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An employer cannot request the invalidation of an employee's employment contract termination notice in court: any other interpretation would be contrary to the prohibition of forced labour (LA)

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Summary

Under the Latvian Labour Law an employee has the right to terminate an employment contract with immediate effect, i.e. without complying with the statutory notice period of one month, if the employee has 'good cause'. Under the Labour Law, 'good cause' is any situation, which, based on considerations of morality and fairness, would not allow for the employment to continue. If an employee terminates their employment contract for good cause the employer must pay severance to the employee based on the employee's years of service with the employer and amounting to between one and four months' average earnings. If the employee gives notice for good cause, this terminates the employment contract with immediate effect.

Even if the employer disagrees with the reasons given in the termination notice, the employer cannot terminate the employment contract on any other ground and does not have the right to challenge the validity of the notice in court. However, if the employer suffers loss as a result of the immediate termination; its reputation is damaged based on the reasons given in the notice; or it has faced some other adverse consequence; the employer can bring a claim arguing that what is stated in the notice is untrue.

Facts

The employee was employed by a local authority as a curator in a museum. On 19 October 2015, the local authority received notice of termination from the employee, based on reasons of morality and fairness. According to her claim statement, the employee stated that she had been unfairly treated because she had been required to perform a huge volume of work under different working conditions a for different salary (unfortunately it is not clear from the judgment what the employee had meant by the word "different" in this case, i.e., different from what), some penalties had been imposed on her unfairly; the employer had asked her several times within the last year to agree to amendments to the employment contract and job description; during the winter she had to work in an unheated workplace; and she was required to perform physically heavy work which had not formed part of the employment contract. In addition, the employee stated that the employer had failed respect her dignity because it had not allowed her to perform her work duties in the manner the employee thought they should be performed. She also noted that the owners of items entrusted to the museum had not been returned to them on time; the items were not kept in appropriate conditions and that the employer was deliberately destroying the cultural heritage of Latvia.

On 23 October 2015 the local authority terminated its employment contract with the employee for the reason that the employee had not performed any work for more than six months owing to incapacity from work (i.e. due to long-term sickness) Under the Labour Law this is a valid reason for an employer to terminate the employment contract on its own initiative.

On 16 November 2015, the employee brought an action in court claiming that the employer's termination notice was invalid. The employee explained that the employment relationship had already been terminated via her notice of termination on 19 October 2015 and therefore the employer could not terminate the employment contract on 23 October 2015. On 17 November 2015, the employer brought an action against the employee

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requesting the court to invalidate the employee's termination notice on the basis that what she had stated in her termination notice did not correspond to reality.

The court of first instance rejected the employer's request for invalidation of the employee's termination notice and allowed the employee's claim for invalidation of the employer's termination notice. The court of first instance had heard each case separately, but the Court of Appeal united the two and ruled in favour of the employer, holding that the employee's termination notice was ungrounded and that therefore the employer had the right to terminate the contract for its own reasons.

The employee appealed to the Supreme Court.

Judgment

The Supreme Court pointed out that the employee's termination notice, based on considerations of morality and fairness, had come into effect on the day it was served to the employer, i.e., on 19 October 2015 and that it had effectively terminated the employment relationship. Therefore, the employer no longer had the right to issue its own termination notice on 23 October 2015, as by that time, the employment relationship no longer existed.

In the past, the Supreme Court has normally allowed an employer to bring an action in court requesting invalidation of an employee's termination notice in cases where the employer considers that notice by the employee based on morality and fairness is ungrounded. However, usually, employers have tended to do this as a way of avoiding paying severance. The Supreme Court explained that the right to challenge the legality of an employee's notice of termination did not emanate from the Labour Law in fact, but had been established by case law of the Supreme Court as a means of filling a gap in law that it considered existed, as the law should have regulated the employer's right to challenge the employee's termination notice due to good cause at court but was silent on that.

In the case at hand, reconsidering its earlier judgments, the Supreme Court came to the conclusion that the legislator had deliberately decided not to grant employers the right to challenge an employee's termination notice in court. The Court explained that the reason why an employee might dispute an employer's termination notice would be different from the reason an employer might choose to dispute an employee's termination notice. In addition, in the first case, the employee would want the employment relationship to continue but in the second, the employee would not want to continue working for the employer. It is a fundamental principle that the employer does not have the right to perpetuate an employment relationship that the employee does not want or to delay termination. The Court referred to legal literature stating that an employee had the right to terminate an employment contract at any time at his or her own discretion and that this right could not be restricted. Any such restriction would be contrary to the principle of prohibition of forced labour under international law, for example, the UN Universal Declaration of Human Rights (Article 23); the International Covenant on Civil and Political Rights (Article 8); the International Covenant on Economic, Social and Cultural Rights (Article 6); the European Social Charter (Article 1.2); and the ILO Convention on the Abolition of Forced Labour. In summary, it would be unlawful to allow an employer to challenge the validity of an employee's termination notice in court.

If an employer has suffered loss as a result of an employment termination; the reputation of the employer has been damaged or the employer has faced other adverse consequences; the employer can bring a claim. However, the claim must not be based on the argument that what the employee has said in his or her termination notice does not correspond to reality.

In addition, the Supreme Court noted that the reasons behind the employee's termination notice should be considered, if they are connected with morality or fairness, and the court should also consider whether the employer has paid severance or the employee is claiming this through the court.

The Supreme Court cancelled the judgment of the Court of Appeal and sent the case back to that Court for review.

Commentary

The question of whether an employer is entitled to make a claim for invalidation of the employee's termination notice if it disagrees with the employee's reasoning and is not willing to pay severance has turned out to be highly controversial. Within the last five years, the Supreme Court has come to several judgments on the subject with differing conclusions. There have been judgments recognising the employer's right to challenge the validity of a termination notice and, in fact, in some, the Supreme Court has said employers were obliged to do so if they want to raise an objection to paying severance. Thus, if the employer fails to make a claim within one month of receipt of notice, the employee will have an indisputable right to demand payment from the employer. But in parallel, the Supreme Court has passed judgments in which it has said that this is not mandatory and that the employer can still effectively object to an employee's claim for severance without a claim by the employer objecting to the notice.

The judgment in the case at hand – which was delivered in expanded form – was intended to draw a line under

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the debate. Even so, the judgment was accompanied by dissenting opinions by three of the nine judges who heard the case. They argued that from the perspective of the Labour Law and the Latvian legal system in general, including Section 1 of the Civil Procedure Law (i.e. that every natural and legal person has a right to the protection in court of its civil rights and interests if those have been infringed or are disputed), the law should protect the rights of the employer in court, including the right to dispute the legality of an employee's termination notice based on reasons of morality and fairness. According to the dissenting judges, the employer's right to challenge the validity of an employee's termination notice has nothing to do with the principle of prohibition of forced labour because forced labour is a separate issue, unconnected to compliance with the provisions of the employment contract and employment law. The case at hand was not about the illegal employment of a person against his or her will. Rather, it was about the fact that an employee's wish to terminate an employment relationship with immediate effect is restricted by law and such restriction serves the legitimated purpose.

Interestingly enough, although foreign law does not apply in Latvia, the dissenting judges referred to paragraph 626 of the German Civil Code, which can be interpreted to mean that the courts can annul an employee's termination notice based on extraordinary circumstances. They also referred to the Estonian Employment Contracts Act, which expressly provides employers with the right to challenge an employee's termination notice before the Labour Dispute Committee and in court.

The latest court practice shows that the courts actually are following the approach suggested by the judgment and it is unlikely that something will change in the nearest future.

Subject: Dismissal

Parties: Employee – v – local government

Court: *Latvijas Republikas Augstākās tiesas Civillietu departaments* (Supreme Court of the Republic of Latvia, civil section)

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