

THE CONCEPT OF TERMINATION OF THE EMPLOYMENT CONTRACT AND ITS ESSENCE

Sobitxonov Joxongir Zunnurxon o'g'li

*Head Specialist Of HR Department Of
Tashkent State University Of Law , Uzbekistan*

e-mail: joxongirsobitxonov07@gmail.com

Zaynobidinova Yulduz Baxtiyor qizi

*Leading Specialist Of HR Department Of
Tashkent State University Of Law , Uzbekistan*

e-mail: yulduz.yunusova.0208@gmail.com

Annotation: Analysis of the process of correct application of the grounds for termination by revealing the nature of the termination of the employment contract. To study the specific aspects of the grounds for termination of the employment contract and to study the guarantees given to employees in the termination of the employment contract. It also consists in identifying the shortcomings arising through a comparative legal analysis with our national legislation, studying the experience of advanced foreign countries, and developing proposals aimed at eliminating them.

Keywords: Labor code, employer, employee, employment contract, termination, ordinary termination, extraordinary termination, labor legislation.

INTRODUCTION

Since the employment contract represents the interests of the employer and the employee at the same time, its annulment will automatically affect the interests of the parties. As a result of this, the interest of some party may be damaged. Taking this factor into account, the law clearly defines the grounds and procedure for terminating the employment contract. As for the theoretical aspects of the termination of the employment contract, the scientists of our country defined this term as follows. "The annulment of the employment contract is the termination of the labor legal relations between the employee and the employer due to the occurrence of certain legal conditions."¹

Also, one of the Western scientists, Deakin, in his scientific works, calls the labor contract one of the cornerstones of economic development and emphasizes that it is essentially a relatively broader concept. Defines the labor contract as a bridge that regulates social relations between employers and employees based on work and mutual trust, which is the main reason for the development of limited liability companies. At the same time, the state also mentions that it regulates relations between employers and

¹ Mualliflar jamoasi. Mehnat huquqi. Darslik. – T.: TDYU nashryoti, 2018. 248-bet.

employees by strengthening the procedure for concluding and canceling employment contracts. Based on the above-mentioned grounds, Deakin says that not only the termination of the employment contract, but also the conclusion of it, other social relations between the employer and the employee, in addition to the labor relations, arise and end².

In our opinion, Deakin's opinion is also valid on one hand. Currently, in many developed countries, the employer has strengthened social relations with the employee in order to ensure high labor productivity in the enterprise.

DISCUSSION AND RESULTS

He is trying to motivate employees, create flexible working hours for them, and change the boring work routine based on uniformity. As a proof of our opinion, I can give an example of psychological contracts, which are now popular in Europe. Research was conducted in 2002-2003 by the joint research program SAL TSA in 6 European countries (Germany, Belgium, Sweden, the Netherlands, Ireland and Great Britain). The purpose of the research was to determine the factors affecting the change of the traditional type of employment contract. According to the results of a two-year study, employers who include elements of a psychological approach to employees in the labor contract have higher productivity and employee job satisfaction. According to the conclusion of the research, they concluded that the psychological labor contract should include mutual trust, mutual promises and obligations between the employer and the employee. The employer expects loyalty, initiative, and competitiveness from the employee, and the employee expects wages, job security, career advancement, and incentives. These factors form the foundation of the psychological contract³.

Therefore, in the termination of the employment contract, in addition to the labor relations between the employer and the employee, the psychological relations based on mutual trust are also void.

The interests of both parties should be taken into account when terminating the employment contract. Naturally, in this process, the legal interest of a party may be harmed. For this reason, the Labor Code of the Republic of Uzbekistan and other legal documents related to labor determine the grounds and procedures for its cancellation and provide for measures to ensure that the rights of the employee and the employer are not violated and their interests are not harmed.

In order to protect the interests of the employee in the case of the complexity of the termination of the employment contract, especially at the initiative of the employer, on June 22, 1982, the International Labor Organization adopted the Convention "On Termination of the Employment Contract at the Initiative of the Entrepreneur". This

² Simon Deakin. "The contract of employment: A study in legal evolution". University of Cambridge WP 203, June 2001.

³ "Employment contracts and psychological contracts in Europe" Published by National Institute for Working Life & SAL TSA 2003.

convention defines the international legal rules for the termination of the employment contract. According to Article 2 of this convention, the provisions of this convention are applied to employees who work on the basis of a fixed-term employment contract, who are undergoing a trial period, who work on the basis of an employment contract concluded for an indefinite period, and who work on a temporary basis. Also, according to Article 5 of the above convention and the recommendations of the International Labor Organization adopted on its basis, the employer cannot terminate the employment contract on the following grounds:

Based on membership and participation in the activities of associations and political organizations that protect the interests of various employees outside of working hours;

to complain about the illegal behavior of the employer and participate in the case against the employer in law enforcement bodies;

on the basis of race, body color, gender, family status and position, religious and political views, social origin;

on the basis of pregnancy, childbirth and childcare leave;

temporary absence from work due to illness;

based on age (excluding retirement age);

on the basis of being in military service or performing civil duty⁴.

The above universally recognized principles protect employees from various illegal actions of the employer. Taking into account the provisions and recommendations of this convention, Article 155 of the Labor Code of the Republic of Uzbekistan provides for the following general grounds for invalidating an employment contract:

1) agreement of the parties (Article 157 of the Labor Code);

2) expiration of the employment contract (Article 157, Article 158 of the Labor Code);

3) termination of the employment contract at the initiative of the employee (Article 160 of the Labor Code);

4) termination of the employment contract at the initiative of the employer (Article 161 of the Labor Code);

5) refusal of the employee to continue work due to the change of the owner of the organization, its reorganization, the change of departmental affiliation (subordination) of the organization (part five of Article 156 of the Labor Code);

6) employee's refusal to continue working under new working conditions (part four of Article 137 of the Labor Code);

7) refusal of the employee to move to another place to work together with the employer (part five of Article 146 of the Labor Code);

⁴ "Compilation of International labour Conventions and Recommendations" International Labor Office. Geneva: ILO, 2015. Page 281.

8) the employee's refusal to transfer to another job for which there are no contraindications based on a medical opinion or if the employer does not have a suitable job (Part 2 of Article 143 of the Labor Code);

9) circumstances beyond the discretion of the parties (Article 168 of the Labor Code);

10) not being elected for a new term or not passing the competition or refusing to participate in the election or competition (Article 169 of the Labor Code);

11) grounds stipulated in the employment contract in cases where this Code or other laws strengthen the possibility of providing a condition on additional grounds for termination of labor relations in labor contracts concluded with employees of special categories.

The employment contract may be terminated on other grounds provided for in this Code and other laws.

Among the 11 grounds listed above, the termination of the employment contract at the initiative of the employer and the termination of the employment contract due to circumstances beyond the discretion of the parties are strictly defined by several laws. takes the bases. In addition, although the above article 155 of our Labor Code enumerates the general grounds for the termination of the employment contract, this list is not complete, the Labor Code itself and other labor laws provide for other grounds. For example, due to failure to pass the initial test (Article 132 of the Labor Code), and other grounds are provided. The fact that there are various articles and documents on the basis of the termination of the employment contract creates difficulties for the user. In order to solve this problem, it would be appropriate to place these bases in one article. In our opinion, the termination of the employment contract is, in essence, a legal confirmation of the termination of the labor and other social relations between the employer and the employee. This formalization reduces the risk that the employer and employee will harm each other on an illegal basis and provides them with guarantees established by law. Historically, until the middle of the 20th century, labor contracts aimed to control more workers. The development of the legislature and the acquisition of a democratic appearance, as well as the change in the attitude towards the employees, caused mutual interests of the employer and the employee. In today's Western countries, especially in Europe, the grounds for terminating the employment contract are not divided into such types as in our country. According to Jens Kirchner and Sascha Morgenroth, employment contracts in Germany are terminated based on person-related, conduct-related, economic, organizational, technological reasons (operational and economic reasons).⁵. In addition, in Norway, the grounds for termination of the employment contract are

⁵ J. Kirchner and S. Morgenroth "GERMAN EMPLOYMENT & LABOUR LAW" Handbook. Verband der Auslandsbanken in Deutschland. 3rd Edition 2017. Page 11.

terminated as a result of subjective personal reasons and objective (external) factors that have nothing to do with the employee.⁶

In our opinion, the purpose of such grouping in these countries is to highlight the differences in the guarantees provided to employees upon termination of employment. We can logically divide the grounds for termination of the employment contract in the Labor Code of Uzbekistan into these types. These distinctions can serve to reduce errors and misqualifications in the application of grounds for termination of employment contracts.

In the process of studying the experience of foreign countries, the following was determined. For example, German labor legislation from European countries does not recognize the concept of termination of an employment contract by agreement of the parties. Termination of the employment contract always happens for a reason. Termination of the employment contract has two forms. The first is extraordinary termination for good cause. The second is ordinary termination.⁷

There must be a serious reason for emergency termination of the employment contract. For these reasons, the employee seriously violates the employment contract, causes a large amount of material damage to the employer, becomes completely unfit for work due to his health condition, the employee's stay at the enterprise causes dangerous consequences for himself, other workers and the employer. may issue. The notice period does not apply to the termination of such an employment contract. In this case, the main reasons are conduct-related reasons and person-related reasons.

In order to simply terminate the employment contract, the employer must give at least the four-week notice period established by law. This notice period is extended depending on the length of time the employee has worked for that employer.

In Japan, from the far eastern countries, labor contracts differ depending on the size of the company. In large corporations, long-term employment contracts (The Long-Term Employment Relationship (LTER)) apply. According to the Japanese Civil Code, it is basically a type of contract that can be terminated by the employee or employer at any time with a two-week notice period. The parties freely determine the terms of the contract, and the employer can determine the obligation not to dismiss the employee without reason, and the employee to serve him faithfully and constantly improve his skills⁸.

CONCLUSION

First of all, in our opinion, it would be appropriate if the psychological contracts used by employers in Europe, analyzed above, were also used by employers in

⁶ Nicolay Skarning & Catriona Elisabeth McIntyre "NORWEGIAN LABOR AND EMPLOYMENT LAW" Global employer handbook. Norway, 2018. Page 7.

⁷ J. Kirchner and S. Morgenroth "GERMAN EMPLOYMENT & LABOUR LAW" Handbook. Verband der Auslandsbanken in Deutschland. 3rd Edition 2017. Page 11.

⁸ Atsushi Tsuneki and Manabu Matsunaka. LABOR RELATIONS AND LABOR LAW IN JAPAN. Compilation © 2011 Pacific Rim Law & Policy Journal Association. Page 18.

Uzbekistan. The results of this study conducted by the joint research program SALTSA in 6 European countries in 2002-2003 proved that the above type of contract has many advantages over the traditional labor contract. The peculiarity is that the terms of these contracts cannot be determined by law. Because these conditions depend on the employer and the employee in every way. These conditions include elements such as mutual trust between the employer and the employee, double promises and strict adherence to obligations. The employer expects loyalty, initiative, and competitiveness from the employee, and the employee expects wages, job security, career advancement, and incentives. These factors form the foundation of the psychological contract.

We can learn the following positive aspects from the experience of Japan, which we considered in the above paragraph. Large, financially stable Japanese companies undertake to always protect the interests of their employees, protect them from unemployment, provide financial security in old age, and create conditions for continuous professional development. And the employees have to serve him faithfully, protect trade secrets, work on himself regularly and other obligations.

In Uzbekistan, unfortunately, in many cases, employers aim to use employees more and pay less. And employees carelessly treat the property of the enterprise. He tries not to go to work with various excuses. Such factors will definitely have a negative impact on work productivity and relationships. As a result, the labor relations between the parties will be terminated. In this process, the employer also avoids the guarantees that he has to pay to the employee. Does not correctly apply the grounds for termination of the employment contract. If we could also use the above modern approaches to labor relations, we would reduce the number of layoffs and avoid the disputes about reinstatement that may arise in this process.

Secondly, in the Labor Code, the grounds for terminating the employment contract are personal (person-related), conduct-related (conduct-related), economic, organizational, technological reasons (operational and economic reasons), as in Germany, and depend on the employee himself, as in Norway. It is not divided into subjective factors (Subjective personal reasons) and objective (external) factors that have nothing to do with the employee. If we also use such groupings in our Labor Code, these distinctions can help reduce errors and misqualifications in the application of grounds for termination of employment contracts.

REFERENCES

1. Mualliflar jamoasi. Mehnat huquqi. Darslik. – T.: TDYU nashryoti, 2018. 248-bet.
2. Simon Deakin. “The contract of employment: A study in legal evolution”. University of Cambridge WP 203, June 2001.
3. “Employment contracts and psychological contracts in Europe” Published by National Institute for Working Life & SALTSA 2003.

4. “Compilation of International labour Conventions and Recommendations” International Labor Office. Geneva: ILO, 2015. Page 281.
5. J. Kirchner and S. Morgenroth “GERMAN EMPLOYMENT & LABOUR LAW” Handbook. Verband der Auslandsbanken in Deutschland. 3rd Edition 2017. Page 11.
6. Nicolay Skarning & Catriona Elisabeth McIntyre “NORWEGIAN LABOR AND EMPLOYMENT LAW” Global employer handbook. Norway, 2018. Page 7.
7. . Kirchner and S. Morgenroth “GERMAN EMPLOYMENT & LABOUR LAW” Handbook. Verband der Auslandsbanken in Deutschland. 3rd Edition 2017. Page 11.
8. Atsushi Tsuneki and Manabu Matsunaka. LABOR RELATIONS AND LABOR LAW IN JAPAN. Compilation © 2011 Pacific Rim Law & Policy Journal Association. Page 18.