LEGAL PROTECTION OF EMPLOYER'S GOOD NAME

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Absract: the article assumes that the Labour Code does not provide equal protection of personal goods of both parties of the employment relationship, clearly preferring the employee in this protection, for whom the protection of these goods is treated as a fundamental principle of labour law. Within de lege ferenda motions, it was proposed to introduce to the Labor Code a mutual rule of respecting the employer's personal goods by the employee. This would change the perception of the protective function of labour law as serving not only the employees but also the employer.

Keywords: antagonism of parties, labor code, employer, employment, legal protection.

1. Introduction

According to the prevailing view, an organisational unit that is structurally and financially separated, but which is not capable of employing staff on its own, cannot be regarded as an employer. This point of view is shared by judicature. In the judgment of 14 June 2006. (IPK 231/05) the Supreme Court held that non-public schools run by an educational association, which do not have independent organizational and financial capacity and do not employ staff on their own behalf, are not employers of the teachers employed in them. The justification to this judgment states, among other things: "Organizational independence in terms of financial management does not prejudge independence in terms of employment of employees. Therefore, an auxiliary economy may be regarded as an employer only if its independence also includes the right to hire employees. "[9]

2. The notion of an employer

The notion of an employer in Polish labor law has been shaped broadly, which raises interpretation problems in terms of determining the required characteristics of this entity. While analyzing article 3 of the labour code it is pointed out that in order for a given entity to be recognized as the employer it is necessary to have the ability to employ workers on its own behalf and to be separated organizationally and financially. [Gładoch, 2017]

Many authors present the view that the subjectivity of the employer is determined primarily by the ability to hire employees on its own behalf. Z. Hajn is of the opinion that "for a natural person to be recognized as the employer it is sufficient that he employs employees in his own name.

However, the purpose of employment, running or not running a workplace in the material sense as well as the size of business activity are irrelevant". This point of view is also shared by the judicature. In the judgment of 3 June 2014. (III PK128/13), the Supreme Court explained that an organizational and budgetary unit of a local government entity may be considered an employer when its independence includes the right to employ employees [13]. In the literature, the notion of employer was clarified and it was emphasized that the ability to independently employ employees must have its basis in the acts regulating the structure of a legal person (e.g. the articles of association of a company) or the acts of its bodies creating the organizational structure (e.g. in resolutions of the company's management board). Consequently, the status of the employer will not be held by an internal structure the manager of which establishes and terminates employment relationships within the authority granted under Article 31 of the Labour Code by the superior organizational unit of which it is a part. A similar view was expressed by the Court of Appeal in Katowice in the judgment of 14 December 2012. (III APa 25/12) emphasizing: "Organizational units which are parts - branches - of legal entities, which are part of multi-enterprise companies, act as employers. These units have the capacity to conclude contracts of employment (or otherwise establish employment relationships as employers), if by virtue of the provisions governing their internal legal status they have the authority to independently employ workers (make declarations of will). If, on the other hand, an internal organizational unit is authorized to conclude employment contracts on behalf of the management of the entity of which it is a part (or otherwise establish employment relations) with the persons admitted to work in it, it is not an employer itself, but it employs employees on behalf of the employer, which is the multi-employer entity - the employer. It should also be pointed out that a person who performs labour law activities for an employer, which is an organizational unit, does not have to be included in the organizational structure of this unit" [Romańska, 2020, p. 193].

3. Legal grounds for protection of the employer's reputation

Depending on the type of legal subjectivity of the employer, we can consider the scope of protection of his personal rights under the applicable law. If the employer has a legal personality, the basis for the protection of rights will be Article 43 of the Civil Code, according to which the provisions on the protection of personal rights of natural persons apply accordingly to legal persons. On the other hand, according to art. 331 § 1 of the Civil Code, the protection of personal rights of statutory subjects (organizational units without legal personality, which are granted legal capacity by a special regulation) is governed by the provisions referring to such protection of legal persons. The list of personal property of legal persons and statutory entities, referred to in Article 331 of the Civil Code, is not closed and, like the one in Article 23 of the Civil Code, is exemplary. In the doctrine of civil law, such goods are considered in particular: good name, name, company, secrecy of correspondence, inviolability of premises and secrecy of the enterprise (Article 551, paragraph 8 of the Civil Code) of a legal person.[Balwicka-Szczybra, 2022, p. 79]

Considering the subject of the study, the concept of good name, which has been thoroughly interpreted by the judicature, needs a wider explanation. According to the Supreme Court, "the good name of a legal person is connected with the opinion that other people have about it due to the scope of its responsibility. Not only the reputation resulting from the previous activities of a legal person is taken into account, but also, as it were, the assumed (presumed) reputation of a legal person from the moment of its establishment. The good name of a legal person is infringed by statements which, viewed objectively, attribute to the legal person improper conduct likely to result in loss of confidence in the legal person, necessary for its proper functioning in the scope of its tasks". In the judgment of 26 October 2006 (ICSK169/06), the Supreme Court explained that "it follows from the essence of a legal person that a legal person is not entitled to the protection of personal dignity, while its good name, which - in a simplified manner - can be understood as an image of the legal person in the eyes of third parties, is fully protected. The good name of a legal person may take various forms. Elements comprising a good name of a legal person depend on the type of activity conducted by a legal person (economic, educational, charitable)".[Balwicka-Szczybra, 2022]

Similarly, the good name was interpreted by lower courts. According to the Court of Appeal in Białystok, "the image of a legal person is connected with its good name and directly touches such categories as reputation and perception of an entrepreneur by other participants of economic and legal trade". In turn, the Court of Appeal in Warsaw in the judgment of 19

November 2013. (VI ACa 657/13) added that: "the good name of a legal person is combined with the opinion that other people have about it due to the scope of its responsibility. Not only the reputation resulting from the previous activities of a legal person is taken into account here, but also, as it were, the assumed (implied) reputation of a legal person from the moment of its establishment. The good name of a legal person is infringed by statements which, viewed objectively, attribute to the legal person wrongful conduct that may result in loss of confidence in the legal person, necessary for its proper functioning in the scope of its tasks". The doctrine notes that the mere undertaking of legal or actual actions (e.g. enforcement actions) may violate the personal interests of a legal person - entrepreneur in particular - undermining its credibility in the market. From the point of view of a legal person, opinions about persons holding positions in its governing bodies and even employees themselves will be important for its image. The Court of Appeal in Warsaw points out this relation, stressing that "negative statements about persons who are members of the governing bodies of a legal person or its employees may lead to damage to the reputation of the legal person itself".[Florek, 2017]

Undoubtedly, it is detrimental to the reputation of a legal entity that is an employer to disseminate untrue information regarding the worsening economic situation of the entity, alleged mismanagement or errors in organization and management. Not infrequently such forms of action are chosen by trade unions in conflict with the employer, disregarding the consequences related to the deterioration of the company's image. It is worth stressing that social relations are crucial for the image of the workplace, thus the relations of the employer with employees and trade unions. From the point of view of the so-called Corporate Social Responsibility (CSR) policy and codes of good practice, a conflict with trade unions or with the workforce significantly affects the assessment of the company in the eyes of clients.

As J. Wratny rightly notes, the main reason for establishing the codes is the "need of self-presentation" - shaping a favourable image of the company outside, as an entity maintaining the highest ethical standards. In each case, the company's image and its good name are adversely affected by a collective dispute, which has an extremely negative impact, among others, on the value of shares. A clear example of this was the situation in Jastrzębska Spółka Węglowa S.A., whose share price rose by more than 7% after the dissemination of information about the signing of an agreement between the Management Board and striking miners [Florek, 2017, p. 241].

When the employer is a natural person, protection of the reputation will be connected with preserving the honour, or dignity, of the entity employing the employees. It has its support in Article 23 of the Civil Code, as well as in the regulations of the Labor Code. Although the

principle of labor law concerning the obligation to respect the dignity and other personal goods of the employee refers to the employer (article 111 of the Labor Code), it does not mean that the staff is exempt from this obligation. The legal basis should be sought in another provision - Article 100 § 2 point 6 of the Labour Code, according to which the employee is obliged to respect the rules of social coexistence in the workplace.

This obligation is explained as "an order for an employee to behave properly towards colleagues, superiors and subordinates, i.e. in accordance with the social norms in force at a given time and place". According to L. Florek, the content of this obligation is to comply with extra-legal norms regulating the principles of "coexistence between people in teamwork processes on the basis of the so-called reciprocity, including solidarity, mutual assistance and kindness, as well as culture of behavior in personal contacts" [Florek, 2017].

4. Permitted criticism of the employer

The literature emphasizes that the employee has the right to speak openly and critically on matters concerning the workplace. However, disapproval expressed towards the employer sometimes results in certain negative consequences for the employee. Exceeding the limits of acceptable criticism may constitute a breach of duties of caring for the good of the workplace and observance of the rules of social coexistence, and also entail various consequences - not only regulated by the labor law, but also the criminal law.

Criticism of the employer, especially when it is a natural person or when it is directed at specific persons employed by the employer (e.g. superiors, board members, etc.) does not constitute a violation of the law, especially of personal rights when it is truthful and does not violate good manners, i.e. the rules of social coexistence. In other words, critical statements should have a proper, cultural form and should be based on reasonable grounds.

The literature rightly points out that "personal goods, as values connected with the inner side of people's lives and therefore unequally measured, are subject to legal protection only if the violation of these goods occurred as a result of unlawful behavior of the person committing the violation. In view of the above, the condition of unlawfulness of the conduct is an indispensable prerequisite for the protection of property. The position presented above has long been well-established in the civilian science of law. T. Sokołowski reminds that violation of personal good consists of crossing the limit of threat to personal good, specified in Article 24 § 1 of the Civil Code, but for the claim of the entitled person unlawfulness is necessary. In one of the more recent judgments of 24 June 2015. (II PK 207/14), the Supreme Court noted that "a

necessary element for the exclusion of unlawfulness of an action violating personal rights is the truthfulness of the statements of fact". Summing up this thread of considerations, it should be emphasized that criticism of an employer is lawful if it is based on true facts and is expressed in an appropriate, i.e. socially acceptable form.[14]

The situation becomes more complicated when an employee (trade union member) evaluates the employer without being sure of the truthfulness of the information and arguments he uses. In the judgment of 18 July 2012. (I PK 44/12) the Supreme Court expressed an opinion that "criticizing the employer and informing about possible irregularities in the company of its owner is not a gross violation of employees' duties, even if the indicated accusations turn out to be groundless. This thesis, however, requires quoting a broader fragment of the justification of the indicated judgment, as it could give rise to a misconception that unlawful slander of the employer is legally permissible. The Supreme Court explained that "even justified criticism of the relations existing in the workplace should be within the scope of the legal order and be characterized by the appropriate form of expression, not disorganize the work and enable normal functioning of the workplace and realization of its tasks.

The judicature has rightly noted that in order to evaluate the employee's behavior, it is important to determine the intention and purpose of his/her critical statement. In the judgment of 16 November 2006. (II PK 76/06) the Supreme Court expressed the following view: "it does not constitute a serious breach of basic employment obligations (Article 52 § 1 point 1 of the Labour Code) for an employee to give a press interview in which he or she criticised the conduct of a member of the employer's body, if the employee kept the appropriate form of expression and his or her conduct cannot be attributed to a significant intensity of bad will and conscious action threatening the interests of the employer or exposing it to damage". A similar view was also expressed in an earlier Supreme Court judgment of July 28, 1976. (I PRN 54/76) in which it was written: "However, only manifestations of bad-faith abuse of the employee's right to criticize the relations existing in the parent company may be regarded as a serious breach of basic employment duties by the employee within the meaning of the provision of Article 52 § 1 of the Labour Code".[6]

In the case of critical statements, it is worth remembering about specific criminal law regulations. Pursuant to article 212 § 1 of the Penal Code, the offence of defamation consists in slandering another person, group of persons, institution, legal person or organisational unit without legal personality of such conduct or properties which may bring them into disrepute in public opinion or put them at risk of losing confidence necessary for a given position, profession or line of business. In accordance with the position of the Supreme Court expressed in the

judgment of 20 November 1933 (III K 1037/33) slander "(...) may be expressed in any way, capable of externalizing the thoughts of the perpetrator and transferring them to the consciousness of others. It can be expressed not only orally, but also in writing, in print, in an image or caricature, it can be externalized by gesture (e.g. meaningful applause when the speaker raises a disgraceful accusation against another person), facial expression (e.g. an ironic grimace when someone speaks about the impeccable honesty of another person)". It should be noted that the provision does not require that the slander be public in nature. The infringement is determined by the resulting possibility of humiliating the victim in public opinion or exposing the victim to the loss of confidence necessary for a given position, profession or type of activity. The possibility of the occurrence of the crime of defamation (slander) is more likely in the case of union activity, where there are personal conflicts between activists and management or the employer. The ease with which this type of situation can arise can be heightened by the sense of certainty inherent in the protection afforded to a trade union activist against dismissal, which however is irrelevant when a crime is committed. Thus, there are accusations against management which not only violate their honor, but also harm the good name of the legal entity.

The judicature's view that failure to mention the defamed person by name is not necessary to impute criminal liability for defamation to the perpetrator when "(...) there is no doubt as to the identity of the person defamed (...), if from a juxtaposition of other circumstances it could be easily inferred who the person defamed had in mind; it is sufficient to give such distinguishing features that allow an objective inference that the defamatory act concerned a given person". In this case, it is up to the defamed persons to decide for themselves whether to seek legal protection, as the crime of defamation is prosecuted by private prosecution.[14]

5. The Trade Union Worker as an Employee - Value Dilemmas Relating to Employee Representation and the Welfare of the Employer

Further considerations must be preceded by a statement that trade union activity should take place within the limits of the applicable law. At this point it is appropriate to recall the content of ILO Convention No 87 concerning Freedom of Association and Protection of the Right to Organise of 9 July 1948. According to Article 8, in exercising the rights conferred upon them by this Convention, workers, employers and their respective organisations shall, like other persons or organised groups, respect the legal provisions in force in the country. ILO Convention 135 concerning the protection of workers' representatives in undertakings and the granting of facilities to them is also based on the principle of legalism. According to Article 1,

the workers' representatives in an undertaking shall enjoy effective protection against all acts of harm, including dismissal, taken on account of their character or their activities as workers' representatives, their trade union membership or their participation in trade union activities, if they act in accordance with the applicable legislation, collective agreements or other mutually agreed arrangements.[Baran, 2018]

In assessing the conduct of a trade union member, reference should always be made to the requirement that they comply with the applicable legislation. The interpretation of Article 32 of the Polish Labor Law, which establishes special protection of the employment relationship, should be based on the premise of the purpose of introducing this protection and the requirement that the person covered by it abide by the law. In the judgment of 12 September 2000 (I PKN 23/00) the Supreme Court stated: "Statutory guarantees of enhanced protection of the permanence of the employment relationship should not be used by a trade union activist who can be accused of a serious breach of fundamental employee duties and abuse of the trade union function to protect himself against justified labour law sanctions".

The position of the judicature is significant due to the position of trade unions in the workplace, as union leaders are usually its employees at the same time. Therefore, there may be an obvious conflict of interests between union activities and the performance of employee duties, primarily with respect to caring for the good of the workplace. The Supreme Court draws attention to this aspect, explaining that "The union activist's assessment of the good of the workplace does not have to put the employer's interest first. On the contrary, the task of the union is to defend the interests of the employees. It should also be taken into account that the stipulated in Article 100 § 2 point 4 of the Labour Code. "care of the employee for the good of the workplace" should be assessed as care for the workplace understood objectively, as an organizational unit being the place of work, and thus being a common value, "good" not only of the employer, but also of the employees". The judicature seems to explain that a strike generally leads to losses on the part of the employer, and therefore its organization by a trade union member and, at the same time, an employee, as a rule could be treated as a violation of the obligation set forth in Article 100 § 2 point 4 of the Labor Code. Therefore, it seems more accurate to assume that the notion of "the good of the workplace" has the same content - both from the point of view of the employer, as well as from the point of view of a trade union activist who is an employee, however, the law exceptionally waives the sanction for the breach of this duty, limiting it to cases of violation of the Act on Resolution of Collective Disputes [Baran, 2018].

Increasing antagonism between the parties may lead to non-compliance with the rules of social intercourse by trade union members. In this case, however, no grounds excluding illegality apply. In a judgment of May 19, 2011 [12]. (IPK 221/10) the Supreme Court expressed a firm view that "dismissal of an action for reinstatement of an employee who is an experienced trade union activist covered by special protection of the permanence of the employment relationship is justified if he/she committed physical aggression, violation of dignity or physical inviolability towards another employee during the strike action. According to the judicature, trade union representatives who do not control their emotions during the protest of a part of the staff may be dismissed despite the protection.

The above position has already been established in case law, as confirmed by the following statement of the Supreme Court: "An employee - a member of a trade union body is burdened, on an equal footing with other employees, with a duty of loyalty towards the employer, the breach of which may be qualified as a grave breach of fundamental labour duties. (...) In order to bring a specific charge against the plaintiff as an employee, it would be necessary to prove that his actions constituted a breach of his obligations regardless of his function in the trade union organization, and this function only served to breach them [Florek, 2017].

6. Conclusion

The protection of the employer's reputation has a broad legal basis, primarily in civil law. In terms of labor law, it is connected with the duty to take care of the good of the workplace.

The obligation to observe the law in the scope of protection of the employer's personal rights covers all employees, not excluding trade union activists or more broadly - members of the trade union.

An infringement of reputation may be the consequence of a conflict (often personal) between the trade union and the employer.

A trade union having legal personality will be liable for the actions of its bodies on the basis of the provisions of the Civil Code (Article 415 of the Civil Code) and Article 36 of the A.s.z., which may result in deletion of the union from the register. If the violation of the good name occurred as a result of the actions of a particular trade union member, he or she is individually liable for the resulting damage - defined in the provisions of the Civil Code and the Labor Code, and in the case of the crime of defamation - the Criminal Code.

Special provisions apply to liability for damage caused by a strike or other protest action organized in violation of the provisions of the Act on Resolution of Collective Disputes. The Organizer shall be liable according to the rules set forth in the Civil Code.

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