

Supreme Court decides that employers can demand information on employees' additional work activities

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Facts

Decision

Comment

In a January 11 2017 judgment (I PK 25/16), the Supreme Court ruled that an employer can demand that an employee inform it of any additional activities that he or she undertakes during the employment period. If the employee fails to do so, this can justify his or her employment contract being terminated upon notice.

Facts

The employee in the case at hand worked as the head of a research department for a research institute on an open-ended employment contract. Pursuant to Section III.3 of the contract, the employee was obliged to inform his employer about additional activity (irrespective of its legal basis) if the scope of such activity was similar to that of the research institute.

During the employment period, the employee cooperated with an entity carrying out research and development and did not inform his employer of this undertaking. Based on the above circumstances, the employer terminated the employee's contract with three months' notice. The employee appealed the dismissal and demanded compensation for unlawful termination of his employment contract.

The first-instance court ruled in the employee's favour and ordered the employer to pay compensation. The second-instance court overruled the judgment as, in its view, the reasons indicated in the termination notice were correct and justified the termination of the contract upon notice. The court indicated that the cooperation between the employee and the entity carrying out the research and development (which was similar to that of the employer) constituted a breach of Section III.3 of the relevant employment contract and, as such, could result in the employer losing trust in the employee. The employee appealed against this judgment to the Supreme Court.

Decision

The Supreme Court ruled that an employer can demand information from an employee if the employee undertakes additional activity during the employment period, irrespective of whether such additional activity is performed within an employment relationship or on another legal basis.

Pursuant to Article 22(1) of Section 1(6) of the Labour Code, an employer may request persons seeking to be employed and employees to provide information regarding their work experience. In the court's view, based on the above provision, an employer is entitled to demand from its employees information regarding not only their work experience before the commencement of their existing employment, but also any additional gainful activity undertaken during the course of employment. Based on an employer's request, an employee must inform the undertaking of any new activity undertaken (irrespective of its legal basis), its cessation and the reasons therefore.

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At the same time, the court confirmed that the parties to an employment relationship may include an employee's obligation to inform his or her employer of any additional activity which is similar to that of the employer in an employment contract. This requirement should be understood as a realisation of the obligation to take care of the employer's interests. If such a provision is included in the contract, the failure to provide an employer with this information justifies the termination of an employment contract upon notice.

Comment

The judgment confirms the Supreme Court's existing position that an employment contract may include a provision which imposes an obligation on the employee to inform his or her employer about any additional activity that is undertaken.

The court's second conclusion concerning data protection is new and may raise doubts regarding its compliance with the Labour Code. Namely, Polish law is strict regarding the scope of information concerning:

- a person seeking employment; and
- a person who is employed.

Interpreting the right to ask for information regarding work experience as enabling an employer to ask for information concerning every gainful activity conducted during the course of employment (ie, its undertaking and cessation and the reasons therefore) may be considered too extensive. Unless the Supreme Court's position is confirmed in subsequent judgments, if an employer wants to bind an employee with such an obligation, a relevant clause should be included in the employment contract and be justified by the employer's interests.

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