

International Labor: Obligation to Re-Employ Following Invalid Termination of Employment

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I was driven to write this article by two pieces of seemingly unrelated information. The first was the fact that, in the Czech Republic – after adoption of the last substantial amendment to the Czech Labor Code – there is currently another substantial and apparently complex amendment to the Czech Labor Code in progress. The second comes from the unpleasant discovery that, at least for the following four years, there is seemingly no plan for anything similar in Slovakia.

The Slovak Labor Code

The Slovak Labor Code (Labor Code) was last substantially modified 15 years ago by the adoption of an entirely new Labor Code that replaced the original act from 1965. After 1993, its contents largely evolved from the nature of the government coalition. The right-wing government sought greater flexibility of labor law relationships, while the left-wing government sought greater protection of employees. To that extent, the contents of the Labor Code were regularly changed with each change in the government coalition – each time, almost everything introduced by a previous coalition was subsequently amended.

From this perspective, the current composition of government coalition appears ideal for the fundamental recodification of the Labor Code. However, appearances can be deceptive. It seems that all hopes of those who have long talked of the need for a fundamental change will be dashed.

Comparing Labor Law Institutions in Former Socialist Countries and Western European Countries

Wrongful Termination Obligations in Slovakia

Here, we will consider at a relatively straightforward obligation: the so-called obligation of an employer to re-employ an employee if a court declares that the employment relationship was invalidly terminated by the employer. Naturally, the obligation of the employer that wrongfully terminated employment correlates with the right of the employee to re-employment with that same employer.

Under the section 79 (1) of the Labor Code: “If an employer gave invalid notice to an employee, or terminated the employment relationship in an invalid manner with the employee immediately or within

a probationary period, and if the employee informed the employer that he/she insists on keeping employment with the employer, his/her employment relationship shall not terminate, with the exception of a court decision that it cannot be justly required of the employer to further employ the employee. The employer shall be obliged to provide the employee with wage compensation. The employee shall be entitled to such compensation in the amount of average earnings from the day he/she announced to the employer that he/she insists on keeping employment, until such time for which the employer enables him/her to keep working, or until a court rules on termination of the employment relationship.”

Section 79 (3) of the Labor Code sets out a so-called upper limit of wage compensation in the amount of an average wage of an employee for **36 months**. Although the court has the right to decide, “...it cannot be justly required of the employer to further employ the employee”. It rarely makes use of this right in practice.

Here, the Slovak legal regulation is relatively clear in how it awards wage compensation, as well as the right to re-employment, but does not differentiate between the grounds for invalidity of termination (in case of notice of termination, for example, whether it was due to formal defects, preclusion of the period for its application, incorrect delivery or evidently unjustified notice of termination, etc.).

However, it does not consider the number of employees employed by the given employer, which in practice can cause major issues for an employer, particularly in the cases of small and middle-sized enterprises (SMEs) in case of unfavorable termination of lawsuit. We know several cases where a small or middle-sized employer terminated the employment relationship with an employee who had a relatively high wage (for example, an accountant) in a formally invalid manner. In each instance, the employer lost the case and was obliged to pay not only wage compensation for the duration of the lawsuit, but also to re-employ the said employee.

Under the Slovak legal regulation, the entitlement to wage compensation and re-employment acts as a “double retaliation” to the detriment of the employer, despite the fact that it can only be a consequence of formal defects in the applied termination procedure (defects of the notice of termination or of immediate termination of employment relationship). The more prolonged the lawsuit, the higher the wage compensation (however, there is a statutory 36-month upper limit). It is worth mentioning that employees are, in case of disputes for invalidity of termination of employment relationship, *ex lege* exempt from the payment of a court fee, so they have nothing to lose. The view of the courts is strongly in favor of employees, in particular in cases of immediate termination of employment relationship. A large number of such disputes end with settlement, often due to the obligation to re-employ the employee.

Wrongful Termination Obligations in Former Socialist Countries

In the **Czech Republic** the legal regulation is very similar; although the limit provided wage compensation is lower (six months). It will be interesting to monitor whether the amendment to the Czech Labor Code currently being considered will also affect this element, even though the comments raising procedure (interdepartmental consultations) regarding the bill of law has not affected this area.

In **Hungary**, the situation is different as the employee has, in principle, only the right to wage compensation (the maximum limit is 12 months!). The right to re-employment only pertains to the employee in exceptional cases precisely defined by law (termination due to discrimination, infringement of the ban on notice of termination, etc.).

In **Poland**, the employee may choose between the option to be re-employed with the employer or to receive the wage compensation. However, there also exists a possibility to initiate a separate proceeding for compensation of damage in the amount of unpaid wage for the period of unemployment if re-employment occurs after a longer time from the termination of the employment relationship.

In **Russia**, the situation is similar to the Czech Republic and Slovakia, i.e., there is concurrence of the entitlement to wage compensation and the right to re-employment, though there is no statutory upper limit to wage compensation.

Wrongful Termination Obligations in Western European Countries

In **Belgium**, there is no employer obligation re-employ an invalidly terminated employee. However, the longer the employee was employed, the higher the wage compensation for invalid termination of the employment relationship. For example, if the employee worked for the employer for 10 years, the amount of wage compensation for an invalid termination will be 33-times the employee's average wage.

In **Germany**, there is no employer obligation to re-employ an invalidly terminated employee. However, there is almost no upper limit of wage compensation and the compensation depends to a considerable extent on the reason for termination of the employment relationship as ascertained in the lawsuit.

In **Spain**, there is no employer obligation to re-employ an invalidly terminated employee. Wage compensation is based on the number of years worked and the reason for termination of the employment relationship (usually it is an entitlement to wage compensation for 33 days for each year worked). In special cases, such as, for example, discriminatory reasons for termination, there is no upper limit of wage compensation.

In **the Netherlands**, there is no employer obligation to re-employ an invalidly terminated employee. Wage compensation is based on the number of years worked and the reason for termination of the employment relationship. Employees in pre-retirement age are protected to a larger extent. In special cases, such as, for example, discriminatory reasons for termination, there is no upper limit of wage compensation.

In the **United Kingdom**, there is no employer obligation to re-employ an invalidly terminated employee. Wage compensation ranges between a basic sum of £14,370 and a multiple of average wages of an employee for 52 weeks or the sum of £78,962 (whichever is lower), in cases of invalid termination.

The above clearly speaks in favor of abolishing the obligation to re-employ an employee in case of invalid termination of the employment relationship – not only of Western European countries, but also of some post-socialist countries (Hungary, Poland). If our employers are to have conditions comparable to their competitors in the stated countries, it is time to consider a change, and not only in this direction.

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