

SUMMARY

2014/49 Authority to dismiss may be delegated (BU)

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Facts

The Bulgarian rules on employment law are contained in the Labour Code. It is generally held that those rules form part of the rules of civil law, as codified in, *inter alia*, the Law on Obligations and Contracts. That law allows a party to delegate authority to another party, albeit with certain exceptions. By contrast, the Labour Code is silent on delegation, with one exception. Does this mean that an employer may not delegate its authority, in particular the authority to issue a notice of dismissal? Or can an employer delegate authority under the general doctrine of civil law? This question has been contentious for a couple of years. Several judgments of the Supreme Court of Cassation in the recent past have indicated that an employer must personally make each dismissal decision. Clearly, the approach taken has been causing many practical complications, particularly in large organisations. Moreover, there have been other Supreme Court of Cassation decisions in which delegation of the authority to dismiss has been accepted. Thus, a decision was needed to put an end to this contradictory case law and give clear guidance to those concerned.

Bulgarian law allows Supreme Court panels to request a ‘General Meeting’ of their Chamber,

in this case the Civil Chamber, to issue interpretative decisions. Accordingly, at the request of one of the Supreme Court panels, the deputy chairperson of the Supreme Court of Cassation and chairperson of the Civil Chamber, initiated interpretative case No. 6/2012. The question before the General Meeting was whether an employer may delegate its authority to terminate an employment contract other than by way of imposition of a disciplinary sanction.

Judgment

The General Meeting weighed up the following arguments in order to make its determination:

The arguments against allowing delegation, as contained in some of the decisions of the Supreme Court of Cassation, were:

Employment law has such specific characteristics that the general rules of civil law cannot simply be applied; a contract of employment is a personal matter.

As noted above, the Labour Code is silent on delegation except for one instance, set out in Article 192(1). This specifically allows an employer to delegate its authority to dismiss an employee by way of disciplinary sanction. This implies that the authority to carry out any other type of dismissal may not be delegated.

Article 8(4) of the Labour Code provides that the employee must perform his or her contractual duties personally. Logically, this applies equally to the employer.

The arguments in favour of allowing delegation, as contained in other decisions of the Supreme Court of Cassation, were:

Employment law may have specific characteristics, but the Labour Code does not prohibit the delegation of employer authority.

The argument that because the Labour Code only specifically allows for delegation in cases of disciplinary sanction this implies that delegation is not possible in other circumstances is weak and goes against the general principles of interpretation, as provided for by the Law on Legislative Acts. The fact that the employer may delegate the authority to dismiss by way of disciplinary sanction does not lead logically to the conclusion that it cannot delegate the authority to dismiss for other reasons.

Article 8(4) of the Labour Code does not provide that the employer's duties must be provided in person (with the exception of cases where the particular contract was concluded based on the employing individual).

Considering these arguments, the General Meeting came to the conclusion that the provisions of the Law on Obligations and Contracts apply in relation to the employer's authority to delegate its authority to dismiss employees, on whatever legal ground. Consequently, an employer may delegate that authority to anyone it wishes, either to someone within the organisation or to a third party.

Commentary

For the last couple of years the 'poor' practice of the Supreme Court of Cassation has been creating serious practical difficulties for local businesses. In order to be on the safe side, employers had to assure that all employment-related documents were signed personally by the registered statutory representatives of the employer, which tended to cause delays in implementing employment-related decisions and an unnecessary burden on statutory representatives.

No reasonable legal interpretation should have led to the conclusion that although there was no specific prohibition against delegation, one should be implied, but many practitioners had felt the need to advise their clients to avoid delegation when terminating employees. The publication of an interpretative decision supporting the proper approach that must be taken by all courts of law nationally was both needed and very much welcomed by practitioners and businesses alike.

Comments from other jurisdictions

The Netherlands (Peter Vas Nunes): To a Dutch lawyer, what strikes one about this judgment is that the issue debated by the Supreme Court was an issue at all. In The Netherlands, no employee who has been dismissed by anyone but the Managing Director personally would even consider challenging the dismissal on the grounds that the individual who signed the notice letter lacked the power to represent the employer. There are two reasons for this. First, the general rules on contract, including those on representation and delegation of authority, apply to employment contracts except where they conflict with the special nature of an employment relationship. I cannot see why allowing a subordinate to dismiss an employee should conflict with the special nature of an employment relationship. Secondly, an unauthorised legal act can be authorised later on with retroactive effect. Suppose, for example, that a department head dismisses one of the employees in his or her department and the employee challenges the dismissal on the ground that the department head lacked the legal authority to execute the dismissal, management could confirm the dismissal later on.

Subject: Dismissal

Parties: unknown

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