

Is It Possible for an Employee to Be Terminated Twice Under the Same Employment Contract?

The question in the title of this article may seem absurd at first glance, but labor law practice is familiar with such situations. An employment does not represent a classic contractual relationship between two contracting parties. It is a complex relationship, especially when decisions of the employer, court, and other authorities intersect within it. Whether this is legally correct or a procedural error is a question that opens a number of interesting dilemmas.

How Does Such a Situation Arise?

In the event of termination of employment, the employee has the right to initiate a **lawsuit before the competent court** against the decision on termination of the employment contract if they believe the termination is unlawful. If, during the proceedings, the court determines that the employee's employment was terminated without legal grounds, at the employee's request, it will decide that the employee be reinstated, that damages be paid, and that the corresponding mandatory social insurance contributions be covered for the period during which the employee did not work. The employee is not obliged to request reinstatement, instead, they may request damages — this is their right, not their obligation.

The employee also has the right to address the **competent labor inspectorate** with a request to **postpone the execution of the termination decision until the final court decision is issued**, within 15 days from the initiation of the labor dispute. If the labor inspector finds that the employer's termination decision clearly violated the employee's rights, and the employee has initiated legal proceedings, the inspector, at the employee's request, will postpone the execution of the termination decision until a final court ruling is rendered.

By obtaining the labor inspectorate's decision postponing the execution of the termination decision, the employee **returns to work until the labor dispute is finally resolved**. Thus, the employee enjoys all rights and obligations arising from the employment relationship, like any other employee, without the need to conclude a new employment contract.

Since an employment relationship is a "living matter," from the moment of the employee's return to work until the final resolution of the dispute, various circumstances may arise—both in relation to the employee's behavior and work performance (for example, breach of work duties, violation of work discipline, failure to achieve work results) and in relation to the employer (organizational, economic, or technological changes, etc.). All these circumstances may influence the further course and outcome of the employment relationship, regardless of the fact that the employee was temporarily reinstated by a labor inspector's decision until the court proceedings conclude.

Although the Civil Procedure Law requires courts in labor disputes to consider the need for urgent resolution, particularly when setting deadlines and hearings, in practice, **these proceedings often last for years**.

Given the above, especially the length of labor disputes, the question arises whether the employer may dismiss an employee again under the same employment contract, but on different legal grounds.

Case Law

In judgment Rev2 2323/21 of 6 December 2022, the **Supreme Court of Cassation** took the position that since the decision of the Labor Inspectorate — postponing the execution of the employer's earlier decision on termination of the employment contract until a final court decision is issued — produced legal effect until the final court decision, **the employer could not subsequently terminate the employee's contract until the proceedings were finally concluded.**

The **Ministry of Labor**, however, has taken a **completely different position** in its legal opinions.

In opinion no. 011-00174/2010-02 of 25 May 2010, it is stated that if the employer determines that the employee is not achieving work results, or lacks the necessary knowledge and skills for the job to which they were reinstated by the labor inspector's decision, and cannot offer them another suitable position, the employer may terminate the contract in accordance with the provisions of the Labor Law. It is further noted that the employee also has the right to seek protection before the competent court and labor inspectorate against this new decision.

Likewise, in opinion no. 011-00-932/2010-02 of 07 February 2011, it is stated that the employer may terminate the employment contract of an employee who was reinstated by a labor inspectorate decision if the employee commits a subsequent breach of work duties. Thus, the employer may terminate the contract of the same employee if there is a justified reason relating to their work ability and behavior under Article 179 of the Law, following the procedure provided in Articles 180 to 185.

Although court practice and legal opinions of the ministry responsible for labor matters are not formal sources of law, employers often rely on them in practice when a particular issue is not explicitly regulated by legal provisions.

Rather than a Conclusion

The lack of a uniform position on this issue raises numerous dilemmas employers face in practice. The labor inspector's decision produces legal effect until the final resolution of the dispute and aims to protect the employee from harmful consequences of the termination in cases where the employee's rights were clearly violated during the termination process, but only in relation to the specific case, not future situations.

On the other hand, the length of labor disputes and the employee's return to the work environment create new situations and circumstances that require resolution even before the existing dispute is concluded, and which may potentially lead to a new labor dispute.

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