

Court practice on dismissal of corporate officers

The Kyiv office of Baker & McKenzie's Employment and Migration practice reviews the most significant court decisions in employment and labor disputes in 2014-2015

Article 41 of the Labor Code of Ukraine does not restrict the corporate officers to whom it applies.¹

An employee, the head of the human resources and documentary department of a public company, was dismissed from office under para. 5 ch. 1 Article 41 of the Labor Code of Ukraine (the "**Labor Code**").

According to the employee, his dismissal was illegal because the provisions of para. 5 ch. 1 of Article 41 of the Labor Code apply only to legal relations arising during the termination of employment contracts between an employer and a corporate officer of a business entity to protect the interests of the relevant investors.

The court found that the dismissal of the employee was lawful given the fact that the provisions of para. 5 of Article 41 of the Labor Code do not contain any restrictions with regard to the categories of corporate officers whose employment contracts may be terminated pursuant to these grounds.

Removal from office of a corporate officer must be done by the authorized body and it must be reasonable.²

An employee holding the post of head of the board was dismissed in 2010 pursuant to para. 4. of Article 36 of the Labor Code. The court found that such dismissal was illegal and ordered the employer to reinstate the employee. In

¹ Decision in case No. 2-1032/15, dated 4 March 2015, of Solomyanskyi Court in Kyiv City; Decision in case No. 341/2195/14-ц, dated 18 December 2014, of the Court of Appeal in Ivano-Frankivsk Region.

² Decision in case No. 753/11315/14-ц, dated 24 July 2014, of Darnytskyi District Court in Kyiv City; Order in case No. 22-ц/796/11157/2014, dated 29 September 2014, of the Court of Appeal of Kyiv City.

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2014, on the day of his reinstatement, the employee was dismissed in connection with removal from office under para. 5 ch. 1 of Article 41 of the Labor Code.

The employee considered that his dismissal under para. 5 ch. 1 of Article 41 of the Labor Code was illegal due to the fact that his powers under the employment contract (that had not yet expired) had not terminated. Moreover, he was dismissed on the day of his reinstatement by the supervisory board, a body that was not authorized to effect his dismissal.

The court found that the dismissal of the employee was illegal because the employer had no grounds for removal from office of the head of the board as under the contract the powers of the employee had not expired. By dismissing the employee on the day of his reinstatement, the employer acted contrary to the Labor Code, as the employee was not notified about his first day of work. Moreover, he was dismissed by the supervisory board, which did not have the authority to adopt a decision on dismissal of the head of the board (as was confirmed by the charter of the company).

An employer can dismiss an employee on the basis of para. 5 ch. 1 of Article 41 of the Labor Code, even if at the time of recruitment such grounds for termination did not exist.³

An employee held the post of managing director with powers granted until the end of November 2014. In July 2014, the general meeting of the company decided to terminate his powers under para. 5 ch. 1 of Article 41 of the Labor Code.

The employee considered that during his dismissal the labor law was violated, in particular as at the time when his employment started the grounds for termination provided for in para. 5 ch. 1 of Article 41 of the Labor Code did not exist.

The court came to the conclusion that the employer was entitled to apply para. 5 ch. 1 of Article 41 of the Labor Code as the law or other legal act in force when the relevant events took place should apply.⁴

³ Decision in case No. 147/1111/14-ц, dated 3 February 2015, of the Court of Appeal of Vinnytsa Region.

⁴ Decision in case No. 1-пр/99, dated 9 February 1999, of the Constitutional Court of Ukraine.

An employer has the right not to specify the reason for dismissal of a corporate officer whose powers are terminated due to expiry of the contract.⁵

An employee holding the post of physician in chief was dismissed under para. 5 ch. 1 of Article 41 of the Labor Code. Among other things, the employee considered that when deciding on his dismissal as physician in chief the proper procedure was violated as no explanation was given of his guilt or the appropriateness of his dismissal, and his previous employment was not taken into account.

The court noted that removal from office may be effected without indication of the reasons as under para. 5 ch. 1 of Article 41 of the Labor Code the owner or the authorized body of a company is entitled not to specify the reasons for dismissal of an officer whose powers are terminated due to expiry of the contract.

Additional notes

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⁵ Decision in case No. 341/2195/14-ц, dated 18 December 2014, of the Court of Appeal of Ivano-Frankivsk Region.