

Serbia: Termination due to actions constituting criminal offence declared unconstitutional

MARCH 2017

The 2014 amendments to the Labour Act enabled the employer to terminate an employee for a breach of discipline that constitutes a criminal offence committed at work or in relation to work, regardless of whether the employee has been found guilty of the crime, and even regardless of whether criminal proceedings have been initiated against the employee. This termination ground looked like a significant novelty in favour of employer who was no longer required to wait for years for the criminal court to render a final condemnatory judgment before it could terminate an employee whose behaviour apparently has the elements of a criminal offence.

However, this employer-friendly solution was short-lived. On 17 November 2016, the Serbian Constitutional Court declared the mentioned provision unconstitutional. The Constitutional Court opined that the provision allowing the employer to determine whether certain behaviour represents an act of committing a criminal offence, vests the employer with competences which belong exclusively to courts and violates several fundamental constitutional guarantees, including the principle that everyone shall be presumed innocent until convicted by a final court judgement.

The unconstitutional provision is no longer in force as of 24 February 2017, when the decision of the Constitutional Court was published. An employee who was terminated before 24 February 2017 based on the (now unconstitutional) provision can request from the employer to amend the resolution on termination of employment until 24 August 2017 (see last paragraph), provided that no more than two years have passed since the date of dismissal.

From now on, employers can no longer dismiss employees purely based on a suspicion that criminal offence has been committed at work or in relation to work. This does not mean the employers will have to bear with employees who have committed heavy breaches of discipline until they are convicted in a criminal court. The Labour Act allows the employer to dismiss a recalcitrant employee *if the employee's behaviour is such that he cannot continue to work for the employer*. Certain precedents suggest that the existing dismissal decisions tainted with unconstitutionality can be in the aftermath

of the decision of the Constitutional Court replaced with new ones based on this broadly formulated disciplinary breach. In case criminal proceedings are instituted, the employer may also suspend the employee suspect to have committed a crime from the onset of the criminal prosecution until the final judgment is rendered. During the suspension period, the employee is entitled to one fourth of his base salary or one third, if he has a family to support.

For employment-related matters, please contact Ana.Jankov@bdkadvokati.com

BDK Serbia



Majke Jevrosime 23
11000 Belgrade

Tel: +381 11 3284 212

Fax: +381 11 3284 213

office@bdkadvokati.com

BDK Montenegro

Bul. Džordža Vašingtona 51
81000 Podgorica

Tel: +382 20 230 396

Fax: +382 20 230 396

office.cg@bdkadvokati.com

BDK Bosnia and Herzegovina

(Advokat Dijana Pejić u saradnji
sa BDK Advokati AOD)

Gundulićeva 6

78000 Banja Luka

Tel: +387 51 250 641

Fax: +387 51 250 642

office.banjaluka@bdkadvokati.com

