

Title:

Employee Reinstatement Pending Employment Termination Disputes

An employee whose employment agreement has been terminated by the employer may initiate court proceedings before the competent court challenging the decision on termination of employment. Despite the fact that the provisions of the Law on Civil Procedure (“**LCP**”) prescribe that, in employment disputes, the court shall pay particular attention to the need for urgent resolution of such disputes, in practice these proceedings often last several years.

Until the employment dispute is finally resolved, an employee whose employment agreement has been terminated suffers adverse consequences that may seriously jeopardize not only their own livelihood, but also the livelihood of persons whom the employee is legally obliged to support. Precisely in order to prevent such adverse consequences for the employee, and in cases where the decision on termination of employment is manifestly unlawful, the applicable regulations provide mechanisms through which the employee may be reinstated pending the final resolution of the employment dispute. These mechanisms are: the issuance of an interim measure by the competent court and the postponement of the enforcement of the decision on termination of employment by the labor inspector.

Reinstatement Through an Interim Court Measure

The provisions of the LCP prescribe that, during proceedings in employment disputes, **the court may, even ex officio, order interim measures** in accordance with the law governing enforcement and security, for the purpose of preventing violent conduct or eliminating irreparable damage. The provisions of the Law on Enforcement and Security (“**LES**”) define interim measures as one of the means of security and prescribe the conditions for their issuance.

First of all, pursuant to the LES, if the initiative for the issuance of an interim measure originates from the employee, **the motion for the issuance of an interim measure** must precisely specify: the claim for which security is sought, the statutory grounds for security, the facts and evidence demonstrating the likelihood that the statutory grounds for security exist, the type and duration of the interim measure, as well as the means and object of enforcement thereof.

The type of interim measure that is favorable to the employee in such circumstances is a measure securing a non-monetary claim — **the temporary regulation of a disputed relationship, where necessary in order to eliminate the risk of violence or significant irreparable damage**. The means by which such interim measure is enforced is **the employee’s reinstatement to work**.

In addition to the above-mentioned formal elements of the motion for the issuance of an interim measure, the employee must make it **probable that the claim exists**, as well as that there is **a risk**

to the claim, namely that, without the interim measure, satisfaction of the claim would be prevented or significantly hindered, or that force would be used or irreparable damage would occur.

According to court practice, it is considered that the employee has made the existence of their claim probable where the procedure for termination of the employment agreement was not conducted in accordance with the provisions of the Labor Law. This is, for example, the case where the employer does not issue a decision on termination of employment but merely deregisters the employee from mandatory social insurance, or where the issuance of a decision on termination of employment due to a breach of work duty was not preceded by a warning notice regarding the existence of grounds for termination of employment. With regard to the existence of a risk to the claim, courts consider the loss of income arising from employment, and the fact that such loss may jeopardize the employee's livelihood, to constitute sufficient evidence of the possibility of irreparable damage.

On the other hand, court practice also recognizes the view that a motion for an interim measure cannot be granted where, by its effects and legal consequences, it is identical to the claim asserted in the lawsuit itself, since such interim measure would **effectively resolve the lawsuit** in advance and prejudice the court's final decision on the merits.

Postponement of Enforcement of the Employer's Decision by the Labor Inspector

Pursuant to the Labor Law, if **the labor inspector** determines that the employer's decision on termination of employment manifestly violates the employee's rights, and the employee has initiated an employment dispute, the labor inspector shall, upon the employee's request, postpone by decision the enforcement of such decision pending the making of a final court ruling. Therefore, a prerequisite for postponing the enforcement of the decision on termination of employment is that the employee has **initiated an employment dispute** concerning the termination of employment. The employee may submit such request within 15 days from the date of initiation of the employment dispute, while the labor inspector is obliged to issue a decision granting or rejecting the employee's request within 30 days from the date of submission of the request.

The key issue arising in connection with this authority of the labor inspector is what constitutes a manifest **violation of the employee's rights**, bearing in mind that the final assessment of the lawfulness of the decision on termination of employment is made by the court. A manifest violation of the employee's rights could be considered to exist where, by reviewing the content of the decision on termination of employment, the labor inspector may conclude that the decision lacks an element prescribed by law, or where the content of the decision indicates that the procedure for termination of employment preceding its issuance was not conducted in accordance with the provisions of the Labor Act.

However, according to administrative and court practice, in situations where the employer has not delivered the decision on termination of employment to the employee, but has merely deregistered the employee from mandatory social insurance, the labor inspector cannot issue a decision

postponing enforcement of the decision. This is because, in such a situation, the labor inspector does not have access to the content of the decision on termination of employment and therefore cannot assess its lawfulness, but may instead **apply another measure**, namely ordering the employer to deliver the decision on termination of employment to the employee.

Conclusion

In the case of a manifestly unlawful termination of employment, the employee has at their disposal the two above-mentioned mechanisms for eliminating the consequences of such decision pending the final court ruling. Their effectiveness is reflected in the short deadlines within which the court or the labor inspector must render a decision, as well as in the fact that a decision ordering an interim measure is enforceable prior to becoming final, while an appeal lodged against the labor inspector's decision postponing enforcement of the employer's decision does not stay enforcement.

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