

Termination of the contract for service in the National Police of Ukraine

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Abstract. *The article examines the specifics of termination of the contract for service in the National Police of Ukraine. It is indicated that service in the National Police of Ukraine is an extremely specific and responsible type of labor activity. This presupposes the existence of a special legal regulation of labor relations of police officers, which establishes, in particular, the specifics of admission to police service and dismissal from it.*

The purpose of the article is to provide proposals and recommendations for improving the theoretical provisions of labor law regarding the determination of the specifics of the termination of the contract for service in the National Police of Ukraine and the corresponding norms of general and special labor legislation. The tasks of the article are to study the points of view of scientists regarding the general principles of termination of the employment contract, as well as to reveal the specifics of the termination of the contract of service in the National Police of Ukraine.

It is noted that the contract, unlike an ordinary employment contract, can be terminated on the grounds provided for in it, in view of this, it is justified that the termination of the contract should be understood as the termination of the employment relationship on all the grounds provided for in the labor legislation and in the contract itself.

The expediency of supplementing Clause 2 of Chapter VI of the Standard Form of the Contract on Police Service: Subclause 4) with the following content: "in connection with the disclosure by Party 2 of official information that led to a violation of citizens' rights", Subclause 5) with the following content: "in connection with the actions of Party 2, which caused a negative public response and lowering the authority of the National Police of Ukraine", sub-item 6) with the following content: "in connection with the infliction by Party 2 of significant material damage to the National Police of Ukraine", sub-item 7) with the following content: "in connection with the systematic non-fulfillment by the Party of 2 indicators of official activity."

Key words: *employee, employer, police officer, contract, employment contract, legal regulation, labor relations.*

Problem statement. Service in the National Police of Ukraine is an extremely specific and responsible type of employment. This presupposes the existence of a special legal regulation of labour relations of police officers, which establishes, in particular, the specifics of admission to police service and dismissal from it. Considering the above-mentioned, it is important in modern conditions to study the specifics of the termination of the service contract in the National Police of Ukraine.

State of the study. The problems of termination of the employment contract during the independence of Ukraine have been studied by such scientists as: V.S. Venediktov, S.V. Venediktov, O.V. Gots, V.V. Eremenko, V.V. Zhernakov, M.I. Inshin, K.Yu. Melnyk, N.O. Melnychuk, N.M. Neumyvaichenko, P.D. Pylypenko, S.M. Prylypko, V.I. Prokopenko, O.I. Protsevskiy, S.O. Silchenko, O.V. Tyshchenko, O.V. Khudyakova, G.I. Chanyshva, V.I. Shcherbyna, O.M. Yaroshenko, and others. Despite the presence of a certain number of publications that examine the problems of termination of the employment contract, a comprehensive theoretical study of the peculiarities of the termination of the contract of service in the National Police of Ukraine.

Purpose and objectives of the study. The goal is to provide proposals and recommendations for improving the theoretical provisions of labour law regarding the determination of the specifics of the termination of the contract for service in the National Police of Ukraine and the corresponding norms of general and special labour legislation. The tasks are to study the points of view of scientists regarding the general principles of terminating an employment contract, as well as to reveal the specifics of

terminating a contract of service in the National Police of Ukraine.

Presentation of the main material. Termination of the contract for service in the National Police of Ukraine ends the existence of the employment relationship of police officers. The contract for service in the National Police of Ukraine as a type of fixed-term employment contract, the terms of which are provided for in Art. 63 of the Law of Ukraine "On the National Police," is terminated within the period specified therein or early.

It should be noted that neither the general labour legislation nor the special legislation on service in the National Police of Ukraine provides for the definition of either the term "termination of the contract" or the term "termination of the working agreement." In the legal literature, the category "termination of the working agreement" has found wider use, as it refers to the termination of any type of employment contract, including an agreement. Termination of the contract as a category related to one of the types of employment contract has its own characteristics and correlates with the category "termination of the employment contract" as general and special.

In the legal literature, the term "termination of the employment contract" is defined in different ways. Thus, V. S. Venediktov writes: "termination of the employment contract should be understood as a general concept that unites all grounds for termination of employment relationships: both at the initiative of the employee, the owner or a body authorised by him, third parties, and in connection with the removal of the

employee from the list of the enterprise, in connection with his death" [1, p. 106]. Yu. P. Dmytrenko notes: "Termination of an employment contract is a comprehensive concept that includes the termination of the contract, the expiration of its term, or another legal fact (for example, the death of the employee)" [2, p. 228]. N. B. Bolotina points out: "Termination of an employment contract is the widest in scope and covers all cases of termination of the employment contract, including by agreement of the parties, as a result of leaving the company, etc." [3, p. 281]. O.M. Yaroshenko notes: "The termination of an employment contract is the termination of the employee's employment relationship with the employer in all cases provided for by labour legislation [4, p. 136]. From the point of view of V. I. Prokopenko, "termination of an employment contract is a generic concept that covers all cases of termination of employment relations" [5, p. 235]. V. R. Shyshlyuk points out: "termination of an employment contract is all cases of termination of the employment relationship and termination of the employment contract, including its termination, which are caused by the will of the parties or a third person who is not a party to it, as well as on the basis of circumstances that do not depend on their will, which takes place on the basis, in the order, and under the conditions determined by labour legislation" [6, p. 83].

The analysis of the stated points of view allows us to identify one of their common features, namely the inclusion of the category "termination of the employment contract" in all cases of termination of the employment relationship. We consider this approach to be completely fair and justified. Considering the fact that the contract, unlike a regular employment contract, can be terminated on the grounds stipulated in it, termination of the contract should be understood as the termination of the employment relationship on all the grounds provided for in the labour legislation and in the contract itself.

Along with the category "termination of the employment contract" to indicate the termination of the employment relationship in legal literature and national legislation, other categories are used, which some scientists use as identical to the termination of the employment contract, while others put a different meaning into them. These categories are: "termination of the employment contract" and "dismissal from work." Thus, O. M. Yaroshenko notes that the term "dismissal" is synonymous with the term "termination of an employment contract" [7, p. 313]. F. A. Tsesarsky writes: "The dismissal of an employee (except in the case of his death) is the termination of an employment contract and determines the procedure for the termination of employment relations" [8, p. 507]. S. M. Glazko points out: "The terms "suspension of an employment contract," "termination of an employment contract," and "dismissal of the employee" are related to each other as follows: Suspension of an employment contract is a generic, generalised concept and covers all grounds for termination of such an employment contract. The term "termination of the employment contract" applies only to cases of termination of the employment contract at the initiative of the employee, the employer, or

at the request of third parties, that is, persons who are not parties to the employment contract. The term "dismissal" characterises the very process of suspension or termination of the employment contract. This term refers to only one party to the employment contract - the employee because the employer, that is, the enterprise, institution, or organisation, has an institutional and stationary nature, which makes it impossible to dismiss him, let alone settle with him" [9, p. 9]. K. Yu. Melnyk points out: "Suspension of an employment contract means the end of its validity on all grounds provided for by labour legislation. Termination of the employment contract is its voluntary suspension at the initiative of the employee, the employer, or persons who have the right to demand its suspension. The term "dismissal" is synonymous with the term "termination of an employment contract," with the exception of cases of the death of an employee, recognition of his absence without notice or declaration of death, as well as the death of an employer-natural person, recognition of his absence without notice or declaration of death" [10, with. 182]. V. R. Shyshlyuk writes: "Termination of an employment contract" is the broadest concept, which includes all cases of termination of employment relations, including unilateral and bilateral volitional actions and events that do not depend on the will of the parties. Instead, "suspension of the employment contract" is a specific concept and consists exclusively in the unilateral expression of will of the employee, employer, or third parties who are not parties to the employment contract. "Dismissal" means a set of interrelated procedural actions of the employer in relation to the employee, with the help of which the termination of the employment relationship is legally formalised" [6, p. 84].

Analysis of the provisions of the labour legislation does not allow us to identify the categories "suspension of the employment contract," "termination of the employment contract," and "dismissal." Regarding "suspension of the employment contract," our position was expressed above. Termination of the employment contract refers to the termination of the employment contract at the initiative of one of its parties or at the request of third parties. Dismissal from work should be considered, on the one hand, as a procedure for terminating the employment relationship between the employee and the employer, and on the other hand, as a synonym for the term "termination of the employment contract," with the exception of natural, objective cases of termination of the employment relationship (death of the employee, death of the employer's physical person). As a type of fixed-term employment contract, the contract can be terminated on the grounds provided for by national labour legislation for fixed-term employment contracts. The Plenum of the Supreme Court of Ukraine drew attention to this in paragraph 13 of the Resolution "On the practice of consideration of labour disputes by courts" dated November 6, 1992 No. 9, noting: "Since the employees with whom the contract is concluded are covered by the labour legislation that regulates relations according to the employment contract, with the exception established for this form of employment contract, their employment contract may be terminated for other reasons provided by the legislation (Articles 36, 39-41 of the Labour Code)". Also, the contract can be terminated on the grounds provided by the contract

itself. The last possibility is provided by the norms of Part 3 of Art. 21 and p. 8 part 1 of Art. 36 of the Labour Code of Ukraine.

Therefore, the general reason for terminating the contract is the expiration of its validity period. The contract may be prematurely terminated: first, on the grounds provided for by national labour legislation for fixed-term employment contracts (Articles 36, 39, 40, 41, 45 of the Labour Code of Ukraine); secondly, on the grounds stipulated in the contract. Such grounds, as a rule, are determined by the nature of the work performed by the employee and the specifics of the enterprise, institution, and organisation.

The legal literature provides the following examples of grounds for terminating a contract that the parties can include in its content: "For example, in a contract with teachers, the reason for its termination may be non-fulfilment of educational plans, in a contract with managers of state-owned enterprises, non-fulfilment of established indicators of efficiency of the use of state property and profit. At many enterprises, among the grounds for terminating the contract are the disclosure of commercial (banking) secrets, financial information, and confidential information, the list of which must be contained in the contract or an appendix to it." [11]; "in practice, the grounds for terminating the contract can be: disclosure of a commercial secret, non-fulfilment of the obligations assumed by the parties, undermining the image of the institution (with details of the concept), causing significant material damage (with its compensation), etc." [2, p. 233]; "When entering into a contract, an employee can undertake to provide indicators that reflect the results of his activity - for example, the level of growth in product sales; terms of development and implementation of new technologies; increasing the profitability of production, etc. Non-fulfilment or improper fulfilment of these obligations due to the fault of the employee may be a condition for terminating the contract, which the parties stipulate in its text" [12].

Termination of the contract with the employee is formalised by an order (order) of the employer to dismiss him from work. In the case of termination of the contract with the employee on the grounds provided for in the contract, the specific grounds for the respective contract are not indicated in the dismissal order and in the employment book, but the grounds provided for in Section 8 of Article 36 of the Labour Code of Ukraine are "grounds provided for by the contract." To terminate the contract under Section 8 of Article 36 of the Labour Code of Ukraine, it is necessary that such a contract should include at least one reason for its early termination.

When an employee is dismissed from work on the basis of Clause 8, Part 1, Art. 36 of the Labour Code of Ukraine, the employer must properly justify the grounds for his dismissal provided for in the relevant contract. If this is not done and the relevant dismissal is contested by the employee in court, the court may declare such dismissal illegal. Such cases are not isolated, for example: "By the decision of January 23, 2018, in case No. 203/6039/15-ts, the Supreme Court upheld the court's decision to reinstate the plaintiff, since the

employer did not prove the fact that the manager did not ensure the implementation of the company's financial plan" [13].

It should be noted that the presence or absence of fault by the employee is not a determining factor for terminating the contract with him on the grounds provided for in it. Thus, in the Resolution of the Supreme Court dated August 30, 2018, in case No. 463/3091/15, it is stated: "According to the factual circumstances of the case, the director of the state enterprise was dismissed from his position in accordance with Clause 8, Part 1, Art. 36 of the Criminal Code. The reason for the dismissal provided for in the contract was the fact that the company had debts to the budget for the payment of the EUS. The plaintiff asked the court to declare illegal and annul the order on his dismissal and reinstate him as a director on the basis that the specified debt of the enterprise arose due to reasons beyond his control, namely in connection with the long-term and groundless blocking of the enterprise's accounts. In addition, the plaintiff drew attention to the fact that at the time of his dismissal there was no agreed amount of debt, the company denied its existence. The Supreme Court came to the conclusion that the decisive factor in this case is the very fact of the violation, and the established guilt of the manager only additionally confirms the legality of the contested order" [13].

The police service contract is terminated on the grounds provided for in the Law of Ukraine "On the National Police." Article 77 of the Law provides: "A police officer is dismissed from police service, and police service is terminated: 1) in connection with the expiration of the contract; 2) due to the state of health (due to illness) - according to the decision of the medical commission on unfitness for police service; 3) by age - in the case of reaching the maximum age for police service established for him by this Law; 4) in connection with the reduction of staff or organizational measures; 5) due to official inadequacy; 6) in connection with the implementation of a disciplinary sanction in the form of dismissal from service, imposed in accordance with the Disciplinary Statute of the National Police of Ukraine; 7) at one's own will; 8) in connection with the transition to work in other ministries and departments (organisations); 9) in connection with direct subordination to a close person; 9-1) in connection with the existence of a real or potential conflict of interests, which is of a permanent nature and cannot be settled in another way; 10) in the event of the entry into force of a court decision on prosecution for an administrative offence related to corruption or a criminal offence, as well as a court decision on the recognition of his assets or assets acquired on his behalf by other persons or in other cases provided for in Article 290 of the Civil Procedure Code of Ukraine in unfounded cases and their collection into state income; 11) in connection with the acquisition of citizenship of another state; 12) in the event that a person provides knowingly false information during recruitment to the police service" [14].

The above list of reasons for dismissal from police service indicates that it does not provide for dismissal on the grounds stipulated in the police service contract. We remind you that a similar basis is provided for other employees in

Clause 8, Part 1, Art. 36 of the Labor Code of Ukraine, and the possibility of providing additional grounds for its termination in the contract is established when defining the specifics of the contract in Part 3 of Art. 21 of the Labor Code of Ukraine. Therefore, we consider it expedient to supplement Art. 77 of the Law of Ukraine "On the National Police", paragraph 13, with the following content: "on the grounds provided for in the contract of service in the police".

Chapter VI "Changes and Terms of Termination of this Contract" of the Standard Form of the Contract for Police Service, approved by the Order of the Ministry of Internal Affairs of Ukraine dated February 3, 2017 No. 89, stipulates: "2. This Contract is terminated:

1. in connection with the expiration of the validity period;
2. at the initiative of Party 1 before the expiration of the term of validity in the cases provided for in clause 3 of this section;
3. at the initiative of Party 2 before the expiration of the term of validity in the cases provided for in clause 4 of this section;
4. Party 2 may be dismissed from the position, and this Contract may be terminated at the initiative of Party 1 before its expiration on the grounds provided for by the Law of Ukraine "On the National Police".
5. Party 2 may terminate this Contract before its expiration on the grounds provided for by the Law of

Ukraine "On the National Police", which gives a police officer the right to initiate the issue of his dismissal from the police.

6. In case of early termination of this Contract, the Parties shall notify each other in writing of their intention to terminate this Contract within two weeks.

7. The date of termination of this Contract shall be the date of its expiration.

In case of early termination of this Contract, the day of termination of this Contract is:

the date of issuing the order on dismissal from police service in accordance with the procedure and on the grounds determined by the Law of Ukraine "On the National Police" or the date specified in the order on dismissal from service;

the date of issuing the dismissal order in connection with the transfer in accordance with the requirements of Article 65 of the Law of Ukraine "On the National Police" or the date specified in the dismissal order;

the day of the death (death) of a police officer, as well as his recognition by the court as missing or declared dead or incapacitated" [15].

The above provisions also indicate that the termination of the contract for police service is carried out on the grounds provided for by the Law of Ukraine "On the National Police", and additional grounds for termination of the contract are not provided for in the Standard Form of the Contract.

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