a breach of contractual obligations, allowing the employee to claim what he or she would have received under the contract,¹⁵ including financial compensation and reinstatement.

1.2. Reinstatement as a priority remedy

While interpreting Article 10 of ILO Convention No. 158, according to which when competent bodies find that termination is unjustified and they are not empowered or do not find it practicable, in accordance with national law and practice, to declare the termination invalid and/or order or propose reinstatement of the worker, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate,¹⁶ the CEACR has emphasized that it gives preference for reinstatement over financial compensation, whereas, where possible, the main objective must be to restore the situation that existed before the violation, most accurately reflecting the objective of correcting the unlawful act and deterring arbitrary dismissals; however, it is flexible in that it offers other possible remedies, depending on the powers of the impartial body and the practicability of a decision to nullify the termination and reinstate the worker.¹⁷

Although Article 24 of the ESC does not establish this kind of preference,¹⁸ the possibility of awarding reinstatement recognizes the importance of placing the employee back into an employment situation no less favourable than he or she previously enjoyed, particularly where compensation alone would not provide adequate protection;

¹³ *Charter of Fundamental Rights of the European Union*, *supra* note 6, Art. 30.

¹⁴ "General Survey on the Termination of Employment Convention (No. 158) and Recommendation (No. 166)," *supra* note 12; Aristea Koukiadaki, "Enforcement of EU Labour Law: Legal Foundations and the Role of the CJEU," *European Labour Law Journal* 15, 4 (2024): 635–637.

¹⁵ Stella Vettori, "The Role of Human Dignity in the Assessment of Fair Compensation for Unfair Dismissals," *Potchefstroom Electronic Law Journal* 15, 4 (2012): 107; Hugh Collins, "Compensation for Dismissal: In Search of Principle," *Industrial Law Journal* 41, 2 (2012): 208–209.

¹⁶ *Termination of Employment Convention*, *supra* note 4, Art. 10.

¹⁷ "General Survey on the Termination of Employment Convention (No. 158) and Recommendation (No. 166)," *supra* note 12.

¹⁸ It requires that courts or other competent bodies are able to order adequate compensation, reinstatement or other appropriate relief (*European Social Charter (Revised)*, *supra* note 5, Art. 24).

whether reinstatement is appropriate in a particular case is a matter for the domestic courts to decide.¹⁹

The possibility of reinstatement influences employers' incentives when making dismissal decisions. Although the right to reinstate an employee is attributed to the court, it must not deviate from the right violated and its very nature, doubts may also arise in a situation where the employer, having lost confidence in the employee, is forced to continue the employment relationship.²⁰ On the other hand, reinstatement, as a form of consequences of the violation to be considered, may be encouraged by the case law if it narrows the amounts of compensation without awarding lost income or other specific losses.²¹ Regardless of how often it is applied in practice, threats (related to the possibility of reinstatement) encourage employers to make better decisions.²² At the same time, the possibility of reinstatement creates more bargaining power for unmotivated and poorly performing employees.²³

An extremely important element for legal certainty is the assessment and consequences of procedural violations of the termination of the employment contract (e.g., the opportunity to actively participate in the decision-making process on the termination of employment, to receive all necessary information and to present one's position). Inconsistency regarding whether the so-called *no difference* rule should be applied, according to which procedural violations alone are not sufficient to declare a dismissal unlawful, or whether it is simply a basis for mitigating the consequences of unlawful dismissal for the employer,²⁴ may also have a negative impact on the management of risks related to legal regulation.

Thus, although international instruments do not provide for mandatory reinstatement in all cases, supervisory practice shows that reinstatement is considered a key protection mechanism and a criterion for effectiveness.

1.2. Financial compensation "without ceiling" as an alternative

Financial compensation, together with the possibility of reinstatement, creates a unified system of legal protection and can be considered adequate only if it covers reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body ruling on the lawfulness of the dismissal as well as compensation sufficient both to deter the employer and proportionate to the damage suffered by the victim; any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive is in principle contrary to the ESC; if there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal instruments (e.g., anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within

¹⁹ *Finnish Society of Social Rights v Finland*, European Committee of Social Rights (2017, complaint No. 106/2014).

²⁰ Elizabeth Shi and Freeman Zhong, "Rethinking the Reinstatement Remedy in Unfair Dismissal Law," *Adelaide Law Review* 39, 2 (2018): 377–378.

²¹ *Ibid.*, 365.

²² Kyota Eguchi, "Damages or Reinstatement: Incentives and Remedies for Unjust Dismissal," *Review of Law & Economics* 4, 1 (2008): 470; Kyota Eguchi, "Productivity Loss and Reinstatement as a Legal Remedy for Unjust Dismissal," *Journal of the Japanese and International Economies* 21, 1 (2007): 80, 102–103; David J. Doorey and Andrew Hills, "Statutory Unjust Dismissal in Canada: What Is the Value of a Lost Job?" *King's Law Journal* 33, 2 (2022): 342–343.

²³ *Ibid.*, "Damages or Reinstatement: Incentives and Remedies for Unjust Dismissal," 468–469.

²⁴ Astrid Sanders, "Expanding the 'No-Difference' Rule in the Law of Unfair Dismissal," *Industrial Law Journal* 36, 3 (2007): 362.

a reasonable time,²⁵ without being deprived of the possibility to take into account individual circumstances and actual harm. Adherence to the “principle of full and dissuasive compensation” is constantly emphasized in the case law of the ECSR.²⁶ Even if one of the aims of the system introducing compensation ceilings is to provide greater legal certainty for both parties to the employment contract, it cannot be precluded that the predetermined compensation might rather serve as an incentive for the employer to dismiss employees in an unfair manner. Indeed, in certain cases, the established compensation ceilings could prompt employers to make a pragmatic estimation of the financial burden of an unlawful dismissal on the basis of cost-benefit analysis. In some situations, this could encourage unlawful dismissals.²⁷ Although the clear size of the financial sanction increases certainty, the possibility of claiming damages, including non-pecuniary damage, together with the inconsistency of case law, as well as other constraints imposed on the employer, may have a significant impact on the employer’s decision-making not only on the termination of the employment relationship itself, but also on the obligations assumed upon conclusion of the employment contract or in the course of it regarding more favourable working conditions for the employee.²⁸ The fact that limitations (ceilings) on non-pecuniary damage are difficult to justify and do not deter violations,²⁹ especially if the possibility of claiming compensation for damage is not linked to the nature of the unlawful actions,³⁰ is also emphasized in legal doctrine.

Meanwhile, the CEACR has also emphasized that compensation systems should not make unlawful dismissal more economically advantageous than lawful dismissal procedures. Thus, the principle of adequacy encompasses both the proportionality of the employee’s losses and the need to deter abuse.³¹

The asymmetric power relationship between the employer and the employee requires strong and effective remedies for violation of fundamental social rights. In the context of the European Union equality law, Article 30 of the CFREU, in conjunction with Article 47 of the CFREU that reinforces the principle of effective remedies that is well known in the European Union labour law,³² the national court must impose a penalty

²⁵ European Committee of Social Rights, *Digest of the Case Law of the European Committee of Social Rights*, (accessed 7 March 2026) // <https://www.coe.int/en/web/european-social-charter/-/updated-digest-of-the-case-law-of-the-european-committee-of-social-rights>; European Committee of Social Rights, “Conclusions 2016 – Lithuania – Article 24,” *Hudoc* (accessed 7 March 2026) // <https://hudoc.esc.coe.int/eng?i=2016/def/LTU/24/EN>; European Committee of Social Rights, “Conclusions 2020 – Romania – Article 24,” *Hudoc* (accessed 7 March 2026) // <https://hudoc.esc.coe.int/eng?i=2020/def/ROU/24/EN>

²⁶ Finnish Society of Social Rights, *supra* note 19; *Confederazione Generale Italiana del Lavoro (CGIL) v Italy*, European Committee of Social Rights (2019, complaints No. 160/2018 and 171/2018); *Syndicat CFDT de la métallurgie de la Meuse v France*, European Committee of Social Rights (2023, complaint No. 158/2017); *CGT-FO v France and CGT v France*, European Committee of Social Rights (2023, complaints No. 160/2018 and 171/2018).

²⁷ *Confederación Sindical de Comisiones Obreras (CCOO) v Spain*, European Committee of Social Rights (2025, complaint No. 218/2022).

²⁸ Nikolaos A. Papadopoulos, “Assessing the Effectiveness of the European Social Charter: A Case Study on Dismissal Reforms,” *European Papers* 7, 3 (2022): 1576.

²⁹ Hugh Collins, *supra* note 15, 224–227; Catherine Barnard and Louise Merrett, “Winners and Losers: Edwards and the Unfair Law of Dismissal,” *Cambridge Law Journal* 72, 2 (2013): 339–340; John Bowers and Jeremy Lewis, “Non-Economic Damage in Unfair Dismissal Cases: What’s Left After Dunnachie?” *Industrial Law Journal* 34, 1 (2005): 95.

³⁰ Hugh Collins, “Compensation for the Manner of Dismissal,” *Industrial Law Journal* 33, 2 (2004): 158; Helen Lam and Kay Devine, “Reasonable Notice for Wrongful Dismissal: Court versus Human Resource Decisions,” *Relations Industrielles / Industrial Relations* 56, 2 (2001): 366.

³¹ “General Survey on the Termination of Employment Convention (No. 158) and Recommendation (No. 166),” *supra* note 12.

³² *Charter of Fundamental Rights of the European Union*, *supra* note 6, Art. 47.

such as to guarantee real and effective judicial protection; it must also have a real deterrent effect on the employer".³³

The procedural aspect of protecting employees' rights is no less important. The effectiveness of reinstatement and compensation depends not only on their formal availability but also on the practical ability of courts to assess proportionality and individual circumstances, where the right of the employee to challenge the dismissal before an impartial body, together with the allocation of the burden of proof to the employer, are necessary to ensure the effective implementation of the essential guarantee, and the remedies for unlawful dismissal become practical and effective, rather than theoretical or illusory.

1.3. IN SEARCH OF NORMATIVE BALANCE

Both ILO Convention No. 158³⁴ and Article 24 of the ESC³⁵ allow certain margin of discretion in designing the systems of remedies, subject to certain limitations. A system that precludes reinstatement or imposes strict statutory limits that impede an adequate remedy may not be in line with international standards. Conversely, a system that eliminates a meaningful judicial assessment of proportionality may raise concerns about legal certainty and the balance of interests of the parties. International standards therefore establish a normative balance: they require effective and dissuasive protection against arbitrary dismissal, while leaving the institutional design to national legislators, provided that the remedies remain proportionate, individualized and practicable.

The analysis made shows that international standards on unlawful dismissal are based on three cumulative requirements: a) substantive justification for the dismissal; b) effective access to courts, with an appropriate allocation of the burden of proof; and c) remedies that are both restorative and dissuasive, with reinstatement as the main point of reference and compensation as appropriate in practice. At the same time, it should be emphasized that the court's discretion in applying the consequences of declaring the termination of an employment contract as unlawful (prohibition of restricting this right) is essentially associated with situations where the national legal regime provides for a relatively low standard of protection (no possibility of reinstatement is foreseen or this possibility remains theoretical, and financial compensation ceilings are also established that do not ensure real compensation for losses and, even more, the deterrent effect of the sanction).

These standards constitute an analytical benchmark for assessing the Lithuanian model of consequences of unlawful dismissal and in particular the scope of judicial discretion in applying reinstatement and financial compensation.³⁶

³³ *Sabine von Colson and Elisabeth Kamann v Land Nordrhein-Westfalen*, European Court of Justice (1984, No. 14/83).

³⁴ *Termination of Employment Convention*, *supra* note 4.

³⁵ *European Social Charter (Revised)*, *supra* note 5, Art. 24.

³⁶ Although Lithuania has not ratified the ILO Convention No. 158, it is important to emphasize the obligation to transpose into national law the harmonized international standards enshrined in Article 24 of the ESC (ratified in 2001 after becoming a member of Council of Europe in 1993) and Article 30 of the CFREU (after becoming a member of European Union in 2004). Through the influence of these international obligations the normative ideas embodied in the ILO Convention No. 158, even in the absence of formal ratification, have contributed to shaping the Lithuanian model of judicial protection against unlawful dismissal, reflecting a broader convergence with international standards of employee protection.

2. HISTORICAL BACKGROUND

This section provides the historical context, revealing the evolution of the legal regulation of consequences of illegal termination of employment relationships, the impact of the former legal regulation on the interpretation and application of the current regime.

Both the restoration of the employment relations and the award of financial compensation without reinstatement have historically been established in Lithuanian labour law as alternative consequences of recognizing the employee's dismissal as unlawful.

2.1. Reinstatement – more grounds for non-application

Although reinstatement has been identified as the main means of protecting an employee's rights, changes in legal regulation through time reveal significant development of this instrument. The Law on Employment Contracts of the Republic of Lithuania (hereinafter referred to as the "Law on Employment Contract")³⁷ that was in force from 1 January 1992 until the codification of labour law in 2002, established the reinstatement as the main consequence of unlawful termination of employment relations, which essentially depends on the employee's will (his or her desire to return to the same job he or she worked).³⁸ In accordance with Article 42 of the Law on Employment Contracts, if an employee is dismissed without lawful grounds or in violation of the procedure established by law, the employee shall be reinstated to his or her previous job and shall be entitled to wages for the period of forced absence, except in cases where the unlawfully dismissed employee declares that reinstating him or her to his or her previous job would create unfavourable working conditions.³⁹ In other words, the standard directly established by law was focused on the full restoration of the situation that existed before the violation, with the only exception – the employee's own desire for his or her rights to be protected in an alternative manner.

After the codification of the labour law in 2002 Article 300 of the Labour Code⁴⁰ retained the measure of reinstating the employee to work and awarding the average wage for the time of forced absence, on the other hand, the possibility of not reinstating the employee was no longer linked exclusively only with the employee's request, the list of reasons was supplemented with economic, technological, organizational or similar reasons attributable to the employer, expanding the discretion of courts in applying the consequences of declaring the termination of employment relations as unlawful.

From this perspective, the recodification that took place in 2017 introduced several essential innovations. On the one hand, Article 60 Section 1 Paragraph 5 of the Labour Code⁴¹ established an additional ground for termination of an employment contract without the will of the parties, according to which the employer acquired the right to dismiss a newly hired employee when an employee who was illegally dismissed was reinstated. Thus, the mere fact that there is an organizational obstacle to reinstate an employee to a position that is already occupied can no longer be considered as a reason not to apply the method of protection of the employee's rights in question. On the other hand, the Labour Code established a general rule that, in the event that an employee

³⁷ *Law on Employment Contract of the Republic of Lithuania*, Official Gazette (1991, No. 246-0).

³⁸ *R. P. v BJ UAB (data not published)*, Supreme Court of Lithuania (2003, No. 3K-3-1092), *V. D. v UAB "Jurita"*, Supreme Court of Lithuania (2001, No. 3K-3-259).

³⁹ *Law on Employment Contract of the Republic of Lithuania*, *supra* note 37, Art. 42.

⁴⁰ Article 297 of the Labour Code in force until 1 January 2013; *Labour Code of the Republic of Lithuania*, Official Gazette (2002, No. 64-2569).

⁴¹ *Labour Code of the Republic of Lithuania*, *supra* note 7, Art. 60, sec. 1, par. 5.

is dismissed without a lawful basis or in violation of the procedure established by law, the court shall adopt a decision to recognize the dismissal as unlawful and to reinstate the employee to his or her previous job,⁴² while also introducing exceptions to this rule: the reinstatement is not applicable if the court determines that this would be incompatible with economic, technological, organizational or similar reasons or because the employee may be provided with unfavourable working conditions, or when an employer employing up to ten employees requests not to reinstate the employee.⁴³ Such changes in legal regulation led to a broader competence of the courts to assess the nature of violations committed by the employer and the resulting consequences for the employee when applying the discussed method of protecting the employee's rights in practice as well as expanded grounds for not applying reinstatement at the employer's request.

When amending legal regulation, the organizational and technical consequences of not reinstating an employee to work were also adjusted: while the Law on Employment Contract provided for the change of the ground of the termination of employment contract to the one stipulated in Article 28 of the Law on Employment Contracts (upon the employee's request),⁴⁴ after codification and recodification of employment relations it was established that the court recognizes the employment relationship as terminated by its own decision.⁴⁵ This change is also directly associated with expanded grounds for not applying reinstatement, not linking them exclusively to the employee's request.

2.2. Financial compensation: from ceiling through detailed calculation to mixed model

In the context of the topic discussed in the paper, notable and significant changes were made in regulating the financial consequences of recognizing the termination of an employment contract as unlawful. If the financial consequences in case of reinstatement have not changed substantially, with the employer's obligation to pay the employee the average wage for the period of forced absence,⁴⁶ the regime applied after the court decided not to reinstate an employee varied significantly in different periods.

According to Article 42 Section 3 of the Law on Employment Contract, upon finding dismissal as unlawful and not applying reinstatement, a compensation in the amount of up to twelve times of employee's average monthly wages is awarded.⁴⁷ Such wording chosen by the legislator was clearly aimed at granting the court discretion to decide what amount of compensation to award to the employee.

After the codification took place in 2002, the compensation to be awarded to an employee who is not reinstated was not only changed, but also precisely defined, equating it to the severance pay that the employee would have received if he or she had been dismissed at the initiative of the employer without the employee's fault and additionally awarding the employee the average wage for the time of forced absence.

⁴² *Ibid.*, Art. 218 Sec. 2.

⁴³ *Ibid.*, Art. 218 Sec. 4–5.

⁴⁴ *Law on Employment Contract of the Republic of Lithuania*, *supra* note 37, Art. 42, sec. 3.

⁴⁵ *Labour Code of the Republic of Lithuania*, *supra* note 40, Art. 300, sec. 4; *Labour Code of the Republic of Lithuania*, *supra* note 7, Art. 218, sec. 6.

⁴⁶ The Law on Employment Contract provided for the obligation to pay remuneration for the period of forced absence (*Law on Employment Contract of the Republic of Lithuania*, *supra* note 37, Art. 42, sec. 2), and the Labour Code (both editions) – for the obligation to pay average salary for the period of forced absence (*Labour Code of the Republic of Lithuania*, *supra* note 40, Art. 300; *Labour Code of the Republic of Lithuania*, *supra* note 7, Art. 218).

⁴⁷ *Law on Employment Contract of the Republic of Lithuania*, *supra* note 37, Art. 42, sec. 3.

The legislator's chosen direction towards greater detail in legal regulation is also revealed by the amendment that entered into force on 1 January 2013, which added a provision to the norm regulating the award of financial compensation, according to which the amount of the average wage for the period of forced absence is reduced by the amount of the wage received by the employee at another workplace during that period.⁴⁸ In other words, the law not only established a specific amount of compensation, without clearly stating the court's discretionary right to adjust it, but also directly determined one specific criteria for reduction and the procedure for calculating the reduced amount.

While recodifying labour law the legislator maintained the same direction of legal regulation, establishing single innovation a fundamental nature:⁴⁹ a maximum period of one year for the average remuneration for forced absence to be ordered was implemented, at the same time establishing the employee's right to claim pecuniary and non-pecuniary damage incurred,⁵⁰ thus implementing the standard of full compensation of loss incurred without any ceilings, established in Article 24 of the ESC,⁵¹ on the one hand, and trying to ensure that in the event of a prolonged dispute, compensation does not become disproportionately high, on the other. At the same time, the determination of the maximum amount of compensation, together with the possibility of claiming an additional amount in form of damages, should be viewed as oriented both to the principle of proportionality and a broader role of the courts in determining the total amount of the sanction exceeding the average salary for one year.

The historical development of Lithuanian labour law regarding the consequences of unlawful dismissal reveals two main trends. First, the regulation of reinstatement has evolved toward greater flexibility and broader judicial discretion. While early legislation treated reinstatement as the primary remedy largely dependent on the employee's will, later reforms expanded the grounds on which courts may refuse reinstatement, allowing consideration of employer related practical circumstances. Second, the regulation of financial consequences reveals the search for balance, focusing codification toward even increasingly detailed legal rules, more specified calculation methods, while during recodification, guided by the principle of proportionality, establishing a one-year ceiling on compensation for forced absence alongside the higher discretion of courts to set the final amount of compensation-oriented possibility to order additional pecuniary and non-pecuniary damages.

3. DISCRETION OF COURTS IN CASE LAW

After assessing the development of legal regulation, the next section of the paper is devoted to the analysis of case law in order to evaluate the path of interpretation of legal norms – narrowing (limiting the right of discretion) or expanding (oriented towards the proactive role of the court) chosen when determining the consequences of unlawful termination of an employment contract.

⁴⁸ *Law on Amendments to Article 204 and Chapter XIX of the Labour Code of the Republic of Lithuania*, Official Gazette (2012, No. 80-4138). It is important to note that such an imperative ground for reducing financial compensation in case of reinstatement was also established in the Law on Employment Contract (*Law on Employment Contract of the Republic of Lithuania*, *supra* note 37, Art. 42, sec. 2).

⁴⁹ Another technical change was related to the rule that an employee who is not reinstated instead of severance pay is awarded a compensation for long-term service, while establishing a procedure for calculating such compensation that is essentially consistent with the previous regulation (*Labour Code of the Republic of Lithuania*, *supra* note 7, Art. 218, sec. 4).

⁵⁰ *Ibid.*, Art. 218, sec. 4.

⁵¹ *European Social Charter (Revised)*, *supra* note 5, Art. 24.

3.1. Limited application of reinstatement: too flexible or marking direction?

The case law of the Supreme Court of Lithuania reveals a relatively flexible approach to the application of the reinstatement, broadening the discretion of the courts. Even when interpreting the detailed rule formulated in the Law on Employment Contract that reinstatement may not be applied only at the employee's request,⁵² the Supreme Court emphasized that the measure cannot be absolute, since due to various objective (organizational, technological, etc.) reasons, reinstating the employee to his or her former job may be impossible or would require costs disproportionate to the violation committed.⁵³ In other words, the Supreme Court of Lithuania formulated an additional ground for non-reinstatement not provided for in the statute. It is important to note that when codifying employment relations, the legislator supplemented the list of situations specified in the law, when an employee may not be reinstated, with the grounds identified in case law, thus indirectly agreeing with the need stated by the Supreme Court to broadly interpret the limits of the courts' discretion to establish a balance between the violation and its consequences.

While applying the amended legal regulation the Supreme Court of Lithuania has emphasized that the courts cannot modify employment relationships, reinstatement means restoring the relationship that existed before, and the possibilities of doing so must be assessed individually,⁵⁴ without absolutizing the position and interests of any of the parties to the dispute.⁵⁵ This conclusion was based on the right granted to the courts to protect the interests of the employee, regardless of the subject matter of the claim, in an alternative manner.⁵⁶ Such interpretation of the courts' discretionary rights remained unchanged after the 2017 recodification of employment relations.⁵⁷

Even greater flexibility in the court's application of the reinstatement rule is determined by the interpretation provided in case law that the failure to comply with procedural requirements (e.g., the employee was not properly and timely warned about the planned termination of employment, he or she was not given the opportunity to express his or her position, the severance pay was not properly calculated and paid, etc.) is in most cases not assessed as essential, which may lead to the termination of employment being recognized as unlawful and the consequences associated with it.⁵⁸

⁵² *Law on Employment Contract of the Republic of Lithuania*, *supra* note 37, Art. 42, sec. 3.

⁵³ *A. C. v Lenkijos Respublikos ambasada*, Supreme Court of Lithuania (2012, No. 3K-3-309).

⁵⁴ *L. K. v Žuvininkystės tarnyba prie Lietuvos Respublikos žemės ūkio ministerijos*, Supreme Court of Lithuania (2012, No. 3K-3-198).

⁵⁵ *D. Ž. v SBĮ Biržų krašto muziejus "Sėla"*, Supreme Court of Lithuania (2016, No. 3K-3-193-248); *R. U. v Šiaulių universitetas*, Supreme Court of Lithuania (2008, No. 3K-3-545).

⁵⁶ *J. P. v AB "Lietuvos geležinkeliai"*, Supreme Court of Lithuania (2018, No. 3K-3-310-403); *A. J. v VšĮ Garliavos pirminės sveikatos priežiūros centras*, Supreme Court of Lithuania (2016, No. 3K-3-37-469). Such discretionary right of the courts was established in the Code of Civil Procedure of the Republic of Lithuania, which entered into force at the same time as the Labour Code (on 1 January 2003) (*Code of Civil Procedure of the Republic of Lithuania*, Official Gazette (2002, No. 36-1340), Art. 414, sec. 3, Art. 417-418). An example of a ground for the court not to reinstate an employee on its own initiative in case law is a situation where the employer loses trust in the employee or their relationship is evaluated as conflicting (*Ibid.*, *D. Ž. v SBĮ Biržų krašto muziejus "Sėla"*; *R. K. v AB "Šiaulių bankas"*, Supreme Court of Lithuania (2013, No. 3K-3-418). The Supreme Court has also emphasized in its case law that the employer makes economic and organizational decisions, but not the court, therefore organizational changes implemented in accordance with legal requirements may become an obstacle for reinstatement even if the dismissal is declared unlawful (*R. S.-U. v A. K. firma*, Supreme Court of Lithuania (2016, No. 3K-3-336-248).

⁵⁷ *V. K. v AB "Oro navigacija"*, Supreme Court of Lithuania (2023, No. 3K-3-3-403); *V. B. v Šiaulių plaukimo centras "Delfinas"*, Supreme Court of Lithuania (2019, No. e3K-3-327-701).

⁵⁸ *A. V. v UAB "Banga electronics"*, *UAB "Nemokumo sprendimai"*, Supreme Court of Lithuania (2021, No. 3K-3-129-943). The Supreme Court has clarified in its case law that the failure to comply with the notice periods established by law may serve as a basis for postponing the date of dismissal, awarding wages for the period of postponing, but not for declaring the dismissal as unlawful, as such consequences

Such an interpretation is also based on the provision in legal doctrine that, if there is a ground for termination of an employment contract, assessing non-compliance with procedural requirements as a fundamental violation would distort the balance of interests of the parties to the employment relationship and create inadequate consequences for the employers.⁵⁹

On the other hand, interpreting the new ground for not applying reinstatement established by the recodification of employment relations in 2017 – upon a request of an employer employing up to ten employees – the Supreme Court indicated that courts cannot apply this ground on their own initiative, in the absence of a clear request made by the employer before the dispute is resolved in substance.⁶⁰ Such an interpretation should be viewed as creating a legal environment in which the court must assess whether reinstatement cannot be applied in the presence of objective obstacles, except when the subjective unwillingness of the party to the employment relationship (the employee or the employer who meets the requirements of the law) is clearly expressed.

3.2. The role of courts in applying financial sanctions: between legal interpretation and rule-making

While the broad discretion of courts to refuse reinstatement can be derived from the law, the award of financial compensation to an employee remains relatively detailed.

As mentioned in the section of the paper devoted to the historical development of legal regulation, according to the Law on Employment Contract the reinstatement resulted in the employer's obligation to pay remuneration for the period of forced absence,⁶¹ while upon finding dismissal as unlawful and not applying reinstatement, a compensation in the amount of up to twelve times of employee's average monthly wages is awarded.⁶² The Supreme Court of Lithuania formulated several rules of interpretation of such legal regulation: a) remuneration for the period of forced absence shall be awarded to the employee only in the event of reinstatement; b) if it is decided not to reinstate the employee, he or she shall be awarded only compensation of average salary for up to twelve months; c) the compensation shall not exceed the amount of twelve average monthly salaries of the employee, but as a rule it shall not be less than the remuneration for the period of forced absence; d) the compensation or severance pay already paid to the dismissed employee shall be included in the compensation in question; e) when awarding compensation, it should be taken into account whether the employee lost his or her job for a long time due to the dismissal and lost his or her salary, professional qualifications, other work qualities, and continuity of employment relations with that employer (these criteria may serve as a basis for awarding a smaller amount than the remuneration for the period of forced absence); f) since the purpose of compensation is to support the employee in searching for a new job and should not

would be incompatible with the principles of reasonableness, justice and fairness (*V. P. v Kauno rajono Piliuonos vidurinė mokykla*, Supreme Court of Lithuania (2015, No. 3K-3-224-701); *M. R. v UAB "Klaipėdos žuvininkystės produktų aukcionas"*, Supreme Court of Lithuania (2013, 3K-3-248)); on the other hand, such an interpretation is not applicable to a situation where the employee is not warned about the dismissal at all, since such a violation would mean that the employer did not comply with the dismissal procedure at all (*R. S.-U. v A. K. firma*, *supra* note 56). Failure to fulfill the employer's obligation to demand an explanation from the employee is not in itself a basis for declaring the termination of the employment contract as unlawful (*UAB "Metalinox" v R. D.*, Supreme Court of Lithuania (2024, No. e3K-3-10-684); *UAB "Agrima" v E. M., J. M., A. M.*, Supreme Court of Lithuania (2024, No. e3K-3-12-701); *UAB "Skado medis" v V. M.*, Supreme Court of Lithuania (2022, no. e3K-3-187-421)).

⁵⁹ Vilius Mačiulaitis, *supra* note 1, 157–159, 165–166.

⁶⁰ *V. B. v Šiaulių plaukimo centras "Delfinas"*, *supra* note 57.

⁶¹ *Law on Employment Contract of the Republic of Lithuania*, *supra* note 37, Art. 42, sec. 2.

⁶² *Ibid.*, Art. 42, sec. 3.

include wages received at another workplace, unemployment benefits, etc., therefore, when awarding compensation to an unlawfully dismissed employee, wages received at the new workplace cannot be deducted from the amount of compensation.⁶³

In other words, the forced absence and the employer's obligation to pay full wages for its period were associated exclusively with the situation when the employee is reinstated (this is not a sanction for the employer, but rather a compensation for the employee, covering everything he or she would have received if there had been no violation). However, if the employee requests not to be reinstated, the employment relationship ends, there is no period of forced absence and the compensation awarded to the employee is aimed at compensating for pecuniary and non-pecuniary damage, it can also be understood as a certain sanction for the employer, therefore its specific amount must be determined by the court, without exceeding the maximum limit established by law.⁶⁴

On the one hand, the possibility of determining the amount of compensation that would be lower than the salary for the time of forced absence meant a significantly smaller scope of protection of the employee's rights,⁶⁵ on the other hand, the court's discretion to determine the amount of compensation corresponding to the violation, based on the principle of proportionality, directly correlated with the provision of the law that the instrument in question is applicable only at the request of the employee.

In this aspect, the codification of employment relations has led to significant changes not only in legal regulation, but also in its interpretation in case law. Since, having recognized the termination of the employment contract as unlawful and having determined that there is no basis for reinstating the employee, the court terminates the employment relationship by its decision from the date the decision enters into force, according to the Labour Code, the period of forced absence is recognized not only as the time from the unlawful dismissal to the employee's reinstatement, but also as the period from the unlawful dismissal to the date the court's decision terminating the employment relationship enters into force, the law established the employer's obligation in both cases to pay the average wage for the period of forced absence.⁶⁶ Moreover, the compensation to be awarded to an employee who is not reinstated was not only changed, but also precisely defined, equating it to the severance pay that the employee would have received if he or she had been dismissed at the initiative of the employer without the employee's fault.⁶⁷ In other words, specific financial compensation to an employee in the event of unlawful dismissal was enshrined in detail in the law.

⁶³ *R. G. v UAB "Kurtina"*, Supreme Court of Lithuania (2004, No. 3K-3-281); *R. G. v UAB (data not published)*, Supreme Court of Lithuania (2003, No. 3K-3-1193).

⁶⁴ *D. A. v Varėnos rajono savivaldybė*, Supreme Court of Lithuania (2002, No. 3K-3-653); *A. T., M. Ž., J. Ž., R. L. v Prienų rajono savivaldybė*, Supreme Court of Lithuania (2002, no. 3K-3-126); *T. B., L. B. v AB "Klaipėdos hidrotechnika"*, Supreme Court of Lithuania (1999, No. 3K-3-293).

⁶⁵ Both because the employer is not obliged to restore employment relations, and because, unlike in case of forced absence, a maximum statutory limit for compensation was provided, and in addition, the law did not establish the court's discretion to reduce wages for the period of forced absence to a greater extent than amounts received on other grounds directly related to dismissal. It is important to note that although the Supreme Court of Lithuania, when applying the legal regulation in question, did not proceed to additionally reduce the amount of wages for the time of forced absence, in one case when the employer filed a request of this nature, basing it on the circumstance that the long period of forced absence was determined by the procedural conduct of the employees who initiated the dispute, the court, instead of stating that such an argument of the employer is irrelevant, since the court does not have the competence to reduce the compensation, proceeded to assess the procedural conduct of the parties and rejected the employer's argument not due to its irrelevance, but due to the established contrary factual circumstances (*Ibid.*, *A. T., M. Ž., J. Ž., R. L. v Prienų rajono savivaldybė*).

⁶⁶ *Labour Code of the Republic of Lithuania*, *supra* note 40, Art. 300, sec. 3–4.

⁶⁷ *Ibid.*, Art. 300, sec. 4.

On the other hand, even with such regulation, the Supreme Court has formed a consistent rule of legal interpretation that the average wage for the time of forced absence, even being established by law in specific terms, as any other sanction, can be effective and achieve the goals it is established for, only if it is proportional to the violations of the law for which it is imposed; the principle of proportionality requires that the size of the sanction be adequate to the nature of the violation and its consequences; proportionality is an inseparable aspect of the principles of justice, reasonableness, and fairness; these principles require that there be no unreasonably large inadequacy or disproportion between the violation of the law and the sanction; the competence to assess proportionality and the related right to reduce the amount of the sanction is granted to the court.⁶⁸

In this regard, two aspects of legal regulation should be noted. First, in certain periods, the possibility was provided for when assessing the employee's losses to take into account the income received elsewhere and to reduce the amount awarded to the employee for the period of forced absence by this amount,⁶⁹ while in other periods such possibility was not provided for,⁷⁰ which allows the compensation in question to be assessed not only as compensation to the employee for losses, but also as a certain sanction to the employer.⁷¹ Second, neither the Law on Employment Contracts nor the edition of the Labour Code that was in force until 1 July 2017 established the maximum period of forced absence, which lacked legal certainty and, if the examination of the labour dispute was prolonged, could lead to extremely serious financial consequences for the employer, not always reflecting the nature of the violation committed, due to which the termination of the employment contract is recognized as unlawful, ensuring the balance of interests of the parties and preventing the employee from unreasonably profiting from it. It is precisely for these reasons that the case law of the Supreme Court has developed over time, according to which the amount of the compensation for the period of forced absence has to meet the principle of proportionality, ensured by granting discretion to courts to reduce the amounts awarded to employees.

Although, when recodifying employment relations, the legislator not only did not establish the court's competence to decide on the proportionality of compensation for forced absence, but also introduced an additional instrument focused on the balance of

⁶⁸ *J. M. v UAB "Jurby Water tech,"* Supreme Court of Lithuania (2017, No. 3K-3-368-611); *K. M. v VŠĮ Kauno klinikinė ligoninė, Kauno miesto savivaldybės administracija, Kauno miesto savivaldybė,* Supreme Court of Lithuania (2016, No. 3K-3-278-701); *A. J. v VŠĮ Garliavos pirminės sveikatos priežiūros centras, supra* note 56; *M. V., N. J., G. R. v UAB "Vitransa,"* Supreme Court of Lithuania (2015, No. 3K-3-154-313). The court, when deciding on the compliance of the compensation with its objectives, essence and general principles of justice, fairness and proportionality, must consider, taking into account the circumstances of the case, whether the specific amount to be awarded does not negate the social function of this instrument, compensates the losses suffered by the employee due to unlawful dismissal, but is not inadequate for the purpose of compensation established by law, does not entail excessively severe consequences for the employer, which would violate the legitimate interests of other employees, does not negate the honesty of the parties to the employment relationship and does not cause a conflict with the guarantees of other employees (*R. Ž. v UAB (data not published)*, Supreme Court of Lithuania (2018, No. 3K-3-55-248); *G. R. v "Pfizer Luxembourg SARL" filialas Lietuvoje,* Supreme Court of Lithuania (2018, No. e3K-3-56-701); *N. D. v Širvintų rajono savivaldybė, VŠĮ Širvintų rajono pirminės sveikatos priežiūros centras,* Supreme Court of Lithuania (2017, No. 3K-3-326-684)).

⁶⁹ *Law on Employment Contract of the Republic of Lithuania, supra* note 37, Art. 42, sec. 2; *Labour Code of the Republic of Lithuania, supra* note 40, Art. 300, sec. 3-4; *B. R., A. K., S. J. v UAB "Saurida,"* Supreme Court of Lithuania (2015, No. 3K-3-321-915).

⁷⁰ The edition of the Labour Code in force until 1 January 2013 (*Labour Code of the Republic of Lithuania, supra* note 40, Art. 297, sec. 3-4); *Labour Code of the Republic of Lithuania, supra* note 7, Art. 218, sec. 2, 4.

⁷¹ According to the Supreme Court of Lithuania, the income received by the employee at another workplace is not a sufficient argument to reduce the amount of compensation awarded for the time of forced absence (*UAB "Agrima" v E. M., J. M., A. M., supra* note 58; *V. B. v Šiaulių plaukimo centras "Delfinas," supra* note 57).

interests of the parties – a maximum period of one year of forced absence, for which the employee is awarded the average wage, the interpretation of regulation in question remained unchanged in case law,⁷² emphasizing that when deciding on the compliance of the amount of compensation to be awarded with the purpose of such compensation, the following significant circumstances should be taken into account: the employer's financial situation and the ability to pay a certain amount of compensation, the specific legal status of the employer as a legal entity, the functions and characteristics of the employee's duties, the duration of the employment legal relationship between the parties, the employee's continuous work experience, the nature of the relationship between the parties as well as circumstances related to the duration of the judicial dispute and the reasons that determined it; this list of circumstances, formulated in case law, significant for the assessment of the amount of compensation for forced absence, is not exhaustive.⁷³

Even after formulating a rule of interpretation according to which courts do not have the discretion to reduce the compensation awarded to an employee for long-term service in case of non-reinstatement, the Supreme Court of Lithuania has emphasized that after calculating the compensations due to an employee in the event of unlawful dismissal (compensation for forced absence and the long-term service compensation) the severance pay paid upon dismissal must be taken into account, reducing the amounts awarded to the employee by the court accordingly; a different interpretation would not comply with the objectives of the method and goals of the protection of labour rights in question, as it would mean that compensation is provided to a greater extent than established in the law.⁷⁴

At the same time, it is important to note that when recodifying employment relations, the maximum period for applying a financial sanction to an employer was established not only as a consequence of declaring the termination of an employment contract unlawful, but also in cases of delay to pay employment related payments upon termination of employment relations.⁷⁵ While interpreting the regulation in force before 1 July 2017, according to which, as in the case of forced absence, a ceiling for the sanction was not provided,⁷⁶ the Supreme Court of Lithuania had indicated that courts are granted discretionary power to reduce the amount awarded to an employee in accordance with the principle of proportionality.⁷⁷ In other words, as in the case of compensation for forced absence, the Supreme Court applied the imperatively formulated legal norm flexibly, expanding the boundaries of the competence of the courts. Although the recodification neither increased the imperative nature of the application of sanctions nor tightened the scope of the court's discretion, only establishing a maximum term (ceiling) for calculating the sanction, the Supreme Court of Lithuania applied radically different rules of interpretation: while on the reduction of compensation for forced

⁷² A. M. v UAB "Grinda," Supreme Court of Lithuania (2024, No. e3K-3-68-378); *Ibid.*, UAB "Agrima" v E. M., J. M., A. M.; VĮ "Regitra" v R. K., Supreme Court of Lithuania (2020, No. e3K-3-87-248); *Ibid.*, V. B. v Šiaulių plaukimo centras "Delfinas."

⁷³ V. B. v Šiaulių plaukimo centras "Delfinas," *supra* note 57; UAB "Agrima" v E. M., J. M., A. M., *supra* note 58.

⁷⁴ VĮ Registrų centras v E. Š., Supreme Court of Lithuania (2024, No. e3K-3-90-684); A. M. v UAB "Grinda," *supra* note 73.

⁷⁵ The sanction of average salary is calculated for the period of delay, but not more than six months (*Labour Code of the Republic of Lithuania*, *supra* note 7, Art. 147, sec. 2).

⁷⁶ *Labour Code of the Republic of Lithuania*, *supra* note 40, Art. 141, sec. 3.

⁷⁷ D. T. v UAB "Rembilda," Supreme Court of Lithuania (2016, No. 3K-3-501-701); P. T. v UAB "Vlantana," Supreme Court of Lithuania (2015, No. 3K-3-350-469); G. S. v UAB "Keltecha," Supreme Court of Lithuania (2014, No. 3K-3-443).

absence, the Supreme Court, as mentioned above, stated that the previous practice, which provided for a broad discretion of the courts, remains relevant, when deciding on the sanction for the delay to pay employment related payments upon termination of employment relations, the Supreme Court indicated that by establishing a specific maximum term of six months legal clarity is ensured, since both parties to the employment relationship can clearly foresee what sanction may be applied if the employer violates the obligation to settle accounts properly with the employee upon termination of the employment relationship; also, when retrospectively assessing the changes to the legal regulation, it can be concluded that the legislator specifically sought to establish a concrete maximum term of penalties; the objectives and imperative nature of the rule in question allows to state that circumstances other than those established in the Labour Code are not grounds for reducing the amount of sanction established therein.⁷⁸

On the one hand, such a narrow interpretation of the objectives of determining the maximum period of application of the sanction in question sacrifices the principles of proportionality, as well as reasonableness, justice and fairness in the name of greater legal certainty; on the other hand, observing different interpretations of legal norms similar in terms of regulatory imperativeness and detail in case law, reasonable doubts may arise as to whether the regulation in question achieves greater certainty or, on the contrary, creates a false expectation regarding the actual content of the statutory regulation.⁷⁹

In this aspect, a certain consistency is brought by the possibility established in the law, along with the implementation of the maximum compensation for the time of forced absence, for the employee to additionally demand compensation for pecuniary and non-pecuniary damage.⁸⁰ Although, as mentioned when analyzing the historical development of legal regulation, this instrument is oriented to the implementation of the standard of full compensation of loss incurred without any ceilings, at the same time, the courts are given the right to assess whether the finding of a violation and the application of other sanctions established by law to the employer are not sufficient satisfaction in themselves.⁸¹ A person's work activity is that area of life on which the well-being of the person and his or her family, social assessment, the opportunity to realize himself or herself, and ensure social stability depend, therefore the violation of these values can cause a person a strong feeling of uncertainty and distrust; when determining the amount of compensation for non-pecuniary damage in cases of violation of employee rights, courts assess such significant circumstances as the duration of the employment relationship, behavior of an employee, the circumstances and consequences of the violation, other remedies applied by the court for the protection of violated rights, etc.⁸²

Since when deciding on the award of compensation for non-pecuniary damage and the amount of damage, the same criteria are essentially used as are assessed when

⁷⁸ *UAB "CRT Partner" v E. S.*, Supreme Court of Lithuania (2023, No. e3K-3-1-684); *K. M., K. S., M. T. H., T. N. v UAB "Kevin EU," UAB "Open Banking LT,"* Supreme Court of Lithuania (2022, No. e3K-3-151-684); *D. V. v UAB "Aivarai,"* Supreme Court of Lithuania (2022, No. e3K-3-142-684); *O. R. v VŠĮ Vyrtaisybės strateginės analizės centras,* Supreme Court of Lithuania (2022, No. e3K-3-1-684).

⁷⁹ More on the comparison of legal regulation regarding the financial sanctions discussed above see: *U. K. v UAB "Centaris,"* Kaunas Regional Court (2026, No. e2A-532-945); *UAB "Liunetė" v. D. K.,* Kaunas Regional Court (2025, No. e2A-2565-945); *UAB "Eimrida" v D. L.,* Kaunas Regional Court (2025, No. e2A-2279-945).

⁸⁰ *Labour Code of the Republic of Lithuania,* *supra* note 7, Art. 218, sec. 2, 4.

⁸¹ *L. M. v VŠĮ Vilniaus universitetas,* Supreme Court of Lithuania (2024, No. e3K-154-684); *A. V. v UAB "Banga electronics," UAB "Nemokumo sprendimai,"* *supra* note 58.

⁸² *Ibid., L. M. v VŠĮ Vilniaus universitetas; UAB "Agrima" v E. M., J. M., A. M.,* *supra* note 58; *R. Ž. v UAB (data not published),* *supra* note 68.

determining the existence of grounds for reducing compensation for forced absence, the detailed calculation of compensation for forced absence and the establishment of the maximum statutory limit of it become a kind of reference point according to which the court examining the dispute decides whether there is a basis to award the employee a larger amount in the form of compensation for damage, thus implementing the right of discretion directly established in the law, and also whether there are grounds to reduce the compensation in accordance with the rules for the application of discretion broadly formulated in the case law.

The broad discretion of courts in applying the financial consequences of termination of an employment contract established by law, while reducing the legal certainty, making statutory regulation dependent on its interpretation in case law, creating unjustified expectations, at the same time establishes prerequisites for the application of consequences that are not formal, but correspond to the balance of interests of the parties. A greater legal clarity in this case could be achieved by expressly granting the judicial discretion to reduce statutory sanctions, leaving the courts with the function of interpreting and applying statutory rules, rather than creating them.

CONCLUSIONS

Summarizing the analysis carried out in the paper, it can be concluded that the findings generally support the hypothesis raised. Although Lithuanian labour law establishes detailed and seemingly strict statutory rules regarding the consequences of unlawful dismissal, these rules do not eliminate judicial discretion. In practice, the courts retain a significant role in shaping the application of these consequences. As a result, the formal rigidity of the statutory regulation does not necessarily ensure greater legal certainty and may even create misleading expectations regarding the scope of employee protection and the limits of judicial intervention.

With regard to reinstatement, the analysis of case law shows that courts interpret the statutory rules flexibly and assess whether reinstatement is practicable in light of the specific circumstances of the case, evaluate objective obstacles, the interests of both parties and the proportionality of the consequences. A similar tendency can be observed in relation to financial consequences. Despite detailed statutory regulation of compensation for forced absence and other payments, courts apply the principle of proportionality when determining the final amount to be awarded, adjust the statutory consequences in order to avoid disproportionate financial sanctions and to ensure a fair balance between the interests of the employee and the employer.

Therefore, the main conclusion of the research is that judicial discretion remains a central element in the Lithuanian model of remedies for unlawful dismissal. While this discretion allows courts to ensure fairness and proportionality in individual cases, it also reduces the predictability of legal outcomes and weakens legal certainty.

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