

Legal Alert

Decision of the Constitutional Court Regarding Annual Paid Leave

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In the summer of 2010 the Bulgarian Parliament adopted a Bill amending the provisions in the Labour Code (“LC”) on use of annual paid leave. The Bill was challenged by the President and a group of Members of the Parliament before the Constitutional Court (“CC”) as it was said to be unconstitutional, non-compliant with international treaties to which Bulgaria has acceded, and inconsistent with the European Union law.

Through its Decision No 12 dated 11 November 2010, CC:

1. Ruled that the provision, under which annual paid leave accumulated from previous years has to be used by 31 December 2011, is unconstitutional. Based on the decision of CC, annual paid leave accumulated by 1 January 2010 can be used without limitation in time.
2. Declared unconstitutional the limitation of the compensation for unused annual paid leave due upon termination of employment agreement to “the current calendar year proportionally to the time recognized as length of service, and for the unused annual paid leave whose use has been postponed on the grounds of Art. 176” LC. Further to the decision of CC, compensation under Art. 224, para 1 LC is due for the whole period of unused annual paid leave for which the 2-year period of limitation has not expired.
3. Ruled that the introduction of 2-year limitation period for use of annual paid leave is a matter of state policy, has motivational effect for timely use of annual paid leave, and is compliant with the Constitution. The 2-year limitation period applies onwards.

All remaining amendments to the LC adopted in the summer of 2010, remain effective. In particular, employers:

1. Have to prepare a schedule for use of annual paid leave by the employees after consultations with trade unions and the employees’ representatives.
2. Can grant annual paid leave to employees without their written request or consent if (a) the enterprise has ceased work longer than 5 days; (b) all employees use their annual paid leave simultaneously, as required by law, a collective bargaining agreement or the employer’s internal rules on labour discipline; or (c) employee has not requested the annual paid leave within 5 working days after the date specified in the schedule of annual paid leave.
3. Can postpone the use of up to 10 working days of annual paid leave for next year if there are significant production reasons.

Monetary compensation in lieu of unused annual paid leave, except in case of termination of employment, is not allowed.

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