

Examination of the courts' jurisprudence in abuse of rights cases

As a result of the entry into force of the new Civil Code on 15 March 2014, the relevant labour legislation has been modified in order to lift the prohibition of exercise of rights against their intended purpose (misuse of rights) and to include the prohibition of abuse of rights in section 7 of the new Labour Code. The illustrative list of misuse of rights situations has been retained by the new provisions on the prohibition of abuse of rights, and a provision governing the replacement of the parties' legal statements by the court has also been included in the new Labour Code. The examination of the courts' practice could promote the correct application of the rules prohibiting the abuse of rights and could indicate whether labour courts had taken into account the civil courts' case-law in respect of the interpretation of the prohibition of abuse of rights.

The principle prohibiting the abuse of rights should apply for all the provisions of the new Labour Code and all the persons referred to therein. There may be multiform abuse of rights situations with varied legal consequences, which could be identified by the working group's research.

Section 83, subsection (1) of the new Labour Code regulates the reinstatement of employment relationship, but does not include the abuse of rights as a ground for such reinstatement despite the fact that in the past a great number of employees have been reinstated in their original work position on grounds of the misuse of their rights. The jurisprudence-analysis may also have an impact on the legislator, as the courts' case-law may reveal the kind of practices employers use to unlawfully terminate the employment of their employees for a low amount of damages.

In practice, the prohibition of abuse of rights and the prohibition of discrimination often blend together. This results from the fact that section 8, point t) of the Equal Treatment Act prohibits discrimination on grounds of "any other situation" and that employees prefer to refer to having suffered discrimination due to the preferential rules on the taking of evidence in discrimination cases. The jurisprudence-analysis will reveal whether the courts could successfully make a distinction between discrimination and abuse/misuse of rights and could render justified decisions on the basis of the special rules on the burden of proof.

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