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PRINCIPLE OF EQUALITY AND PROHIBITION OF DISCRIMINATION IN THE CZECH AND POLISH WORK ENVIRONMENT

Abstract

The subject of this study is a comparative law analysis of the issue concerning the principle of equality and the prohibition of discrimination in the Czech and Polish legal systems. The subject is still topical because of the phenomenon of discrimination occurring in a workplace among employees. This phenomenon is of multidimensional character and its complexity causes numerous problems for entities interpreting the provisions within this field. The aspects related to discrimination are not and will not be an easy subject, especially because they concern delicate and sensitive aspects related to human dignity, including the right to privacy. In employment, employees should most of all be treated equally in terms of the way of establishing and terminating their work relationships, the conditions of employment, qualifications and most importantly, aspects related to political beliefs, trade union membership or religion practiced. The first part will issues of a general nature, primarily those relating to international and European regulations regarding the principle of equality and the prohibition of discrimination will be presented. In the further part of the article, the topic of anti-discrimination provisions under Polish and Czech law will be discussed and legal solutions in this matter will be presented.

Streszczenie

Przedmiotem niniejszego opracowania jest analiza prawnoporównawcza zagadnienia dotyczącego zasady równości oraz zakazu dyskryminacji w polskim oraz czeskim systemie prawnym. Tematyka jest wciąż aktualna ze względu zjawisko dyskryminacji występujące w zakładzie pracy wśród pracowników. Zjawisko dyskryminacji ma wielowymiarowy charakter, a jej złożoność przysparza podmiotom interpretującym przepisy z tego zakresu wiele problemów. Aspekty związane z dyskryminacją nie są i nie będą łatwym tematem, szczególnie, że dotyczą delikatnych i newralgicznych aspektów związanych również z godnością osobistą człowieka, także prawem do prywatności. Zaś w zatrudnieniu pracowniczym pracownicy przede wszystkim powinni być równo traktowani pod względem sposobu nawiązania i rozwiązania stosunku pracy, warunków zatrudnienia, kwalifikacji zawodowych, a w szczególności aspektów związanych z przekonaniami politycznymi, przynależności związkowej czy wyznawana religią. W pierwszej części przestawione zostaną zagadnienia natury ogólnej, przede wszystkim odnoszące się do międzynarodowych i europejskich przepisów dotyczących zasady równości oraz zakazu dyskryminacji. W dalszej części artykułu podniesiona zostanie tematyka przepisów antydyskryminacyjnych na gruncie prawa polskiego oraz czeskiego oraz przestawione rozwiązania prawne w tej materii.

Keywords: *principle of equality, indirect discrimination, direct discrimination, Labor Code, Czech labour law*

Introduction

The main goal is to present and analyse Polish and Czech legislation in the field of discrimination and the principle of equality. In particular, the text refers to discriminatory events and behaviours occurring in the workplace and among employees. The thesis of the article is that the anti-discrimination provisions introduced in Poland and the Czech Republic, based on European Union legislation, are interpreted differently in these countries. Regardless of the provisions introduced in labour law, discrimination still often appears in employment relations.

The principle of equality and the prohibition of discrimination are legal issues that have a wide normative basis in international and national law (Ziółkowski, 2015; Zubik, 2014; Kułak and Śmieszek, 2017; Ślebzak, 2013; Maliszewska-Nienartowicz, 2012; Trispiotis, 2014; Blaszczak, 2015; Zieliński, 2013; Gerards, 2013). The normative aspects of the issues concerning the principle of equality and the prohibition of discrimination are regulated in the most important international agreements on human rights. First and foremost, the Universal Declaration of Human Rights (Paris 1948) should be mentioned here, which in its art. 1 indicates the equality of everyone in terms of dignity and rights, and in art. 2 prohibits any discrimination. However, in Art. 2 sec. 1 in the International Covenant on Civil and Political Rights (Journal of Laws 1977, No. 38, item 167) and in Art. 2 sec. 2 of the International Covenant on Economic, Social and Cultural Rights (Journal of Laws 1977, No. 38, item 169) it is precisely indicated that states are under obligation to respect and guarantee the exercise of the rights provided for in these agreements, excluding any discrimination. Within the aspect of obeying the norms related to the prohibition of discrimination and sustaining the principle of equality in particular spheres of social life, the Polish state ratified the agreements and became a party to the International Convention on the Elimination of All Forms of Racial Discrimination (New York 1966) and the Convention on the Elimination of All Forms of Discrimination Against Women (New York 1979). In the Convention for the Protection of Human Rights and Fundamental Freedoms (Journal of Laws 1993 No. 61, item 284, as amended), in art. 14 underlined the prohibition of discrimination within the rights and freedoms indicated

in the Convention. Discrimination cannot be based on gender, race, colour, language, religion, political beliefs, national or social origin, membership of a national minority, wealth, birth. The literature (Krzywoń et al., 2019 p. 266) points to the accessory nature of the provision – discrimination against the background of the rights and freedoms guaranteed in the Convention. In 2000, Additional Protocol No. 12 to the ECHR was opened for signing, which excludes discrimination within the scope of any right established by law.

Whereas within the framework of the European Union, the principles of equality and the prohibition of discrimination have been established primarily in Art. 2 TEU (Treaty on the European Union, Official Journal of the EU C 202 of 2016), which states that the Union is based on equality. And in Art. 3 sec. 3 TEU emphasizes the need to fight against social exclusion and discrimination, and promotes justice and social protection, equality between women and men. The Charter of Fundamental Rights (EU Official Journal EU C 83 of 30/03/2010) emphasizes that everyone is equal before the law – Art. 20, and in Art. 21 prohibits any discrimination, and the content of art. Article 22 compels the EU to respect cultural, religious, and linguistic diversity (Title III *Equality*).

The Polish legislator, with the Act of December 3, 2010. on the implementation of certain regulations of the European Union in scope of equal application (Journal of Laws of 2010 No. 254, item 1700) – the so-called Equality Act – introduced and developed the constitutional principle of equality and EU equality directives. Appropriate legal regulations have been introduced into the provisions of the Labor Code (Act of 26 June 1974, Labor Code, Journal of Laws 2022, item 1510, i.e.), in particular Chapter IIa *Equal treatment in employment*.

Legal basis of the principle of equality and non-discrimination in employment

The Constitution of the Republic of Poland (Journal of Laws of 1997 No. 78, item 483) contains guarantees of equality of law and equal treatment in Art. 32, which at the same time emphasizes that everyone is equal before the law. A person must not be discriminated because of their political views in economic

or social life. Within this scope the Constitutional Tribunal also took its position in this respect, claiming that equality does not mean being identical or treating everyone identically (Judgment of the Constitutional Tribunal of 9 March 1988, U 7/87). All subjects characterized by a given, important trait (relevant) to an equal (same) degree ought to be treated equally (in the same manner), therefore according to the same (identical) measure, with no differences, both discriminating nor favouring. *Equality also stands for the acceptance of different treatment by law of different entities (addressees of legal norms), because equal treatment by law of the same entities in a certain respect usually means different treatment of the same entities in a different respect.*

Art. 32 of the Constitution of the Republic of Poland derives from the prohibition of discrimination in employment, which is formulated in Art. 11^3 of the Act of June 26, 1974, Labor Code. The legislator has definitely stated that any discrimination in employment, direct or indirect, in particular on the grounds of gender, age, disability, race, religion, nationality, political beliefs, trade union membership, ethnic origin, denomination, sexual orientation, employment for a definite period or indefinite, full-time or part-time employment – is unacceptable. The right to equal treatment in employment is surely an employee's entitlement, which results directly from the content of art. 183a § 1 LC According to the above regulation, employees should be treated equally. Similarly, Article 11^2 of the Labor Code provides that employees have equal rights for the same performance of the same duties. In Art. 11^2 of the Labor Code, which prohibits discrimination in employment, but it is not explicitly indicated that this concerns discrimination of an employee. However, while defining direct and indirect discrimination, the legislator demonstrates that it concerns less favourable treatment of an employee or damaging disproportions or a particularly unfavourable situation for a specific group of employees, Art. 18^{3a} § 3 and 4 of the Labor Code (Góral and Kuba., 2017). Employees should be regarded as equal in terms of establishing and terminating an employment relationship, employment conditions, promotion and access to training in order to improve professional qualifications, in particular regardless of their gender, age, disability, race, religion, nationality, political beliefs, trade union membership, ethnic origin, religion, sexual orientation, employment for a definite or indefinite period, full-time or part-time

employment. The provision means, among others, that an employee is entitled to an identical base pay for an identical work, just as people employed on similar positions. It is forbidden to differentiate pay on the basis of gender, race or nationality. In its Decision of April 26, 2022 (III PSK 151/21), the Supreme Court stated that discrimination (unequal treatment due to a qualified cause) is different from ordinary unequal treatment in employment due to the same fulfilment of the same duties. Not every single distinct formulation of employee's privileges is a violation of an equal treatment and therefore discrimination. The differentiation of an employee's legal situation might be also justified by a legitimate relevant feature. Discrimination is unequal treatment of employees in an identical factual and legal situation, caused by a forbidden criterion (Judgment of the Supreme Court of 29 March 2011, II PK 276/10).

The Labor Code distinguishes two forms of discrimination against employees – direct and indirect. The Labor Code also recognizes harassment as discrimination, including sexual harassment. Harassment is understood as behaviour the purpose or effect of which is to violate the dignity or humiliate an employee. Sexual harassment, on the other hand, is an act prohibited and sanctioned by labour law. However, it should be emphasized that crimes against sexual freedom and decency are subject to penalties provided for in the Penal Code – Art. 197 § 1 of the Penal Code (Florek, Pisarczyk, 2021, p. 20). Direct discrimination occurs when an employee, for one or more reasons specified in Art. 18^{3a} § 1 was, is or could have been treated less favourably than other employees in a comparable situation. The employer's actions must result directly from the premises indicated in the cited article of the Labor Code. The structural elements of direct discrimination are the comparability of the situation (factual and legal) in which employees find themselves and less favourable treatment of a discriminated employee (Pisarczyk, Wujczyk, 2021, p. 63). The indicated definition from The Labor Code points to a possibility to assume that discrimination was related to a past, current or hypothetical state (Tomaszewska, 2020, p. 129). While there is no doubt raised with reference to a past state, a misunderstanding may arise while discrimination occurs also when an employee could have been treated unequally in comparison with other employees (Wujczyk, 2016, p. 39). The provisions of the Labor Code relate future behaviour or hypothetical behaviour to the discriminated person

himself (Boruta, 2004, p. 10). In its judgment of May 7, 2019, the Supreme Court states that differentiating the amount of remuneration on the basis of citizenship is direct discrimination, and maintaining this criterion by the employer by maintaining higher remuneration for employees previously employed under such conditions constitutes *partial* discrimination (Article 11^3 of the Labor Code). The prohibition of discrimination also applies to motherhood, although it is not mentioned in Art. 18^{3a} § 1 of the Labor Code (Judgment of the Supreme Court of May 9, 2019, III PK 50/18). In addition to maternity, the Supreme Court also indicates other criteria not listed in Art. 18^{3a}, and which may constitute a form of discrimination. In the judgment of 29 November 2017 (I PK 367/16), it states that discrimination is a worse treatment of an employee, unjustified by objective reasons, due to features or properties unrelated to the work performed, concerning him personally and significant from the social point of view, for example listed in Art. 18^{3a} § 1 of the Labor Code, or due to employment for a definite or indefinite period or on a full-time or part-time basis. An example of such a prohibited criterion used to differentiate among employees might be, for example, physical appearance. In given circumstances it might be considered a reason for discrimination in the form of harassment or leading to limitations resulting from physical, mental or psychological functions, which connected to various barriers may make their full and effective participation in professional life in line with other employees more difficult, while such limitations are of a long-term character (Article 18^{3a} § 5 point 2 of the Labor Code), disclosure of HIV status, parenthood, legal counsel training, citizenship, place of residence. On the other hand, unethical, immoral, contrary to decency or the principles of social coexistence of the employer's behaviour towards the employee do not constitute a manifestation of direct discrimination itself, as indicated by the Supreme Court in its Decision of 9 January 2014 (I PK 186/13).

In turn, indirect discrimination takes place when, as a result of an apparently neutral decision, criterion applied or action, there are or could occur damaging disproportions or a particularly unfavourable situation in terms of establishing and terminating an employment relationship, terms of employment, promotion and access to training to improve qualifications to all or a significant number of employees belonging to the group distinguished due to one or several

reasons specified in § 1, unless the provision, criterion or action is objectively well-founded due to the lawful goal to be achieved, and the means to achieve it are relevant and necessary. Indirect discrimination applies to a particular group – for instance all or a considerable number of women or men or people with disabilities. The official criterion for differentiating employment conditions is not gender or disability, but e.g. a profession performed almost exclusively by women – a nurse (Liszcz, 2019, p. .104). Among the criteria for indirect discrimination, which may turn evince themselves as neutral, the criterion of physical strength or mobility presumed as efficiency in adaptation to fluctuating working hours and workplace, or professional training are only ostensibly indicated (Dörre-Nowak, 2011, pp. 109-110). The essence of indirect discrimination is reflected in the principle of proportionality between the goal and the legal means which the employer uses in order to achieve it (Nielsen, 2015, p. 35). In the literature we can find the notion that in practice most often discrimination happens indirectly. This is the case when, due to an apparently objective cause or action, there are or hypothetically could occur unfavourable disproportions between the legal situations of different employees. The real reason for such occurrence is however one of the reasons of discrimination leading to an employee (or a group of employees) with such features will be treated worse. The employer, often applying discrimination, achieves discriminatory effect due to the use of a criterion supposedly neutral, not formally forbidden by the EU as discriminatory criterion (Lankamer and Potocka-Szmoń, 2006, p. 14; Szewczyk, 2021). Indirect discrimination in employment due to disability occurs when an agreement between the employer and trade unions excludes, without objective justification, all persons employed by the transferred employer who have been declared at least partially incapable of work (Article 18^{3a} § 1 of the Labor Code). There is not objectively justified (Article 18^{3a} § 4 of the Labor Code) differentiating criterion in the form of having other sources of income in the rules for awarding a jubilee award in connection with the restructuring of the employer consisting in the transfer of employees to a new employer pursuant to Art. 23^{1} of the Labor Code. It will not be discriminatory to assume such a criterion, which, even though it differentiates the situation of entities belonging to a particular group due to reasons described as discriminatory (for example, a disability) in relation

to other employees, but is objectively justified due to the lawful goal to be achieved, and the means to achieve this goal are appropriate and necessary (Judgment of the Supreme Court of February 28, 2019, I PK 50/18). It ought to be added, and that was emphasized by the Supreme Court, that in order to indicate that an indirect discrimination has taken place, it must be first of all prove, that there is a particular group of employees, a group in which a majority (or all members) might be described with a given feature and second of all, that an employer has hurt those employees using a supposedly neutral criterion. Although, as follows from Art. 18^{3a} § 1 LC the catalogue of these features remains open, however, it is up to the party that claims to have been a victim of indirect discrimination to demonstrate (at least substantiate) what the feature was (Judgment of the Supreme Court of 23 May 2012, I PK 206/11). In order to determine if an indirect discrimination has taken place, firstly it must be shown if a specific legal regulation, criterion or practice, which supposedly are of neutral character, have been violated (Szewczyk, 2017, p. 280). Subsequently, the procedure should indicate whether a given regulation, criterion or practice is based on legally recognized objectives and prove that the means used are appropriate and necessary to achieve this goal, or whether it was possible to achieve this goal using less cumbersome means (Maliszewska-Nienartowicz, 2011, 274-279). Determining whether a given provision, criterion or action applied is of discriminatory character will require preparing a comparison within a specified category of people, for example of given race, gender, or religion (Florek, 2001, p.155; Szewczyk, 2012, p. 59-60). Indirect discrimination is excluded while a provision, criterion or action is objectively justified because of a lawful goal, which is to be achieved and the means to achieve that goal are proper and necessary. Indirect discrimination is very difficult to prove (Szewczyk, 2017, p. 281). Protection against indirect discrimination includes, most importantly, unequal treatment of employees in the area of establishing and terminating employment, promotion, access to training to improve employee qualifications or employment conditions.

Equal treatment of employees and prohibition of discrimination in the Czech labour law

The basic legal act containing employment regulations in the Czech Republic is Act No. 262/2006 of the Journal of Laws, Labor Code, as amended. The Czech Labor Code regulates such legal institutions as the legal relationship between employers and employees in or in connection with dependent work. Most of all, it defines a set of basic rights and commitments of the parties to basic employment relationships and legal relationships based on employment contracts performed outside the employment relationship (contract for the provision of work).

The Czech Labor Code in its legal act in Title IV *Equal treatment and non-discrimination* in § 16 contains basic provisions related to the prohibition of discrimination in employment relationships and the requirement of equal treatment of employees:

1. *Employers are obliged to ensure equal treatment of all employees within the scope of employment conditions, remuneration and other monetary and non-monetary benefits, trainings, and opportunities to achieve functional or other kind of promotion in employment.*
2. *All discrimination is forbidden, especially discrimination based on gender, sexual orientation, racial or ethnic background, nationality, citizenship, social background, place of birth, language, health status, age, religion or beliefs, wealth, marital and family status and family relationships or obligations, political or other views, membership and activity within political parties or movements, trade unions or Employer organizations; Discrimination based on pregnancy, motherhood, fatherhood or gender identity is considered discrimination based on gender.*
3. *The terms of direct discrimination, indirect discrimination, harassment, sexual harassment, persistent harassment, solicitation to discriminate and incitement to discriminate, and cases where different treatment is allowed are regulated by the Anti-Discrimination Act.*
4. *Different treatment is not considered discrimination if, because of the character of professional activity, such treatment is a basic requirement to perform work; the Goal of such exception must be lawful and the*

> *requirement proportional. Means serving the purpose of preventing or compensating inconveniences resulting from a person's affiliation to a group described by one of the reasons listed in the anti-discriminatory acta re also not considered discrimination.*

The terms direct discrimination, indirect discrimination, harassment, sexual harassment, stalking, inciting to discriminate and inciting to discriminate as well as cases where different treatment is allowed are regulated by Act No. 198/2009 of the Journal of Laws, on equal treatment and means of legal protection against discrimination and amending certain acts (anti-discrimination act). Different treatment should not be considered discrimination if, due to the nature of the professional activity, such treatment is a crucial requirement for the performance of work. The purpose of such an exception must be legitimate and the requirement proportionate. Measures aimed at preventing or compensating for disadvantages resulting from belonging to a group defined by one of the grounds listed in the anti-discrimination act are also not considered discrimination (Hloušková et al., 2022, pp. 41-42). Violation of the equal treatment rule is a violation of employer's duties, and an employer is obliged to compensate for the damages done to the employee by such actions. The duty to compensate for such damages is evaluated in given circumstances in accordance with the provisions of § 265 para. 1 of the Czech Labor Code, in compliance with which an employer is liable to compensate for the damages suffered by an employee during the performance of vocational tasks or in direct relations to the violation of legal obligations or intentional acting against public decency or on the basis of the provisions of § 265 para. 2 of the Czech Labor Code, according to which an employer must also compensate for damages suffered by an employee because of a violation of violation of legal obligations when performing the employer's official tasks by employees acting on his behalf (Hloušková, 2022, p. 443).

A similar position was taken by the Supreme Court of the Czech Republic in Judgment 21 Cdo 2863/2015. The means for protection against discrimination are directly regulated within the anti-discriminatory act. An employee who has suffered from violation of rights and duties resulting from the right

to equal treatment or from the prohibition of prohibition resulting from the anti-discriminatory act might turn to court for:

a. stopping discrimination
b. eliminating the consequences of the discriminatory interference
c. ensuring satisfactory gratification

If such remedy is not sufficient, then if the reputation or dignity of the employee or his reputation in the company has been significantly reduced, the employee is entitled to compensation for non-pecuniary damage in money. The amount of compensation is determined by the court (Roučkova, Schmied, 2022, pp. 19-20).

The Supreme Court of the Czech Republic in its judgment 21 Cdo 230/2015 indicated that: if an employee in court is able to indicate facts, from which it can be deducted, that an employer has experienced direct or indirect discrimination on the basis of their gender, race, ethnic background, religion, beliefs, worldview, disability, age or sexual orientation, then, in accordance with Art. 133a of the Code of Civil Procedure, it is alleged that the participant was directly or indirectly discriminated against, the court in labour matters is considered to be proven, unless otherwise stated in the proceedings. The burden of proof in such disputes therefore rests with the employer. However, the burden of proof only shifts to the employer after the employee makes a claim and proves that he or she was in fact mistreated.

In the judgment 21 Cdo 1844/2020, the Supreme Court of the Czech Republic states, among others, that Article 3, paragraph 2 of the Anti-Discrimination Act regulates a specific form of discrimination against disabled persons, consisting in *refusal* or *omission* to take reasonable measures (among others) in to provide a disabled person with access to a specific job, job performance or functional advancement or other employment.

The purpose of this provision is not to enable persons who are unqualified or unable to perform a specific job (to perform essential work-related tasks) to have access to a specific job, activity or career development or promotion, but to compensate for the disadvantaged situation of disabled persons by removing obstacles for people who, due to their disability, are unable to perform a certain amount of work under the current arrangements. are (may)

be limited in their work because of their disability, but who would be able to do that work if the employer's current arrangements were adapted to them by taking reasonable measures that do not impose a disproportionate burden on the employer (cf. also recital 17 of Council Directive 2000/78/EC of 27 November 2000 establishing general framework conditions for equal treatment in employment and occupation, the implementation of which is expressed, among others, in the provisions of § 3(1) of the Anti-Discrimination Act).

Discrimination against an employee on the basis of disability involves an employer's *failure* to take reasonable measures to provide a disabled person with access to a particular position, to perform occupational activities or to functional or other promotion in employment, if it is (if it must be) obvious to the employer in the light of all circumstances of the case that the employee is disabled (limitation resulting in particular from physical, mental or psychological disability), which, in interaction with various barriers, prevent (may prevent) the full and effective participation of the employee in professional life on an equal basis with other employees (in on the concept of *disability*, see, for example, the judgment of the Court of Justice of the European Union of 11 April 2013 in cases C-335/11 and C-337/11, HK Danmark, judgment of the Court of Justice of the European Union of 18 March 2014. in case C-363/12, Z., judgment of the Court of Justice of the European Union of 18 December 2014 in case C-354/13, FOA, or judgment of the Court of Justice of the European Union of 18 January 2018 in case C – 270/16, Ruiz Conejero), but the employer nevertheless fails to take any reasonable measures to enable a disabled person to have access to employment, to pursue an occupational activity or to advance functionally or otherwise in employment which would be conceivable in the circumstances and which do not impose disproportionate burden on the employer.

The Supreme Court in its judgment of December 18, 2014, ref. no. 21 Cdo 4429/2013, also states that if, before the establishment of the employment relationship (when exercising the right to employment), there was a violation of the rights and obligations arising from equal treatment or discrimination, the employment of an employee by an employer who refused to employ the employee due to the violation of rights and obligations resulting from equal treatment, it is not a reasonable way to eliminate the effects of such violation or discrimination, which the employee could effectively invoke, or discrimination.

The Labor Code regulates the principle of equal treatment as the employer's obligation to treat its employees in a specific manner throughout the duration of the employment relationship. The principle of equal treatment guarantees equal rights to employees in the same or comparable position (situation), and also implies the requirement that the employer's internal regulations or practices do not favour or disadvantage employees in an unjustified way in relation to other comparable employees. The principle of equal treatment is violated if there is no objective and reasonable justification for the different treatment.

In the case law of the courts of the Czech Republic, one can find the proceedings of a dismissed employee against his former employer, in which the plaintiff raised primarily the amount of severance pay paid to other employees after the termination of the employment relationship, depending on the form of termination of the employment relationship by way of a contract, which is privileged by a severance pay of five and a half times higher . The complainant therefore infers from the amount of severance pay given to other employees that they were treated differently (better) than he was. The difference was primarily in the method of termination of the employment relationship, as the defendant mainly concluded an agreement to terminate the employment relationship with the remaining employees, while in his case the employment relationship was terminated by notice. The appellant therefore submits that, in these circumstances, the defendant was *bound by the clause of the collective bargaining agreement at least in so far as it was obliged to act in that respect on an equal footing with employees whose employment had been terminated at short notice for similar reasons.*

The Supreme Court pointed out that the law allows for the termination of an employment relationship only in the manner exhaustively specified in Art. 48 of Act No. 1. work. This mandatory provision limits the freedom of action of the parties to the employment relationship in this respect, and the parties' autonomy of will does not go beyond this freedom. However, if the conditions for terminating an employment relationship are set within the limits (methods of terminating an employment relationship) specified by law, no inequality or discrimination can be found in the application of this statutory provision. The employer cannot be denied the right to use the instructions resulting from the law. If, for reasons precisely determined by the

courts (position in the company's hierarchy, level of remuneration, etc.), the defendant varied the manner (form) of terminating the employment relationship, he cannot be criticized for his manner of conduct and, based on the principle of equal treatment, claim some kind of *directness* from the plaintiff in order to restrictions on his freedom to contract and choose the form of termination of the employment relationship. Despite the emphasis on equality in law, we cannot forget that the main value protected by private law is freedom (of contract). Therefore, it cannot be considered that the lack of a legal basis for granting a higher severance pay on the basis of a collective agreement (i.e. by terminating the employment relationship with notice instead of by collective agreement) would lead to inequality or discrimination. (Supreme Court Judgment 21 Cdo 68/2020).

The principle of equal treatment is the employer's obligation to treat its own employees in a certain way, during the entire duration of their employment relationship. The principle of equal treatment guarantees equal rights to employees in the same or comparable position (situation), and it also results in the requirement that the employer's internal regulations or practices do not unreasonably Favor or disadvantage employees over other comparable employees (cf. the judgment of the Supreme Court of 26.5. 2016 no. 21 Cdo 2863/2015, published under No. 137 in the Collection of Court Decisions and Opinions, year Discrimination in labour law relations is characterized as actions (in the form of commission or omission) by the employer, which is directed directly or indirectly (through apparently neutral actions) to the disadvantage of one or more employees compared to other (other) employees of the same employer, whose motive (motive)) are (established by law) grounds for discrimination (cf. judgment of the Supreme Court of 18 January 2017 file no. 21 Cdo 5763/2015).

It is clear from the above that the obligation to ensure equal treatment, as stipulated in § 16 paragraph 1 of the Act work, the employer has towards the employee in the areas specified there. In contrast to the prohibition of discrimination, the motivation (motive) of unequal treatment does not have to be any of the discriminatory reasons. The term *bossing* is not a legal term; if it is an undesirable behaviour related to one of the reasons for discrimination, it may fulfil the elements of the factual nature of harassment in the sense of Section 4,

paragraph 1 of the Anti-Discrimination Act (cf. e.g. Šimečková, E. Prohibition of discrimination in employment relations, Prague: Leges, 2020, with . 49). If any of the discriminatory reasons are absent, this behaviour may be considered a violation of the employer's obligation to ensure equal treatment of all employees in the area regulated by law. The outlined distinction is not an end in itself, but has a number of consequences (among other things, it concerns, for example, the fact that the European Union directive referred to by the plaintiff deals only with discrimination based on one of the discriminatory grounds – cf. e.g. Article 1 of the Council Directive of 27.11. 2000 No. 2000/78/EC, which establishes a general framework for equal treatment in employment and occupation, or that the judgment of the European Court of Justice of 10 April 1984 in case 14/83 referred to in the plaintiff's appeal equal treatment of men and women in access to employment, i.e. an area that is not affected by the provisions of § 16, paragraph 1 of the Labor Act).

Summary

Discrimination of employees in a workplace is undoubtedly an element deserving of special attention. The problem is related most of all to rights of workers in a workplace and its negative consequences are borne by both an employee and employer, with a workplace's image being spoiled as well. An employer should take into account the fact, that besides violations of the labour code, their negative actions towards employees might demotivate other coworkers and therefore discourage people from applying for a job in a particular company. A negative image of a company might also influence its economic and financial position in a market negatively and that might weigh on its potential cooperation with clients. Both legal regulations contained in international, European, Polish, and Czech law guarantee the employee legal protection. In the event of an obvious infringement of his rights, the legal path remains open, which is guaranteed by the provisions of national and Czech law. Being a member of the European Union, the Czech Republic enjoys the same privileges of legal protection as a Polish citizen. At the same time necessity arises to popularize subjects related to discrimination in a workplace,

both among employees and employers. A good practice would be organizing trainings, lectures raising awareness and informing about the possibilities and methods of counteracting undesirable phenomena in the workplace. The prohibition of discrimination is the foundation of international law, as well as EU and national law.

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