

provides benefits and guarantees for workers. At the same time, the layout of the code prescribes the conditions under which the dismissal of an employee on the initiative of the employer is legal. It abolishes benefits for mothers who have children of all ages and makes them equal to the terms of dismissal with other workers.

References:

1. The Employment Law Review Tenth Edition. Reproduced with permission from Law Business Research Ltd, 2019. London. – Chapter 46 (Articles 628-641)
2. Trends of Layoffs in the Draft Labour Code of Ukraine. [Електронний ресурс] – Режим доступу: <https://www.legalalliance.com.ua/eng/publications/trends-of-layoffs-in-the-draft-labour-code-of-ukraine/>

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THE RIGHT NOT TO BE TRIED OR PUNISHED TWICE

It is beyond any doubt, that when we think of a criminal case or any other matter, it is quite challenging to pass a “completely fair” decision. In fact, to find the guilty person, is not the biggest problem. But what shall we do, if a person has already been punished for his crime, but it turns out, that it was a graver crime that entails a more severe sentence? For the injured party the right decision would be to sue the offender for the second time and demand further punishment. But as for the criminal’s interests, there would be a breach of the principle of “Non bis in idem” which is translated literally from Latin as "not twice for the same [thing]".

The right not to be tried or punished twice is one of the fundamental human rights, that originates from Roman civil law (Justinian’s Code “Corpus Juris Civilis). It is an inalienable segment of the right for fair trial. Nowadays it is codified in Article 4 Protocol No. 7 of the European Convention on Human Rights:

1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for the offence for

which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is the evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case [1].

The first paragraph sets out the three key components of the non bis in idem principle:

- 1) whether both proceedings were “criminal” in nature,
- 2) whether the offence was the same in both proceedings and
- 3) whether there was a duplication of proceedings.

The third component in turn consists of three separate sub-issues:

- whether the first decision was “final”,
- whether there were new proceedings and
- whether the exception in the second paragraph is applicable [2].

Within the court practice of this principle, there arises the difficulty of determining the first component of this right. The Court case-law sets out three criteria, commonly known as the “Engel criteria” (Engel and Others v. the Netherlands), to be considered in determining whether or not there was a “criminal charge” The first criterion is the legal classification of the offence under national law, the second is the very nature of the offence and the third is the degree of severity of the penalty that the person concerned risks incurring.

It is also necessary to add, that the right not to be tried and punished twice is also reflected in The Constitution of Ukraine (as well as other countries’ statutes). Article 61 says “No person may be brought to legal liability of the same type for the same offence twice”. To my mind, a good example of usage of “non bis in idem” principle is the case Igor Tarasov v. Ukraine. The situation was that the plaintiff to the ECHR entered the local bar with his friend, both drunk and holding the legs of the chairs, threatened people and staff in the bar. It ended with many persons being beaten, injured waiters, damaged dishes and furniture. At first, the policemen determined it as a “petty disorderly conduct”, administrative wrong and the accused got a fine. The claim was just about the threat, noise and breach of public order, nothing about violence. Some days later, the detective sued

Mr. Tarasov for the criminal offence – the battery of another person with intent (it turned out that morning he had beaten his wife) and hooliganism with aggravating factors (damage to people in the bar and property). When he got the second accusation, the offender went to ECHR and claimed that there was the breach of his right not to be tried or punished twice. When the court examined the case, it found that according to the principle of “non bis in idem”: 1) both matters were in fact criminal; 2) they both concern the same date, the same man and the same deed; 3) therefore there was a duplication of the proceedings. As a result, if it is correct to call it so, because of the first false qualification of the crime by the police, it turned out that the man who injured many people would not get the proper punishment. And on the other hand, we see the effect of the mentioned principle, that the person’s right was protected and he will not receive an unfair trial.

To sum up, the “non bis in idem” is the substantial part of human rights. Despite being started long ago, it still remains a standard for the legislature of democratic countries. It makes us sure, that being a party to the trial, our rights and freedoms will be guaranteed and observed. As Eleanor Roosevelt said “Justice cannot be for one side only, but it must be for both”.

References:

1. Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms – https://www.echr.coe.int/Documents/Library_Collection_P7postP11_ETSI117E_ENG.pdf.
2. The Constitution of Ukraine - <https://zakon.rada.gov.ua/laws/main/254к/96-вр>.
3. European Court of Human Rights, 2018 “Guide on Article 4 of Protocol No. 7 to the European Convention Human Rights” – https://www.echr.coe.int/Documents/Guide_Art_4_Protocol_7_ENG.pdf
4. Справа «Ігор Тарасов проти України» (Заява № 44396/05) - https://zakon.rada.gov.ua/laws/show/974_b63.