TERMINATION OF OPEN-ENDED EMPLOYMENT CONTRACTS IN GREECE

1. Introduction

In the Greek legislation the main corpus of the law of termination of employment contracts is related with open-ended contracts and is set out by the Laws No. 2112/1920 and 3198/1955, which set the general frame for the termination of such employment contracts and define the formal restrictions with regard to it. At the same time further substantive limitations in the termination of employment may be set by the individual employment contracts as well as the various collective employment agreements and special statutory restrictions. Additionally the provisions in the Greek Civil Code prohibiting the abuse of law, have significantly and substantially contributed to the formation and development of the "termination law" as one that protects the working position[4].

On the other hand, in the European Community legislation this matter is not treated as a whole, i.e. at the level of general formal and substantial limitations with regard to the termination of employment and there are only specific statutory interventions in matters of particular interest for the legislator, such as in case of collective redundancies or transfer of an undertaking.

It should also be noted, that other forms of termination of an employment agreement (such as with the consent of the parties or with the initiative of the employee) don't cause any serious problems or face any special handling by the law, while the employment contracts of a definite time, having by themselves a time limit, are not regulated by the aforementioned labor laws, but the general terms of the Greek Civil Code, related with the termination of any contract of definite time, apply to them. This means that in any such case the main issue to be examined is only the existence or not of an important reason justifying the termination of the contract by any of the parties and no other formal restrictions exist.

2. The formal requirements for the termination of employment

As it is already stated herein, in the Greek Law the terms for termination of an open-ended employment contract are mainly set out in the **Law no. 2112/1920** (as modified by the Law no. 4558/1930), which regulates the termination of the employment contract of the white-collar employees and in the **Royal Decree no. 16/18.07.1920** that basically expanded the provisions of the said law to blue-collar workers and domestic servants. The provisions of these laws were complemented and partly amended by the **Law no. 3198/1955,** which constitutes the second basic legislative instrument for the termination of the employment relationship[5].

[4] Zerdelis D. Termination Law for the employment contracts, Sakkoulas Publications, 2002, p. 240.
[5] Koukiadis I., Labor Law – Individual employment relationship and the legal frame for the flexibility of labor, Athens – Thessaloniki Sakkoulas Publications, third edition 2005, p. 711.

The aforementioned laws apply basically to all employees with a contract of employment subject to private law, **that have fulfilled two (2) months of service with the employer**, with the exception of employees that have been excluded from the general provisions of labor law and are subjected to special statutory regulations (e.g. teachers in private education, doctors, artists and performers in state theatres, porters etc.)[6], private sector employees who are not principally engaged in that occupation, employees who work in the public sector or in legal entities governed by public law (to whom the Law no. 993/1979 applies), farm servants etc.

The two aforementioned laws **set the formal requirements** for the valid termination of employment at the initiative of the employer, which briefly are:

a) Notification for the termination in writing
b) certain period between service of notice and actual termination of the relationship
c) payment of a severance allowance
d) registration of the employment in the payroll of the Social Insurance Institute (I.K.A.) and
e) announcement of the termination to the Greek Manpower Employment Organization (O.A.E.D.).

More specifically:

2.1. Notification in writing

As it results from the combination of the provisions of articles 1 of Law no. 2112/1920 and 5 par. 3 of Law no. 3198/1955, **the termination on the part of the employer must be in writing**, although the employer is not obliged to mention in the notice the grounds of termination[7]. It should be noted that the termination is not valid if not in writing, even if all other legal requirements are met and all other procedures are followed.

2.2. Period of notice

In addition to the previous term, a specific period of notice of termination was required in the past, depending on the total duration of service of the employee to that particular employer and on whether s/he has been employed as a white collar employee or a blue collar worker[8].

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[6] Vlastos St., Individual Labor Law, Volume II, Athens – Komotini Sakkoulas Publications, 1994, p. 518.
[7] Vlastos St., The Form for the termination of an employment contract, Labor Law Review 2005, p. 945.
[8] According to article 10 of Law No. 3514/1928, which is regarded today to having a general application in labor law, as a white-collar employee *"shall be deemed any person employed, this employment being his main occupation, on a retainer, regardless of the way of payment, in service of a shop, office or any kind of undertaking of the private sector, which shall provide exclusively or mainly non manual work. Servants of any kind as well as any person in general who shall be used in the production directly, as a worker in the*

The Law no. 3198/1955, however, actually **abrogated the obligation of employers to observe a period of notice in case of blue collar workers and servants**, for whom, ever since, the notice period constitutes only the mean, on the basis of which their severance allowance is calculated.

On the other hand, as far as the white-collar employees are concerned, the obligation to observe the period of notice has at the same time provided the employer with the **possibility to buy it out by payment of a severance allowance**, equal to the total of the regular wages the employee would receive, should the period of notice had been observed[9].

Therefore, although the law has provided for a period of notice for the termination of the employment at the initiative of the employer for all employees, **a dual system has actually been established**.

Based on this, **no period of notice is required any more in case of redundancy of blue-collar workers** and an employer can terminate their contracts immediately by paying the respective severance allowance. On the other hand, in cases of termination of white-collar employees the employer has the **alternative** either to observe the period of notice (and pay the reduced severance allowance provided for this case) or to pay the total severance allowance and fire them immediately. The immediate termination is therefore allowed, provided that the employer shall pay to the employee the corresponding to this case severance allowance.

2.3. Severance allowance

A first remark on the severance allowance is that **no such allowance is owed by an employer in case the employee worked for less than two (2) months**.

Apart from that, as it is obvious from the aforementioned, it is necessary to distinguish between white-collar employees and blue-collar workers. As already said, **in case of an immediate termination, white collar employees are entitled to a severance allowance equal to the regular wages they would receive should the notice period provided for them was observed**. On the other hand, should the notice period be actually observed or should the employee leave his position willingly during the period of notice, the employer shall pay to the employee **half of the severance allowance** provided for in case of immediate termination.

This practically means that the severance allowance for white-collar employees starts from the regular wages of one (1) month for two (2) months until one (1) year of service to the employer that terminates the employment and may amount to the regular wages of

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fields of industry, handicraft, mining or agriculture or as an assistant or an apprentice of the abovementioned categories, or provides any kind of servant services whatsoever shall not be deemed as employee".

9 For the exact period of notice required by law, see hereinbelow in Section 2.3.

twenty four (24) months for twenty eight (28) years (or more) of service in case of an immediate termination. On the other hand, should the notice period be observed, the aforementioned amounts are reduced by half (half the regular wages).

Based on the above, the exact form for the calculation of the period of notice and of the corresponding to this severance allowance of any white collar employee (or the notice period) is as follows:

Duration of employment	**Notice period or severance allowance**	**Severance allowance after observance of period of notice**
2 months -1 year	1 month/monthly wage	½ monthly wage
1 full year - 4 years	2 months/monthly wages	1 monthly wage
4 full years - 6 years	3 months/monthly wages	1 ½ monthly wage
6 full years - 8 years	4 months/monthly wages	2 monthly wages
8 full years - 10 years	5 months/monthly wages	2 ½ monthly wages
10 full years	6 months/monthly wages	3 monthly wages
11 full years	7 months/monthly wages	3 ½ monthly wages
12 full years	8 months/monthly wages	4 monthly wages
13 full years	9 months/monthly wages	4 ½ monthly wages
14 full years	10 months/monthly wages	5 monthly wages
15 full years	11 months/monthly wages	5 ½ monthly wages
16 full years	12 months/monthly wages	6 monthly wages
17 full years	13 months/monthly wages	6 ½ monthly wages
18 full years	14 months/monthly wages	7 monthly wages
19 full years	15 months/monthly wages	7 ½ monthly wages
20 full years	16 months/monthly wages	8 monthly wages
21 full years	17 months/monthly wages	8 ½ monthly wages
22 full years	18 months/monthly wages	9 monthly wages
23 full years	19 months/monthly wages	9 ½ monthly wages
24 full years	20 months/monthly wages	10 monthly wages
25 full years	21 months/monthly wages	10 ½ monthly wages
26 full years	22 months/monthly wages	11 monthly wages
27 full years	23 months/monthly wages	11 ½ monthly wages
28 full years and over	24 months/monthly wages	12 monthly wages

For example if the contract of a white-collar employee with sixteen (16) full years of service is to be terminated the employer has the possibility either i) to give him a twelve-month notice and pay him six (6) monthly wages at the time of the actual termination (i.e. after expiration of the twelve-month period) or ii) to pay him immediately twelve (12) monthly wages and terminate the contract instantly.

From what is already stated above, it is clearly deducted that the amount of the severance allowance basically depends on the accrued service of the employee, as well as on his/ her level of remuneration. However, pursuant to article 5 of the Law no. 3198/1955 **the maximum of the monthly wages taken into account for the calculation of the**

severance allowance, shall not exceed eight (8) times the minimum wage of an unskilled worker multiplied by thirty (30). With this regulation the Law sets **an important limit** to the overall severance allowance to be paid to any white-collar employee, **since this limit to the calculation of the wage, limits further the total amount to be paid by the employer.**

With regard to blue-collar employees on the other hand, for whom as already stated the termination is always immediate, i.e. without period of notice, the compensation scale is different and the severance allowance much smaller. This being the case, today, the severance allowance for blue collar workers begins from five (5) daily wages for two (2) months of service until one year of service and may reach up to one hundred sixty five (165) wages for thirty (30) completed years of service or more[10].

Duration of service	**Severance allowance**
2 months -1 year	5 day's wages
1 full year - 2 years	7 day's wages
2 full years - 5 years	15 day's wages
5 full years - 10 years	30 day's wages
10 full years - 15 years	60 day's wages
15 full years - 20 years	100 day's wages
20 full years - 25 years	120 day's wages
25 full years - 30 years	145 day's wages
30 full years and over	165 day's wages

With regard to the severance allowance, pursuant to article 3 of the Law no. 2112/1920 **the calculation basis is the regular salary, i.e. the salary and any other benefit supplied instead of a wage**, such as benefits in kind, commissions etc., whereas pursuant to article 5 of Law no. 3198/1995 the calculation of the severance allowance is conducted on the basis of the regular wages of **the last month of full-time employment**. Under these circumstances **the "regular salary" may include any other benefits apart from the standard wage, both monetary or material,** such as the Christmas, Easter and vacation bonuses, the additional payment for working on Sundays or at night or over the regular hours if such working is ordinary and standard, several bonuses paid on standard terms, even the cost of certain accommodations provided to the employees, as in cases of food, residency, car etc. if these are provided as a return for the work rendered.

Furthermore, the article 2 of the same Law regulates the way of payment of the severance allowance in form of a one-off reimbursement on the day of termination of the employment, should it not exceed the regular wages of six months. In the opposite case, the severance allowance is paid off in three-month installments, which shall not be less than the wages of three months and upon reimbursement of the six months wages on the day of termination.

[10] This was regulated with the National General Collective Bargaining Agreement for 2006-2007. In cases of blue-collar workers and given that the standards provided by the aforementioned laws are considered quite low these standards tend to increase by such collective agreements every now and then.

In case of non reimbursement of the severance allowance or of reimbursement of a smaller amount, **the termination shall be deemed void,** bringing all legal consequences regarding the continuance of the employment relationship, which actually means that the employer is obliged to re-hire the employee and pay to him all wages owed from the time of termination until re-hiring[11].

2.4. Other restrictions

In the aforementioned three fundamental formal requirements of termination of employment at the initiative of the employer (notice in writing, period of notice, severance allowance), we must also add the employer's obligation to have the employee registered in the payrolls for the Social Insurance Institute (I.K.A.) or at least have the employee insured in the Social Insurance Institute (I.K.A.), pursuant to article 5, par. 3 of Law no. 3198/1955. Omission of such obligation shall lead to invalidity of termination. Last but not least, the employer must proceed to the announcement of termination to the Greek Manpower Employment Organization (O.A.E.D.) within eight days upon its notice to the employee (article 9 Law no. 3198/1955), whose **omission however shall not lead to invalidity of termination but to criminal liability for the employer**.

2.5. Exemptions

One should also note that there are some cases where the abovementioned formal requirements are not necessary in order for a termination of employment at the initiative of the employer to be strong and valid. Therefore, the employer may terminate the employment contract without a termination notice **in case criminal charges were filed against the employee for any unlawful activity while performing his/ her employment duties or, if not on duty, for a major offence in general.** Furthermore, the employee who is fired due to interruption of employment by a fire or any other force majeure incident that resulted to any such interruption, against which the employer happens to be insured, is entitled to the 2/3 of the severance allowance provided for by the law, meaning actually that in case the employer is not insured against the force majeure event occurred that caused the interruption of the undertaking's operation, is completely exempted from compensation liability.

3. The substantive requirements for the termination of employment

The restrictions of the employers' right to terminate an open- ended employment contract set out by the Laws no. 2112/1920 and 3198/1955 are without prejudice to making free use of it, since the employer may at any time dismiss any employee, even without any particular reason and without having to justify his/ her option[12]. In compliance with the aforementioned Laws only the fulfillment of the formal requirements stated herein are necessary in order for a termination to be deemed valid and become legally effective.

[11] Zerdelis D., p. 500.
[12] Zerdelis D., p. 319.

However, throughout the years the right of the employee to his/ her working position was gradually created in the Greek legal theory and (consequently) in jurisprudence, a right which was substantially affected by the fact that the termination was at the sole discretion of the employer and only some formal requirements were necessary. Nowadays, this right is being protected by the introduction in the Greek jurisprudence of substantive requirements in addition to the formal ones, which are necessary in order for the validity of the termination and which restrict the employer's freedom to terminate a contract.

With reference to the substantive requirements, specific reasons may be provided for in order for an employer to exercise the right of termination, such as the employee's misbehavior or other reasons of economic or technical nature, or at least the general audit on the basis of a general abuse clause.

In the Greek legal frame today, contrary to other, there is no legislative statute currently in force that would provide for any substantive restrictions regarding the termination of open- ended employment contracts. Consequently, the second option prevailed and as a result, pursuant to the provision 281 of the Greek Civil Code[13], **for any valid termination of an employment agreement a negative substantive requirement is necessary**. With this general rule the abuse of any right is prohibited and in compliance with it, the exercising of the right, i.e. the termination of the employment contract, must not exceed the limits set by good faith, moral ethics and the social and economic purpose of the right, otherwise the termination shall be deemed invalid and abusive, and shall not therefore lead to the termination of the employment contract.

It is clear that in the absence of special provisions, the content of the said negative substantive requirement mainly derives from case-law and the review of terminations by the Courts of Justice. **Nowadays we can distinguish between two different review systems, the subjective and the objective review.**

In the subjective review the **intentions of the employer** are being examined. It is generally accepted, even from the first years of application of the Greek Civil Code[14] that the reprehensible intention of the employer, his / her intention to cause damage to the employee, constitutes a clear breach of the limits set out by article 281 of the Civil Code and therefore it leads to an invalid termination. In this case we are talking about a "malicious" termination, triggered by the employer's feelings of animosity or revenge or, generally speaking, any other personal reasons of the employer that are irrelevant to the interests of the undertaking[15].

The following reasons of termination, inter alia, constitute according to case-law special forms of this kind of abusive exercise:

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[13] *Exercise of any right is prohibited if it exceeds profoundly the limits set by good faith, moral ethics or the social or economic scope of the said right.*
[14] Zerdelis D. p. 326.
[15] Koukiadis I. p. 766.

a) **the exercise on the part of the employee of a right provided by law or by the contract**, such as the recourse before a competent authority for the satisfaction of his/her demands[16], the constant claim of lawful rights[17], the exercise of legal actions against the employer for the protection of his/her rights[18], the presence in a court-hearing as a witness[19], the deny to obey to an illegal exercise of the employer's managing rights[20], the opposition to a sexual harassment[21] etc.

b) **the exercise of freedoms guaranteed by the Constitution**, such as trade union freedom[22] or freedom of political action

c) **personal features of the employee**, such as national extraction, sex, race, color etc[23].

As we have already stated herein this review was already established at an early stage since it literally constitutes an abusive exercise of right. However, it has then been realized that the lack of reprehensible motives is not enough for the valid exercise of the right of termination of the employer, i.e. in case the employer is not motivated by feelings of revenge, hatred, animosity or bad will but the dismissal must be positively justified on the ground of specific reasons related either to the employee or his/ her conduct, or the economic and technical condition of the undertaking[24].

Under this new protection form, as it is currently being legislatively shaped, **the Courts pay particular attention to the reasons invoked by the employer to be the real reasons of the termination and their importance**, in order to substantiate their judgment on the abuse of right. It must be stressed that despite the fact that the termination is generally non- causative and the employer is not obliged to invoke the reasons on the grounds of which the employment contract was terminated, **in case the employee impeaches the validity of termination the employer is de facto obliged to provide the reasons of termination in order to oppose the employee's lawsuit**.

Therefore, the Courts' rejection of the employee's motion to declare the invalidity due to abuse of rights is mainly done on the basis of specific objective reasons which justify the employer's legal interest to terminate the employment relationship. On the other hand, **the dismissal shall most probably be considered abusive in case the reasons invoked by the employer are used as a pretext and the dismissal is triggered by personal motives of the employer**. There are, however, many judgments according to which in

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[16] Supreme Court 539/1990, Supreme Court 1791/1999.
[17] Supreme Court 688/1999.
[18] Supreme Court 1100/1988.
[19] Supreme Court 1115/1987.
[20] Supreme Court 97/1991.
[21] Supreme Court 1665/1999.
[22] Which is also protected with a special provision in article 14 par. 4 of the Law No. 1264/1982.
[23] All these cases are also protected nowadays with the provisions of the Law No. 3304/2005.
[24] Zerdelis D. p. 335.

case the reasons invoked by the employer are proved to be untrue, the abuse of right is independently conferred, even when it is not directly related to his/ her personal motives[25].

According to what is already mentioned, task misperformance or breach of contractual duties or economic and technical reasons constitute valid reasons of termination.

In the first case we refer to the **reasons concerning the employee or his/ her conduct** that justify the termination. As a general rule we may say that any reason related to the employee's person or his/ her conduct and may constitute an important reason for the ordinary termination of a fixed-term contract may also constitute a justified reason for the ordinary termination of the employment contract as well[26]. This being the case, the inability of the employee to perform his/ her duties or his/ her unsatisfactory work performance[27], the breach of any contractual obligation[28], the lost of trust at the person of the employee[29], the lack of compliance with the employer's instructions[30] etc. have all been considered as a legitimate cause for the termination of the employment contract.

On the other hand, in case the employer invokes economic, technical or operational reasons, **the Court examines firstly these reasons**, which are however unexamined on their merits since they fully rely on the employer's freedom to conduct business, and **secondly if the employee's choice was done on the basis of objective criteria which render it socially justified**.

Upon consideration of an equitable balance between the interests of the parties, the termination of the contract is not considered to breach the restriction set out in article 281 of the Civil Code, in case the employer's justified interest in the termination of the employment prevails the employee's interest to maintain his/ her position. In legal practice, however, the consideration of the abovementioned balance of interests does not merely rely on the personal opinion of the employer who terminates the contract but requires the concurrence of objective reasons. Therefore, nowadays the Court review mainly focuses on the objective reasons that justify the termination of the employment relationship, instead of its subjective elements.

Furthermore, nowadays the jurisprudence has in some cases also examined the importance of the invoked reasons and **whether they justify the termination**, i.e. whether it is possible to resolve the dispute with the implementation of less severe measures. In that case the implementation of the most onerous for the employee measure, that being the termination, is not legitimate, since the termination, which constitutes the most drastic interference with the legal status of the employer, must be not only be a

[25] Supreme Court 133/1991, Supreme Court 623/1983.
[26] Karakatsanis Al. Thoughts on the Termination Law, Dedication to Al. Litzeropoulos, Volume A', p. 439.
[27] Supreme Court 1201/1998.
[28] Supreme Court Plenary Session 707/1985, Supreme Court 1107/2000.
[29] Supreme Court 1453/1996.
[30] Athens Court of Appeals 12046/1989.

relevant but also an appropriate measure to fulfil the employer's justified interests[31]. This is the so called "ultima ratio" principle, **which however has not yet been thoroughly accepted in jurisprudence and judges seem to be reluctant about it, since it seems to lead to the examination of the purposes of the termination, which is not allowed[32].**

We must also point out that with reference to the substantive restrictions as they are defined in the Greek legal order pursuant to article 281 of the Civil Code, **in the present legal regime the employee bears the burden of proof of the facts that establish the abuse**. Although the presumption of legality applies to a non-causative termination of an employment relationship, it can however be reversed in case the interested party claims and proves that the termination is invalid for any legal reason whatsoever. From what is already stated above, it can be deducted that especially in case of economic or technical reasons, when the employee has to prove his/ her allegations, s/he shall be found in an extremely difficult situation and shall encounter serious problems.

To conclude, with reference to the consequences of the review of a termination of an employment at the initiative of the employer, in case all legal requirements, both formal and substantive, are not met, **the termination shall be deemed invalid**. In such case, the employment contract is not terminated and the contractual obligations of the parties shall continue to be entirely valid. To sum up, in case of an invalid termination the employee shall claim employment rights, i.e. maintain his/ her working position and receive the wage agreed (for the period of time the employer refuses to accept his/ her services).

[31] Zerdelis D. p. 347.
[32] Koukiadis I. p. 772.