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Termination of Employment – *de lege lata* and *de lege ferenda* postulates

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ABSTRACT

This study will be concerned on the job regulations, focusing particularly on the conditions of termination of employment. It is a thesis of the present work to answer the question if *de lege lata* and *de lege ferenda* postulates to change the labour law are required. To consider it, an in-depth insight will be made into the legislation in 4 countries as follows: Poland, the United Kingdom, Egypt and Hungary in order to compare them.

Keywords: Law, Employment, Job, Dismissal, Labour Code, Comparison, Poland, Europe

1. INTRODUCTION

There is an element of truth in the notion that labour law should have been regulated as soon as it was possible. One may claim that the right moment to begin this process was in the Middle Ages or even in the Antiquity when people would perform several different jobs. However, a further reflection shows that before the 19th century – when workers began to succeed in fighting for their rights – almost every country in the world perceived a “labour revolution” as superfluous. Furthermore, even in the 18th century, the factory employment

was not substantial enough to engage in the battle for passing their law¹. When these circumstances are taken into consideration, it is not surprising that the most significant changes in the approach to employees were made in the last two centuries. Yet one might argue with equal justice whether those regulations are adequate satisfying.

It is beyond doubt that in terms of political and economic changes which appeared in the 19th, in the 20th and in the beginning of the 21st century, the employment legislation was constantly improving. By the same token, the number of new institutions and solutions in labour law was considerably increasing. Regarding that situation, they were both supporters and opponents of almost every new regulation. This can be illustrated by the employers disagreeing on the matter of the burdens of litigation in labour law when the New Deal was entering into force². Not only did the employers protest, but the employees and the scholars as well. By the way of contrast, the authors of the New Deal had been at first the greatest supporters of this programme, including the solution of the issue of litigation in employment regulations. However, the protests resulted in adjusting the New Deal to social opinion. Let that example above suffice to show that it is a matter of fact that labour law is constantly changing due to many heated public debates. It is true that when a regulation is highly unacceptable, the probability of abolishing the law is frequently high. Nevertheless, the facts remain that this probability is insignificant as far as legal loopholes are concerned.

This article will attempt to indagate the issue of termination of employment according to the current law regulations in the following countries: Poland, the United Kingdom, Egypt and Hungary. It would appear that the best way to examine some labour law systems is to compare them, which brings us to the way of examination being applied in this dissertation. The main aim of this work is to answer the question whether some changes in the current labour law - especially considering the termination of employment regulations, need to be done. To this end, a profound insight into the articles of the job legislation would be made. What is more, it would be considered if *de lege lata* and *de lege ferenda* demands are constantly needed.

2. THE DEFINITION AND THE CIRCUMSTANCES OF TERMINATION OF EMPLOYMENT

2. 1. Poland

“Termination of employment” may be defined in many ways. However, most members of law societies claim that the term denotes a situation when the employment –known as a relation between an employee and an employer, ends. It is widely acknowledged that this may happen in two ways – an employee decides to resign from work or can be dismissed. From this facts we may conclude that both parties of the agreement do have the right to end their relationship³.

¹ S. Deakin, *Timing is Everything: Industrialization, Legal Origin and the Evolution of the Contract of Employment in Britain and Continental Europe*, “Regulating Labour in the Wake of Globalisation. New Challenges, New Institutions.”, Oxford and Portland, Oregon 2008, p. 67-87.

² C. Estlund, *Rebuilding the Law of the Workplace in an Era of Self-Regulation*, “Regulating Labour in the Wake of Globalisation. New Challenges, New Institutions.”, Oxford and Portland, Oregon 2008, p. 89-113.

³ J. M. Ramirez-Machado, *Domestic work, conditions of work and employment: A legal perspective.*, “Conditions of work and employment Series”, No. 7, International Labour Office, Geneva 2003, p. 1-100.

The labour law is regulated in the Constitution of the Republic of Poland⁴. As it will be exemplified, there is a number of articles according to which a right to work is one of the most significant human rights. Take for instance article 24:

“Work shall be protected by the Republic of Poland. The State shall exercise supervision over the conditions of work.”

As a matter of fact, the article above is situated in the first chapter of Polish constitution entitled “The Republic” which is believed to consist of the most fundamental rights. In connection with article 24, there are brief statements under Article 33 paragraph 2, Article 65, Article 66, Article 67 and Article 68 referring to employment law. Determined by Article 24, they contribute to provide: equal rights in every occupation, freedom of choosing a profession and a place to work, safe and hygienic working conditions, social security and health protection.

It is difficult to resist the conclusion that the Constitution of the Republic of Poland defines only the minimum standards of rights⁵ and it is necessary for further legislations to be more specified on the issue of employment, the termination of it included.

In itself, there exists a Labour Code in Poland⁶. The conditions of terminating job agreement are described in Section 2 “General provisions on the termination of an employment contract” under Article 30 and in Section 3 “Termination of an employment contract with notice.” Furthermore, this regulation provides security in case of ending an employment in Section 4 “Rights of the employee in the case of an unjustified or unlawful termination of the employment contract by the employer.” It may seem that in consonance with the Polish Labour Code the employee is widely protected. However, the same law enables a contract termination by the employer without notice in cases described under Section 5 “Termination of an employment contract without notice.”

As has been indicated, Section 3 and Section 4 of the Labour Code are focusing on the rights of the employee as long as termination of employment is concerned. For instance, what is remarkable is a legal possibility for the employee to be given some paid time off (from 2 to 3 days) in order to search for a new job post. Doubtless is the conclusion that it situates employers in quite a satisfying position. Conversely, the right to appeal against the notice to the Labour Court is claimed to be one of the most ingenious idea in this legislation.

Reflection will suggest a doubt moving on to evaluating Section 5. There is no escaping the fact that a legislation that allows an employer (under some conditions) to terminate an employment contract without notice may not always be practically adequate. This is far from saying that this regulation is unneeded as far as they are workers who in fact violate their basic duties, commit a crime or lose a license required to perform a specific job. It remains to be seen that the circumstances in the labour cases differ, especially whilst considering violating basic duties. It may appear that for some employers an employee not being observant enough is violating their basic duties, no matter the reason of their behaviour is. In fact there are some situations when being less attentive at work should be pardonable, for

⁴ The Constitution of the Republic of Poland from 1997 (No. 78, item 483).

⁵ M. Wujczyk, The right to social security in the Constitution of the Republic of Poland, “The Right to Social Security in the Constitutions of the World: Broadening the moral and legal space for social justice.”, International Labour Organization, Geneva 2016, p. 180-190.

⁶ The Labour Code of Poland from 1974 (No. 24, item 141).

example when a worker has an ill child or suffers after a family loss. What is more, one might remember that job termination should be based on objective facts, not for example due to age discrimination⁷.

When we analyse the Polish Labour Code, it can be easily observed that some changes ought to be inserted to make the legislation more specific. In connection with that issue it is worth knowing the solutions which were made in some other countries. However, it is worth mentioning that the Polish law has to be adjusted to the European Union regulations, for example connected with the labour inspectorates⁸

2. 2. The United Kingdom

One of the main similarities between the Polish Labour Law and the law of the United Kingdom is that both regulations provide solutions in case of doing harm being the result of ending an employment. However, the United Kingdom employment regulations are situated in many different acts, such as: The Employment Rights Act, Pensions Act, The National Minimum Wage Act and The Working Time Regulations. What is more, there is also a legislation that not only refers to rights connected with working, but also to the other life aspects, for instance The Equality Act. There is no doubt in the fact that it must be obeyed as far as several occupations are concerned, but it is vital to provide equality in many other life situations.

There is a marked tendency for those who are the supporters of the United Kingdom labour law to claim that placing employment legislation in many different acts results in making the job rules more specific. For instance, they declare that the Human Rights Act might influence the employment legislation⁹. In comparison, as it was introduced before, in Poland the most vital information can be found in The Constitution of The Republic of Poland and in the Polish Labour Code. Those regulations are sometimes slightly too general and might enable creating an opportunity - for both the employer and the employee, to bend the law which tends to be a recurrent issue among Polish society. A moment's reflection shows that the Polish legislators ought to refer to the pattern of the United Kingdom law. On the other hand, passing many acts undoubtedly has its advantages, but there are also some drawbacks involved. It emerges that the more acts there are, the harder it is for human beings to be aware of their rights. More to the point, the opponents of the United Kingdom labour law claim that there are some aspects of the rights of employees not mentioned in the Human Rights Act¹⁰. Examples of the disadvantages can be multiplied and in taking this case into consideration the best solution is to find the right balance between creating more specific regulations and passing too many acts.

Focusing on to the circumstances of termination of employment in The United Kingdom, and what follows – the consequences and possibilities for both the employee and the employer, it is worth mentioning that there are plenty of regulations connected with that issue. The labour law in The United Kingdom provides, on a different note than in Poland,

⁷ See more about age discrimination in Poland: M. Zysk, Age Discrimination Law in a Country with a Communist History: The Example of Poland, *European Law Journal* 2006, p. 371-402.

⁸ G. Falkner, Institutional Performance and Compliance with EU Law: Czech Republic, Hungary, Slovakia and Slovenia, *Journal of Public Policy* 2010, p. 101-116.

⁹ S. Palmer, Human Rights: Implications for labour law, *Industrial Law Journal* 2000, p. 343-366.

¹⁰ See more: K. D. Ewing, The Human Rights Act and Labour Law, *Industrial Law Journal* 1998, p. 275-292.

a substantial number of solutions for the employees in case of ending employment without the agreement of both contract parties.

There are several claims possible to be made by the employee when a dismissal is concerned, frequently being called “principal claims”. They can arise when: ending employment is wrongful or unfair, the problems with redundancy payment appear, there is a failure in giving the reasons of dismissal in paper or whether discrimination because of any reason might be involved¹¹ (Russell, 23). The British labour law differs a wrongful dismissal and an unfair dismissal which enables the former employees to find a solution that suits their situation the best.

2. 3. Egypt

It occurs that the employment law in Poland and the Egyptian job regulations are declared in both countries in acts – called Labour Code and refer to employees’ and employers’ rights. At the same time, they might be perceived as basic legislations, meaning it is worth remembering that in Egypt both parties of each employment contract have to obey many other acts of the law in force, for instance: The Child Law, The Law Regarding to the Rehabilitation of the Disabled or The Egyptian Civil Code. This is similar to the situation in Polish law where one cannot break the laws of The Constitution of the Republic of Poland and many other legal acts.

Moving on to characterizing the Egyptian employment regulations, it is vital to explain that the situations when a termination of an employment is possible occur whilst examining Article 69 of The Egyptian Labour Code¹². More to the point, the act mentions 9 specific cases, emphasizing the fact that it is not permitted to dismiss a person unless these circumstances appear. Some of them are described quite specifically, as: absence without an explanation, assuming a false identity or being drunk or intoxicated whilst doing a job. However, other situations enabling termination of employment are slightly too general, for example, competing with the employer in the same activity. It is a matter of fact that the clarification of that case depends on the party of the contract. Thus to take one example, both the employer and the employee might participate in one competition, not necessarily organised in their place of work. The question is whether that is also competing under Article 69 of The Egyptian Labour Code or does the competing refer only to the internal job relations, meaning the position that each one has in the specific company. It seems reasonable to assume that the employer who is capable of dismissing an employee, would perceive it as bending the employment regulations. By the way of contrast, the worker might not agree with considering this behaviour as competing.

This brings us to the brief reflection on termination of employment in Egypt. The labour law in that country is an example of a regulation where the legislation is perceived as very specific. Few will concur with that, focused on claiming that those regulations should be widely described which would result in preventing misinterpreting the law. Although the Egyptian employment conditions are widely described, the situations when parents send their young children to work are not rare¹³

¹¹ T. Russell, A guide to UK employment law, available online: <http://www.tim-russell.co.uk/upimages/employment%20guide.pdf> (2017-10-15).

¹² The Labour Code of Egypt from 2003 (No. 12).

¹³ J. Wahba, The influence of market wages and parental history on child labour and schooling in Egypt, *Journal of Population Economics* 2006, p. 823-852.

Analysing the Egyptian Labour Code is required whilst considering changes in the conditions and circumstances of termination of employment so as to avoid a situation in which there are many articles and examples providing obeying employees rules only in theory. What ought to be vital is adjusting the legislation to the most common situations in every workplace.

2. 4. Hungary

In Hungary there is a Labour Code dated in 2012¹⁴ whose regulations also refer to termination of employment. It would seem that a new act – passed only a few years ago, ought to meet the expectations of the working society and be inspiring whilst making some changes in the Polish legislation. The changes made refer especially to performing work to the ability of an individual person¹⁵. One cannot but wonder whether making an in-depth examination of this legislation might actually lead to perceiving such a young act as positive or negative.

It is a matter of fact that not only does the Hungarian Labour Code describe the circumstances when it is possible to terminate an employment, but also the situations when it is prohibited. The examples when it is not permitted are as follows: during pregnancy or maternity leave or during a leave absence which was taken for raising children and not getting paid for that. These regulations are both obvious and specific, so in view of those facts, should be considered positively.

Surprising as it may seem, it appears to be more problematic whilst analysing the articles permitting termination of employment. A notable example is Section 78 of the Hungarian Labour Code:

“(1) An employer or employee may terminate an employment relationship without notice if the other party:

- a) willfully or by gross negligence commits a grave violation of any substantive obligations arising from the employment relationship; or
- b) otherwise engages in conduct that would render the employment relationship impossible.”

Take for instance the situation when the negligence is concerned. It is dependable on the conditions of work what should be considered as a negligence which is quite similar to the situation in the Egyptian Labour Code. However, one may claim that the Hungarian employment regulations are specific enough and there is nothing to be changed in this Labour act. Frankly speaking, there is an element of truth in those opinions.

3. CONCLUSIONS

The *de lege lata and de lege ferenda* postulates appear in almost every branch of law and the labour law is not an exception in this case. The major aim of the demands is to frequently improve the position of an employee and to make an employer obey the rights

¹⁴ The Labour Code of Hungary from 2012.

¹⁵ J. Hajdú, The right to social security in the Hungarian fundamental law (Constitution), “The Right to Social Security in the Constitutions of the World: Broadening the moral and legal space for social justice.”, International Labour Organization, Geneva 2016, p. 180-190.

of each worker. Therefore, making law regulations more specific is claimed to enable the employee to be widely protected and, more generally – develop the labour market.

On the other hand, whilst taking all the aforementioned facts above into consideration, it is worth mentioning that the likelihood of passing a Labour Code which would be very specific cannot be very high. Brief reflection submits a painless answer – explaining every situation in an employment act would make it substantially longer which might result in people not being eager to read and adjust the law. It would seem that some other ideas might be considerably desirable.

The foregoing discussion has attempted to examine 4 solutions in different countries where termination of employment is considered. After having an in-depth insight into the job regulations in Poland, the United Kingdom, Egypt and Hungary, it is difficult to resist the conclusion that the labour legislation is still too general. It is a recurrent issue due to perceiving specifying the acts as being deteriorating to obeying the law.

Finding a right balance in passing a law and enabling employees wider protection ought to be one of the most vital aims in current labour regulations. That means making the rules more specific in other acts which will describe every termination of employment condition in a way that the employers would not be able to bend the moral rules or find a way out of the law.

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