ADAM MICKIEWICZ
UNIVERSITY
POZNAŃ

DISMISSALS EFFECTED BY AN EMPLOYER FOR ONE OR MORE REASONS RELATED TO THE INDIVIDUAL WORKERS CONCERNS

POLISH REPORT

EWLL SEMINAR 2018 – CIUDAD REAL

Anna Bryszak

Kornelia Downar

Witold Kopczyński

Marta Tarkowska

prof. Michał Skąpski

mgr Jakub Gołaś

Table of contents

1. DEFINITION

General characteristic of the discontinuation of an employment relationship recognizing the labour law as distinctly independent branch of the Polish legal system is a defining feature of the Polish legal system. The employment law, introducing basic rules of employing and dismissing employees should be considered as its most important and extensive section. In this area, the legislator has adopted the idea of necessity to protect both the continuity and the durability of an employment relationship as the golden mean for the correct development of the social and economic relationships. The employment law is the area where the legislator includes and tries to reconcile competing interests of both – employees and employer. On the one hand, the legislator cares about legitimate rights of employers who are the engine of the free market economy. On the other hand, the legitimate interest and rights of employees should be taken into account, especially when it comes to effective mechanism of protection against arbitrary dismissals. Such need originates from the social teaching assumptions of the Catholic Church. The Polish Constitution from 1997 express this in the article 20 which goes as follows:

A social market economy, based on the freedom of economic activity, private ownership, and solidarity, dialogue and cooperation between social partners, shall be the basis of the economic system of the Republic of Poland.

In order to properly define and characterize legal aspects of dismissing workers it is necessary to present proper meaning of several terms. First, it should be clearly stated that in legal terms there is no such thing as dismissal in the Polish labour law. Despite the fact that the word "dismissal" is commonly use, it is not a legal term and we will not find it in such fundamental Polish legal acts like the Labour Code. In case of the Polish legal system, the legal equivalent term for the "dismissal' is the term "termination of the employment relationship" upon common agreement or statement of will of one of the parties.

Discontinuation of work service heavily depends on the basis on which it was performed before. For not always the situation that seems to be an employment relationship between an employer and an employee shall be qualified as one.

Firstly, it should be noted that Polish Labour Code and other relevant labour acts focus exclusively on relations between employers and employees. Furthermore, the Labour Code does not consider civil contracts as the legitimate ground for constituting legally effective employment relationship. What is more, the national legislator clearly prohibits replacing employment contracts with a civil law contracts where the actual conditions of the performance are specific for employment relationship. Party to a civil contract performing service for the benefit of the other party weakens own status and is not protected with social privileges guaranteed by the employment law of with an exception related to the unversal constitutional rights. In such case, civil contractors are deprived of rights that would protect them from groundless and arbitral dismissals. It should be noted that in Poland there is still a large group of people working under civil contracts, mainly under work contracts, mandate contracts or in the form of self-employment. The process of dissolving such contracts is vastly regulated by the Civil Code and in this cases protection against dismissals is significantly weaker.

The employment relationship may develop only in specific material conditions specified under the Labour Code. The majority of employment relationships operates in the legal form of the contract of employment but there are also other forms like an election or a nomination. Employment relationship may be defined as a special legal bound between the parties (an employer and an employee) where the durability of the relationship is effectively protected under provisions of the Labour Code and other specific labour acts.

1.1. Grounds of the termination and expiration of the contract of employment

The distinction of material and formal grounds of terminating employment relationship is a necessary step to properly characterize specificity of the Polish regulation of dismissals. Material grounds should be related to such issues as validity or legitimacy of termination. At the same time, formal grounds should be defined as acceptable forms and other formalities regarding the process of terminating employment relationship.

As art. 30 of the Labour Code stipulates, there are only four actions by which a contract of employment can be terminated. These are:

- mutual agreement of the parties,
- statement of will of one of the parties with notice,
- statement of will of one of the parties without notice and
- expiry of the contract.

These actions may be organized into two groups. First group concerns the issue of dismissal and includes first three events that cover all basic legal forms of discontinuing employment relationship through specific activity of one or both contracting parties of an employment relationship. At the same time, second group includes only the event of expiration of a contract of employment.

It is not an easy issue to establish material grounds on which an employee can be dismissed. Furthermore, those grounds are different for each action of dismissing employee. For example, in case of common agreement there are no general requirements related to the procedure, while in case of termination through statement of will of one of the parties without notice there are apparently stringent requirements.

Generally speaking, in each case of terminating a contract of employment by one of the parties it is necessary to present appropriate material grounds that objectively explain why given relationship has to be terminated.

In case of terminating a contract of employment with notice those material requirements are less rigid. Termination with notice should be considered as a basic way leading to a dismissal of an employee. It is required for employer to give proper non-discriminatory and non-arbitrary justification. Reasons for terminating employment contract with notice may be related to the conduct of dismissed employee or may be unrelated to personal reasons. For example, it is justified to terminate given contract of employment with notice due to economic reasons. It is for a labour courts to decide whether given justification of terminated contract shall be considered as legitimate. A contract of employment can be terminated also without notice. It should be noted that in that

case, material grounds are particularly limited only to specific accidents justifying terminating given contract. Articles 52 and 53 of the Labour Code contain a catalogue of the "firing on the spot" situations, which are related to the fault of the employee or to his absenteeism at work. These specific situations will be analysed further in this report.

1.2. Termination of the employment relationship based on an election, an appointment and a nomination

The employment relationships based on an election, an appointment and a nomination are established mostly in the area of public services and administration. The specific situations when it is possible to build the employment relationship under aforementioned procedure can be found in a many different statutes that regulate specificity of relevant occupational group.

Legal protection of employees in the employment relationship based on an appointment is weaker than in case of a contract. Appointed employee can be immediately removed from the post. Removal form the post is an administrative decision of competent body and there is no obligation to present reasons for such action.

In case of an election the most obvious reason of the termination is linked with the end of the term of the office. Other grounds are enumerated in the specific regulations that are applicable to the specific office or position (for e.g. referendum, resolution of a bound).

A contrario to the employment relationship based on an election or an appointment, a nomination is characterised by much wider protection of the employment relationship durability. However, it has its cost. What distinguishes this type of the employment relationship is a rigorous subordination to the employer. A nomination relates exclusively to the administration and the public services. It is also an act of the administrative bodies. Like in case of the election, there are numerous relevant labour acts where we can find catalogues of specific events when a relationship may be terminated with the specific occupational groups of elected employees.

2. THE RELEVANT FACTORS FOR ALLOWING DISMISSALS

Polish Labour Code establishes employer's obligation to enclose justification in case of most of conducted dismissals. However, in case of the most common form of dismissal applied by an employer - with notice - the general clause "justified dismissal" is not further defined in legal acts. It means that every reasonable justification can be accepted and this is the court that has to decide in every individual case if the justification given by the employer is sufficient. The dismissed employee considering his dismissal as invalid or illegal may contest effects of a termination only through judicial proceedings, where the labour court is entitled to examine and assess both validity and legality of employer's actions.

In the field of relevant factors for allowing dismissals, the distinction has to be made between a termination with notice and without notice. As it was indicated before, in case of termination of an employment contract with notice, there are no specific factors recognised in the Polish labour law and the only material requirement takes the form of the general clause of

"justified dismissal". It simply means that each fairy justified termination of a contract with notice shall be considered as both valid and legal. The Labour Code or other relevant labour acts do not enumerate such relevant factors in case of a termination with notice.

Conversely, in case of termination of an employment contract without notice there are specific factors allowing dismissals. In other words, it is legally possible to dismiss given employee without notice only in specific cases clearly recognised in the Labour Code or other relevant labour acts. Fundamental circumstances are defined in Articles 52 and 53 of the Labour Code and may be associated with the fault of an employee or his justified absenteeism. An employer is entitled to dismiss an employee without notice only in following cases:

a) in the event of a grave violation by the employee of the employees basic duties;
b) if the employee commits a crime, while under the employment contract, which prevents the further employment of the employee in the occupied job position, if the crime is obvious or has been declared by a valid sentence;
c) if the employee, through his fault, loses a licence required to perform work in the occupied job position;
d) if an employee is unable to work as a result of an illness:
    - for more than 3 months if the employee has been employed with a given employer for less than 6 months,
    - for longer than the total period of receiving welfare and sickness benefits on that account, as well as receiving rehabilitation allowance for the first 3 months if the employee has been employed with a given employer for at least 6 months, or if the incapacity to work was caused by an accident at work or an occupational disease or
e) if an employee has any justifiable absence from work for reasons other than those specified in point 1, lasting for more than 1 month.

It should also be noted that the number of employees to be dismissed determines whether given case should be considered as an example of collective dismissal regulated under separate act and legal procedure. On the other hand, it should be noted that the Polish labour law does not provide special protection or rights of employees in case of larger enterprises. Employees are treated equally despite the size of enterprise.

The duration of a contract of employment is another factor that is partially relevant to the issue of dismissals. However, it must be underlined that it does not affect directly the possibility to dismiss given employee but it affects the duration of the period of the notice in the case of the termination with a notice. Longer-lasting employment results in longer notice period.

3. SOURCES OF LAW

3.1. General characteristic of the sources of an employment law

The sources of the Polish law are hierarchically organized. This also applies to the sources of labour law. The Constitution of the Republic of Poland of 2nd April 1997 is the supreme source of the law in Poland. It recognizes fundamental and basic rights of employees and employers, as well as it characterizes foundations of internal economic system.

The Constitution also presents the hierarchy of the state-established sources of law. Lower in this hierarchy there are acts of parliament (statutes) and ratified international agreements, regulations and enactments of local law. Those are the sources of universally binding law. There is also other category of laws specific for labour law. These are collective labour agreements, regulations and charters that may regulate some issues related to the procedure of dismissals.

3.2. The state-established sources of law

Among the state-established sources of law the most important is the Labour Code. The Labour Code from 26th June 1974 is the act that regulates the most important and complex issues of the employment law. The Code contains the general criteria for termination of employment relationship and it also shapes procedures of proper termination of a contract. The regulations of the Code (also concerning the relationship termination) were amended many times in the modern history of Poland. It is also worth to note that the Labour Code focuses on the individual labour law, regulating mainly such issues like rights and obligations of the parties of an individual contract of employment. At the same time, issues relevant to the collective labour law are regulated in separate acts.

Apart from the Labour Code there are also several specific acts relevant to the issue of terminating contracts of employment . The most important statute in this area is the Collective Redundancy Act from 13rd March 2003. The specificity of employment relationship termination is also determined by other parliamentary acts that regulate such particular issues like status of elected or nominated functionaries. Furthermore, it should be noted that also the Civil Code has a particular impact on labour law in all those cases that are not regulated directly under the Labour Code. For instance, the Civil Code regulates general principles of creating and dissolving civil contracts which can be the ground for delivering work service by one subject to another (not being an employee). The basic civil principles are also applied in such cases like calculating period limits, effectiveness of will delivery to other party or defects in declarations of will.

Among the regulations (decrees) related to employment issue are mostly those pronounced by the Minister of Labour and Social Policy. The regulation on authorizing absence at work of 15th Mary 1996 is probably one of the most important decrees directly linked to the issue of dismissing employees.

Poland as a member of the United Nations, the European Union and the International Labour Organisation is subjected to the arrangements of the both international and European regulations of the employment law. At the same time, it should be noted that Poland did not ratify the ILO Convention No. 158 *concerning Termination of Employment at the Initiative of the Employer.*

However, our system generally fulfils international standards of the aforementioned convention. Poland has adopted and implemented many EU directives like the council directive 98/59/EC or council directive 2001/23/EC. Poland has also signed and ratified the European Social Charter from 1961.

3.3. Collective agreements and the sources of the "internal" labour law

The collective agreements, collective arrangements, regulations and charters are special category of internal sources of the labour law that are limited to given enterprise or industry branch. It should be noted that in accordance to art. 9 § 2 of the Labour Code, the provisions of collective agreements and collective arrangements, as well as regulations and statutes, cannot disadvantage employees in comparison to the provisions of the Labour Code and other state-established laws.

At the same time, it should be noted that the Polish Supreme Court in the judgement from 7th of December 1999 (I PKN 48/99) stated that the charters containing regulations changing the statutory standard in the field of the protection of employment relationship in favour of the employees are legally binding and should be effectively applied.

The impact of collective agreement on polish labour system is generally very weak, because the vast majority of employees is not covered by those regulations.

4. TERMINATION OF THE EMPLOYMENT CONTRACT WITH NOTICE

Article 32 of the Labour Code provides that termination of an employment contract with notice, which is recognised as the standard way of the termination of an employment contract, may be applied by either party. A notice is a unilateral declaration of will to terminate a contract of employment submitted to the other party of an employment relationship. In such case, given employment contract will terminate on the day that the period of notice expires. The period of notice stands for a period of days between the day of effective submission of the declaration of termination by one side of the employment relationship and the day on which the employment relationship is terminated. In accordance with art. 30 § 2^1 of the Labour Code, the termination notice period of an employment contract covering one or more weeks or months ends on a Saturday or on the last day of the month, accordingly.

Having regard to all provisions of the Labour Code, in order to terminate an employment contract for an indefinite period of time, the employer must fulfil the following five requirements:

1. presenting substantial grounds of dismissal;
2. informing enterprise trade union representing an employee facing dismissal about the prospective termination of employment relationship;
3. notifying the employee in writing of the dismissal;
4. providing dismissed employee with information about period of a notice;
5. including information about the employee's right to appeal to the labour court.

4.1. Criteria for allowing dismissals – justified grounds

The obligation to justify termination of an employment contract for an indefinite period of time is based on general statutory cause that takes the form of requirements to indicate "just cause" (art. 45 § 1 of the Labour Code) or "grounds justifying termination" (art. 30 § 4 of the Labour Code). This is the requirement that is exclusively addressed to the employer in case of terminating a contract for indefinite period of time. Generally speaking, the employer must provide appropriate grounds justifying his decisions about terminating given contract. In Poland, according to judicature, the unjustified termination is a term based on reasons that cannot constitute a valid cause of termination. According to the doctrine and judicature, an employer is not entitled to terminate an employment contract for reasons of:

- transferring a work establishment to another employer;
- employee refusing or resigning from work in the form of telework;
- employee using his rights related to the issue of violation of the principle of equal treatment in employment;
- employee supporting another employee who is entitled to the rights due to the violation of the principle of equal treatment in employment.

Despite the fact that the Labour Code does not specify the criteria for dismissal, in the literature it is assumed that some basic grounds are defined in art. 100 of the Labour Code and are related to following aspects

- employer's right to conduct a rational employment policy and
- the employee's performance of his duties.

The Supreme Court has stated that the reason for termination should be factual and particular. Assessment of the validity of termination of an employment contract under art. 45 of the Labour Code should be made with a necessity to take into account legitimate interests of the employer and the employee's qualities related to an employment relationship. The type and gravity of the reason for termination are decisive. The appropriate reason for termination may also be linked with circumstances independent from the employee, if this is justified by the employer's legitimate interests. Reduction in employment at the workplace is a legitimate reason for termination and the validity of termination is not conditional upon the employer prior offering the employee another suitable job at the workplace. The reason for terminating a contract of employment must be specific and factual, but it does not have to be of special importance or extraordinary importance, since the termination with notice is an ordinary way of dissolving any working relationship. The substantiated reason for terminating employee's employment contract should be known to the employee at the latest upon receipt of the notice. The lack of a precise and understandable reason for terminating a contract results in its direct breach. When assessing the admissibility of dismissal, on the one hand, the legitimate economic interests of the employer should be taken into account and on the other - the fact that the termination of an indefinite contract of employment is a causal act in the labour law (in the sense that it cannot occur without valid reasons relating to the qualification or employee behaviour) should be considered. Careful and conscientious performance of work by an employee on indefinite contract of employment

excludes the possibility of dismissal, unless there are certain reasons for termination on the side of the employer.

The Labour Code does not contain a catalogue of legitimate reasons for terminating the employment contract for an indefinite period by the employer. In the literature they are divided into two groups of those lying on the employee's side and lying on the employer's site.

Examples of those lying on the employee's side:

- employee's unsuitability for work position;
- failure to comply with obligations;
- failure to follow the instructions of the superiors;
- justified loss of trust in the employee;
- lack of due diligence in the performance of employee's duties;
- inflicting damage on the employer's property;
- consumption of alcohol during work;
- violation of the rules of social coexistence in the workplace.

Examples of those lying on the employer's side:

- liquidation of the workplace;
- organizational changes;
- employment rationalization aimed at reducing the costs of the employer's activity;
- no possibility of further employment for other reasons.

4.2. Formal and procedural requirements

4.2.1. Periods of notice

Periods of notice vary with regard to the type of concluded contract. For instance, the period of notice for an employment contract concluded for a trial period is dependent on the duration of contract and amounts to (art. 34 of the Labour Code):

2) 3 working days; if the trail period does not exceed 2 weeks;
3) 1 week; if the trial period is longer than 2 weeks;
4) 2 weeks; if the trial period is 3 months.

At the same time, the notice period of employment contract concluded for indefinite period of time and for fixed-term depends on the employment period with a given employer and amounts to (art. 36 of the Labour Code):

1) 2 weeks; if an employee has been employed for less than 6 months;
2) 1 month; if an employee has been employed for at least 6 months;
3) 3 months; if an employee has been employed for at least 3 years.

It is important to underline that in contrast to trial employment, the duration of the period of notice for indefinite contracts and for fixed-term contracts depends on employee's seniority (length of employment) with particular employer. The only exception may be related to the situation when employing party is changed as a result of a transfer of work establishment or its part to another employer. In such case, also the duration of employment with a previous employer should be included in calculation of a seniority affecting length of a period of notice.

The length of notice period as provided in art. 36 § 1 of the Labour Code is not determined by the length of seniority at the time of delivering notice but by the length of seniority that an employee shall acquire at the time of effective termination, i.e. the last day of the period of notice. In the case when the employee develops longer seniority during the notice period also the statutory length of notice period should be affected[1]. Therefore, the seniority shall by estimated from the date of the conclusion of the employment contract to the date of its final termination.

4.2.1.1. Extending statutory periods of notice

The opinion allowing to extend statutory periods of notice by the parties to a contract of employment is now quite widely represented in both the literature and the case law. The Polish Supreme Court initially held that the statutory periods of notice are rigid and cannot be modified by the parties, unless otherwise expressly specified in the regulations. However, it should be noted that the Supreme Court has currently revised its standpoint and accepted more flexible solution[2].

Currently, the periods of notice may be extended by mutual consent of the parties. This procedure is generally accepted by national judicature as is seems to be compatible with the principle of privilege of employees (art. 18 of the Labour Code). According to the principle, if given provisions of employment contract or other document determining working and remuneration conditions offers more favourable conditions to the employee than it is guaranteed under the Labour Code or other labour acts it should be considered as legal and acceptable provision due to the fact that it introduces more favourable conditions of employment.

There are also other statutory provisions that allow to prolong period of notice of concluded contracts. For instance, according to art. 36 § 5 of the Labour Code, if an employee is employed in a job position involving financial responsibility for the assigned assets, the parties may agree in the employment contract for longer notice periods. In case of statutory two-week period of notice, the notice shall be prolonged to one month and in case of statutory one-month period of notice it may be prolonged to 3 months. The main purpose of such regulation is to assure that the employee will have a chance to effectively recollect entrusted property and other assets.

Moreover, it should be noted that in any other case, longer period of notice may be established at any stage of the employment contract, including also the case when the period of

[1] For instance, by the day of delivering the notice the employee has been employed for 5 months and 3 weeks but during the notice period and before effective termination his seniority will exceed 6 months of employment. In such case, the period of notice should amount to 1 month as during lasting period of notice employee's seniority will change and shall be at least 6 months.

[2] The ruling of the Supreme Court of 23th March 1978 (ref. I PRN 24/78); of 30th July 1981 (ref. I PR 63/81); of 17th August 1977 (ref. I PZ 30/77).

notice has already started. Furthermore, in the opinion of the Supreme Court[3], the extension of the period of notice may also be introduced under relevant provisions of collective agreements.

4.2.1.2. Reduction of the notice period

General provision

Article 36 § 6 of the Labour Code provides the parties with a legal possibility to reduce the period of notice by indicating the earlier date of termination of the employment contract. Parties may do this after one of the parties served the notice of termination of the contract to another party. An initiative to shorten the period of notice may be undertaken by either party to the employment contract and an agreement is necessary to introduce this exception. It is acceptable to submit an application for shortening the notice period along with the notice. None of the agreement must in no way modify the procedure for the termination of an employment contract. It simply means that the employment contract is terminated with the date indicated by the parties as the date of early termination of the employment contract that modifies statutory periods. The period between the date of early termination of the employment contract and the originally designated term of notice shall not affect the duration of the employee's seniority. The employee also does not acquire remuneration for this period as he agreed to shorten the statutory period of notice.

Shortened period of notice due to the bankruptcy or liquidation of an employer

Article 36^1 of the Labour Code allows to shorten the period of notice in the form of unilateral legal action of an employer and regardless of the employee's will. Based on article 36^1 § 1 of the Labour Code, an employer may shorten only a three-month notice period. However, it should also be noted that employer's freedom has been reduced and the period of notice may be shortened by maximum two months to no less than 1 month. The reason justifying the reduction of the notice period is the fact that declaring bankruptcy or liquidation of the employer is a set of reasons not concerning employees and it is easier to carry out liquidation procedure after terminating all contract of employments. There are reasons that may justify collective redundancy (e.g. reorganization of the employment structure related to the liquidation of the employer's branch, workplace, etc.). The Supreme Court has clearly stated that the declaration of will of the employer about shortening the period of notice pursuant to article 36^1 of the Labour Code may be submitted only together with the sole notice of termination and not later[4]. It is unacceptable to notify the employee about the shortening of the period of notice after completing whole procedure.

4.2.2. Written form

The legal requirement of written form applies to the cases of both termination of employment contract with notice or without notice (art. 30 § 3 of the Labour Code). However, failure to apply prescribed form shall not automatically effect in the nullity of the termination. Such legal effect may be achieved only by the power of a ruling issued by competent labour court. This

[3] The ruling of the Supreme Court of 5th February 2002 (ref. I PKN 866/00).
[4] The ruling of the Supreme Court of 19th December 1990 (ref. I PR 391/90).

simply means that termination in a nonwritten form (e.g. verbal, e-mail or SMS) is at the same time both effective and yet unlawful. On the other hand, it should also be noted that in the case of employee refusing to accept written declaration of the employer's intention to terminate a contract of employment, including a correct instruction on the employee's right to appeal to the labour court (article 30 § 5 in conjunction with article 264 § 1 of the Labour Code) shall not affect the effectiveness of such notice. In that case, termination of employment contract shall be considered as both effective and lawful.

4.2.3. Consultation of notice with an enterprise trade union

Art. 38 of the Labour Code. Consultation of notice with an enterprise trade union.

§ 1. An employer must notify, in writing, an enterprise trade union representing an employee of the intention to terminate an employment contract concluded for an indefinite period of time with notice, and must provide grounds justifying the termination of the contract.

§ 2. If the enterprise trade union decides that the notice would be unjustified, it may, within 5 days from receiving the notification, present the employer with justified objections, in writing.

§ 5. The employer must consider the opinion of the trade union, if any is given within a specified period of time, before deciding on notice of termination.

It simply means that the employer is obliged to notify, in writing, the company's trade union organization representing the employee that he intends to terminate the employment contract for indefinite period concluded with given employee. Such notification should contain proper explanation of reasons for planned action. Failure to comply with the procedure specified in art. 38 of the Labour Code constitutes a direct breach of the provisions on termination of employment contracts, which justifies an appeal of an employer against the termination of an employment contract to the competent labour court (art. 44). This principle has imperative nature and there are no major exceptions. The employer shall be exempted from the consultative obligation only in case when given employee is not a member of an enterprise trade union and did not ask for its protection. The notification of the trade union organization must precede the actual termination. In order to comply with the requirements of the procedure described in art. 38 of the Labour Code it is necessary for the employer to notify trade union before giving an actual notice. Established trade union organization, in accordance with art. 38 § 2 of the Labour Code, should have five full days in order to express its opinion on the intended termination. The running of the period according to art. 111 of the Civil Code starts from the day following the day of attaching the employer's letter and covers another 5 calendar days. The dismissal can therefore be carried out by the employer at the earliest on the day following the expiration of the last day out of the five-day deadline. If the company's trade union does not present its opinion within prescribed 5 days, the employer shall be free to terminate the employment contract. For the recognition that the employer introduces company's trade union organization with the reason for the intention to terminate the employment contract with notice, it is enough if the presented justification is comprehensive, specific and clear enough that it cannot be considered as ambiguous.

4.2.4. The status of employee during the period of notice

The Labour Code provides an employee with certain obligation during the period of notice. For instance, according to article 167^1 of the Labour Code, an employee is obliged to use all outstanding leave within the period of notice as long as the employer grants the leave during this period. Furthermore, an employer also may exempt an employee from the obligation to work until the end of the period of notice, regardless of the party that terminated given relationship and with a continuous right to obtain remuneration for all the statutory notice period (art. 36^2 of the Labour Code). It is also worth to note that an employee during the period of notice cannot be treated less favourably than other employees. What is more, as art. 37 of the Labour Code provides, an employee is also entitled to time off for the purpose of seeking other employment. This provision is aimed to support employees in their search of new workplace without causing longer gap in seniority. It is widely known that individuals with longer gaps in employment face more difficulties in the process of finding new job. While using this right, the employee shall also retain the right to acquire remuneration from current employer. However, it should be highlighted that an employee is entitled to time off only in case when the employment contract was terminated by an employer. The amount of due time off in order to look for a new job depends on the length of the period of notice for a given employment contract and amounts to:

a) 2 days for contracts with a 2-week and 1-month period of notice and
b) 3 days for contracts for which a 3-month notice period.

Despite the fact that the employee decides at which time of the notice period he would like to exercise his right to time off, the date of exercising this rights should be discussed and agreed before with an employer. The case of exercising such right without consent of an employer may be considered as a serious violation of basic employees' duties (absenteeism) and in extreme case it may result in the termination of the employment contract by the employer immediately through the fault of the employee.

5. TERMINATION OF AN EMPLOYMENT CONTRACT WITHOUT NOTICE

Termination of an employment contract without notice is a declaration of will of one of the parties to the employment relationship, on the basis of which the employment relationship ceases to exist on the day the statement is effectively served to the other party. The parties to the employment relationship may in this way terminate any type of employment contract recognised in the Polis labour law. Both parties are entitled to terminate an employment contract without notice only in specific cases clearly provided in the Labour Code. Both parties may terminate an employment contract immediately through the fault of other party or through no fault of other party. As it was indicated before, the termination of an employment contract without notice is effective immediately, on the day of delivering to the other party the statement of intent to terminate given relationship.

Termination of an employment contract without notice should be considered as strictly formal procedure with specific obligations of an employer acting as active party. Employer must fulfil the following requirements:

1) presenting substantial grounds of dismissal;
2) informing the trade union representing an employee facing dismissal about the prospective termination of employment relationship;
3) notifying the employee in writing of the dismissal;
4) including information about the employee's right to appeal to the labour court.

5.1. Criteria for allowing the dismissals

5.1.1. Termination through the fault of an employee

Article 52 of the Labour Code presents circumstances when the employer can terminate an employment relationship through the fault of an employee. An employer is entitled to apply this procedure only in three following cases:

a) in the event of a grave violation by the employee of the employees basic duties,
b) if the employee commits a crime, while under the employment contract, which prevents the further employment of the employee in the occupied job position, if the crime is obvious or has been declared by a valid sentence and
c) if the employee, through his fault, loses a licence required to perform work in the occupied job position.

First situation concerns an event when given employee has violated his basic duties in the way it can be categorised as a grave violation of the employees basic statutory and contractual duties. The Labour Code does not define the term "severe violation of basic employee duties". In order to apply this procedure of dismissal it must be demonstrated that the employee violated duties that should be considered as basic ones, that these duties were violated through his fault and that the violation may be classified as grave. Grave violation of basic employees' duties is commonly linked with the behaviour of an employee that may be considered as an example of gross negligence or intentional fault. Therefore, it is extremely important to demonstrate three following prerequisites in order to consider given event as an obvious case of grave violation of basic employees' duties. The first one is illegality of conduct in the form of direct violation of basic employee duties. The second one is the effect in the form of serious threat done to the employer's interests. The third one is to categorise employee's behaviour as gross negligence or intentional fault. Basic employee duties are settled in art. 100 and art. 211 of the Labour Code and within the violation of obligations defined in these articles we should use this dismissal procedure. Generally speaking, each case must be examined separately and final verdict should include specific conditions such as type of work post, occupied position or intentions and character of employee's illicit activity. With accordance to art. 22, 100 and 211 of the Labour Code the doctrine distinguishes specific examples of employee's basic duties such as: diligent and careful work, execution of supervisors orders, caring for the good of the workplace and compliance with the principles of social coexistence in the workplace. Pursuant to the Supreme Court judgments, we can distinguish further examples of violation of basic employee duties such as: failure to follow

work-related instructions, failure to maintain sobriety in the workplace, violation of established order and discipline of work, using a sick leave in a manner inconsistent with its intended use or conducting activities competitive to the employer without his knowledge or consent[5].

Second situation is related to the event of the employee committing a crime, while under the employment contract, which prevents the further employment of the employee in the occupied job position, if the crime is obvious or has been declared by a court verdict. Obviousness occurs especially when the employee has been caught *in flagrante delicto* by the employer or when there are reliable witnesses of the employee's criminal activity. An obvious crime is a situation when circumstances do not raise any serious doubts. If the offense rises any doubts, the employer shall stop his actions until official confirmation in the form of a final court verdict. It should be noted that the employee benefits from the presumption of innocence until the end of the criminal proceedings also in terms of labour law.

The third situation concerns circumstances when the employee, through his fault, loses a licence required to perform work in the occupied job position. It applies to employees who perform work activities that require certain qualifications confirmed by formal documents (e.g. driving license). In the event of losing professional qualifications the degree of fault of the employee shall not be taken into account. Loss of formal qualifications may result from a final court decision or from an administrative decision. Without license required for given job and due to the employee's fault it is justified for the employer to terminate such relationship immediately.

5.1.2. Termination through no fault of an employee

Art. 53 of the Labour Code. Termination of a contract without notice through no fault of an employee.

§ 1. An employer may terminate an employment contract without notice:

1) *if an employee is unable to work as a result of an illness:*
   a) *for more than 3 months if the employee has been employed with a given employer for less than 6 months,*
   b) *for longer than the total period of receiving welfare and sickness benefits on that account, as well as receiving rehabilitation allowance for the first 3 months if the employee has been employed with a given employer for at least 6 months, or if the incapacity to work was caused by an accident at work or an occupational disease,*
2) *if an employee has any justifiable absence from work for reasons other than those specified in point 1, lasting for more than 1 month.*

§ 2. An employment contract cannot be terminated without notice if the employee is absent from work due to taking care of a child while receiving allowance on this account, or if the employee is in isolation due to a contagious disease while receiving welfare and sickness benefits on this account.

§ 3. An employment contract cannot be terminated without notice after the employee has reported to work after an absence.

[5] The ruling of the Supreme Court of 10th May 2000 (ref. I PKN 642/99); of 3th March 2005 (ref. I PK 263/04); of 9th July 2015 (ref. I PK 247/14); of 11th September 2014 (ref. II PK 49/14); of 21th October 1999 (ref. I PKN 308/99).

§ 5. An employer should, as far as possible, reinstate an employee to work immediately if he reports his return to work within 6 months of the termination of the employment contract without notice after the reasons for an absence referred to in § 1 and 2 cease to exist.

The Labour Code in art. 53 provides the employer with the possibility to terminate a contract of employment without notice through no fault of an employee but due to his prolonged excused absence at work. In the event of justified absence, the employee is generally protected against termination of the employment contract. However, the protection lasts only for a limited period of time after which the employer acquires the right to terminate the contract without notice. The employer may terminate the contract in the mode of art. 53 of the Labour Code in the event of any of the situations enumerated there.

First event is related to the inability to work due to illness (§ 1 point 1) and second one is related to justified absence caused by a reason other than inability to work due to illness (§ 1 point 2). In each case, the effect of termination is immediate.

The right of an employer to terminate a contract without notice through no fault of an employee due to his absence is dependent on the time of absence. The Labour Code in art. 53 §1 clearly defines minimum duration of absence that allows to apply analysed procedure. It should be noted that the termination procedure allows an employer to apply it despite the fact that there is no fault of an employee in absence that at the same time is perfectly legitimate. Such legal possibility is justified by a simple opinion that prolonging absence at work seriously disrupts functioning of the enterprise and often leads to considerable losses of an employer. In such event is seems that an employer shall enjoy effective and exceptional measures to ensure proper course of business.

5.2. Formal and procedural requirements

5.2.1. Termination of a contract through the fault of an employee

Under article 52 § 2 and § 3 of the Labour Code an employment contract cannot be terminated without notice through the fault of an employee more than 1 month after the employer obtains information about the circumstances justifying the termination of the employment contract. The deadline runs from the date of obtaining proven and reliable information about the circumstances that gave reasonable grounds for the immediate termination of the employment contract with given employee. The employer has the right to conduct an efficient and immediate explanatory session, as a result of which it is possible to verify the truth of the received information. Moreover, the employer shall be entitled to decide on the termination of an employment contract only after consulting his future actions with an enterprise trade union representing the employee. In such case, unions must be informed about the grounds justifying the termination of the contract. If the enterprise trade union has objections concerning the legitimacy of the termination of the employment contract, it must express its opinion immediately, and not later than within 3 days. It should be also noted that the employer is not legally bound by the opinion of enterprise unions.

5.2.2. Termination through no fault of an employee

In the event of termination of a contract of employment without notice on the basis of art. 53 of the Labour Code, the formal requirements provided in art. 30 § 3-5 of the Labour Code should be respectively applied. These are: maintaining written form, indicating legitimate reason for termination of the contract and instructing fired employee on the right to appeal to the labour court. Furthermore, an employer is still obliged to consult his will to terminate the contract with enterprise unions representing fired employee. It should be also noted that according to art. 53 § 3 of the Labour Code, the termination of a contract of employment without notice through no fault of an employee may not take place after the employee has reported to work after an absence. In other words, regaining the ability to work and returning to the enterprise causes that the employer is no longer entitled to terminate the contract due to a previous absence. Both these premises must be met jointly. The Supreme Court has highlighted that the prohibition to terminate the employment contract without notice after the employee appeared to work after the absence is not binding if the employee is still unable to work due to illness[6].

6. JUDICIAL CONTROL OF DISMISSAL

Employee, with whom employer terminated employment contract, has a right to appeal to the impartial organ. It can be conciliation commission, if it functions in work establishment, arbitrary court or labour court. Article 243 of the Labour Code says that an employer and an employee should aim to reach conciliatory settlement of the dispute arising out of an employment relationship, however it is rarely practiced and disputes often ends in labour courts. Employee's right to appeal against a termination of employment relationship is guaranteed under article 45 § 1 of Constitution of the Republic of Poland and in Convention of the International Labour Organization No. 158. In case of unjust dismissal, art. 8 § 1 of the convention gives the right to a worker to appeal against employers decision to terminate given employment relationship. It is a direct manifestation of fulfilling protective function of labour law. However, it is worth to note that even faulty legal action leading to the an termination of employment relationship is legally effective and can be undermined only by employee's or employer's complaint. Each and every employee, no matter the type of employment contract, has a right to appeal to court. At the same time, there are significant differences in scope of judicial control of the legality of termination of employment relationships. It especially refers to the so-called non-contractual employment relations, established on the basis of an appointment, a nomination and an election. Appointment is an employment relationship, that is not covered by universal durability protection. Dismissed employee cannot demand recognition of dismissal as ineffective and he also cannot demand reinstatement. However, in this situation, the legislator has provided employees with the opportunity to claim compensation under the same rules as in case of indefinite term contracts.

Article 264 of the Labour Code defines terms of pursuing legal claims. In case of both terminating employment contract with or without notice, there is time limit of 21 days to bring an

[6] The ruling of the Supreme Court of 16th December 1999 (ref. I PKN 415/99).

action. There is the same deadline, when it comes to expiry of contract. The deadline to bring an action shall be calculated from the delivery of the letter notifying of the termination of the employment contract or expiry of the employment relationship. In this letter, employer is obliged to place an instruction about a right to appeal to the labour court. Absence of such instruction gives a possibility to reset the time limit to bring an action.

Complaint demanding from court to declare the notice of termination ineffective or to reinstate the employee or to award proper compensation brought out of statutory time allows a court to dismiss such action. The expired time to appeal may be rest only in limited, statutory cases. If an employee has failed to appeal within specified time limit, the court is entitled to investigate and determine the cause of bringing action out of statutory time. If the court acknowledges groundlessness of this application, it gives a judgment about rejecting this complaint. In this situation, the validity of the termination of an employment contract is not examined and the evidence proceedings about plaintiffs claim is not carried out.

In the lawsuit, in which employee claims for a faulty termination of the employment contract, burden of proofs (*onus probandi*) rests on employer. It is argued that the employer terminates an employment relationship with the employee for a specific reason, which he should demonstrate in the lawsuit. It is consistent with art. 9 § 2 of the Convention of the International Labour Organization No. 158 that claims that demonstrating the legitimacy of terminating an employment contract should rest on the employer.

The scope of judicial control differs due to the nature of the employment relationship, however it always limits the freedom to terminate given employment relationship. It may include an assessment of formal correctness and material justification of termination of employment relationship or only compliance with procedural requirements. Unjustified and unlawful termination of the employment contract has to be distinguished. The termination of the employment contract is unjustified when there is no real and legally significant reason for the termination of an employment contract. The unlawful termination is a wider category and covers also events when the employer failed to apply and to follow formal procedure and requirements related to the procedure of terminating employment relationship. It may take form of a violation of the regulations concerning employees covered by special protection against dismissal, failure to comply with prescribed form of notice or with the statutory notice periods. Other examples of violation regulations on termination of employment contract are: failure to present a reason to terminate a contract in the declaration of will, violation of the obligation to apply the trade union consultation procedure and not informing the employee about his right to appeal to the labour court.

It is also worth to note that Labour Code does not provide the possibility to question the termination of the employment contract based on the mutual agreement of the parties. This is due to the fact that in such way of terminating an employment relationship, both parties had to submit consistent declarations of will, and thus they willingly did it. In this case, it is possible to avoid legal consequences of such statement only if it is burdened with one of the defects of the declarations of will mentioned in the Civil Code like error, lack of consciousness or freedom or threat.

7. WHAT ARE THE CONSEQUENCES AND EFFECTS OF A (LAWFUL AND UNLAWFUL) DISMISSAL

The consequences of lawful and unlawful termination of the employment contract vary and depend on factors such as the nature of the employment relationship, the method of termination of an employment contract, as well as the duration of the contract. A dismissed employee may issue other claims in the event of a faulty termination of an employment contract concluded for an indefinite period and other in the event of a faulty termination of the contract for a trial period.

As mentioned earlier, the major consequence of the lawful termination of an employment contract with notice is that the contract shall be terminated at the end of the period of notice. If the employment contract is terminated without notice, the employment relationship ceases immediately as soon as the declaration of will is given to the employee or employer.

An employee with whom an employment contract for an indefinite period has been terminated in a faulty way, i.e. unreasonable or with violation of the regulations on termination of employment contracts is entitled to bring three different types of appeal action. An employee may appeal for:

- declaring the notice of termination ineffective,
- reinstating him in a job,
- proper compensation.

A claim for declaring termination to be ineffective is possible only if the period of notice has not expired yet. In a situation where the period of notice has already expired and the employment relationship has been effectively terminated, the employee may appeal for reinstating him to work and awarding outstanding remuneration for a period out of work. If an employee does not want to continue employment in given enterprise, he may demand proper compensation.

7.1. Rights of the employee in the case of an unjustified or unlawful termination of the employment contract for an indefinite period

The choice of the claim remains with the employee, but the restitution claim is the preferred type. This results from both the Labour Code and the International Labour Organization Convention no. 158. A claim for the recognition of ineffectiveness of termination and for reinstatement in the event of a defective termination of the employment contract by the employer is aimed to protect the permanence of the employment relationship.

An employee's action for recognition of termination as ineffective and for reinstatement to work belong to the type of legal actions shaping the law. A court ruling that declares the termination ineffective results in the abolition of an unlawful state that was caused by the faulty termination of an employment relationship. This ruling is constitutive and operates *ex nunc*, and also leads to the restitution of the employment relationship.

A judgment restoring an employee to work also operates *ex nunc*. This means that the employment relationship should be reactivated on the day the employee announces his readiness

to commence work immediately. The deadline for the notification of readiness is 7 days from the date of the validation of the judgment of the labour court. According to article 48§1 of the Labour Code, if an employee does not declare his immediate readiness to work within prescribed] deadline, the employer shall be entitled to refuse to re-employ the employee, unless this period was exceeded for reasons beyond the employee's control. Failure to report readiness to work results in the inability to produce prescribed effects of the judgment. The term "immediate readiness to commence work", should be construed as a situation when the employee submits his immediate readiness to work, and thus the absence of both legal and factual obstacles may be easily declared. Reporting employee's readiness to commence work immediately is therefore a necessary condition for effective reactivation of the employment relationship. Restoration to work by virtue of a labour court judgment results in the obligation of the employer to employ an employee on the same terms as resulting from previously incorrect termination of the employment contract. The job position must be the same as before and the employer cannot offer a similar or equivalent position, unless it is not possible to provide the employee with exact same job stand.

The remuneration for the time of being out of work, along with the sanction of recognition of the ineffectiveness of the termination of the employment contract and reinstatement to work, is another way to protect the permanence of the employment relationship. This is an accessory claim in relation to the claim for restoration to work. This claim has both equalizing and compensatory character. The remuneration for the time of being out of work cannot be considered as salary within the meaning of the labour law, because it is not a remuneration for the work done.

The amount of due remuneration is strictly regulated in the Labour Code. An employee who took up work as a result of restoration to work is entitled to receive remuneration for the period of being out of work, but not more than for two months, and if the period of notice was three months - no more than for a period of one month. In the case of employees under the special protection of the durability of the employment relationship described in the Chapter 8 for whom separate regulations prohibit termination of the contract, are entitled to obtain remuneration for the entire period of unlawful unemployment.

The enforceability clause in the part relating to remuneration for the time of being out of work is given after the employee has taken up work. Therefore, it means that the claim for remuneration for the period of being out of work depends on the fulfilment of the condition of notification of readiness to commence work immediately. A labour court is not obliged to award remuneration. It can be claimed both in the action for restoration to work and after restoration to work.

If the employee does not want to continue employment, a claim for compensation is still available. It is estimated as an equivalent of salary for period from 2 weeks to 3 months. However, the amount of compensation cannot be lower than the remuneration for the period of notice. If the period of notice has been defined as longer in a collective agreement, in other internal regulations or in a contract of employment, than resulting from the law, compensation should be awarded in the amount of remuneration for the extended period of notice. Compensation for an incorrectly terminated contract of employment is not a classic form of civil damages, which in principle is a compensating benefit. It is not required from the employee to show the fact of

suffering damage, and the amount of compensation generally does not correspond with the actual damage. Furthermore, the compensation is not reduced by the value of social benefits obtained by the employee while remaining unemployed. The employer's liability comes from the very fact of a faulty termination of the contract, because it is assumed in advance that it causes particular damage to the employee. Depending on the circumstances, the compensation may serve the purpose of damages *sensu stricto* or may function as the redress. There are also views according to which the compensation has also a social function, as it provides the employee with means of subsistence. The repressive function is also commonly recognised and it is related to the element of punishing the employer for his illicit act.[7]

The regulations of the Labour Code specify the minimum and maximum value of compensation, but there are no enumerated circumstances that determine awarded amount. When determining the amount of compensation, the court should take into consideration such aspects as the amount of the current remuneration, employee's working period for this employer, the value of the employee's real damage, the gravity of the provisions of law violated by the employer or the employee's attitude towards work and the manner in which he fulfils his duties.

The choice of the claim, including the restitution claim, belongs to the employee, but it does not unconditionally bind the court. Despite the court's findings that the termination was unjustified or inconsistent with the provisions regulating the termination of the employment contract unlawful, the employer, when he does not want to hire back the employee, may argue that restoration to work is in such case pointless or impossible. The employer may also claim that although the dismissal was flawed, reinstating the employee is inconsistent with the socio-economic objective of the employee's right or with the principles of community coexistence. In such situation, the labour court may award compensation to the employee, which is then a substitute to other claims (*facultas alternativa*).

A labour court has the right to ignore an employee's request for recognition of dismissal as ineffective or reinstatement, if it determines that it is impossible or pointless to take such request into account. In case of such findings, the court shall award the employee only with a compensation. The labour court must take into account all circumstances, such as the nature of the termination of the employment relationship, the grounds for the decision on reinstatement, and what effects may occur for each party due to the employee being reinstated or awarded compensation.

The claim for substitutional compensation limits the right of the employee to demand restitution or continuation of the employment relationship, thus protecting the interest of the employer and the employee's staff. Restoration to work is considered impossible if it is virtually unfeasible or objectively unrealistic. Such a situation takes place when the current position of the employee has been effectively and permanently liquidated. The inadmissibility to reinstate the employee cannot be adjudged if the employer hired another person instead of the dismissed employee.

[7] Jakub Stelina, *Prawo pracy,* Warszawa, 2016.

Substitutional compensation may also be awarded if alternative claims of the employee are objectively unjustified. A labour court may then take into account another alternative claim *ex officio* and award the employee with a proper compensation instead (event if the employee did not raise such claim). Such liberty should be linked with notorious cases when an employer incorrectly terminated a contract of employment by violating formal provisions on termination of contracts, but there was a real and legally material valid grounds for such action. It is recognized then that the restoration of an employee to work would be contrary to the socio-economic objective of the employee's right as the reinstatement should be considered as unjust and disadvantageous for an employer. The burden of proof to evidence showing that there is a premise of "impossibility" or "unreasonability" and that the return to work would undermined the essence of the principles of community coexistence or the socio-economic objective of the law rests with the employer.

7.2. Rights of the employee in the case of an unjustified or unlawful termination of the fixed term employment contract

In the event of a defective termination of a fixed-term contract or a trial contract the law does not provide the employee with restitution claims. An employee with whom a fixed-term contract of employment was unjustly or unlawfully terminated, may demand only proper compensation. It amounts to the value of remuneration due until the end of period set out in the contract, but not more than 3 months remuneration.

However, it should be noted that there are some exceptions related to special categories of workers. For instance, these are: pregnant employees or during maternity leave, in relation to a male employee raising his child during maternity leave as well as in relation to an employee within the protection period of their employment relationship the basis of the provision of the Act on Trade Unions. Such categories of employees are entitled to demand to declare the notice of termination ineffective or to reinstate them in a job even in the case of contract concluded for definite period of time.

7.3. Claims of the employee due to a faulty termination of a contract concluded for an indefinite period without notice

An employee with whom an employer unreasonably or unlawfully terminated an employment contract without notice is entitled to appeal to reinstate him on the former conditions or to award him with a compensation. The compensation is equal to the amount of remuneration due for the period of notice. The employee who has returned to work as a result of reinstatement, is also entitled to obtain remuneration for the time of being out of work, but not more than for three months and not less than one month. The remuneration for the whole period of being out of work is awarded to employees who are covered by special protection of the durability of the employment relationship.

It is worth to note that it is possible to switch forms of termination from the termination with notice to the termination without notice during the period of notice. In such case, if an employer has terminated an employment contract through the fault of an employee in the course of the period of notice and violated the provision on the termination of employment contract

without notice, the employee is only entitled to receive compensation. The compensation amounts to the remuneration due for the time until the expiry of the period of notice.

7.4. Employee's claims for faulty termination of fixed-term contracts without notice

The employee's situation in the case of immediate termination of the fixed-term contract is similar to the situation of an employee with whom an indefinite period contract was terminated without notice. Such employee is entitled to demand compensation in the amount of remuneration due for the time until which the contract was to continue, though not more than 3 months remuneration. In such situation a claim for restoration to work can only be made if the period to which the contract was to last has not yet expired, unless the reinstatement would be pointless due to the short period remaining until the expiry of that period. After starting work as a result of reinstatement, the employee is also entitled to demand remuneration for the time of being out of work, but not more than for three months and not less than one month.

8. SPECIAL CATEGORIES OF WORKERS

Formal and procedural requirements described in the Chapter 5 (obligation to justify dismissal, consultation with trade union) are known in legal doctrine as *the general protection of employment relationship's duration*. Since 1974, when Labour Code was enacted, it has been concluded, that there are employees, who need to be protected under special scheme. Law concerning special categories of workers are known as *the special protection of employment relationship's duration.* In legal doctrine this protection is divided into two categories: with regard to employee's personal or family situation (for example: pregnancy, maternity, retirement age) and concerning function that employee acts[8] (trade union activist, social labour inspectors). It is worth to note that such regulations are included not only in Labour Code, but also in other labour acts.

8.1. Employees before reaching the retirement age

The first category comprises the employees who are approaching the retirement age. After changes in law introduced in 2017, basic retirement age for women is 60 and 65 for men. Due to article 39 of the Labour Code, it is prohibited to serve a notice of termination on an employee who will reach the retirement age in not more than 4 years, if his employment period would enable him to receive a retirement pension upon reaching this age. However, these regulations are often criticized as ineffective[9]. At the same time, it should be noted that employment relationship may be terminated in other statutory forms, i.e. without notice through the fault of the employee or because of the long employee's absence due to inability to work as a result of an illness or due to other justified reasons[10].

[8] Drozd Andrzej, *Wypowiedzenie stosunku* pracy, Wroclaw 2013, p. 95.
[9] Góral Zbigniew, [w:]*Kodeks pracy. Komentarz, wyd. III*, red. Baran Krzysztof W. , WK 2016.
[10] Article 53 of the Labour Code.

After reaching the retirement age, it depends on employee's will whether he decides to retire or to continue working. To the early 2000s the Supreme Court considered that possibility to receive a retirement pension after reaching the retirement age is sufficient and justified ground to terminate the contract[11]. However the perspective of the Supreme Court has changed and currently the termination of a contract when the only reason is employee's entitlement to retire is considered as a form of discrimination because of the age[12]. In such situation, an employee has right to appeal in the case of an unjustified or unlawful termination of the employment contract by the employer, as described in the Chapter 7. Moreover, the court cannot reject the employee's demand to declare the notice of termination ineffective or to reinstate him in a job and award compensation instead[13]. Additionally, the dismissed employee is entitled to obtain due remuneration for the entire period of being out of work[14].

8.2. Protection regarding pregnancy and parenthood

The need to protect female employees who are or want to become mothers had been noticed from the very beginning of creation of the International Labour Organisation. One of the first ILO's regulation was the Maternity Protection Convention (Convention no. 3), entered into force in 1921, which in article 4 provides woman with protection against dismissal for a specific period after the birth. Furthermore, also in the Polish law one of the widest level of special protection concerns female employees during the pregnancy and employed parents during maternity or paternity leaves.

The Article 177 of the Labour Code - Particular protection of pregnant employees.

§ 1. An employer may not terminate an employment contract with a female employee during her pregnancy or while on maternity leave, with or without notice, unless there are reasons justifying termination without notice through her fault, and an enterprise trade union representing the employee has consented to the termination of the employment contract.

§ 2. The provision of § 1 does not apply to a female employee on a trial period not exceeding one month.

§ 3. An employment contract concluded for a definite period of time or for a trial period exceeding one month that would terminate after the third month of pregnancy, is extender until the date of birth.

§ 3[1]. The provision of § 3 does not apply to an employment contract for a definite period of time concluded to substitute an employee during a justified absence from work.

8.2.1. Pregnancy

The protection becomes active since the first day of employee's pregnancy. From that moment employer cannot terminate employment contract with the employee with or without notice. If the employer had already made a declaration of terminating given employment contract and by this day the female employee was pregnant, it must be revoked. Furthermore, if the employee become pregnant during the notice period, contract cannot be terminated. Pregnancy

[11] The ruling of the Supreme Court of 21st April 1999 (ref. I PKN 31/99).
[12] The ruling of the Supreme Court of19th November 2008 (ref. I PZP 4/08).
[13] Article 45 §3 of the Labour Code.
[14] Article 47 of the Labour Code.

should be certified with a medical certificate[15]. It is important to estimate date of conception in certificate in order to establish when the special protection began.

It is allowed to dismiss a pregnant woman only through her fault (in situations described in chapter 5.1.1.) and after trade union's explicit consent. Regarding pregnant employee protection, the role of the trade union is much more significant than in case of consultation procedure shaped in art. 38 of the Labour Code, described in chapter 4.2.3. If the employee is a member of the trade union or the enterprise trade union agreed to represent given employee in particular situation, it is necessary for an employer to receive prior unequivocal permission in order to conduct dismissals. Without trade union's consent, pregnant employee cannot be legally dismissed. This condition is not essential, if woman does not participate in trade union and does not ask for its protection.

Pregnant employee is protected by the virtue of art. 177 of Labour Court only against unilateral declarations of termination initiated by an employer. At the same time, contract may be terminated with or without notice by employee or through mutual agreement. However, it has been noticed that the position of woman who is aware of pregnancy and decides to terminate contract, is different than situation of woman without this knowledge. Women in such position, often tried to revoke their statement of termination, but under these circumstances, the employers' consent was required. Understanding difficult position of women, the Supreme Court has ruled that pregnant employee being unaware of her condition is mistaken and her will to terminate the contract shall be declared as void (the ruling of the Supreme Court of 11th June 2003, ref. I PK 206/02). In the judgement, the Supreme Court has modified the concept of error adopted from the civil law. Usually it is essential that an error must be caused by the person the declaration of intent is made to or in cases when that person was aware of the error or could have noticed it easily. Only then legal effects of the declaration of intent may be undermined.[16] However, the Supreme Court ruled that in the situation of employee who terminates contract without realization of pregnancy, these prerequisites are not necessary.

The special protection of pregnant employees refers mainly to the contracts of indefinite period. There are some limitations and exceptions concerning the protection of pregnant employees on fixed-term contracts. Prohibition to terminate the employment relationship does not apply to an employee on a trial period not exceeding one month. Another exception from special protection concerns an employee who substitutes another employee for a definite period. However, in case of other fixed-term contracts concluded with an employee that became pregnant, such contracts should be extended until the date of birth.

[15] Article 185 of the Labour Code.
[16] Article 84 of the Civil Code.

8.2.2. Maternity leave

An employment contract cannot be terminated during the maternity leave. It lasts from 20 to 37 weeks and depends on the number of new born children[17]. The minimum length of the maternity leave that woman is obliged to use is 14 weeks (in some cases this period might be shorten to 8 weeks). Remaining period might be used by father or another member of the closest family. During that time, they are also protected against dismissals.

8.2.3. Family leave

Another category of leaves related to the parenthood is the parental or family leave. It lasts 32 or 34 weeks and is granted to both parents, who have a right to decide how to divide and use this leave. During this leave, an employee is as protected as during the maternity leave, which means that the employer might only terminate the contract without notice because of employee's fault and when an enterprise trade union representing the employee gave its prior consent. This protection is also provided for father during the so-called paternity leave, which is a leave that might be used only by father rising a child. It lasts maximum 2 weeks. When a child turns 24 months, the entitlement to use this leave expiries. The regulations described above apply also to an employee who adopted the child or received the child to raise as a foster family.

8.2.4. Childcare leave

The last leave related to parenthood and covered by special protection against termination is the childcare leave. It is required to be employed for at least 6 months (total, not in the same workplace) to have a right to use this leave. It might last maximum 36 months and must be used by the time the child turns 6 years. This leave is intended to take personal care of the child but during that time it is allowed to take on paid work, study or train (as long as it does not interfere with the personal care of the child)[18]. The leave might also take a form of reduction of working time. Because of that, the protection from termination of employment contract is slightly weaker than during the abovementioned leaves. An employer may not terminate an employment contract within the period from an employee filing a request for childcare leave or for reduction the working time (which is at least 21 days before the beginning of the leave) until the leave ends, unless there are reasons justifying the termination of the employment contract without notice through the fault of the employee.[19] The consent of the enterprise trade union representing the employee is not required in such case.

[17] Article 180 of the Labour Code.
[18] Article 186^2 of the Labour Code.
[19] Article 186^8 of the Labour Code.

8.2.5. Remedies

After unlawful dismissal, the employee is entitled to apply the remedies described in the Chapter 7. Similarly to the employee during the retirement age, dismissed parent might demand to declare the termination ineffective or to be reinstated in a job and court cannot reject this request and award compensation. Pregnant employee, employee dismissed during the maternity leave and male employee who raises the child on maternal leave, are entitled to remuneration for the entire period of being out of work[20].

To sum up, the protection from termination of contract due to the parenthood is very wide and provided not only for the parents of the child but sometimes for other members of the closest family who take actual care of the child. The employer is obliged to accept employee's request for any type of leave. Presuming that the female employee with one child has intention to use the maximum length of all of the leaves, it is forbidden for employer to terminate the contract for a definite time of almost 6 years.

8.3. The representatives of employees

One of the strongest level of protection is provided for the representatives of employees. Due to their significant role in demanding from the employer to comply with workers' rights and obligation to put the employees' interests first, they are exposed to the reprisal and discrimination. The special protection against dismissal was regulated in order to encourage employees to take part in different forms of representative bodies.

8.3.1. Trade union members

Regulations concerning protection of some members of the trade union are included in the Trade Union Act from 1991. According to the article 32 of the Act, it is forbidden to terminate the employment contract with specific unionists without the prior consent of the trade union board. Protection is provided for a specific number of trade union activists, designated by name in the resolution of trade union board. The number of protected employees depends on the number of company's management or on the number of trade union members (board of the trade union decides, which method is more favourable for them). Assigned employee must be a member of trade union board or other member entitled to represent trade union. Apart from designation of the employees, resolution of trade union board must indicate the duration of provided protection. Usually the term of protection equals to the term of his office as a member of the union's board (which is regulated in trade union statute). After the end of term, the protection is still active for the additional period, reflecting half of served term of office, but no longer than one year[21]. If the board has failed to designate specific unionists, protection is provided for the head of trade union board. Prohibition to terminate the contract also applies to the 3 employees who established trade union and lasts for 6 months since the establishment of founding committee. The trade union is obliged to inform an employer which employees are protected under the scheme.

[20] Article 47 of the Labour Code.
[21] Article 32 of the Trade Union Act of 23 May 1991 (consolidated text: Dz. U. 2015, pos. 1881).

These regulations apply to every type of contracts: for an indefinite period, fixed-term and trial period (but they expire within the end of period). It is forbidden to terminate the contract with or without notice, unless the trade union board expressed its consent. The assent must be given in board resolution in written from. Lack of response or any other form (oral, decision made only by head of the trade union board, etc.) are invalid. There is no concrete term in Trade Unions Act when the board is obliged to response, so the part of the Polish doctrine claims that in such cases the terms from the Labour Code can be applied, which are 5 days in case of termination with notice and 3 days in case of termination without notice[22]. The consent must be given to the employer before he serves a notice. When notice has been already served but period of notice hasn't expired, and in the meantime the board resolution covered the employee with special protection, the notice should be revoked[23].

It is worth to note that trade union's consent is also required to terminate the contract without notice through the fault of employee. This standard is often questioned because of the doubts as it is obvious that even despite the fact that the reasons to dismiss an employee are legitimate and factual, trade union board generally will place employer's interests above their colleague position and would not give the assent[24]. Such cases were investigated in the Supreme Court's judgements. For example, the employer wanted to terminate the contract without notice due to employee's intoxication at the meeting in Economic Affairs Ministry during the business trip[25] or when the trade union members used psychical and psychological violence against other employees who did not participate in strike[26]. Regardless of the fact that these behaviours were assessed as a grave violation of the employees basic duties of employers, the trade union boards deliberately refused to give their consent to terminate the contracts. The Supreme Court has ruled that the claims of dismissed trade union members should be considered as an obvious example of abuse of a subjective right despite unlawful terminations and in such cases the courts cannot decide on the reinstatement on the former conditions or compensation (based on article 56 of the Labour Code),. These rulings were based on art. 8 of the Labour Code, which states that *no one is allowed to exercise any rights in the manner that would be contrary to their socio-economic objective or the principles of community co-existence. Any such act or omission by a person exercising their right is not considered an exercise of that right and is not protected.* However, in the light of the principles of the special protection against dismissal, these general clauses should be used as an exceptions only in particularly justified situations[27].

The legal doctrine claims that the case law concerning protection of trade union members might be applied *mutatis mutandis* in cases regarding protection of others representatives of employees[28].

[22] Baran Krzysztof W., [w:] *Komentarz do ustawy o związkach zawodowych* , [w:] *Zbiorowe prawo pracy. Komentarz*, red. Baran Krzysztof W., WK 2016.
[23] Drozd Andrzej, *Wypowiedzenie stosunku* pracy, Wrocław 2013, p. 128.
[24] Dral Antoni, *Powszechna ochrona trwałości stosunku pracy. Tendencje zmian,* Warszawa 2009.
[25] The ruling of the Supreme Court of (ref. II PK 242/04).
[26] The ruling of the Supreme Court of (ref. I PK 221/10).
[27]Podgórska-Rakiel Ewa, *Glosa do wyroku SN z dnia 3 sierpnia 2016 r., I PK 227/15*, [w:] *Gdańskie Studia Prawnicze-Przegląd Orzecznictwa*, 2017/1/125-131.
[28] Drozd Andrzej, *Wypowiedzenie stosunku* pracy, Wrocław 2013, p. 142.

8.3.2. Members of the special negotiating body and the European Works Council

Members of the special negotiating body and European Works Council should be considered as another special category of workers protected due to their function as employees representatives. Regulations regarding this protection are included in The Act of 5th April 2002 on European Works Councils[29], which implements Council Directive 94/45/EC of 22nd September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees[30] (then replaced by Directive 2009/38/EC of the European Parliament and of the Council of 6th May 2009[31]). The necessity to provide *adequate protection as regards dismissal and other sanctions* for employees representatives is recognised among the purposes of this directive. In case of Poland, the protection of such representatives is based on the same formula applied in the case of trade union members[32].

In order to terminate the contract with protected employee it is required for the employer to obtain prior consent of the enterprise trade union representing the employee or of the district labour inspector (if the employee is not represented by trade union)[33]. The protection lasts for the term of office in special negotiating body or the European Works Council and additionally for one more year. Special treatment is guaranteed to every member of mentioned institutions (method of counting the members is regulated in the Act and Directive).

8.3.3. Members of the works councils

The regulations of European Union were the reason to provide the protection for another group of employees. The Act of 7th April 2006 on Informing and Consulting Employees[34] implemented Directive 2002/14/EC of the European Parliament and of the Council of 11st March 2002 establishing a general framework for informing and consulting employees in the European Community - Joint declaration of the European Parliament, the Council and the Commission on employee representation[35] established the so-called works councils. These groups of elected employees (by other workers) are intermediaries between employees and employer in informing and consultation procedures. The work council consists of specific number of members (3 - in enterprise employing from 50 to 250 workers, 5 - to 500 workers and 7 above 500 workers[36]; these numbers might be changed on the agreement between council and employer[37]). Every member is protected against termination of the employment contract as it is required from the employer to receive prior consent of the works council[38]. The protection lasts during the term of office in the council. Despite the fact that these regulations followed the law regarding protection of trade union members[39], they do not provide additional period of protection after the end of council's term.

[29] Consolidated text: Dz. U.2012 pos. 1146.
[30] Official Journal L 254 , 30/09/1994 P. 0064 – 0072.
[31] Official Journal L 122 , 16/05/2009 P. 0028 – 0044.
[32] Drozd Andrzej, *Wyponiedzenie stosunku* pracy, Wroclaw 2013, p. 147.
[33] Article 37 of The Act of 5 April 2002 on European Works Councils (consolidated text: Dz. U. 2012 pos. 1146).
[34] Consolidated text: Dz.U.2006 pos. 550).
[35] Official Journal L 080 , 23/03/2002 P. 0029 – 0034.
[36] Article 3 of The Act of 7 April 2006 on Informing and Consulting Employees.
[37] Article 5 of The Act of 7 April 2006 on Informing and Consulting Employees.
[38] Article 17 of The Act of 7 April 2006 on Informing and Consulting Employees.
[39] Drozd Andrzej, *Wyponiedzenie stosunku* pracy, Wroclaw 2013, p. 142.

This resolution is questioned in legal doctrine as disincentive to employees to participate in works councils due to the fear of employer's retaliation just after the end of the served term[40].

8.3.4. Members of the supervisory board in commercialised enterprises

According to the process of commercialisation of the state-owned enterprises after 1989, the special entitlements were guaranteed to the employees of such enterprises. Among them are positions in supervisory board reserved for the employees representatives, regulated in The Act of the 30th August 1996 on Commercialisation and Employees' Entitlements[41]. These members of the supervisory board cannot be dismissed during the term of the board and one year after. It is forbidden to terminate the contract with notice. These regulations do not create the mechanism of receiving the consent of other employees, known from other regulations concerning protection of the employees' representatives. As consequence, there are no exceptions from the prohibition to terminate contract with a notice with such employees. However, it should be also noted that the contract might be terminated without notice without any additional requirements or limitations[42].

8.3.5. Members of the employees councils in joint enterprises

The employees representatives are also particularly protected in case of employment in specific type of enterprise regulated in Polish law – the joint enterprises. These companies are created by state, state-owned enterprises, cooperates and social organisations[43]. When there is more than 50 employees in the company, the self-government of employees must be established. One part of this self-government is the employees' council, formed of nine employees, elected for the term of 2 years. During the cadence, it is forbidden to terminate the contract with notice with council's member without prior consent of the council[44]. This protection lasts one more year after the end of the term. Nevertheless, the council consent is not required in order to terminate the contract without notice.

8.3.6. Remedies

In case of the unlawful termination of the employment contract, the employees representatives are entitled to remedies regulated in the Labour Code, described in the Chapter 7, with some changes, known from protection of the employees approaching the retirement age and protection regarding parenthood. When dismissed employee demand to declare the notice of termination ineffective or to reinstate him in a job, the court cannot reject this request and award compensation instead[45]. Another modification concerns the amount of remuneration for the period of being out of work. The limit of 2 months does not apply to the dismissed employees representatives. They are entitled to obtain the remuneration for the entire period of being out of work[46].

---

40 Wujczyk Marcin, *Komentarz do ustawy o informowaniu pracowników i przeprowadzaniu z nimi konsultacji*, [w:] *Zbiorowe prawo pracy. Komentarz*, WK 2016.
41 Consolidated text: Dz. U. 2017 pos. 1055.
42 The ruling of the Supreme Court of 29th March 2001 (I PKN 327/00).
43 Article 1 of The Act of 10 July 1985 on Combined Enterprises (consolidated text: Dz.U. 1985 pos. 142).
44 Article 26 of The Act of 10 July 1985 on Combined Enterprises.
45 Article 45 §3 of the Labour Code.
46 Article 47 of the Labour Code.

8.4. Social labour inspectors

The social labour inspectors are also specially protected against dismissals. These are qualified employees chosen by workers among the trade union members (but trade union may allow the candidate who is not their member) who are obliged to supervise the process of applying labour law standards at the workplace, especially provisions and principles of health and safety at work[47]. They are entitled to control conditions of workplace and employer's compliance with safety regulations[48]. These duties should be undertaken by the social labour inspector after his working hours. After detecting a breach, the inspector should make written recommendations, which employer is obliged to comply with. In executing its competences and obligations, the inspector cooperates with the State Labour Inspectorate. Due to the specificity of duties and actions, it can be considered that the social labour inspectors are often threatened by employer's pressure and antipathy. To assure inspector's independence and guarantee that he manages his obligations properly, it is forbidden to terminate the contract with notice during his term of office and one year after the end of the term. As inspectors are appointed for 4 years, is simply means that the protection lasts for 5 years[49]. The contract might be terminated without notice (though no fault or though the fault of the employee) only after receiving trade union consent and only when there are material conditions to apply the procedure of terminating the employment contract without a notice .

8.5. Discrimination and mobbing

In regard to discriminated employees, art. 18^{3e} § 1 of the Labour Code states that *the fact that an employee has exercised his rights due to a violation of the principle of equal treatment in employment may not constitute a reason for the disadvantageous treatment of the employee and may not result in any negative consequences toward the employee; in particular, it may not constitute grounds for the termination of an employment relationship by an employer, with or without notice.* This provision applies also to the employee who helped the discriminated colleague[50]. However, the actions of the discriminated worker who exercises his rights and therefore violates basic duties of the employee (for example by revealing disclosed information) must be proportional[51].

Despite the fact that mobbing is separated from regulations concerning discrimination, there is no corresponding rules prohibiting termination of the contract due to enforcement the law. Nevertheless, some commentators claim that regulations from art. 18^{3e} are superfluous for the reason that exercising the employee's rights due to violation of the principle of equal treatment cannot be considered as disloyal or contrary to the principles of community co-existence behaviour and therefore would not be justified ground to terminate the contract[52].

[47] Article 18^5 of the Labour Code.
[48] Article 4 of The Act of 24 June 1983 on Social Labour Inspectorate (consolidated text: Dz. U. 2015 pos. 567).
[49] Article 13 of The Act of 24 June 1983 on Social Labour Inspectorate.
[50] Article 18^{3e} §2 of the Labour Code.
[51] Maniewska Eliza, [w:] *Komentarz aktualizowany do Kodeksu pracy*, Maniewska Eliza,Jaśkowski Kazimierz, LEX 2018.
[52] Sanetra Walerian, [w:] *Kodeks pracy. Komentarz, wyd. III*, Iwulski Józef, Sanetra Walerian, LexisNexis 2013.

Apart from the protection guaranteed for the employees representatives and social labour inspectors, there is no special regulation for other employees, who may potentially fall victim of disfavour of the employer. Participation in the legal strike cannot be considered as violation of basic duties of the employee and identified as a ground to dismissal, but there are no special provisions besides those described in the Chapters 4 and 5. However, currently the new bill concerning transparency in public life is being proceeded and includes provisions providing protection against dismissal for whistleblowers.

9. DISMISSALS - THE PAST AND THE FUTURE

One of the key characteristics of the Polish legal system is that the law experience numerous and often changes. This regularity also applies to the labour law. Since 1974, the Labour Code was amended many times and most important changes may be linked to such events like the collapse of communism, political and economic instability of 1990s or the accession to the UE in 2004.

The Financial Crisis did not had such a strong impact on the Polish employment market situation in the way it affected other countries. Nevertheless, in 2009 the Polish Parliament introduced temporary solution in the form of special anti-crisis act. This statute was legally binding for two years and expired in 2011. It suspended binding force of measures constituted in the article 25^1 of the Labour Code and allowed employers to constantly renew fixed term contracts of employment. This situation made the employers more flexible in the contract termination because in Poland considerable amount of all employment contracts are fixed-term contracts. It is also worth to note that during the crisis of 2008 the unemployment rate in Poland was fairly low (about 10%). Nowadays, Poland can proudly say that its domestic labour market is keeping one of the lowest unemployment rates among the EU countries with 5%unemployment, the lowest in history.

Currently, the Codification Committee on Labour Law is working on entirely new Labour Code and Collective Labour Code that may have a great impact on the domestic system of employment law. Proposed measures may strengthen the perception of employment relationship durability and continuity. For instance, the new project introduces new obligation of employer to notify planned dismissals to the employee before initiating actual procedure. It is hard to say when the bill reach the Parliament and whether it will come into force in proposed form.

Bibliography

1. Baran Krzysztof, *Komentarz do ustawy o związkach zawodowych, Zbiorowe prawo pracy,* WK 2016.
2. Dral Antoni, *Powszechna ochrona trwałości stosunku pracy. Tendencje zmian*, Warszawa 2009
3. Drozd Andrzej, *Wypowiedzenie stosunku pracy*, Wrocław 2013
4. Drozd Andrzej, *Wypowiedzenie stosunku pracy*, Wrocław 2013
5. Florek Ludwik, *Prawo pracy*, Warszawa 2017
6. Góral Zbigniew, *Kodeks pracy. Komentarz,* WK 2016
7. Maniewska Eliza, *Komentarz aktualizowany do Kodeksu pracy*, LEX 2018.
8. Muszalski Wojciech, *Kodeks pracy. Komentarz,* Legalis 2017
9. Podgórska-Rakiel Ewa, Glosa do wyroku SN z dnia 3 sierpnia 2016 r., I PK 227/15, [w:] Gdańskie Studia Prawnicze-Przegląd Orzecznictwa, 2017/1/125-131.
10. Sanetra Walerian, *Kodeks pracy. Komentarz, wyd. III*, LexisNexis 2013.
11. Sobczyk Arkadiusz, *Kodeks pracy. Komentarz*, Legalis 2017
12. Stelina Jakub, *Prawo pracy*, Warszawa 2016
13. Walczak Krzysztof, Kodeks pracy. Komentarz, Legalis 2017
14. Wujczyk Marcin, *Komentarz do ustawy o informowaniu pracowników i przeprowadzaniu z nimi konsultacji, Zbiorowe prawo pracy. Komentarz*, WK 2016.

Rulings of the Supreme Court:

1. The ruling of the Supreme Court of 7th December 1999 *(I PKN 48/99)*
2. The ruling of the Supreme Court of 30th July 1981 *(ref. I PR 63/81)*
3. The ruling of the Supreme Court of 17th August 1977 *(ref. I PZ 30/77)*
4. The ruling of the Supreme Court of 23th March 1978 *(ref. I PRN 24/78)*
5. The ruling of the Supreme Court of 19th December 1990 *(ref. I PR 391/90)*
6. The ruling of the Supreme Court of 21st April 1999 *(ref. I PKN 31/99)*
7. The ruling of the Supreme Court of 21th October 1999 *(ref. I PKN 308/99)*
8. The ruling of the Supreme Court of 16th December 1999 *(ref. I PKN 415/99)*
9. The ruling of the Supreme Court of 10th May 2000 *(ref. I PKN 642/99)*
10. The ruling of the Supreme Court of 29th March 2001 *(I PKN 327/00)*
11. The ruling of the Supreme Court of 5th February 2002 *(ref. I PKN 866/00)*
12. The ruling of the Supreme Court of 3th March 2005 *(ref. I PK 263/04)*
13. The ruling of the Supreme Court of 19th November 2008 *(ref. I PZP 4/08)*
14. The ruling of the Supreme Court of 8th March 2011 *(ref. I PK 221/10)*

15. The ruling of the Supreme Court of 11th September 2014 *(ref. II PK 49/14)*
16. The ruling of the Supreme Court of 9th July 2015 *(ref. I PK 247/14)*
17. The ruling of the Supreme Court of 15th September 2015 *(ref. II PK 242/04)*