



COVID-19 pandemic, censorship and Labour Law protection in Poland – selected issues

LA PANDEMIA DE COVID-19, CENSURA Y PROTECCIÓN DE LA LEY LABORAL EN POLONIA - TEMAS SELECCIONADOS

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ABSTRACT

Covid-19 pandemic had a significant impact on many areas of human life, and above all, on the area of economic and professional activity. In particular, pandemic changed the labor market, not only in labor market mechanisms but also in fundamental labor laws. The global Covid-19 epidemic resulted in the Polish labor market - remote work, which was a response to the widespread closure of the country. Unfortunately, there also have been problems with the freedom of speech for employees during the coronavirus pandemic in Poland. The paper focuses on the topics mentioned above, stressing areas related to the security of employee rights that can be considered controversial.

RESUMEN

La pandemia COVID-19 tuvo un impacto significativo en muchas áreas de la vida humana, y sobre todo, en el área de la actividad económica y profesional. En particular, la pandemia cambió el mercado laboral, no solo en los mecanismos del mercado laboral, sino también en las leyes laborales fundamentales. La epidemia global de COVID-19 resultó en el trabajo remoto del mercado laboral polaco, que fue una respuesta al cierre generalizado del país. Desafortunadamente, también ha habido problemas con la libertad de expresión para los empleados durante la pandemia de Coronavirus en Polonia. El documento se centra en los temas mencionados anteriormente, destacando las áreas relacionadas con la seguridad de los derechos de los empleados que pueden considerarse controvertidos.

KEYWORDS

COVID-19 pandemic
Labour law protection
Whistleblower
Employees
Remote work
Protection against
Dismissal
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PALABRAS CLAVE

COVID-19 PANDEMIC
Protección de la ley laboral
Whistleblower
Empleados
Trabajo remoto
Protección contra el
Despido
Censura

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I. INTRODUCTION

The global Covid-19 epidemic occurred in a significant breakdown of the economies of the world countries in the areas of the most significant for labor law and security of the broadly understood work process. In Poland during the Pandemic, the problem with the freedom of speech for health professionals was associated with the disciplinary dismissal of the midwife, which revealed information on the working conditions of the hospital workers. This event was of great importance in the sphere of activities, ensuring the medical sector's safe working conditions. At the same time, from day to day, both employers and a significant part of the employees have passed remote work with the use of distance communication, as on the one hand ensured employers with long-term reduction of business costs. On the other hand, however, work remotely brings many legal and organizational challenges, but it can also be subject to abuse. In Poland, in March 2020, many sectors of the economy have ceased to function correctly, and in others, some activities have been drastically limited. This fact was negative for many employees and employers. Legal provisions regulating the forms of COVID-19 counteracting, including employee rights, change in Poland very dynamically. Starting from the diagnosis of the first patient from COVID-19 on 2 March 2020, the Polish legislator prepared guidelines on the proceedings, prevention, and elimination of COVID-19, other infectious diseases, and unfavorable states caused by crises («Covid 1”). The Act was published on 7 March 2020. However, in mid-April and May, subsequent aid laws, known as Covid 2.0 and 3.0, and a week later, another project, etc., up to the current Covid Act 6.0. A few of these regulations regarding COVID concerns the protection of labor and the actions and duties of employers. The current crisis threw light into two problems in our economic system: securing the work process and freedom of speech. Remote work was introduced to statutory regulations in Poland only in 2020 through the so-called COVID anti-crisis law -19. On this basis, the remote work could be performed on behalf of the employer to counteract COVID-19; and S defined, currently limited until the duration of the epidemic and subsequent three months after the stage of the epidemic (or epidemic risk).

During the “corona-crisis”, the freedom of the speech of employees, also cannot be ignored. The current crisis revealed the full significance of freedom of the word in

reporting irregularities by employees of the medical sector. Therefore, for proper protection of the interests of employers and employees, securing the professional interests of employees in this correct freedom of expression has fundamental importance for the state's economy. Remote work in Poland - a field of abuse of employee rights.

In March 2020, the Polish legislator introduced a state of epidemic alert in Poland, and then on March 7, in connection with the spread of an infectious disease caused by the SARS-CoV-2 virus, the so-called anti-crisis act¹, which was amended several times. The legislator introduced many changes relating to various law branches, particularly labor law, causing changes in the labor market. Finally, in March 2020, appeared the so-called remote work, which informally replaced teleworking existing in the Polish Labor Code (work outside the workplace with remote communication means, the so-called "home office")². There is a reasonable statement that remote work is a pandemic creation in Poland. Remote work has been presented as a form of work performed outside permanent work during the pandemic. The essential function of remote work was a reaction to the restriction of the activities of national economy entities in the current form and the opening of employers to new forms of employment, allowing for social distance and at the same time limiting the costs associated with running a business. The very provision regulating remote work in the act was limited to a laconic statement about working remotely, without significant details. At the end of June 2020, the share of people who worked remotely due to the epidemic situation in the total number of employees was 10.2%, which was 0.8 percentage points less than at the end of March 2020 during the second quarter, the number of employees providing remote work in the public and private sectors was similar. In units employing more than 49 people, approx. 11% of the employed worked remotely due to the epidemic situation, while in units employing up to 9 people it was approx. 8% of the employed. In September 2020, the first signals appeared that remote work could replace telework because the former is more flexible and convenient for both parties of the employment relationship³. Moreover, workers began to notice that, in addition to being instructed to work remotely by the employer, his duties towards his employees ended there, and this began to cause anxiety in the labor market⁴.

II. REMOTE WORK AND EMPLOYEE RIGHTS

The situation caused by the COVID-19 pandemic introduced a discussion not only about remote work itself but also about employee rights related to its performance.

1. Act of March 31, 2020 amending the act on special solutions related to the prevention, prevention and combating of COVID-19, other infectious diseases and emergencies caused by them, and certain other acts, Journal of Laws 2020 item 568.

2. Act of June 26, 1974, the Labor Code, Journal Of Laws 1974 No. 24, item 141.

3. See Praca zdalna w Kodeksie pracy zastąpi telepracę, <https://kadry.infor.pl/wiadomosci/4695641,Praca-zdalna-w-Kodeksie-pracy-zastapi-teleprace.html>.

4. Doubts related to the command to work remotely were repeatedly explained by the National Labor Inspectorate, <https://www.pip.gov.pl/pl/o-urzedzie/wyjasnienia-i-wsparcie-pip/najczestsze-pytania-i-odpowiedzi/praca-zdalna/121593,praca-zdalna.html?pubdate=202102020949>.

Enabling employees to work outside the workplace, and in particular, at home, will allow employers to be more flexible during the COVID-19 pandemic, but at the same time, employees can reconcile their private and professional lives. Remote work is a flexible and atypical form of employment. The significant advantages of remote work are that an employee only need to access the Internet and remote communication to provide work for the employer. The “pandemic discovery” of remote work in its statutory definition is broad and covers the performance of work using electronic means of communication (identical to telework) and other types of work transferred to be performed outside the place of work. In Poland, it is currently assumed that remote work is not the same as teleworking. Firstly, organizing remote work does not require a great organizational effort on the part of the employer, and the fact that employees in Poland working in remote work conditions are not able to determine what employee rights they are entitled to, even for example regarding the organization of computer equipment for remote work or return lump sum for the electricity used to perform the work. As a result, a Polish employee who works remotely under an employment relationship may only be entitled to a specific entitlement under the Labor Code, which also applies to those employees who work at the employer’s premises. Therefore, let us follow the laconic provisions of the anti-crisis act, which introduced the concept of remote work. According to Art. 3 of the Act, point 1 “During the period of an epidemic threat or an epidemic, announced due to COVID-19, and within three months after their cancellation, in order to counteract COVID-19, the employer may instruct the employee to perform, for a specified period, work specified in the employment contract, outside the place of its permanent performance (remote work)”. At the same time, accordingly, point 3. “Remote work may be recommended if the employee has the technical and local skills and capabilities to perform such work and the type of work allows it. (...) 4. the employer provides the tools and materials needed to perform remote work and logistics support for remote work. However, another point of the provision “suspends” the employer’s obligations to provide the employee with tools for work. 5. “When performing remote work, the employee may use tools or materials not provided by the employer, provided that it allows for the respect and protection of confidential information and other legally protected secrets, including business secrets or personal data, as well as information, the disclosure of which could expose the employer to damage. The National Labor Inspectorate has created a collection of questions and answers on its official website, among which it answered pretty extensively to the question about the costs related to remote work and the responsibility of employees⁵.

Remote work is performed on the same working conditions and pay as the work performed at the company’s premises. Where is the difference? A remote employee

5. National Labor Inspectorate, <https://www.pip.gov.pl/pl/o-urzedzie/wyjasnienia-i-wsparcie-pip/najczestsze-pytania-i-odpowiedzi/praca-zdalna/121593,praca-zdalna.html?pubdate=202102020949>; see more: Jacek Andrzejewski: praca zdalna niesie sporo zagrożeń dla pracownika, <https://mojafirma.infor.pl/personel/5165377,Jacek-Andrzejewski-praca-zdalna-niesie-sporo-zagrozen-dla-pracownika.html>; Praca zdalna szansa czy zagrożenie?, <https://mojafirma.infor.pl/personel/5165377,Jacek-Andrzejewski-praca-zdalna-niesie-sporo-zagrozen-dla-pracownika.html>,

is not entitled to any other financial allowance due to remote work because there are no regulations directly related to this issue. The employer may optionally introduce additional benefits in connection with remote work; it all depends on the arrangements between the employer and the employee. If it is not regulated, for example, in the work regulations, the employer is not obliged to create other equivalents or allowances for the time of remote work. Remote work is not only financial benefits but also the issue of health and safety at work of a remote employee, an accident at work, or even working time records. On the other hand, there are initiatives to introduce remote work to the Labor Code⁶. It requires a comprehensive and appropriate regulation, which may be difficult because it cannot resemble telework, which the Polish Labor Code comprehensively regulates. Opinions of both employers and employees support the maintenance of the availability of such a mode of work also after the pandemic. In practice, however, there are still many problems concerning maintaining high standards of protection for employees to not lead to abuses in this regard, which employees who work remotely have to deal with at present. On the one hand, we do not want to overregulate remote work, but on the other hand, the high level of flexibility and the lack of provisions in this regard in the anti-crisis act lead to the weakening of the labor protective law function.

III. WHY NOT TELEWORK?

Teleworking, *i.e.*, working outside the workplace using remote communication means (the so-called “home office”), was not very popular in Poland. It was used sporadically, e.g., due to reasons relating to the employer resulting from the organization of work or for reasons attributable to the employee (personal conditions and the preference to work in this way). Telework has been introduced to chapter IIb of the Labor Code. On October 16, 2007, the provisions of the Act of August 24, 2007, amending the Act-Labor Code and certain other acts implementing the assumptions of the European framework agreement on teleworking. Art. 67(5) §1 of the Labor Code provides that work may be performed: a) regularly outside the workplace, b) using electronic means of communication within the meaning of the provisions on the provision of electronic services (teleworking). Teleworking does not have to be done in the teleworker’s home. It also results indirectly from other provisions of Chapter IIb of the Second Section of the Labor Code. In particular, the content of Art. 67 (14) and 67 (17), which introduce specific regulations - if the work is performed at the teleworker’s home, clearly indicates the possibility of performing work in the form of telework outside the teleworker’s home. In teleworking, the parties to the employment relationship determine when

6. Leśniak, G.: Praca zdalna nieprędko doczeka się uregulowania w kodeksie, https://www.prawo.pl/kadry/praca-zdalna-jakie-sa-ustalenia-partnerow-spoecznych-i-kiedy,505241.html?fbclid=IwAR3UmPjexQNCI3t6hOn-N2H-zMvm50VG5AJqx6_cnDBNV5HgdAkD5Cg1Ye8; Leśniak, G.: Jest projekt o pracy zdalnej-pracownik odpowiedzialny za organizację stanowiska pracy, <https://www.prawo.pl/kadry/pracownik-bedzie-odpowiadat-za-organizacje-stanowiska-pracy,507451.html>.

and where teleworking will be performed (Article 67 § 1). The employer or employee may submit an initiative to work in the form of telework. Contrary to all opinions, teleworking also allows flexibility in settlements between the employer and the studio in terms of equipment necessary for teleworking. Based on Article. 67 § 1 the employer is obliged to:

1. provide the teleworker with the equipment necessary to perform work in the form of telework,
2. ensure the equipment,
3. cover the costs related to installation, service, operation, and maintenance hardware,
4. provide teleworker with technical assistance and necessary training in the field equipment handling - unless the employer and the teleworker decide otherwise.

The employer also defines the rules for recording working time and controlling the employee during the work of the employee, customs, e.g., verification of the state of health and safety at work, but it is worth emphasizing - with the consent of the employee (Art. 67 § 2 point 3)⁷.

IV. REMOTE WORK AS A TEMPORARY SOLUTION IN POLAND?

During the COVID-19 pandemic, under the influence of imposed restrictions, the possibility of remote work for employees appeared in the Polish labor law. Initially, as one of the forms of employee protection, it became the subject of numerous discussions among employees and employers. Undoubtedly, remote work is a response to the inevitable changes in the labor law meal. Special attention is paid to the control and supervision of employees, which leads to greater efficiency of employees. The Polish legislator, taking into account the challenges of labor law during the COVID-19 pandemic and the new realities of working after the pandemic, decided to regulate remote work. On May 19, 2021, a draft act was prepared by the Ministry of Development, Labor, and Technology to amend the Labor Code, the Act on Vocational and Social Rehabilitation and Employment of Disabled Persons, and the Act on Employment Promotion and Labor Market Institutions appeared⁸.

7. See more: Sobczyk, A.: *Telepraca w prawie polskim*. Warszawa: Oficyna Wolters Kluwer 2009; Sowińska-Milewska, D.: *Telepraca a kobiety – z doświadczeń projektów Fundacji Centrum Promocji Kobiet*, w: Szewczyk, A. (red.). *Telepraca – szansą czy zagrożeniem na rynku pracy?* Szczecin: Wydawnictwo Naukowe Uniwersytetu Szczecińskiego 2002; Spytek-Bandurska, G.: *Telepraca jako nietypowa forma zatrudnienia w Polsce. Aspekty prawne i społeczne*. Warszawa: Oficyna Wydawnicza Aspra 2015; Zalewski, T.: *Telepraca do korekty*. Resort pracy przygotowuje zmiany. *Dziennik Gazeta Prawna* 2014, <http://serwisy.gazetaprawna.pl/praca-i-kariera/artykuly/792587,telepraca-do-korektyresort-pracy-przygotowuje-zmiany.html>.

8. See the full text: <https://legislacja.rcl.gov.pl/projekt/12346911>.

Remote work is to be part of the work code in chapter II c. The definition of remote work became the key to the bill. The labor code is to include three types of remote work performance.

1. it will be work fully or partially performed, agreed by the employees with the employer (Art. 67 (18)),
2. at the employer's request, *i.e.* in exceptional situations, such as the application of an emergency, epidemic threat or epidemic state and within 3 months after their cancellation, as well as due to the employer's inability to ensure health and safety at work, e.g. as a result of a breakdown (Art. 67 (19) § 2),
3. performed occasionally (maximum 12 days a year) (Art. 67 (33)).

An attractive solution is that the employer is obliged to take into account the request of the employee – spouse or employee – parent with complications of pregnancy or employees – parents of disabled children and an employee raising a child until the age of 4, for remote work, unless it is impossible to do so. Due to the organization of work or the type of work performed by the employee.

The employer will be obliged to:

1. provide the employee performing remote work with materials and work tools necessary to perform remote work;
2. cover the costs related to the installation, service, operation and maintenance of work tools necessary to perform remote work, costs of electricity and necessary access to telecommunications links, as well as other costs directly related to the performance of remote work, if the reimbursement of such costs has been specified in the agreement or regulations;
3. provide the employee performing remote work with technical assistance and the necessary training in using the work tools necessary to perform remote work.

The employer will have the right to control the employee's performance at the place of performing remote work and during the employee's working hours on the terms specified in the agreement or regulations. The method of carrying out the control must be adapted to performance and the nature of remote work. Performing control activities may not violate the privacy of the employee performing remote work and other people or impede the use of homerooms in a manner consistent with their intended use. The employer will have the right to control the employee's performance at the place of performing remote work and during the employee's working hours on the terms specified in the agreement or regulations. The method of carrying out the control must be adapted to performance and the nature of remote work. Performing control activities may not violate the privacy of the employee performing remote work and other people or impede the use of homerooms in a manner consistent with their intended use. Online work is an opportunity for a new development of labor law in Poland, but for those companies that understand that working in a task-based system of

tasks will be efficient and satisfy many Polish enterprises. One of the problems Polish enterprises face in fully accepting remote work is the inability to control an employee and their performance while working remotely.

IV. THE “RIGHT TO SILENCE” IN POLAND

Whistleblowers are one of the most effective ways of detecting and preventing activities and irregularities that threaten the public interest. Reporting about irregularities is of great importance in times of crises that may weaken economic processes, and normal supervision over the decision-making process may be impaired. Employees are often the most reliable source of information about inappropriate situations in the workplace. However, revealing them exposes themselves to several risks, including harassment, harassment, and even dismissal. Negative associations related to reporting are remnants of communism in Poland. In Poland, labor law does not provide adequate protection, among others, to employees, interns, apprentices, former employees, and even people who perform atypical work⁹. The whistleblower’s role is not limited to revealing the irregularity, which is the fundamental element of the disclosure process; however, as the recent whistleblower’s actions in Poland show - the whistleblower is a crucial element in the recovery process of the institution where the disclosure took place. Consequently, whistleblowing is necessary for the fight for fairness and the public interest, especially during the COVID-19 pandemic. The most prominent case of acting in the broadly understood public interest is a midwife from a hospital in Nowy Targ. An employee posted a photo on Facebook wearing a protective mask made of a disposable handkerchief. There was also a thread of a makeshift face mask made of a paper towel. The midwife wanted to report how challenging the conditions are in Polish hospitals. In response to the post on Facebook, the employer handed the midwife a statement about the employment contract termination without notice because she violated essential employee obligations, ie, care for the workplace’s good¹⁰. The above-mentioned facts confirm the problem, because it was not the only case when whistleblower in Poland experienced retaliation for reporting irregularities at the workplace.

V. EUROPEAN UNION AND WHISTLEBLOWING LEGISLATION

On 7 October 2019, the Council of the European Union in the Composition of Justice and Home Affairs finally approved the final version of the Directive of the European Parliament and the Council on protecting persons reporting infringements of EU law, also known as the Directive on whistleblowers¹¹. The new legislative act that

9. For instance: fixed-term contract or temporary work.

10. Available in Polish at: https://serwisy.gazetaprawna.pl/zdrowie/artykuly/1463864,koronawirus-w-polsce-uciszanie-lekarzy.html?fbclid=IwAR0TugvIMeeqzIpb5vX7Rk_xqbGY8-8SmWbaB8bKujPfiVWYeZVFI76aHtE.

11. Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law, <https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:32019L1937&from=EN>.

provides for common minimum standards for the protection of signalers in the EU is the result/result of a series of complex negotiations and compromises between various entities and institutions, whose ultimate goal was to ensure a higher level of protection in various sectors subject to EU competences. In order to be effective, the Directive provides for several measures to protect signalers against retaliation and requires private and public entities and national authorities, the establishment of channels enabling easy to report available and reliable. As will be analyzed in detail in subsequent chapters, the importance of signals worldwide is increasingly visible in the light of financial and political scandals, which due to the cross-border dimension of the modern economy and interaction policy, also struck in the many EU Member States. In addition, the provisions on signal protection or only sector instruments apply in all national legislation, which means that protection across the EU has always been fragmented and ineffective¹². Several international entities, such as Transparency International¹³ and the Council of Europe¹⁴, together with the social partners and the European Parliament, have repeatedly asked the European Commission to propose a legal instrument enabling the minimum harmonization of signaling regulations across the EU as a fundamental step towards strengthening the principles of democracy and transparency Inside the Union. Directive Vera Jouranová, Commissioner for Justice, Consumers and Gender Equality, presented as a “breakthrough”. However, according to V. ABAZI¹⁵ - Commissioner exaggerated the importance of new regulations, although they derive from best practices in many respects, including because they contain a broad definition of who can be a signaler and cover a wide range of policy areas the public and private sectors. All forms of retaliation on signals are prohibited, in the case of alleged retaliation, the burden of proof, and there was no retention to the employer.

There is no doubt that every employee (for the broadcasting mentioned above Directive) should benefit from complete protection against possible retention attempts for notification of irregularities and should use them in the same scope. Labor law must be a set of regulations to protect employee interests - a weaker part of the employment relationship. At this point, it should be indicated that the main objective of the Directive is to protect only broadly understood public interest (or a European public interest), while slaughtering the essence of the protection of informers-employees. Protection of employees (mainly) consists primarily of protecting the employee against exclusion from the workplace and, above all from society. Protection against exclusion should be seen as a fundamental operation or to ensure the efficiency of the excellent majority, unless everything. Furthermore, ensuring efficiency may require assistance to all reporting irregularities without showing a limit. The consistent

12. Proposal for a Directive of the European Parliament and of the Council, COM(2018) 218 final 2018/0106(COD), Explanatory Memorandum, el.

13. Transparency International (2013), Whistleblowing in Europe: Legal protections for whistleblowers in the EU.

14. Recommendation CM/Rec(2014)7 on the protection of whistleblowers and explanatory memorandum (Online version: Council of Europe Committee of Ministers website), <https://www.coe.int/en/web/cdcj/activities/protecting-whistleblowers>.

15. Abazi, V.: The European Union Whistleblower Directive: “A ‘Game Changer’ for Whistleblowing Protection?”, *Industrial Law Journal*, vol. 49, no.4, December 2020, p. 641.

rejection by the Directive aspects of signaling protection in the scope, respectively, improves the working environment to protect the health and safety of employees and working conditions and would ensure the protection of employees applying violations of both national and EU law. Unfortunately, the Directive focuses only on protecting the European public interest, while the derivative product is to protect professional and social interests employed and the signaling themselves who have been treated by the Directive instrumentally. In general, the legislative initiative has only a direct or indirect dimension and must be related to EU law or EU financial interests.

VI. THE RIGHT TO FREEDOM OF EXPRESSION AND EMPLOYEE CONSEQUENCES

Whistleblowing (literally: informing)¹⁶ consists of disclosing an employee's noticeable irregularities in a workplace by informing people authorized to take corrective actions in an organization or prevent irregularities. It is assumed that employees are the most reliable source of information about abuse in the workplace. By revealing them, they expose themselves to various forms of retaliation, such as exemption from work, harassment by the employer, or colleagues' exclusion. Due to the historical past, whistleblowing's definition in Poland is marked with very negative comparisons¹⁷.

Notwithstanding, it can be argued that when the public is aware of the risk of misconduct by an institution (whether it is a public or private sector institution), public disapproval increases, and thus the perception of the employee who makes the disclosure changes. When society knows what irregularity was disclosed by a signal and what retaliation was taken against signals, a sense of insufficient justice increases. In Polish legal culture, reporting is still very controversial and criticized that it does not provide adequate legal safeguards before retaliation. Anyone, i.e., an employee, trainee, a student, a former employee, or employer's contractor, can be a whistleblower¹⁸. Whistleblowing can act as a reporting mechanism for offenses, fraud, and other forms of illegal or unethical behaviors whose disclosure is an essential feature of a democratic system, especially in the difficult period of the Covid-19 Pandemic. The Polish Labor Code does not contain any protective institutions of employees making irregularities;

16. See PWN Polish Dictionary, <https://sjp.pwn.pl/szukaj/informator.html>; Santoro, D.; Kumar, M.: *Speaking Truth to Power. A Theory of Whistleblowing*, Springer 2018; Lamer, R. A.: "Whistleblowing and Employee Loyalty", *Journal of Business Ethics*, 1992, 11 (2), s. 125-128; Latan, H.; Chiappetta Jabbour, Ch. J.; Lopes de Sousa Jabbour, A. B.: "Whistleblowing Triangle, Framework and Empirical Evidence", *Journal of Business Ethics*, 2019, 160 (1), s. 189-204; Elliston, F. A.: "Anonymity and Whistleblowing", *Journal of Business Ethics*, 1982 1 (3), s. 167-177; Ceva, E.; Bocchiola, M.: "Theories of Whistleblowing", *Philosophy Compass*, 2019, 15 (1); Prediction of Whistleblowing or Non-Reporting Observation: The Role of Personal and Situational Factors. [REVIEW]. Cassematis, P. G.; Wortley, R.: *Journal of Business Ethics*, 2013, 117 (3), s. 615-634; Santoro, D.; Kumar, M.: "A Justification of Whistleblowing", *Philosophy and Social Criticism*, 2017, 43 (7), s. 669-684; Culiberg, B.; Mihelič, K. K.: "The Evolution of Whistleblowing Studies: A Critical Review and Research Agenda", *Journal of Business Ethics*, 2017, 146 (4), s. 787-803.

17. Kobroń-Gąsiorowska, L.: Czy Polskę czeka era etycznych donosów? Społeczno-prawne aspekty działania, 82 Zeszyty Naukowe Towarzystwa Doktorantów UJ Nauki Społeczne 2015, p. 82; Kobroń, L.: Informator strażnik wartości czy donosiciel, *Palestra*, 2013, no. 12-13, pp. 296-300.

18. Kobroń, L.: Informator strażnik wartości czy donosiciel, *Palestra*, 2013, no. 12-13, pp. 296-300.

on the contrary, the Act regulates the so-called Disciplinary exemption due to violation of essential employee obligations, *i.e.*, art. 52 § 1 point 1 of the Labor Code¹⁹.

The Supreme Court in the judgment of May 10 2018, II PK 74/17 indicated that the employee has the right to the permitted, public criticism of the supervisor (the right to whistleblowing, *i.e.* disclosure of irregularities in the functioning of his workplace consisting in various types of acts of dishonesty, dishonesty involving the employer or his representatives), if this does not lead to a breach of his employee duties, in particular taking care of the welfare of the workplace and keeping secret information, the disclosure of which could expose the employer to damage (loyalty obligation; not infringing the employer's interests - Article 100 § 1 point 4 of the Labor Code), as well as compliance with the company rules of social coexistence (Article 100 § 2 point 6 of the Labor Code). In the opinion of the Court, an employee may not rashly, in a manner justified only by subjective reasons, formulate negative opinions towards the employer or its representatives. «Permitted criticism» must be reliable, factual, and adequate to the specific factual circumstances and in an appropriate form. The essential feature of permitted criticism is the employee's „good faith”, *i.e.*, his subjective conviction that he bases the criticism on truthful facts (with due diligence in checking them) and acts in the employer's legitimate interest. In the Supreme Court's opinion, „caring for the welfare of the workplace” is an employee's obligation to refrain from actions aimed at causing damage to the employer or even considered as actions to the employer's disadvantage. In such situations, the employee's behavior should be assessed in such a way that the emphasis should be placed not so much on the culpable (not guilty) or legal (unlawful) nature of his behavior but on his loyalty to the employer²⁰. However, in a 2017 ruling, the Supreme Court indicated that the condition for the application of Art. 52 § 1 point 1 of the Labor Code (a whistleblower's disciplinary dismissal) is therefore the employee's mental attitude to the effects of his behavior, determined by the will and possibility of foreseeing, *i.e.* awareness of the fundamental nature of the breach of duty and the negative effects that this behavior may cause for the employer. The disciplinary dismissal of a midwife from Nowy Targ was based substantially on art. 100. § 2 p. 4 of the Polish Labor Code, *i.e.*, violation of primary employee responsibilities. In this context, it should be pointed out that regardless of whether the exemption was or was not justified, legal consequences of the employer's will are immediate.

VII. CONCLUSIONS

Although two threads were raised in this paper, I am limited to the indication of several observations. The Covid-19 pandemic resumed a discussion on the need to protect the professional and social interests of employees. This paper aimed to identify the main problems from the perspective of employees with which I have to measure during the ongoing crisis. In the context of Poland, it is worth pointing out the crisis of

19. Labour Code of 26 June 1974 Dziennik Ustaw, 1974 Nr 24 poz. 141.

20. The judgment of the Supreme Court of May 23 2014, II PK 32/14.

freedom of speech through the possibility of revealing irregularities in the workplace. Unfortunately, the form of disciplining the employee is so-called Disciplinary release that refers to immediate effect. The only way to defend such an employee is to appeal to the court of work "Employer's decision". On the other hand, it is also worth pointing out the Polish legislator's positive actions on the regulation of remote work and securing the interests of remote workers. The current bill does not regulate many detailed solutions leaving them by the employer's decision and regulating the internal regulations of the workplace. We do not know if the legislator can replace the regulated teleworking the Labor Code - remote work. Certainly, the rules for remote work cannot be a repetition of the provisions on telework, and time will show how much the benefits of remote work will be with us for longer.

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