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THE RIGHT TO PRIVACY

POLISH REPORT

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1. The meaning of a term 'privacy'

Etymology of the word 'privacy' derives from Latin *privus*, meaning 'one's own, private; separate, single'[1]. The term is polysemic and there is no legal definition of it. Polish judicature and legal doctrine did not hammer out one, consistent definition of privacy. They make use from foreign research (S. Scolio, A. Westin) and they come to the conclusion that privacy is associated to several areas of live, such as freedom, intimacy, ownership, and also right to decide autonomously, right to reveal or not information about oneself and right not to be interfered overly with thoughts (e.g. advertisement)[2].

It is important to emphasize that privacy in labour law cannot be understood as widely as in civil law or public law. It results directly from character of employment relationship. One of its essential features is subordination. Employee is obliged to work under employer's superiority and due to that fact the employer is entitled to control how employee performs their duties. The key to define right to privacy is to find balance between permissible acts and breach.

2. The Constitution of the Republic of Poland of 2nd April, 1997

Term "right to privacy" is not explicitly mentioned in The Constitution Of The Republic Of Poland[3] (hereinafter: the CRP), but it can be interpreted from many articles, in particular ones which are dealt about human dignity, that is thought to be the root of right to privacy.

The Article 30 of the CRP. *The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities.*

Dignity marks the boundary for the public interference in an individual's matters, and thus in his privacy as well.

Legal doctrine claims dignity to be both legal right and absolute value, which expresses a source of all other legal rights. It inheres every human being regardless of citizenship and whether one conducts indignly. In accordance to the Article 30 and the Article 1 of CRP („The Republic of

[1] R. Kumaniecki, *Słownik łacińsko-polski,* Warszawa 1967.
[2] S. Scolio, *Transforming Privacy: A Transpersonal Philosopy of Rights*, London 1998, p. 1-2.
[3] The Constitution Of The Republic Of Poland on 2 April 1997 (Dz.U.1997.78.483 as amended).

Poland shall be the common good of all its citizens.") respect for dignity is constitutional value of utmost importance and axiology of constitutional rights is built around it[4].

1.1. Articles of Constitution related to right to privacy:

The Article 47 of the CRP. *Everyone shall have the right to legal protection of his private and family life, of his honour and good reputation and to make decisions about his personal life.*

The Article 49 of the CRP. *The freedom and privacy of communication shall be ensured. Any limitations thereon may be imposed only in cases and in a manner specified by statute.*

The Article 50 of the CRP. *The inviolability of the home shall be ensured. Any search of a home, premises or vehicles may be made only in cases and in a manner specified by statute.*

The Article 51.1 of the CRP. *No one may be obliged, except on the basis of statute, to disclose information concerning his person.*

2. Public authorities shall not acquire, collect nor make accessible information on citizens other than that which is necessary in a democratic state ruled by law.

3. Everyone shall have a right of access to official documents and data collections concerning himself. Limitations upon such rights may be established by statute.

4. Everyone shall have the right to demand the correction or deletion of untrue or incomplete information, or information acquired by means contrary to statute.

5. Principles and procedures for collection of and access to information shall be specified by statute.

The Article 53.7 of the CRP. *The freedom to publicly express religion may be limited only by means of statute and only where this is necessary for the defence of State security, public order, health, morals or the freedoms and rights of others.*

The right to privacy in the CRP consists of positive and negative elements. The positive elements are: right to legal protection of private and family life, honour and reputation, right to make decisions, freedom, right to privacy of communication, inviolability of the home. The negative elements are the right not to disclose information concerning oneself – 'information's autonomy'[5].

Private and family life is understood as all the aspects of human life which cannot be rate as a public life, hence the aspects related to family, friends and co-workers, gathered as widely, as

[4] L. Garlicki w zdaniu odrębnym do pkt 3 orzeczenia TK z dnia 28 maja 1997 r., K 26/96.

[5] M. Wujczyk, *Prawo pracownika do ochrony prywatności,* WKP 2012.

possible.[6] Moreover not only relationships should be qualified, but also all the information about individual, e.g. health state, marital status, habitual residence, worksite, interests, and so one. As a family life we understand all the factual circumstances related to family, included ones that are not valid from legal viewpoint.

In accordance to the Act of 29 August 1997 on the Protection of Personal Data (unified text: Journal of Laws of 2014, item 1182 with amendments) not only a citizen, but everyone who resides in Republic of Poland has a constitutional right to privacy.

Due to the Article 49 of the CRP any form of communication is under protection, e.g. verbal or nonverbal, recorded or not and at any other form[7]. Thus, as a rule, any interference with passing information is forbidden – censorship, surveillance, data gathering, etc.

The Article 51 of the CRP is the closest to right to privacy. Information's autonomy is regulated there. The Constitutional Tribunal in its judgement of 1st February, 2002 (ref. U 3/01, OTK-A 2002, nr 1, poz. 3.) defined it as the 'right to make autonomous decisions about disclosing information concerning themselves as well as the right to exercise control over the information, which is being possessed by another party'. As a rule it is understood as the right not to disclose any information related to individual, also if the information is associated to public life. Exceptionally, the right can be limited.

1.2. Adressess of a constitutional norm

It is important to determine to whom constitutional norms imposing right to privacy are aimed at. As a rule constitutional norm are aimed at public authorities, especially legislature. They determinate how statues shall be imposed. But in this case the Constitutional Tribunal claims right to privacy to have both vertical and horizontal character. Vertical character is interpreted as a relationship between public authorities and individuals, and horizontal – between equal individuals. Thus, the employer's obligation to comply with right to privacy arises directly from Constitution. Due to the fact that privacy, as a derivative from dignity, has superior role in hierarchy of values this solution is legitimate, but it not absolves Parliament form an obligation to enact elaborate norms.

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[6] P. Sarniecki, *Komentarz do art. 47 Konstytucji RP* w: L. Garlicki, *Konstytucja RP Komentarz*, t. III, Warszawa 2003, p. 2.

[7] W. Skrzydło, *Komentarz do art. 47 Konstytucji RP* w: Skrzydło Wiesław, Konstytucja *Rzeczypospolitej Polskiej. Komentarz.*, Lex 2013.

1.3. Constitutional limitations

The Article 31.3 of the CRP. *Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.*

Any limitation of constitutional rights must be imposed only in cases and in a manner specified by statute. It must be motivated by a superior interest of society. The interest must be superior to that specific right which is being limited, the limitation must be proportional and cannot lead to infringement of the substance of a right.

An example of legitimate limitation of right to privacy in employment can be found in The Act of 29 August 1997 On The Protection Of Personal Data (In accordance to the Article 3, the Act is applied to employers who are mainly natural or legal person or organization unit without legal entity who 'are involved in the processing of personal data as a part of their business or professional activity or the implementation of statutory objectives'. Statue in the Article 23 enumerates situations, in which data can be collected and processed by that person. The limitations can be divided into two categories: the ones that require allowance the data subject and the ones that not require such allowance.

The Article 23 of the Protection Of Personal Data Act. *1. The processing of data is permitted only if:*

1) the data subject has given his/her consent, unless the processing consists in erasure of personal data,

2) processing is necessary for the purpose of exercise of rights and duties resulting from a legal provision,

3) processing is necessary for the performance of a contract to which the data subject is a party or in order to take steps at the request of the data subject prior to entering into a contract,

4) processing is necessary for the performance of tasks provided for by law and carried out in the public interest,

5) processing is necessary for the purpose of the legitimate interests pursued by the controllers or data recipients, provided that the processing does not violate the rights and freedoms of the data subject.

2. The consent referred to in paragraph 1, point 1 may also be applied to future data processing, on the condition that the purpose of the processing remains unchanged.

3. Should the processing of data be necessary to protect the vital interests of the data subject and the condition referred to in paragraph 1, point 1 cannot be fulfilled, the data may be processed without the consent of the data subject until such consent can be obtained.

4. The legitimate interests, referred to in paragraph 1, point 5 in particular, are considered to be: 1) direct marketing of own products or services provided by the controller,

2) vindication of claims resulting from economic activity.

3. Right to privacy as a personal interest in Statue of 23 April 1964 – the Civil Code

The Article 23 of the Civil Code[8]. *Personal interest of a human being, such as in particular health, freedom, dignity, freedom of conscience, surname or pseudonym, image, confidentiality of correspondence, inviolability of home as well as scientific, artistic, inventive and reasoning activities shall be protected by the civil law regardless of the protection provided for by other provisions.*

There is no legal definition of a personal interest in polish system of private law. In legal doctrine there are two main approaches how it should be defined. S. Grzybowski, represents subjective opinion and admits that protection of a personal interest shall not be depended on presence of a particular condition, understandable in any case. Emotional state of an individual is sufficient to gain legal protection. He also claims that subjectivity, as long as immateriality, characterizes any personal interest, thus any endeavour to create universal rules are contrary to fundaments of personal interest.

On the other hand, Z. Radwański considers personal interest as an interest inherently related to human being, regardless their individual approach to it, which is non-financial and cannot be expressed in any economical category. Notwithstanding it can affect economical status of individual (e.g. opinion can affect earnings of a employee).

There are also some judgements in which attempt to define personal interest can be found. The Supreme Court in its Judgement of 10 June 1977 (ref. II CR 187/77) ruled that personal interest consist of elements that together allow individual to develop their personality and make use of goods, that are accessible on that particular stage of socio-economic development and protect their existence. There is also an established opinion, which recurs in several Supreme Court's judgement that personal interest's protection cannot depend on individual's sensitivity (subjective opinion). That sensitivity can differ because of one's characteristics, traits or preconditions. Thus personal interest's

[8] The Act of 23 April 1964 Civil Code (consolidated text Dz.U.2016 pos. 380).

criteria must be objectified. During the process court must consider both wider audience perceptions, social standards of conduct and customary norms[9].

To sum up, it can be acknowledged that there is a predominant opinion how personal interest shall be interpreted. They are incorporeal, inalienable, non-financial, but can affect economical status of individual, inherently personal – they come into being with birth and expire with death, non-transferable and can be vindicated only by an injured person and they are worthy of legal protection if infringement can be considered with objectivity.[10]

In Supreme Court opinion personal interest are related to private and family life and human intimacy[11]. By virtue of the face that it is impossible to foresee diversity of a human life, catalogue of interest is open[12]. Also it is being referred to by use in the Article 23 term '*such as in particular'*.

As a result of all that consideration, it is certain that right to privacy can be classified as a personal interest. However, there is remote possibility to find in real life situation in which only one, extracted personal interest is injured. More often ranges of different personal interest coincide. Not only it is impossible to singularise one from another but also they incorporate the same components. Moreover, each personal interest is protected in the same way.

3.1. Personal interest in employment – labour dignity

Polish legal doctrine distinguishes a category of personal interests related to work. It is called 'labour dignity'. It is a catalogue of values particularly important in employment relationship. They arise in connection with creating employment relationship and they consist of employee's self-esteem and personal efficacy. Employee in workplace should be considered both a good professional and earnest worker and also experience to be trustworthy and appreciated by an employer[13]. Infringement of right to privacy can affect labour dignity. In general, as a infringement of the labour dignity can be classified: assault, indecent behaviour, unjust assessment, spread untruth opinion about employee, illegitimately sentence penalty for breach of order[14]. In that catalogue can be found infringement

[9] See the ruling of the Supreme Court of 11th, March 1997 (ref. III CKN/97), and similarly ruling of the Supreme Court of 6th October, 1969 (ref. I CR 305/69), ruling of the Supreme Court of 12th November, 1974 (ref. I CR 610/74), ruling of the Supreme Court of 5th April, 2002 (ref. II CKN 350/00) and so on.
[10] The ruling of the Supreme Court of 21st October, 2008 (ref. II PK 71/08).
[11] The ruling of the Supreme Court of 18th January, 1984 (ref. ICR 400/83).
[12] Wyrok Sądu Najwyższego z dnia 9lipca 2009r., II PK 311/08, MPP 2010, nr3, s.143–147.
[13] J.Jończyk, *Zagadnienie ochrony dóbr osobistych w prawie pracy*, „Państwo i Prawo" 1963, nr 5–6, s. 820 in.
[14] The ruling of the Supreme Court of 21st October, 2008 (ref. II PK 71/08)

against the right to privacy, e.g. processing employee's data without permission, surveillance, assessment based on information researched with breach, spreading employee's personal information.

3.2. Personal interest protection

The Article 24 of the Civil Code § 1. *A person whose personal interest is jeopardized by another person's action may demand that the action be abandoned, unless it is not illegal. In the case of actual violation, he may also demand that the person who committed the violation perform acts necessary to remove its consequences, in particular that the letter make a statement of relevant content and in relevant form. On the basis of the principles provided for by the Code he may also demand pecuniary compensation or a payment of an adequate amount for specified community purpose.*

§2. If, as a result of a personal interest damage to the property was inflicted the injured party may demand it to be redressed on the basis of general principles.

§3. The above provision shall not prejudice the entitlements provided by other provisions, in particular by copyright law and by patent law.

Due to the quoted article, personal interest protection depends on meeting several prerequisites. Firstly, the personal interest must exist objectively (as it was referred in previous paragraphs), an infringement must be a consequence of employer's action or omission and that action or omission must be unlawfulness against that interest from the legal point of view or in the lights of principles of community life.[15] The Supreme Court claims prerequisites that exclude unlawfulness to be:

1. action or omission is not illegal,
2. infringer perform their legal right,
3. subject has given their consent (not in all cases),
4. protection of a justified interest[16].

The legal regulations governing the protection of personal interest are:

1. claims for refraining from actions posing a threat of infringement to a personal interest,
2. claims for seizing a continuous action already infringing a personal interest,

[15] S. Kryczka, *Wybrane dobra osobiste w zatrudnieniu.*

[16] The ruling of the Supreme Court of 19th October 1989 (ref. II CR 419/89).

3. claims for legally binding determination that an individual is entitled to a given personal interest and that it is infringed by another individual,
4. claims for remedying damage,
5. claims for monetary recompense for the harm suffered,
6. vindictive damages for specific social purpose[17].

This claims can be divided into two groups: non-property claims (1-3) and property claims (4-6).

4. The Labour Code [18]

The Article 11[1]. *Employers are obliged to respect the dignity and other personal rights of employees*

An employee's right to privacy collides with his employer's right to supervision at work. Deciding which methods and means applied by the employer are allowed in light of the right to privacy is always depending on the specific situation, especially on the kind of work, level of responsibility, employer's justifiable lack of trust etc. Generally it can be stated that the employer has the right to use technical means (cameras, phone tap), if it serves to protect his significant interest, reaching the desired goal is highly probable, and the use of other means is impossible or otherwise highly difficult[19]. In such a case the employer's actions will not be unlawful in nature.

The rule points solely to the relation between an employer and his employee, and may be applied only in such relation. In light of the very narrow definition of an employee in the polish law it may seem that a large group of people is excluded from this regulation (for instance people applying for a job, or employed under a form of employment outside of the labour code). These people are protected by the regulation of the Civil Code[20]. Why isn't the direct application of the civil law regulation to the employees sufficient then? Because of the uneven position of the employer and employee in an employment arrangement, the labour law tries to compensate for this disproportion by equipping the employee with more effective instruments designed for protection of his rights, then the civil regulation would.

[17] https://en.cgolegal.pl/services/litigation-department/protection-of-personal-interests/
[18] The Act of 26 June 1974 Labour Code (consolidated text Dz.U.2016 pos. 1666).
[19] K. Jaśkowski, *Komentarz aktualizowany do Kodeksu pracy*, Lex 2016.
[20] S. Kryczka, *Wybrane dobra osobiste w zatrudnieniu*.

4.1. Relation between personal interest protection and the protection provided in the Labour Code

The predominant part of the doctrine claims that personal interest protection from the Civil Code is independent from the protection provided to the employee by the regulations of the labour law[21]. This means that the employee may vindicate a claim resulting both from violating the right to privacy from the Article 24 of the Civil Code and from the regulations of the Labour Code[22]. An exclusive application of the specific regulation or a limitation of application of the general regulations of the Civil Code, eventuates neither from the content of the Articles 23 und 24 of the Civil Code nor from any other regulation of the Labour Code[23].

4.2. Protection provided in the Labour Code

The protection in labour law should be divided into individual (to which individual employees are entitled to) und collective protection (eventuating from the regulations of collective labour law).

From among the means of individual protection, the doctrine points to rectification of the work certificate, a claim for quashing the penalty for breach of order and discipline, and also the right to termination of an employment contract without notice due to serious infringement of basic employer's obligations towards the employee. Some authors also point to a claim arising out of a defective termination of a permanent employment contract and claim arising out of a defective termination of an employment contract without notice. These measures serve protection of employment more than protection of personal interest[24].

The norms of the collective labour law regulate the relations between the organization of employees, and employers and their organizations. Collective labour law includes the trade union law, arrangement law, collective labour litigation law. As the definition of collective labour law indicates, organizations of employees are obligated to protect the interests and right of employees with their actions, under which falls the dignity of the employee (J. Wratny), through which also the right to privacy.

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[21] H. Szewczyk, *Ochrona dóbr osobistych w zatrudnieniu*, wyd. Oficyna, 2007, Rozdział 8.1.
[22] J. Zamorska, *Stosunek ustaw szczególnych do kodeksu cywilnego*, Studia Cywilistyczne, t. 18, Kraków 1971, p. 53.
[23] J. Ignatowicz (w:) *System prawa cywilnego*, t. I, *Część ogólna*, red. S. Grzybowski, Ossolineum 1985, pp. 865-867.
[24] H. Szewczyk, *Powszechna ochrona trwałości umownego stosunku pracy po nowelizacji kodeksu pracy*, *Z Problematyki Prawa Pracy i Polityki Socjalne*j, red. A. Nowak, t. 13, Katowice 1998.

The Article 1 § 1 of the Act of 23 May 1991 on Trade Unions[25]: *A trade union shall be a voluntary and self-governing organisation of the employees, founded to represent and protect their rights, professional and social interests.*

The Article 4 of the Act on Trade Unions. *Trade unions shall represent employees and other persons referred to in Section 2, the unions also protect their dignity, rights, and material and moral interests both collective as well as individual ones.*

Trade unions have the competence to evaluate projects of statutes and executive acts within the scope of the tasks of the trade unions defined by the Act on Trade Unions, although these evaluations have no binding nature to the legislator.

Trade Unions can influence the situations of the employees more directly through acts of collective labour law, which may establish material and legal guarantees of provision acquisition, indicate preventative or removal measures towards emergent violations on the workplace level und above[26]. Which is why acts of collective labour law are the instrument, which can establish additional stringency for the employer within the scope of privacy right protection, which are not provided by the common law, and also establish additional protective instruments (i.e. different kinds of legal claims). Such acts can also detail the controlling powers of the employer (i.e. ways and procedures for use of cameras in a workplace).

4.2.1. Claim for quashing the penalty for breach of order and discipline

Wrongful application of a disciplinary penalty all by its self cannot violate the privacy right, however the employer may apply a penalty based on circumstanced, which came to light through a violation of that law (i.e. by means of an illegal monitoring) or due to circumstances which came to his attention however by use of legal methods, but these circumstances have no connection to the employment relation (i.e. imposing a disciplinary penalty for wrongful conduct, taking place outside of the workplace and work hours und unrelated to the employer or workplace). Provisions of the Article 112 § 1 of the Labour Code state that if a penalty is applied in violation of the provisions of law, the employee may object. It is generally acknowledged that the objection may refer to the

[25] The Act of 23 May 1991 on Trade Unions (consolidated text Dz.U.2015 pos. 1881).
[26] H. Szewczyk, *Ochrona dóbr osobistych w zatrudnieniu*, p. 239.

groundlessness, incommensurability of the penalisation[27]. An employee who has filed an objection may apply to revoke the penalty applied towards him.

The Article 112 of the Labour Code *§ 1. If a penalty is applied in violation of the provisions of law, the employee may object within 7 days of receiving the notification about the penalty on him. The employer decides whether to accept or reject the objection after hearing the opinion of the enterprise trade union representing the employee. If the objection is not rejected within 14 days from when it is filed, the objection is considered as having been sustained.*

§2. An employee who has filed an objection may, within 14 days from the notification about the objection being rejected, apply to the labour court to revoke the penalty applied towards him.

§ 3. If an objection concerning a fine is sustained or the fine is revoked by the labour court, the employer is obliged to return the equivalent of the fine to the employee.

4.2.2. Claim for rectification of the work certificate

As in the case of wrongful application of a disciplinary penalty, a defective issue of an work certificate may have an indirect connection to a breach of privacy right of the employee. The employer may disclose information about the employee in the work certificate, which he is not authorised to disclose.

According to the Article 97 § 2^1 of the Labour Code, an employee may within 7 days from receiving the work certificate submit to a request to the employer to correct the work certificate. In case of a refusal the employee has the right within 7 days of the refusal to file the request to the labour court. On grounds of the Article 99 of the Labour Code an employee who suffers damage due to an issue of an incorrect work certificate may put forward a claim for redress of damage cause by the employer (payment of compensation), when all of the following three prerequisites are met: the employer has issued an incorrect work certificate, an employee remained unemployed due to that fact and has suffered damage to property, staying in a direct connection to the issue of an incorrect work certificate[28]. To this claim regulation of contractual liability (the Article 471 of the Civil Code) are applied in such cases, when the incorrect issue of a work certificate has caused a different damage, than a loss of earning of the employee[29]. An incorrect work certificate is defined as one, which contains information that is contrary to the actual state of affairs to the date of its issue. The burden of proof lies with the employee.

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[27] Z. Salwa, *Prawo pracy iubezpieczeń społecznych*, Warszawa 1999, s. 177; tenże, *Kodeks pracy po nowelizacji. Komentarz*, Bydgoszcz 1996, p. 162.

[28] E. Maniewska, *Komentarz aktualizowany do ustawy z dnia 26 czerwca 1974 r. Kodeks pracy (Dz.U.98.21.94).,* Lex 2016.

[29] The ruling of the Supreme Court of 13th October, 2004 (ref. II PK 36/04).

The Article 97 of the Labour Code *§ 1. Upon the termination or expiry of an employment relationship, the employer is obliged to issue a work certificate to the employee immediately. The issue of the work certificate may not depend on the previous settlement of accounts between the employee and the employer. (...)*

§ 2. The work certificate provides information on the period and type of the work performed, job positions held, the manner of the termination or the circumstances of the expiry of the employment relationship as well as other information necessary to establish the employee's entitlements and social insurance entitlements. Furthermore, the work certificate should contain a note on withholding any remuneration for work, in the meaning provided for by the provisions on execution proceedings. Information on the amount and components of remuneration, as well as the qualifications achieved, should also be placed in the work certificate at the demand of the employee.

§ 2[1]. The employee is entitled, within 7 days from receiving the work certificate, to submit to the employer a request to correct the work certificate. *If the request is refused, the employee is entitled, within 7 days from learning about the refusal to correct the work certificate, to file a request with the labour court to correct the work certificate.*

§ 3. If a labour court decides that the termination of an employment contract without notice through the fault of the employee was in violation of the provisions of law on the termination of employment contracts in this manner, the employer must include a note in the work certificate that the employment contract was terminated with notice from the employer.

The Article 99. *§ 1. An employee has the right to* ***claim for the redress of damage*** *caused to him through a failure of the employer to issue a work certificate in due time, or a failure to issue an accurate work certificate.*

§ 2. The compensation referred to in § 1 amounts to the remuneration for the period of being out of work for this reason, but for not longer than 6 weeks.[...]

§ 4. The court decision on compensation in re

4.2.3. Termination of an employment relation without notice by the employee

The Article 55. [Termination of a contract without notice by an employee]

§ 1. An employee may terminate an employment contract without notice if a medical certificate has been issued declaring a harmful effect of the work performed on the health of the employee, and the employer, within the period of time determined in the medical certificate, fails to transfer the employee to another position appropriate for his health condition and corresponding to his professional qualifications.

§ 1[1]. An employee may also terminate an employment contract in the manner determined in § 1 where an employer has committed grave violations of his basic duties towards the employee; in such a case, the employee is entitled to compensation in the amount due for the notice period, and if the employment contract has been concluded for a definite period of time or for the time of the completion of a specified task in the amount of the remuneration for the period of 2 weeks.

§ 2. A statement on the termination of the employment contract by an employee without notice must be in writing, and must provide grounds justifying the termination of the contract. The provision of Article 52 § 2 applies accordingly.

§ 3. The termination of an employment contract for the reasons determined in § 1 and § 11 results in the same consequences as those provided for by the provisions of law for the termination of an employment contract by the employer with notice.

The employee has the right to terminate the employment contract without notice, when the employer seriously infringes on basic employer's obligations towards the employee (the Article 55§ 1[1] of the Labour Code). A qualified infringement on employee's privacy right may be such an instance. The doctrine and judicial decisions indicate that in such a case proving the guilt of the employer is insufficient, because the guilt must be deliberate or it must be the case of gross negligence determined objectively. The employee's right to terminate the employment contract without notice extinct within a month as of the date on which it acquired knowledge of the termination's grounds (the Articles 52 § 2 and 55 § 2 of the Labour Code).

In case of successfully conducted employment agreement's termination employee has a right to a strict compensation. It is constructed in the same way as a remuneration for a notice period 30, thus the compensation equates remuneration for 2 weeks of work if an employee has been employed for less than 6 months, 1 month if an employee has been employed for at least 6 months and 3 months if an employee has been employed for at least 3 years (the Article 36 of the Labour Code).

[30] K. Jaśkowski, Komentarz aktualizowany do art.55 Kodeksu pracy w Komentarz aktualizowany do ustawy z dnia 26 czerwca 1974 r. Kodeks pracy (Dz.U.98.21.94)., Lex 2016.

5. Surveillance at work

5.1. Whether and in what forms the surveillance at work is allowed?

The Article 47 of the CRP provides that everyone shall have the right to legal protection of his private and family life, of his honour and good reputation and to make decisions about his personal life. These specific elements of the right to privacy justify the introduction of protection against an interference in some aspects of private life of individuals under the CRP. However, the right to privacy is not absolute and may experience some limitations. Such restrictions should be adapted to the need arising from the rank of a protected interest. This is the legal ground for the protection of privacy of an employee. An employee has the right keep certain information regarding him/her in secret.

Moreover, under the article 11^1 of the Labour Code, employers are obliged to respect the dignity and other personal rights of employees. However, in order to determine protected personal rights we should refer to other legal act as appropriate catalogue of personal rights of each individual (including employees) can be found in the Article 23 of the Civil Code.

On the other hand, we should remember that in accordance with the Article 94 point 2 of the Labour Code, the employer is obliged to organise work in a way that ensures effective use of working time and appropriate efficiency and quality of work. Therefore, it can be assumed that the employer has the right to monitor and verify how employees perform their duties and how they use company's time and resources.

Modern technology allows employers to control workers in a wide range. However, certain control methods faces numerous legal restrictions or even are prohibited under Polish law. It should be highlighted that the current Polish legal system does not regulate directly nor comprehensively the issue of employees monitoring in the workplace. The Ministry of the Interior, due to several formal inquiries of the Ombudsman and the General Inspector for Personal Data Protection, attempted to create the Monitoring Act which, which has never entered into force thanks to the lack of political will.

5.1.1. Recording sound and picture and monitoring

The current national legislation does not prohibit the control of employees. At the same time, there are no provisions directly specifying the places and circumstances under which the monitoring

by the employer would be allowed by the law. In addition, nothing in Polish legislation defines such crucial aspects as the rights and obligations of employers monitoring employees at the workplace or employees' rights related to the issue of work monitoring. It should be also noted that even the judicature does not indicate or define requirements or conditions under which the monitoring in the workplace can be introduced and applied.

However, we can find residual provisions concerning video monitoring in other, non-labour, legal acts that may be partially applied to employees. Video surveillance at and during work is often based on the collection of data about employees, so it fits in the general concept of data protection. Therefore, the implementation of such monitoring by the employer in the workplace requires compliance with provisions of both protection of personal data and personal rights.

It can therefore be considered that the video surveillance of employees really is an example of the processing of personal data within the meaning of the article 7 point 2 of the Act of 29 August 1997 on the Protection of Personal Data. However, according to the Article 23 paragraph 1 point 5 of the Act on the Protection of Personal Data, the processing is permitted only when it is necessary to fulfil the legitimate objectives pursued by the data controllers (i.e. employers) and such processing shall not violate the rights and freedoms of subjected person. Such wording of the data protection provisions leads to the conclusion that the installation of video surveillance in the workplace does not require the workers' prior or follow up acceptance to exercise control in such form. The above has been confirmed by the Minister of Labour and Social Policy in his reply from 9 November 2009 No 12970 to the interpellation regarding legal principles of installing monitoring in the workplace.

The data obtained through video surveillance, as it is subjected to the regime of the Act on the Protection of Personal Data, must be properly stored by the controller (i.e. by the employer). According to the article 51 and 52 of the above-mentioned Act, the employer is obliged to ensure appropriate technical and organizational security of information about employees obtained by monitoring. The data should not be available to any unauthorised person. The employer's failure to comply with the obligations of the Act on the Protection of Personal Data is associated with criminal liability.

Executing monitoring of employees, the employer should not to collect sensitive personal data such as racial or ethnic origin, political opinions, religious or philosophical beliefs, religious or party affiliation, health, genetic code, addictions or sexual life, conviction, judgment on punishment

and criminal fines and other decisions given in court or administrative proceedings. Therefore, we should accede to the opinion that any form of employee's consent cannot be considered as factual or legal ground for the processing of sensitive personal data obtained during monitoring. In contrast, the processing of the non-sensitive personal data shall be permitted provided that it is stored by the data administrator (i.e. employer) for legally permitted purposes and that the rights and freedoms of the data subject do not outweigh the justified interest of the employer.

Moreover, employees should be informed about the fact of installing monitoring equipment and its purpose. The purpose of monitoring must adequately justify its introducing and at the same time, it has to be clearly and directly indicated in the informing letter. However, it should be noted that according to the National Labour Inspectorate, the monitoring cannot be installed in order to check the quality of work of employees. The monitoring can be installed, for example, to ensure safety, protect company's secrets, reduce theft incidents or to protect against harassment (mobbing). In addition, the measures taken must be proportional to the purpose of monitoring and the level of risk threating the employer's interest.

The labour law doctrine emphasizes that constant monitoring (systematic) without valid, justified reason and only employed in connection with a particular purpose (e.g. control of the employee suspected of distribution of pornography via the Internet) is generally inadmissible. Naturally, it is also prohibited to use monitoring in toilets, changing rooms, etc.

In the event of work in telephone customer service it is permitted to record telephone calls answered by employees in order to control their conscientiousness and diligence or to verify customers' complaints.

It is natural that the employer also wishes to protect his property and sensitive data. It has to be emphasised that according to the Article 5 of the Act on the protection of persons and property, the use of direct physical protection and technical security (e.g. cameras) is mandatory for such workplaces as banks, telecommunications facilities and airports. We can also find more specific regulations applied to the guards, as the above-mentioned Act implements direct obligation to equip assurance bank vehicles in a system of satellite location monitored from the outside.

To sum up, due to the lack of proper legislation, informing employees about the extent to which their behaviour is monitored and recorded should be the supreme principle. The work

regulations document or the Collective Labour Agreements can be considered as the best way to both inform employees about monitoring and regulate basic rules of such control. Such practise may eliminate any confusion or prevent conflicts related to the monitoring. Such form of control of employees should be implemented only for the purposes connected with the employment relationship.

5.1.2. Location tracking - GPS

In accordance with the Article 94 point 2 of the Labour Code, the employer is obliged to organise work in a way that ensures full use of time at work and achievement of high performance and quality of work by employees. Some measures used in the monitoring process allow employers to fulfil the abovementioned obligations. Such tools as geolocation (e.g. GPS) may support more efficient management of employees performing the field work (e.g. couriers, drivers, commercial agents).

It should be noted that such form of control may by employed only during working hours. Same action taken after working hours shall be considered as direct violation of employee's privacy, unless the employer has proper consent obtained from his employee (the Article 23 paragraph 1 point 1 of Act on the Protection of Personal Data). This strict rule is justified by a fact that employees often use their company cars after working hours for private purposes. In such case, the use of GPS without direct consent of an employee should be considered as a direct violation of his right to privacy.

It should be also remembered that each employee should be informed about the GPS system installed in any equipment he uses and about the fact and scope of data it collects. Such principle is defined in the Article 24 of the Act on the Protection of Personal Data that regulates the so-called original collection of personal data by data controllers. In such case, informing about data collection has to be accomplished before the factual data collection.

The analysis of the Article 23 paragraph 1 point 5 of the Act on the Protection of Personal Data leads to the conclusion that the employee's acceptance to install the GPS system in the car is not generally required, provided that the processing is necessary for the fulfilment of the legitimate objectives pursued by administrators or data recipients and that the processing will not violate the rights and freedoms of the data subjects. Such legitimate interest can be found in the article 22 §1 of

the Labour Code, under which the employer is entitled to control properly carried out orders by the employee.

5.1.3. Personal inspection

The inspection should be adequate and proportional to the intended purpose of the employer. The acceptable objectives of the individual control should be subjected to strict legal regulation so that its possible negative consequences did not outweigh the benefits of personal control that the employer can execute. What is more, the personal control should not take any form of preventive protection of the employer's interests and it should be employed as a last resort (ultima ratio) - only when less radical measures (e.g. monitoring) cannot be applied. In any case, any form of inspection of employees cannot be used for obtaining information about their private life or other spheres of non-professional activity (social, political, etc.).

5.2. Protection of personal data concerning health

The provisions of the Articles 23 § 1 point 1-5 and 27 § 1 and § 2 points 1-10 of the Act on the Protection of Personal Data govern the issue of legality of ordinary and sensitive personal data processing. According to the Article 27 § 1 of the above-mentioned Act, the sensitive data should be defined as information concerning health, genetic code, addictions or sex life and data relating to convictions, judgements on penalty and fines and other decisions issued in court or administrative proceedings.

The Act on the Protection of Personal Data generally prohibits the processing of sensitive data. However, the ban shall be lifted in the event of compliance (by the controller) with specific conditions set out in the Article 27 paragraph 2 points 1-10 of the Act. For example, the controller shall be allowed to process the sensitive data after obtaining written consent of the data subject or when the processing is permitted by the special provisions of other acts. Whilst the provisions of the Labour Code and its implementing regulations entitles the employer to delegate employees to medical examination, he does not receive detailed data regarding health of examined worker other than simple certificate stating that there are no reasons why the employee should not work on a specific job position under the specific conditions. The employer has no legal access to detailed results of medical examinations. The medical examiner cannot provide the employer with information on diagnosed diseases, unless it is an example of occupational diseases.

The data which the employer may require during the recruitment process are indicated in the Article 22[1] of the Labour Code. It covers such aspects like: name and surname, parents' names, date of birth, address, education, employment history, information about children and PESEL number. It also constitutes that potential employer cannot demand from candidate personal data not clearly defined in the article or in other provisions. What is more, it is forbidden to require any other data that should be considered as inadequate or unrelated to the purpose of the recruitment procedure.

Separate provisions may allow to demand other data than indicated above. For example, in the case of catering services it is required to have a certificate issued by Sanitary Inspectorate. The examination, which scope is determined under the act on preventing and fighting infections and infectious diseases in humans[31], allows to establish whether a work candidate for a post related to serving or processing food and beverages is not infected with chopsticks typhoid fever, paratyphoid fever alleged A, B and C, other rods of the genus Salmonella and Shigella. Additionally, the medical examination aims to detect suspected carriers of tuberculosis and other pathogens that cause disease excluding from work with food.

Moving to the other important aspects, it should be noted that it is forbidden to ask about work candidate's future or current pregnancy. What is more, such information given by a candidate should not be a direct reason to refuse the employment. However, it seems, that this rule does not apply if the pregnant employee will not be able to work from the beginning on an agreed work stand due to the statutory prohibition of employment of pregnant women at harmful or disruptive work. On the other hand, we should remember that in polish legal system it is also forbidden to dismiss any employee due to current of planned pregnancy. Current employee may notify the employer about a pregnancy if this is necessary to activate special rights or obtain specific services assured by the labour law.

It should be also noted that each employee has to be subjected to several types of medical tests as part of the occupational medicine. There are preliminary, periodic and control examinations. The preliminary examination is performed generally before starting work. It can be also performed in case of a new exposure to dangerous conditions that may occur during change of job post. On the other hand, the periodic examinations are performed when the validity of the previous certificate

[31] The Act of 5 December 2008 on preventing and fighting infections and infectious diseases in humans (consolidated text Dz.U.2016 pos. 1866).

allowing to work expired or in case of apparent health deterioration of a worker. Such medical tests should be carried out also in the case of worker's reports indicating such need. Consequently, the control examination should be performed in each case of employee's sick leave exceeding 30 days. These examinations are aimed at determining if there are no contraindications for continuing work at a certain position. Medical reports about employee's capacity to work may be issued only by authorised physicians. As it is forbidden to work without such certificate, the employer should not admit any employee to work without valid medical certificate . Failure to comply with such legal obligations entails with strict liability of the employer.

It is also worth mentioning, that according to judgment of the Constitutional Tribunal, any employee or public officer should not be excluded from work because of his or hers HIV infection as current state of medical knowledge and treatment allows such individuals to function normally. The state and employers are obliged to assure safe working conditions for infected and other employees. Dismissal from service or job should take place only if is clearly determined that a person is not able to perform the job in a particular unit. (The operative part of the judgment the Constitutional Tribunal of 23 November 2009 (P 61/08).

5.3. The role of trade unions and labour organizations in the protection of the right to privacy

A trade union is defined under polish law as a voluntary and self-governing organization of working people, established to represent and defend their rights and professional and social interests. The trade union is independent in its statutory activities from the employers, state administration and government as well as other organizations. The main task of trade unions is to defend the professional interests of workers and act to improve their economic and social situation. They try to balance the power between employers and employees. Trade unions try to prevent layoffs, monitor compliance with the Labour Code, seek higher salaries and better working conditions for employees.

The trade unions factually govern the system of work and working conditions as every change associated with a field of work (e.g. payroll system, the new working rules) requires their consent. They ensure compliance with labour law or collective agreements. They can require and spread necessary information about working conditions. For instance, the trade are entitled to require conducting hazard testing in order to determine if there are any threats to life and health of employees.

However, the trade unions can also pose a threat to the privacy of the employees. One of the key rights of trade unions is governed by the Article 28 of the Act of 23 May 1991 on Trade Unions. It provides that the employers should provide the trade union (on their demand) with information necessary to conduct union activities. The demanded data may cover such aspects like working conditions and remuneration policies. In practice, the type and scope of the requested information is sometimes questionable, especially when the link between demanded information and role of the union is not clear and obvious. However, in every problematic case we should remember that the right of trade unions to obtain information about workplace cannot justify any exclusion of provisions on the protection of personal data of employees. The employee shall be allowed to share general data about employees, for example, in form of information about salaries at different positions or in different occupational groups. Nevertheless, shared data should not allow the trade unions to assign specific information to specific employee. Such particular information may be obtained by the trade unions only after acquiring voluntary consent of particular worker.

5.4. The role of the General Inspector for Personal Data Protection

The tasks and powers of the General Inspector for Personal Data Protection are specified in the provisions of the Act of 29 August 1997 on the Protection of Personal Data.

The General Inspector is entitled or obliged to:

- verify compliance of data processing with the data protection law,
- issue administrative decisions and handle complaints related to the provisions of the Act on the Protection of Personal Data,
- ensure that entities required will perform their non-monetary liabilities resulting from administrative decisions issued by the application of enforcement measures provided for in the Act of 17 June 1966 on Administrative Enforcement Proceedings,
- keep a registry of databases and registry of information security administrators and provide the information about registered databases and administrators,
- deliver its opinion about draft laws related to the data protections ,
- initiate and implement projects designed to improve the protection of personal data,
- participate in the work of international organizations and institutions dealing with the protection of personal data.

The General Inspector is also entitled to issue particular administrative decisions in any case of violation of the provisions of the Act on the Protection of Personal Data. The General Inspector may order required entities to restore proper legal state, especially by:

- removing indicated infringements,
- addition, update, correction, disclosure or confidentiality of personal data,
- applying additional measures protecting the collected personal data,
- transfer suspension of personal data to a third country,
- protection data or transferring it to other entities,
- deleting of personal data.

In the event of confirmation that given action or omission of the head of the organization, its employee or other natural person acting as the personal data administrator can be considered as a criminal offense specified in the Act, the General Inspector is also entitled and obliged to notify the competent body, enclosing evidences confirming such suspicion.

5.5. Is it possible to use evidence collected illegally for dismissal of an employee?

The dispute regarding the admission of evidence in a form of the record is based on the conflict of two values protected by the law: the right to a court (the Article 45 of the Constitution) and the right to privacy and secrecy of communication (the Article 49 of the Constitution). Evidences collected illegally may be used in particular cases. However, there is no general rule regarding choosing one of the above values. Each factual situation demands different approach and may lead to different conclusion. It is frequently-heard argument that when the recording person did not participate in the recorded conversations(recording was made by fraudulent installation of bugging device), the recordings obtained in such manner should be considered as acquired in conflict with social norms. Consequently, presenting such evidence before a court should not be socially acceptable. However, the judicature has defined theoretical exception to the above-mentioned rule, indicating that the admission of such evidence can be admitted only if it would lead to "defend the legitimate legal interest".

In the case before the Court of Appeal in Bialystok (I ACa 504/11), the court allowed evidence of recording of the conversation. However, it is worth noting that in this case, the party personally participated in the recorded conversation. What is more, the court identified also other reasonable circumstances to allow the admission of the evidence, such as a series of other evidences

characterising factual events and forming together with an attached recording a logical whole. In such case, the evidence in form of the recording should be regarded only as auxiliary, supplementary to the other evidences, rather than the main source of party's claims. The court also pointed out that the failure to inform the interlocutors about the fact of recording conversation cannot be used as a sole circumstance justifying a refusal to admit such evidence. Such behaviour can be considered as a violation of social standards , but it is not against the law.

However, what has been obtained with the criminal offence cannot be the evidence in any proceedings. The recording of third parties' calls obtained through eavesdropping may be an offense under the Article 267 of Criminal Code[32] (an offense against the protection of information). Recording your callers, even without not informing them about it, is not considered as a criminal offence. However, there are opinions that such evidence should not be admissible because it infringes the principles of social coexistence. In case of the labour law, theoretical base for a rejection of the evidence application may be found in the article 8 of Labour Code (or the Article 5 of the Civil Code) that with a use of a general clause defines abuse of law due to its conflict with social norms. It seems that such explanation is not appropriate, as a general clause moderates the relationship of substantive law rather than procedural.

The doctrine indicates that in practice the employee has very limited capacity to present various evidences. Such problem becomes extremely visible in all those cases when there are no witnesses of employer's violation of employees rights. In such cases, reaching for recordings seems to be the only available option. This is the field where labour courts (employment tribunals) accept evidences obtained from the secret recordings. Such conduct may be justified by a fact that reaching for secret recordings was the only available and possible measure to protect violated employee's legitimate rights and interests

The labour courts justify allowing such evidences in the processing for the primary reason that the employee is generally considered as weaker party in the employment relationship and often has limited opportunities to prove his case in court. The court has to determine whether the employee who used secret recordings did not have other opportunity to demonstrate the validity of its claims and that the conversation was not manipulated by recording person, e.g. by asking provocative questions.

[32]The Act of 6 June 1997 Criminal Code (consolidated text Dz.U.2016 pos. 1137).

Admission of evidence of the recordings obtained by using equipment preserving or transferring images and sound in a lawsuit does not mean that a court opponent is deprived of the possibility to undermine its credibility. We should remember that the court is obliged to analyse the evidence through legally defined procedure about conducting inspection and analysis of documents (the Article 308 § 2 of the Civil Procedure Code[33]). The court and any party are entitled to challenge not only the authenticity of the evidence but also its poor quality and proving such findings will prevent the court from accounting such evidence.

Finally, it is worth mentioning that no objections to the use of illegally obtained evidence in form of the recording were expressed by the Supreme Court in its judgment of 25 April 2003 (IV CKN 94/01). In another judgment - of 13 November 2002 (I CKN 1150-1100) – the Supreme court considered that the need to allow such evidence may be justified by a such the need of protect legitimate private interests by the cost of freedom of communication.

To sum up, the labour law experts are not unanimous on whether the evidence of illegal recordings should be admitted in proceedings. Some of them point that refusal to admit such evidence may be justified by constitutional norms. Other have more liberal attitude. Ultimately, it is the court that handles a particular case and decide whether such evidence should or should not be admitted.

6. Whistleblowing

It is impossible to correctly describe the legal status of Polish whistleblowers without explaining the definition first. Whistleblowing involves revealing any irregularities and anomalies occurring in the workplace, which are immoral, reprehensible or illegal. Inappropriate behaviours can occur both in the private and public sector, but they do not necessarily have to be disclosed solely by employees. Whistleblower can be both a person employed on the basis of a civil contract, and also a person working in uniformed services like police officers, soldiers, firefighters. Persons or institutions authorized to take appropriate actions to protect both the workers themselves and the workplace (e.g. the reputation, financial condition) are usually the ones that are informed about the observed irregularities by whistleblowers. Whistleblowing itself has different forms, which can be divided into

[33]The Act of 17 November 1964 Code of Civil Procedure (consolidated textDz.U.2016 pos. 1822).

formal and informal, anonymous and transparent, and external and internal. An anonymous, informal letter sent to the boss, as much as report signed by an employee and presented at the supervisor's desk, is a form of internal whistleblowing, due to the fact that information about the observed irregularities remains within "four walls" of a company. On the other hand, the whistleblower can provide information to a journalists (anonymously and informally), or personally inform the Labour Inspection (explicitly and formally), which in both cases is an example of the external form of whistleblowing (because knowledge of the anomaly reaches the institutions or persons unrelated organizationally with the work place). The main feature that clearly distinguishes whistleblowers from the common squealers, is both - acting in good faith (no element of revenge or financial goal), and taking these actions in the public interest.

The discussion about whistleblowing cannot be called proper without looking at the historical background of this phenomenon in the first place. Its origins date back to 1863, when the United States of America introduced The False Claims Act, which originally was designed to protect informers revealing frauds harming the Union Army during the Civil War. Currently, rights of whistleblowers in the US are secured by The Whistleblower Protection Act (1989), that guarantees the protection of federal employees revealing improper and illegal actions of the government, as well as Sarbanes - Oxley Act (2002), forcing financial institutions to use a particularly meticulous internal control. In the UK whistleblowers are protected by The Public Interest Disclosure Act (1998), which protects them from unfair dismissal. Similar protection measures exists in other countries of the common law system (Australia, South Africa).

To illustrate the problem of whistleblowing on Polish soil it should be noted that the legislature has not regulated protection of Polish whistleblowers within one specific act. There are several reasons for it. Firstly, the very concept of 'informing', which is an inherent part of whistleblowing, causes rather mixed, not to say downright negative feelings among the public opinion. A thin and fragile fine line between "ethical informing" and "denunciation" has been effectively obliterated by both - the period of the Nazi occupation and decades of communist rule, with their strength based inter alia on effective network of informants and infiltrators. Furthermore, while informing about irregularities in the behaviour of managers or employers generally gains social approval, reporting about shortcomings and failings of colleagues or people standing lower in the hierarchy of business is widely regarded as a manifestation of antisocial attitudes and inhuman demeanour. Moreover, the

environment of the potential whistleblower often focuses on him, rather than on his motivations or the information provided.

A short amount of legal regulations concerning the whistleblowing is also caused by the fact that during the period in which the countries of the common law system gradually formed and developed legal standards in this respect, Poland was a country ruled by a totalitarian system, which in a particularly zealous way had been limiting private sector. Therefore, there was no possibility of monitoring such irregularities in the private sector, as private sector basically didn't exist. Only in recent years we see the discussion about protecting whistleblowers is growing louder.

6.1. Protection of whistleblowers in polish legal system

Lack of any specific act relating to the whistleblowers does not mean, that the Polish legal system does not provide any legal protection to those people. The starting point here is the Polish Constitution from 1997, which in the Article 54 "provides the freedom to express opinions and to acquire and disseminate information". Furthermore, Polish law requires from every citizen some certain whistleblowing-ish obligations. The first is social obligation to inform law enforcement agencies on suspicion of committing a crime resulting from the Article 304§1 of the Code of Criminal Procedure. The second one is the duty of the employee to care for the welfare of the workplace, from which you can derive an obligation to signal the perceived irregularities in the functioning of the workplace, and which is described in the Article 100§2 point 4 of the Labour Code. This specific obligation requires the employee to care about the welfare of the workplace, but only if it is not against the interests of the employer. It seems logic that if the legislator requires the employee to report any irregularities in the workplace, he should also provide protection from any possible unpleasantness which could be a direct result of meeting the statutory requirement by whistleblower.

6.2. Polish Supreme Court

In caring for the welfare of the workplace, whistleblower must bear in mind the interests and good name of his employer. The Polish Supreme Court in one of the judgments (I PK 48/13)[34] stated that "An employee is entitled to a permitted, public criticism of a superior (right to whistleblowing, i.e. disclosure of irregularities in the functioning of his workplace, consisting of

[34] The ruling of the Supreme Court of 28th August 2013 (ref. II PK 48/13).

various kinds of acts of misconduct, dishonesty which involve the employer or his representatives) if only it does not lead to a breach of his employment duties particularly in caring for the welfare of the workplace and maintaining the confidentiality of information, disclosure of which could harm the employer (duty of loyalty; infringe the interests of the employer - the Article 100§ 2 Section 6 of the Labour Code, employee cannot rashly shape negative opinions concerning the employer or his representatives). (...)Permitted criticism must be characterized by objectivity, reliability, relevance to the specific facts and the appropriate form". The major feature of acceptable criticism is the good faith of the employee, or his subjective belief that criticism is based on the true facts (he also takes all reasonable care in checking them) and that whistleblower works in the justified interest of the employer. "

External whistleblowing about pathologies and anomalies occurring at the workplace usually takes form of sharing knowledge about these irregularities with public media, or providing the necessary information to the competent law enforcement authorities. In the eyes of employers however, these actions may be regarded as a serious breach of basic employee duties. The case law of the Polish Supreme Court in some detail resolve this issue, raising that "*a press interview provided by a employee, which gave a negative opinion about a behaviour of an employer, does not constitute a grave violation of fundamental duties of the employee, if the employee retained appropriate form of expression, and his behaviour cannot be attributed to as significant intensification of malice and conscious action threatening the interests of the employer or that damages him, "* (the Article. 52 § 1 point 1 of the Labour Code) "(ref .. II PK 76/06)[35]. Moreover, the Supreme Court held that "*giving to law enforcement authorities copies of documents supporting a criminal prosecution is not a violation of basic employee duties* (the Article 304§1of the Code of Criminal Procedure) *when there were reasonable grounds for such action* " (ref. .. I PK 389/02)[36]. A similar decision was issued on the 16th June 2005 by the Supreme Court in relation to the members of the worker cooperative, stating that "*member of cooperative work, employed under a cooperative employment contract who acts as the chairman of the trade union organization, cannot be accused of a serious breach of the membership and deliberate actions against interest of the worker cooperative, for the sole reason that he alarmed criminal prosecutor about a crime committed by a member of the board of the worker cooperative* "(ref. I PK 257/04)[37]. The same position was taken by the Supreme Court on the shareholders of Commercial Companies (ref. I PK 173/03)[38],

[35] The ruling of the Supreme Court of 16th November 2006 (ref. II PK 76/06).
[36] The ruling of the Supreme Court of 2nd September 2003 (ref. I PK 389/02).
[37] The ruling of the Supreme Court of 16th June 2005 (ref. I PK 257/04).
[38] The ruling of the Supreme Court of 23th January 2004 (ref. I PK 173/03).

ruling that "*the behaviour of an employee of the company who, as its shareholder, alarmed public prosecutor about crime committed by board members of the company, accusing them of acting to the detriment of the company, cannot be assessed from the point of view of the Article 52§1 point 1 of Labour Code*" (i.e. As a severe violation of basic employee duties).

6.3. Labour Code

The abovementioned law is crucial for assessing the possibility of dismissal of whistleblowers for their activism. If the whistleblower "*has retained appropriate form of expression,*" informing about irregularities to media, or he filed a notice to law enforcement, "*when there were reasonable grounds [to do so]*", a whistleblower's action cannot be considered as a "*serious breach of basic employee duties*". This condition, included in the Article 52§1 Section 1 of the Labour Code is one of three reasons caused by the employee for whom the employer may terminate the employment contract without notice. Therefore, if the whistleblower's action falls within the framework provided by the Supreme Court rulings, ethical information may not be, in the theory, a reason for the termination of the employment contract. In case of a termination (with or without notice) of the employment contract, whistleblower may appeal to the competent labour court (the Article 44 of the Labour Code). Depending on the type of employment contract and the mode of its solutions, whistleblower has the right to demand recognition of termination as ineffective, reinstatement to work or compensation for his loss (the Article 45 and 56 of the Labour Code). It should be noted however, that a whistleblower is rarely fired only because of his activism. Usually the employer, as for a reason for the termination of an employment, indicate other shortcomings of an employee (using the already cited Article 52 § 1 Section 1 of the Labour Code). This state of affairs results in the need to demonstrate to the labour court a deception of alleged reasons for which the employer has decided to dismiss a whistleblower.

However, whistleblower's freedom of speech is not absolute. It is limited, both by an obligation to care for the good name of the employer, and the provisions of the Civil Code, which in the Articles 23 and 24 includes a regulation concerning the protection of personal rights from unlawful infringement (e.g. the good name of the employer). Furthermore, the Criminal Code in Article 212 defines the crime of defamation as a violation of human dignity. Vast amount of professions in Poland is regulated by law which entails the need to respect professional secrecy (e.g. lawyers, journalists, medical). On the basis of the above intelligence, it should be noted that not all the information and not in all circumstances can be revealed by whistleblowers.

In case of a justified disclosure, whistleblower may seek protection in both national and EU's law. Particularly noteworthy is the Article 18^{3a} of the Labor Code, which constitutes equal treatment in employment. Paragraph 1 introduces an open catalog of forbidden actions which against workers equality, while §4 prohibits so-called indirect discrimination, which boils down to establishing a regulations, which only seem to have no effect on the situation of the employee, but in fact introduce smaller or larger disparity between employees. In accordance to the Article 18^{3d} "a person whose employer violated the principle of equal treatment in employment, is entitled to compensation in an amount not less than the minimum salary for work per month, determined in separate paragraph".

6.4. European Convention of Human Rights and Fundamental Freedoms

In addition to the already mentioned Constitution, whistleblower can invoke the right to freedom of expression regulated in the European Convention on Human Rights and Fundamental Freedoms, signed by Poland on November 26, 1991. Article 10 says that "*Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers*". A Council of Europe Convention on Corruption signed in Strasbourg on 4 November 1999, and announced in Poland on November 16, 2004, is also a document of great importance. In the Article 9 it states that " *Each Party shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities*". This document clearly oblige Poland to create separate regulations concerning protection of whistleblowers. The public opinion has been informed about that problem by the Polish Ombudsman over the recent years.

Apart from acts mentioned above, there is a large amount of documents characterized in the UE's legal system as so-called soft law. It includes the resolution of the Parliamentary Assembly of the Council of Europe on the protection of whistleblowers (No. 1729/2010), the recommendation of the Parliamentary Assembly of the Council of Europe "Whistleblower's protection" (No. 1916/2010) or the report of the Committee of Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe "Strengthening the protection of whistleblowers". Unfortunately those documents cannot derive any specific obligation or right which implementation whistleblower could then claim in court. Nevertheless, they are a guideline or indication of interpretation for the courts, and the factor influencing the shape of the standard of whistleblowers protection.

Heading to the case-law of the courts, judgments issued by the European Court of Human Rights in Strasbourg are the most important in the protection of whistleblowers, especially, since they are binding in a relation to polish courts. Over the years, the Strasbourg Court has established criteria that allow to assess whether a person can be considered as a full-fledged whistleblower. If potential whistleblower meets these criteria, he should not suffer from negative consequences of his actions.

Firstly, the whistleblower should provide information about irregularities to supervisor or other competent authority. If such an indication would be "obviously impractical", the information may be finally transferred to the public. Resolution of the Parliamentary Assembly of the Council of Europe on the protection of whistleblowers from 29th April 2010 states that the external way of signalizing abnormalities can be used when there is no internal way of alarming about such things or it does not function properly. In practice, this means that all knowledge of fraud and irregularities should be first passed to the authorities of workplace. If such action will prove to be insufficient or ineffective, whistleblower may seek the assistance of the Labor Inspectorate, which guarantees anonymity to whistleblowers. If abuse concerns a unit of the national sector, the appropriate action is to inform the master unit, the relevant ministry, or as a last resort - the Supreme Chamber of Control. And when these measures fails, the ultimate solution is to inform the media and the public opinion.

Secondly, a whistleblower must act in the public interest, not for the purpose of personal gain (promotion or revenge on leadership). Furthermore, information provided by the whistleblower must be authentic and transferred in good faith. This means that in his actions whistleblower cannot be motivated by a desire to harm the institution or company on which the information is about. Cited already Parliamentary Assembly Resolution explains that "whistleblower should be considered to be acting in good faith when he has reasonable grounds to believe that the information disclosed was true, even if it subsequently proves to be incorrect, along with proof that he is not acting for purposes incompatible illegal or contrary to ethics ".

Another criteria is the ratio of any damage endured by the institution or workplace as a result of the disclosure of sensitive information, to the benefits brought by such an action. It may happen that marking some irregularities in functioning of the workplace will lead to severe damage to reputation and good name of workplace, which in the long term will result in the inevitable consequences of a financial or employment matters. A form of expression used by whistleblowers to communicate irregularities is, of course, not without significance. Opinion expressed in vulgar form or a form that offends dignity and earnestness of the situation will not be protected, which is exemplified by the

judgment of the European Court of Human Rights on "Palomo Sanches and others" Vs. Spain case (Applicants were dismissed on disciplinary grounds for placing vulgar caricatures of colleagues and manager in theirs company's newspapers; national courts and the ECHR did not saw there any violation of workers' rights and recognized the dismissal as justified).

Polish whistleblower can seek protection from the European Court of Human Rights, only if he will fulfill several formal requirements. Firstly, his rights and freedom have to be violated by the state - party of the European Convention on Human Rights (litigation against individuals, state institutions or foundations is impossible). Secondly, infringement of whistleblower must take place after the Convention will enter into force in the country (in case of Poland date of entering the Convention into force was on 1st May of 1993. Last but not least, all possible domestic appeals should be exploited, before the whistleblower can present the case before European Court of Human Rights. An appeal to ECHR may be filed within 6 months since the date of final judgment of the matter, unless the matter has been submitted to another international procedure (the Article 34 paragraph. 2 of the ECHR). The applicant can raise the complaint in a matter of violation of rights and freedoms guaranteed in the Convention (especially violation of freedom of speech regulated in Art. 10), or to seek redress. If indicated irregularities in the workplace or state institution of the whistleblower resulted in a conviction in a criminal trial, a favorable judgment for him ECHR knocks on the submission of an application for resumption of proceedings at the national level (this issue is regulated by the Article 540§3 of the Code of Criminal Procedure).

It should be noted that the set of negative consequences faced by the whistleblower after the disclosure of sensitive information is very broad, and goes beyond dismissal. It is mainly about environmental ostracism, loss supplements to salaries, disciplinary action or lawsuit sued by the employer, concerning violation of personal rights. When an employee is accused by the employer of making one of the above mentioned crimes, he has the right to use the services of a professional attorney. The law provides a proxy or attorney to those who cannot afford to pay for his services. In civil action (e.g. as a violation of personal rights), this issue is regulated in the Article 117 of the Code of Civil Action, and in criminal procedure (e.g. for the offense of defamation) defence from office is provided by the Article 78 of the Code of Criminal Procedure. If whistleblower is an employee, he may ask trade union which represents him to defend his interests. Whistleblowers can also report to relevant non-governmental organizations, which support may involve joining to a lawsuit or observation of its course.

In conclusion, it must be admitted that the Polish legal system suffers from a serious lack of legislation which should clearly and specifically regulate the status of Polish whistleblowers, and ensure that they have sufficient protection against unjustified dismissal and other unpleasant effects of exposure of irregularities at the workplace. Polish whistleblowers may, however, rely on fundamental human rights contained in the Polish Constitution and the ECHR, which guarantee freedom of speech and expressing views. Not without significance is also the national legislation, which in some ways encourages and instructs whistleblowers (e.g. paragraphs of the Code of Criminal Procedure) to inform the relevant authorities of any pathologies and anomalies occurring at the workplace. Polish whistleblower can seek for help from state authorities, such as the National Labour Inspectorate, the Ombudsman and the Supreme Chamber of Control and, if necessary, informing about their situation no-state institutions (e.g. The Helsinki Foundation for Human Rights, Batory Foundation) or trade unions. In the case of exhaustion possibilities in the country, Polish whistleblower can claim righteousness before the European Court of Human Rights, whose judgments are binding in relation to the Polish courts. Furthermore, law provides more and more better protection for whistleblowers every year.

7. Social media in working relation

The debate about employee responsibility for content posted by him in social media should be started by a statement that in polish legal system there is no direct regulation of that problem. Nowadays social media portals had become not only a mean of communication with group of friends but also a useful instrument to build up employee brand. Talking about content shared in internet we have to point on the biggest and most influential portals, such as Facebook, Twitter and Instagram. Those portals have become a platform for sharing life experience, thoughts, comments about surrounding reality or current social, political or economic events of many people, including employees.

Content shared online can have big impact on how the person is seen as an employee or as a candidate for specific job. Taking care about an image should not be limited only to face to face relations between employers and employees, but also should be taken widely even through indirect

influence of social media. Holiday photos, short video showing interesting birthday party or emotional post about current social events leave permanent mark, which in certain circumstances, might show the employer that such person crosses certain "good taste" boundaries through excessive share of personal information. Such behavior may lead to employer's conclusion that a potential candidate does not fit for an offered position.

Access to the personal information, shared by people in the social media, does not require specific technical knowledge – anyone can gain it – employer, potential employer, coworker or business partner. Reckless share of information, both private and work related, might have far-reaching consequences in business area. While commenting other users' content people should also have in mind the way they express their opinion. Comments are visible for thousands of users who might take them as result of incompetence or even raise doubts about further partnership with highly extrovert personality.

The lack of direct regulations concerning employees' activity in social media does not mean that there are no legal measures to protect employers and other entities against violation of their rights. Especially, extensive experience of polish judiciary allows to determine proper legal structures and solutions, allowing the negative consequences of the staff member which was sharing inappropriate from the point of view of social intercourse content. In terms of assessing the harmfulness of the content shared on the Internet, The Supreme Court pointed, in the judgment dated 9th of May 2013 (ref. IV KK 403/12), that the Internet as a mass media with most range can have negative effect of social harmfulness of the act. We should keep in mind that a range of information is a major factor in the process of evaluating the harmful effect of posting negative comments about employer or coworkers. Discussion that does not leave the employees group would be treated differently than an online opinion seen by hundreds or even thousands of people. This range also affects the degree of the employee's liability and has decisive influence mainly in the case of determining possible criminal liability, of which more later in this report.

7.1. Criticism about employers and coworkers

Biggest controversy and threat related to employee's activity online in social media zone should be linked with the issue of criticism about employer and coworkers. Further consideration should be started by defining word "criticism". The Supreme Court in its resolution from 17th December 1965 (ref. VI KO 14/59)stated that *"criticism should be defined as informing other person or persons about evaluation*

of creation, work or behavior of other person, institution or organization. Criticizing expresses positive or negative judgment according to their primary measure. The statement may then be a subject of evaluation or exchange of views, gives an opportunity to point an errors of evaluation or the primary measure itself.". Specific classification scheme of published statements allows to differentiate neutral opinion from criticism which may lead to infringement of personal rights of others. Those negative effects were discussed in the first part of the article. The Supreme Court in judgment dated 7th of December 2006 (ref. I PK 123/06) points that criticism expressing care about welfare and interests of the employer and not causing any harm falls within the law and therefore it satisfies the conditions of admissibility. On the other hand, criticism expressed in a vulgar way, undermining the competences and credibility of the employer on public forum should be classified as unacceptable, in terms of both social norm sand by the law.

As it was pointed before, the biggest threat in work relations is public criticism. It is hard to imagine modern world without access to social media, which, with its easy access and popularity provide not only entertainment but also possibility to share an opinion with the world about many important topics of day to day life. And this is common reason of many conflicts.

It is not difficult to imagine that employee, upset with his superior's acts or behavior sends a rude and mean joke, video or false information to others, undermining superior's credibility or ridiculing him among coworkers. Sharing negative, aggressive content may come from vary reasons and motivations – revenge to begin with, through show displeasure with the situation, up to attempts to eliminate competition for better paid position. But despite of the motivations that kind of behavior leads to negative consequences under labor law, civil law, and sometimes even the criminal law.

Freedom of publishing content, despite of who is the target of them, cannot in any way harm the person's personal rights. Attacks on a specific person, related to their personal aspects and not connected with work responsibilities or work related decisions is not allowed. At the same time criticism of actions taken by employer or coworkers has its limits. The accusations must be justified and objections against superior that have little to do with facts, or which is not rare, be completely false and used only to discredit someone are highly unacceptable. Defamatory opinions or slanders calculated to damage an image of employer as a person are inextricably linked with sharing negative opinion about the company that may consequently lead to severe lose of property and wealth. In the age of the Internet a few aggressive comments shared on work related portals or social media can

instantly be reached by anyone interested in company condition – potential employee, business partners, investors – causing irreparable damage.

Sharing discriminating content, leading to hate speech against race, religion or in any other way affecting people of specific social groups may be penalized by various way - this applies to information about employer or coworkers as well. Sharing satirical, in theory, content of the above-mentioned type that target coworkers may also be a ground for "joker's" liability. Inside "jokes" targeting specific group of people, more often that real threat, may lead to alienate this group, thereby leading to work conditions deterioration, and how is shown by polish judicature, may disorganize the company. Similar situation also occurs in case of stigmatization employees affiliated in organizations within the company. Said disorganization is consequence of aggressive, harassing comments targeting specific group of coworkers, but also critical, hateful statements uniting employees against acts of employer. It is crucial to remember that superiors' actions not always are welcome gladly by subordinates, even thought their purpose is long term improvement of the company and thereby work conditions and payment.

7.1.1. Employee as a mobber

The above problem involves employees activity in social media – whether the employee, because of the content posted online, may be qualified as a mobber (harasser). According to the Article 94^3 § 3 of the Labour Code, *"the mobbing shall be defined as actions or behavior on, or against, employee consisting of long term persisting harassment or intimidating of the employee, which cause lowered self-esteem about his professional value, causing or intended to humiliate or ridicule , isolate or eliminate him from group of coworkers"*. It is not hard to imagine the situation where virtual content fully comply with above conditions – offensive Facebook or Instagram profile, photos and movies reworked in a way to cause satirize or offensive reactions, public criticism and attacks on the employee by coworker. Such actions are not only friendly teasing, but are directly intended to ridicule and "eliminate" employee, which does not fit in the company or is seen as a threat, as someone pretending to take higher, better paid position. According to regulations of the Labour Code, responsibility for mobbing in a work place, if these conditions are fulfilled, lays within the employer, whereby for many years employees-mobbers felt safe from punishment. Recognizing the growing problem, The Supreme Court in judgment from9^{th} of May 2011(ref. II PK 226/10) stated that in case of breach of employee's personal interests, he may demand compensation or reparation, also before the civil court, even in the case, when the

obligatory conditions for recognizing the employer or coworker as a mobber have not been fulfilled. This points to personal liability of the offending employee.

7.1.2. Criticism as a care for employers good

It is also important to mention about occurring in polish law doctrines definition of criticism as a care for employers good. In workplaces, particularly large ones, with employees on various levels, dealing with different roles and activities we can observe the phenomenon of specific internal control developed inside the structures of the company. Employees looking with a critical eye on the actions of the superiors or coworkers often faster than higher authorities can see the need of change, evaluation of some behaviors that are present in the work. Expressing their criticism in an appropriate manner, even in public, they force coworkers to reconsider raised issues, which is good for the company. Constructive criticism, intended to present activities, which in employees' opinion does not serve the proper work system, lower the efficiency, worsen the relations between employees, directly influencing the overall condition of the workplace, only serves for the good of whole working community. Critical comments often allows to see the need of necessary change faster than in usual, post-control manner.

7.1.3. Loss of trust for the employee

Work relation is based on mutual trust between employer and employee that allows to function and perform mutual duties properly and consistently. In the Polish judicature for years has existed an opinion that (justified) loss of trust for the employee can be a reason for termination of employment. Breach of trust, as well as principles of loyalty to employer allows for taking action resulting in punishing employees. Those actions may be initiated by exceeding the limits of acceptable criticism or by presenting an employer or coworkers false accusations. The termination of work (both with and without the notice period) is the most severe consequence for inappropriate content published by employee online. It is considered that such step is justified in case, when further cooperation is impossible because of employee's violation of the boundaries of acceptable content shared in social media.

7.2. Liability under the Labour Code

Besides consequences of the employment termination. it should be noted that for employee showing insubordination on the Internet can be also subjected to penalties under the Polish Labour Code. The provisions of the Code specify exhaustive list of sanctions applicable against employee (reprimand, penalty warning, fine, which in these cases is not applicable) and the clearly specified list

of employees offenses that are punishable. As indicated previously, offensive content shared on the Internet should be subjected to application of the above-mentioned sanctions because such behavior is a flagrant violation of the social norms for which compliance is one of the basics responsibilities of every person employed despite of the position. Judicature points directly on *"responsibility of proper behavior towards the leadership of the company and employee as the coworkers. Generally, expressing the opinions which are negative and disqualifying other employees in terms of ethical and professional, questioning the qualifications, undermining the authority and negatively influence their dignity (especially when it is continuous) should be considered as inconsistent with the above-mentioned duty"* (judgment of the District Court in Łódź dated 12th of August 1978, ref. I P 786/78) – which meets the criteria raised in earlier deliberations about violations made by published content. According to the Article 108 § 1 of the Labour Code, the reprimand penalty and the warning may be imposed on the employee in case of: failure to comply within established organization and order of work, safety and health regulations, fire regulations, method of confirming the arrival and presence at work, and also presenting valid excuse for absence at work. Under the term of not complying within established organization and work order lies, among others, unacceptable criticism, which according to judgment of The Supreme Court dated 17th of December 1997 (ref. I PKN 433/97) means also *"aggressive way of employee expression which leads to disorganization of work at the company and escalates conflicts"*. It is impossible to accept that such behavior does not coincide with the indicated premise forming a ground for employee's responsibility.

7.3. Liability under the Unfair Competition Act from 16th of April 1993

Employee sharing their thoughts, ideas or observations on the workplace, organization, techniques used, methods, sometimes in unconsciously breaks the rules of business secret, which according to the Article 11 of the Unfair Competition Suppression Act from 16th of April 1993[39], should be considered as an act of unfair competition, thereby giving the possibility of conducting competitive policy for entrepreneurs operating in the same market sectors. Employees responsibility for revealing the company secrets is regulated in legislation (Labour Code, Unfair Competition Suppression Act) and also often – in the employment contract. The Labour Code, through defining basics employees responsibilities in the Article 100 § 2 point4 formulates the principle of caring for the good of the workplace and clearly indicates that one of the main manifestation of its compliance is keeping the confidentiality of information which may harm the employer. This regulation is applicable in case of every employment contract. The law states that the ban on transferring or

[39]Unfair Competition Suppression Act from 16th of April 1993 (consolidated text Dz. U. 2003 pos. 1503).

disclosing company information, considered as an act of unfair competition, should be binding the employee for the period of 3 years from the moment of termination of employment, unless contract contains regulations exceeding this period. In case of violation of the ban there is a wide range of penalties that employee can face –the Article 18 of the Act from 1993 mentions claims granted to entrepreneurs against offender. These are abandonment of illicit activities, removing the effects of illicit activities, the declaration of proper content and form, reparation on general terms, surrender falsely draw benefits and award right amount of money for a known social purpose associated with polish culture or protection national heritage, in case of the act was culpable and in case of revealed information inflict serious damage on contractor, employee could bear responsibility on grounds of criminal law - fine, restriction of liberty or imprisonment up to two years. Reparation on general terms referred to above means that the damage is not related to the failure of complying to the commitment that connects the parties, but from negatively evaluated behavior of the entities, in this case employees action (according to the Article 415 of the Civil Code *"who with his fault caused damage to another, is obligated to the repair of the damage"*.

7.4. Liability under the Civil Code

In the Civil Law, both employer and coworkers are entitled to claim for breach of their personal rights– The Supreme Court in judgment from 10th of November 2005, (ref. V CK 314/05) pointed that such violation may occur, among other situations, when employee commits an evaluate statement, which is not supported by the actual assessment of the situation (more broadly the subject of violation of personal rights has been raised in the first part of this article). The Article 24 of the Civil Code includes a broad spectrum of claims enjoyed by the person whose rights has been violated, which are: demand to take actions required to repair negative effects, especially through releasing a statement with proper content and form, demand to financial compensation or obligation to pay specific amount to the designated social target. Furthermore, even if personal rights have not been violated, but employees actions posed a real threat, the injured party is also entitled to claim for the cessation of the act leading to violation. It should be noted that the violation or threat of violation of the personal interest does not automatically lead to liability of the perpetrator. In order to make somebody liable, the following criteria must be met simultaneously: the existence of legal interest, threat or violation and illegality of said threat or violation. Only the existence of all of these criteria allows the initiate the appropriate proceedings. Within the Civil Law employee must take into account liability for the damage caused because according to the Article of the 415 Civil Code, proving harm caused by the content posted online by employee allows to obtain proper

compensation. In that matter, for employer to demand financial compensation it is necessary to establish occurrence of damage caused by the employee and the direct connection between harm and the employee's actions. The employers should prove his harm through indicating due to unacceptable behavior of employee by which he was not able to sign a deal.

7.5. Liability under the Penal Code

Employees liability is also prescribed within the Criminal Law, mostly in two articles – the Article 212 of the Criminal Law (defamation) and the Article 216 of the Criminal Law (insult). Defamation caused by the content posted on the Internet applies both to individual and legal entity or organization – this means that the criminal liability may be linked with statements which may lead to humiliation or loss of trust of the person or organization according to the position or activities. In case of professional relations this means that content posted online may concern employer, coworkers, the company's management or the workplace. For the described crime the criminal penalty is fine or restriction of liberty. The dissemination of indicated accusations through means of mass communication – and it is obvious that the Internet is such thing – as an eligible act, may be punished by a custodial sentence up to one year. This means that the employee, by posting content on the Internet and through breaching standards of the Article 212 of the Criminal Law, causing loss of trust for the person or organization and such behavior should be linked with severe consequences – even a jail sentence.

Differently from defamation, the crime of insult may affects only natural person, i.e. employers or coworkers (not legal entities or organizations). Occurrence of harmful and unjustified criticism and insult that was expressed with the intention for person that was a target to be present or aware of it are conditions of the crime of insult. By using means of mass communication to fulfill this goal, employee commits an act of eligible crime, for which the criminal penalties are: fine, restriction of liberty or imprisonment up to one year.

The cases mentioned above concerns liability of the employee. It should be stressed, that everyone has the right to defend against accusations - in order to avoid liability for content posted online, employee must prove the truth of allegations and actions in defending socially justified interest. Polish law for the socially justified interest in work relations takes among others: attention to compliance the equality of employee relations, necessity of providing rules and regulations for health and safety at work, actions against mobbing, actions against discrimination. It is necessary to provide evidence that will confirm dissemination of allegations apart from protection from legal

consequences unjustified criticism will show that employee actions are in fact in range of care for the good of the workplace.

7.6. Private content via social media

Another dangerous phenomenon is sharing by the employee private content via social media. This kind of actions, in theory are not directly related to violation of employment standards. But are they really? Employee's behavior in form of sharing inappropriate content which may damage the employer's trust can provide a basis for imposing sanctions or even termination of employment. Due to peculiar popularity of social media portals, there is no way to find in polish law regulations governing liability of the employees in such case. Nevertheless, it is also hard to be indifferent to situation when employee publicly manifests their dissolute lifestyle. Broad access to that kind of information, depending on position in the company, may cause the reluctance of potential customers of the employer to cooperate or do business with that person. Highly qualified and competent employee working at exposed post like banker or teacher should not share specific kind of information on the Internet. In case, when his behavior can damage whole workplace, and this kind of behavior is, for sure, loss the public trust for the company, he should be prepared to face the consequences for his actions (as was described before), even in the form of employment termination. It should be emphasized that employee's liability for that kind of content is associated directly with rank or social trust for the position he takes within given company. It is necessary to keep in mind, that shared content may be evaluated by the employers or potential employers depreciating the position on the job market.

In increasing number of cases, the employee himself provides prove of violating is duties, for example by sharing photos and videos of a holiday trip which took place while formally being on a sick leave. That kind of behavior can be a ground for conducting an investigation and result in consequences, or in the extreme cases, even the termination of employment.

7.7. Social Media Policy

The employers can defend themselves from negative consequences of employer's activity in online media through imposing specific internal regulations, which may be defined as Social Media Policy. Contained in the internal regulation or in the work contract provisions create "manual" for employees how to share content online. This regulation aims to prevent arising negative consequences of sharing content online through education and determination of clear borders for the staff, crossing which will be associated with, predetermined, and known for the employees,

punishment. These regulations gathered together in one act, made available for the staff in order to familiarize with, clearly states acceptable boarders, which, when complied to, allows for good social coexistence and provide protection to the company image. More important than punishing employees for the inappropriate behavior is to teach them how to act within the virtual world of social media, in a way that won't harm the employer, coworkers or any other person.

7.8. Peculiar structure in the form of Civil Service

We may also find peculiar structure in the national labour law in the form of Civil Service, which is specific form of public employment providing *"reliable, impartial and politically neutral execution of tasks of the state"*. Members of the civil service are hired under a contract of work or through appointed – it depends on job post indicated in the Civil Service Act from 21st of November 2008[40]. In addition to the specificity of the base for employment, the civil service staff is distinguished by one more specific feature, which is defined in the Article 76 of the Civil Service Act. This provision specifies directly that *"members of the civil service body cannot manifests their political opinion"*. The obligation of worthy behavior within the Civil Service or outside has been pointed out in the Article 76 of the Civil Service Act. The regulation leaves no doubt or ways of interpretation, clearly specifying the boundaries within which the employee is allowed to share content, especially on the Internet. Disciplinary liability of Civil Service, both its scope and allowed penalties, are specified by the Article 113 of Civil Service Act where it is stated that member of the civil service body is responsible for violating the duties of the member of civil service body. These responsibilities contains of, among others, protection for the country interests and human rights, reliable and impartial performance of duties, secrecy statutorily protected, and, for the topic of this deliberations, worthy behavior within the Civil Service or outside. The Act exhaustively sets list of possible penalties, which additionally differs in relation to ordinary officials, senior officials and other employees of the civil service. Violation of responsibilities by the employees and officials can be punished by: admonition, reprimand, lack of promotion for two years, decrease of base salary – no more than 25% - for period not longer than six months, lowering the rank within the civil service, dismissal from service and immediate expulsion from work in the office. The information about awarded penalty is placed in the personal files of the employee or official, and its removal from the files, as a compare to disciplinary penalties from the Labour Code, takes place after 3 years. As an exception from this – penalty of dismissal from service and expulsion from work in the office, which also impose a ban on

[40] Civil Service Act from 21st of November 2008 (consolidated text Dz. U. 2016 pos. 1345).

employment within the civil service for 5 years. Removing the annotation from the files takes place 3 years after the ban is over. This solution allows to increase the severity of punishment, which, worth noted, may be imposed on the employee, whose behavior on the Internet was found as a severe violation of duties arising from employee status, or official of the civil service.

Rank of the position does not allow for public criticism also because of possibility for loss of trust for the represented public office by the society, causing thereby severe harm. Moreover, members of the civil service, deciding to work within its ranks, voluntarily take the decision of moderation their personal life – being the "face" of the state, affirmation of the state power among the citizens, cannot let on to doubt about their credibility, because in this way they depreciate position of the state administration. The threat of the above-mentioned disciplinary consequences for violation of statutory order of neutrality assures the preservation of positive image of the large part of the state officials.

7.9. Summation

Modern employment, in addiction to basic rules and skills, requires also to develop, by both by employee and employer, specific skills of living in virtual word of social media, complying with the Social Media Policy and above all to preserve the boundaries of good taste and rules of social coexistence. Forgetting the elementary rules of expressing an opinion, also criticism, may cause that employees will more and more suffer the negative consequences for sharing online seemingly innocent content. Possible responsibility under the Labour Law, the Civil Law and the Criminal Law creates a wide range of possibilities to effectively fight against inappropriate content shared by employees, whether in the form of unlawful criticism, or the content violating general principles of social coexistence. Despite of lack of proper legislation regulating directly employees activity in broadly described social media or the Internet, polish law and judiciary developed a certain model of conduct. This allows to hold employees accountable for their unacceptable behavior in the area of social media liability all the employees. The illusion of anonymity does not allow anybody to abuse others' rights and legitimate interests. Nevertheless, in the near future, the legislator is excepted to intervene with more strict and efficient legal measures that should be particularly designed in order to address characterized legal issue.