

DIMENSION OF UNILATERAL SHAPING OF THE CONTENT OF THE NOMINATIVE EMPLOYMENT RELATIONSHIP

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Abstract

The notion of nominative employment relationship indicated in the title refers mainly to employment relationships by appointment in the public sector with a special employee-service legal status determined by professional pragmatics, with an expanded catalog of duties and a strengthened system of responsibility, as well as special rights not present on the grounds of general employment law.

Keywords - employment relationship, legal actions, disciplinary punishment.

Introduction

In the catalog of the duties of the appointees, the obligation of the employee to submit to orders changing the content of the employment relationship (duty of availability) is mentioned, among others, in the normatively described scope. In this regard, it should be noted that the provisions of the pragmatics provide for a sufficiently wide range of possibilities to unilaterally shape (change) the content of the employment relationship to recognize that the employee's availability is one of its characteristic features, distinguishing the nominative relationship from contractual relationships. The importance of this characteristic in the status of nominees has a solid historical basis. Due to the fact that the complex status of these subjects - apart from the obligatory element - also includes a public element connected with holding an office (function), the indicated feature should be seen as an ideological reference to the regulations of the Act of 17 February 1922 on the State Civil Service, which created nominative employment based on an administrative bond, assuming - in exchange for special professional rights - a far-reaching availability of civil servants towards the official authorities, stricter obligations together with strict liability for their violation, as well as hierarchical subordination to the superior [2].

Chapter IV of the Law on the Civil Service, which dealt with this issue, provided for the possibility of transferring an official to another position, either ex officio or at the request of the official, with the only basis for change being the criterion of “good service”. A specific form of a change in the official relationship was also the transfer of an employee to a state of inactivity; during this time, he or she would receive the full salary due to him or her, and this period would count towards a pension. Even today the above-mentioned jurisdiction upholds the principle, characteristic of the law of official relations, of the increased competence of the decision-maker in terms of unilateral influence on the disposal of the employed person, dictated by “official” needs or “the interest of the service”. [5].

The analysis of the current legal regulations indicates that the unilateral change of the nomination relation can be the consequence of circumstances and events distinguished on the basis of different criteria, among which the most important should be the criterion concerning the subject and the mechanism of changes. In view of the first of the indicated criteria, we can speak of changes concerning the subjects of the employment relationship, the grounds for its establishment or the content of this relationship, while in view of the second, of transformations resulting from changes in the legal status, from legal actions or from legal events. Subjective changes result from changes on the part of the subjects of the employment relationship, which in practice refers only to changes (transformations) of the employing entity.

In the literature it is emphasized that in transformations of this type the rule of succession, arising from Article 231 of the Labor Code, applies, which means that the employment relationship is continued, and in place of the previous employer a successor entity enters by operation of law. It is possible, however, that the legislator constructs for the purpose of a particular case different principles of the considered changes [4]. The change of the basis of employment leads to the substitution of the hitherto nominative employee bond with a different basis of employment relationship, most often employment contract. Such a change, as a result of the regulation of a specific legal norm, is most often of a general nature and is usually dictated by systemic changes in the functioning of a particular segment of the public service. The opposite situation is also possible, involving the change of the contractual employment relationship into an appointive one, which, however, is of an individual nature, and may be the result of special qualification (examination) procedures of persons applying for appointment, or the passage of a normatively described professional career path crowned with the replacement of the contractual basis of employment with an appointive basis. The change in the

content of the employment relationship by appointment relates to the rights and obligations of its parties. The literature emphasizes that this may refer to the supplementation of the legal relationship with new rights and obligations of the parties or to the limitation, extension or exclusion of the existing rights and obligations. At the basis of the considered change may lie both changes in the legal status leading to the transformation of the content of the employment relationship by force of law, as well as modifications resulting from legal actions and events [1].

The subject of further considerations will be the analysis of possibilities and limits of unilateral shaping of the content of the nominative employment relationship by employers, superiors (service managers) and other entities equipped with the power to modify the rights and obligations of employees (e.g. disciplinary commissions). The starting point of the analysis is the statement that - unlike in the contractual employment relationship - the structure of the legal relationship existing due to the procedure of making an act of employee nomination and arising as a result of that act has a complex content manifested in the simultaneous connection of the parties by basic relationships of a public law nature (service) and an obligation nature (employee). Due to the size and mutual distribution of public and obligatory elements in their content, they can take the form of public-obligatory relations (e.g. judges, prosecutors), obligatory-public relations (e.g. civil servants, Supreme Chamber of Control auditors) and obligatory relations with public-law elements (e.g. teachers, science employees).

Employee pragmatics are special regulations in relation to the Labor Code, which means that by virtue of references contained therein or pursuant to Art. 5 of the Labor Code, the provisions of the Labor Code apply in matters of the employment relationship to the extent not regulated by it. The scope of this application will depend on the degree of saturation of the legal relationship created on the basis of the appointment with the obligatory elements: the higher the saturation, the higher will be the significance of the Labour Code in regulating the status of a given category of subjects, the lower it will be [4]. As a result, such a relationship consists of norms determining the public-legal sphere of the nominee's status, which define his/her relations with the body that is not an employer, most often in connection with the act of entrustment, deprivation (loss) of position or change of the place of performing the position (service relationship) and disciplinary relations, as well as of norms determining the obligatory sphere related, in principle, to the relations between the nominee as an employee and the employing entity as an employer, related to the process of providing work (employment relationship).

The above, while indicating the role of the service body and the employer in the legal relationship, at the same time constitutes the scope and distribution of the managerial powers of the employing entity in nominative employment relationships and the service powers of the service body in nominative employment relationships.

1. Changes in the employment relationship resulting from a legal act

In the material sense, they refer to the possibility of the competent entity to make changes to the content of the employment relationship by way of a legal transaction, with respect to the place of work, official position (type of work), remuneration (salary). Some authors also include here the effects of circumstances causing refraining from work as a result of unpaid leave, transfer into unemployment status, suspension in performing duties.

The possibility of making such changes expresses the principle of employees' availability, which is fundamental for the law of industrial relations. The availability, in the most general meaning, means legally permissible possibility of making unilateral changes by a superior to the essential elements of the employment relation together with a correlated with this action the obligation of an employee to submit to the disposed changes. The controversy concerns the relation between this term and the concept of "subordination" and whether the notion of availability should be connected only with the permanent or also temporary changes of the employment relation [6].

According to some authors the disposability is a special manifestation of the subordination including the obligation of the employee to submit to unilateral changes in the content of the employment relationship, of permanent character. According to another opinion the disposability can also mean the obligation of the employee to submit to unilateral, temporary changes in the employment relationship, but it is not equal to the concept of subordination. The subordination is understood here as a competence-subordination relation within the complex employment (service) relation, occurring between the employee and the employer, who by making use of the competence, called an order, actualizes the obligation of the employee [3].

With the presented proposals distinguishing the concepts of disposition and subordination it is necessary to agree. In the accepted meaning subordination means the obligation to carry out the orders that are included in the content of the obligations resulting from the act creating the employment relationship (service) and that have their basis in the regulations of the prag-

matics. Disposability involving the obligation of the employee to submit to unilateral acts changing the content of the employment relationship does not, therefore, fit into the presented scheme. The above means that while the subordination is connected with the execution of the orders updating or making concrete the obligations which make up the scheme of the employment (service) relationship, the availability means the obligation of the employee to submit to the acts of the superior which change or significantly modify the scheme of this relationship, affecting its further existence in its current shape, within the limits set by the law [6].

2. Transfer to another job

Legal regulation of the change in the content of the employment relationship (official relationship) concerns, first of all, the institution of transfer to another place or position, which is a regulatory feature of the majority of standards. The change may consist in promoting the employee, transferring him to a lower position (demotion) or transferring him to an equivalent position or another position (in the same office, in another office in the same locality, in an office in another locality). Due to the period of transfer, one can speak of temporary and permanent (permanent) changes. The indicated institution is characterized by considerable variety and diversity, taking into account the nature and specific conditions of functioning of a given service. Due to the scope and limits of legal determination of the act of change, we can distinguish between transfers conditional on the fulfilment of normatively determined conditions of material nature, and transfers not conditioned by material conditions, possible at any time at the request of the employee or with the consent of the parties [9].

The material conditions indicate the conditions under which the employee is obliged to be available. As a rule, the pragmatic rules make the possibility of making the considered change conditional on the fulfilment of a positive premise expressed by an indefinite valuation phrase, e.g. “the needs of the office”. (employees of state offices, civil service, PIP), “special needs of the office” (employees of state offices), “interest of the service”, “special interest of the service” (civil service employees), “service needs” (employees of the NIK), “justifiable emergency” (employees of state offices, prosecutors, counsels of the Attorney General’s Office), “consideration of the dignity of the position” (court registrars) or a vague descriptive phrase such as “reorganization of the office” (state employees and civil servants), “abolition of a position”, “abolition of a court or department”, “transfer of the seat of the

court” (court registrars), “permanent incapacity” (employees of state offices, court superintendents) [1].

The legislation also sets out negative prerequisites limiting or preventing the unilateral implementation of a specific change, expressed in terms that are not evaluatively defined, such as “important personal or family reasons” (employees of state offices, probation officers, PIP inspectors), “particularly important personal or family reasons” (employees of the PIP, civil service) or facts defined descriptively, e.g. “pregnancy status”, “care of a child under 14 or 15 years of age” (employees of state offices, civil service, probation officers, PIP inspectors). The content of the terms under consideration will be in each case determined by the competent supervisor, who - depending on the way the case is regulated - enjoys a nonuniform margin of interpretation and evidence [5].

In the case of references to the phrases specified in the assessment (e.g. “special needs of the office”), the margin of discretion is the greatest, but the superior should indicate what needs are involved and justify that they are so important and significant that they require a limitation of the employee’s rights. In other words, the content of these terms must be concrete. In the cases of references to certain phrases defined descriptively the superior is, as a rule, deprived of the discretionary leeway (e.g. when evaluating the premise of “pregnancy status”) or this leeway is limited (e.g. when evaluating the premise of “abolishment of the position”) [5].

In procedural terms, the changes conditioned by the material premises take the form of formally and materially unilateral or formally unilateral, and materially bilateral legal acts of the superior changing the content of the employment relationship. In the first situation, these are the acts of a competent authority containing only the statement of will of the employer or the head of the service (the authority “directs”, “transfers”, “orders”, “delegates”, “imposes the obligation to take up work in another unit”, “appoints to another post”, etc.). In the analyzed situation, the superior may unilaterally, in a legally binding manner, determine the situation of the employee, without the necessity of obtaining his/her prior consent for making the change. It should be noted that the material and procedural aspects of transferring an employee to another position have not been regulated in the pragmatics, according to an unequivocal logical criterion that can be established. This concerns both the abovementioned, very heterogeneous normative terminology, which defines the designations of the notion describing the transferring action, as well as the determination of the entity competent to undertake the considered act [3].

In contrast to the above situation, the condition of the correctness of the change occurring in the form of a formally unilateral, and materially bilateral legal act, is the submission of an appropriate declaration of will of the employee (the authority may transfer “with the consent” of the person concerned). In this case, the superior cannot unilaterally determine the employee’s employment situation in a legally binding manner, because a necessary component of the factual state preceding the intended change is the employee’s prior declaration of will consenting to the proposed change. However, the material and formal effects do not occur simultaneously here, because the former is a component of the preparatory proceedings (preceding the decision), and the latter a component of the decision-making proceedings. The expressed consent, while not being a component of the content of a formally unilateral act, is nevertheless a condition for its effectiveness.

The supervisor’s right to transfer the employee to another job, which is a function of the consent expressed by the supervisor, is rationed by maternal, custodial or special personal or family reasons of the employee. The concept of ‘acting with consent’ must be understood strictly and means that the exercise of that power by the employer (head of service) is subject to the employee’s prior approval of the content of the intended decision concerning his transfer. Despite the fact that in material terms such a transfer is a bilateral act, nevertheless - due to its formal unilateralism - this act may be regarded as a kind of equivalent, but not a substitute for the institution of the amending agreement [2].

There is no doubt that the element of availability gives the nominative employment relations a specific character of “service”, however, it has its normative limits delineated by the provisions of individual professional pragmatics. Disposition cannot, therefore, be equated with total freedom of a superior to make unilateral changes to the content of the employment relationship, but means only that the employee is obligated to submit to only those unilateral acts changing the type of work (position) and place of work (service) within the type of work (service) specified in the act of appointment, which are authorized by law. This means, therefore, that the discussed discretion does not come into play in those cases where a certain area of the content of the employment relationship has been excluded at all from the scope of the superior’s competence to take unilateral acts changing the content of this relationship, as well as in situations where the law makes the admissibility of the superior’s act changing the conditions of work (service) dependent on the employee’s prior approval. The use of the principle of availability, apart from the material premises, is also limited by the competence premises (indicating

which entity: the employer, the head of the service or another is competent to take such an act), procedural premises (specifying the required procedure prior to the transfer) and possibly temporal premises (specifying, in the case of ad hoc changes, the maximum period for which the transfer can be made).

The transfer of an employee to another job, but within the structure of a specific organizational unit, is, as a rule, within the authority of its manager. In turn, the power to transfer an employee to another office is reserved to the authority of the head of the service. When assessing this correctness in terms of the legal consequences arising from it, it could be assumed that in a situation where the transfer of an employee to another position falls within the scope of the employer's exclusive powers, such a case should be qualified, both in the material and procedural sense, as a case concerning the employment relationship. This would be an institution similar to the institution of unilateral change in the type of work regulated in Article 42 paragraph 4 of the Labor Code in cases justified by the needs of the employer, dictated by the need to mitigate the difficulties occurring in the organization of the work process [1].

However, the situation in the second case should be assessed differently. Although the act of transfer in terms of the subject refers to the employee, in terms of competence it belongs to the powers of the authority located outside the structure of the employing unit (the head of the service), while in terms of the subject - it concerns primarily an organizational action serving the proper (rational) deployment of personnel in the service, and in some cases a different shaping of the scope of the powers (competencies). The change of the employment relation (type of work or place of its performance) is here subordinated to the organisational action, fulfilling an instrumental role towards it. Entrusting the right to transfer an employee to an entity situated outside the structure of the employer, which is a managerial (superior) body in relation to both the organisational unit in which the transferred employee is currently employed and the unit to which the transfer is made, is a simple consequence of the fact that this activity, as going beyond the scheme of mutual obligation of the two parties to the employment relationship (the employee and the current employer) and involving a third party (the future employer), cannot be interpreted only using the concepts of the employment relationship. The service authority here does not act on behalf of the employer (as its statutory representative), but on behalf of the service, for it would be difficult to deduce that the right to unilaterally and sovereignly transfer an employee to work for another employer falls within the original competence of the entity currently employing that employee, which is matched by the obligation of the future employer to accept that employee.

Undoubtedly, the above justifies the statement that the transfer in question goes beyond the scheme of the content of the employment relationship, but it is included in the category of the service relationship, as it is a unilateral and authoritative decision of the service authority (head of the service), regulating the legally individualized interest of the employee, made for reasons justified by public reasons (the interest of the service), and not because of the person and the interest of the employee [8].

Transfers not determined by material reasons may take place at the initiative of the employee - at his/her request (application) or ex officio, but with the consent of the employee, which in both cases essentially concerns the transfer to work in the same or another position with another employer. Unlike in the previously discussed situation, making such a change is possible at any time and it is not limited by the fulfillment of certain conditions of material nature, which determine the correctness of the action, which results from the consensual nature of the analyzed act. From the essence of the analyzed institution it follows that the source of the initiative of the employee applying for a change are not so much justified public reasons (the interest of the service), but the interest of the employee [9].

The situation may be different, however, when the initiative of change comes from the employee's superior. In a typical situation, the right to make such a change belongs to the head of the service (e.g. the Minister of Justice in relation to court registrars, the Prosecutor General in relation to prosecutors). In another normative variant, the transfer is made by the head of the unit in which the employee is to be employed (after the employee submits a request for transfer to another unit or his/her consent to such a transfer and the heads of the offices agree on the transfer of the employee). The construction under consideration occurs, inter alia, on the grounds of the pragmatics of teachers, civil servants and the civil service. From a substantive point of view, both constructions of transfer under consideration are based on an implicit (in the case of an application for transfer by an employee) or explicit (in the case of an employee's consent to a transfer) prior agreement (consensus) concluded, in the first situation, between the employee and the head of the service and, in the second situation, between the employee and the present and future employer or between two employers. Formally, however, the considered transfers have a unilateral character, because - after exhausting the required procedure leading to a consensus - they are made by the head of the service or the head of the unit to employ the employee [7].

Analyzing the changes involving the will of the employee and the heads of offices, one could, at first glance, consider that we are dealing with a trans-

fer located by virtue of normative regulation within the construction of the employment relationship, because it takes place with the consent (at the request) of the employee within the framework established by the agreement concluded on this issue between the current and future employer.

However, against such a conclusion is the fact that the transfer, after exhaustion of the procedure of the required agreements, takes place on the basis of a formally unilateral act of the head of the office which is to employ the transferred employee. It means that - due to the mentioned formal unilateralism - such a change may be treated as a specific counterpart, but not a substitute of the so-called tripartite agreement, encountered in the contractual labour law, where the consensual declarations of will of all parties, i.e. the future and the present employer as well as the employee, are not only a condition for the validity of the act, but also a material component of the content of the legal action taken. Therefore, also in this case, there are grounds for assuming that equipping the entity situated outside the structure of the employment relationship linking the transferred employee with the employing entity with the formally unilateral right to shape the situation of the employee goes beyond the scheme of the employment relationship as a commitment of two parties, indicating the business nature of the operation under consideration.

The transferor here acts neither on his own behalf nor on behalf of the employer employing the transferred employee (as his legal representative), but on behalf of the service. The right to formally unilaterally transfer the employee to work for another employer does not belong either to the original competence of the entity currently employing the employee, to which the obligation of accepting this employee by the future employer corresponds, much less to the competence of the entity that is to employ the transferred employee with the correlated obligation of the current employer [2].

3. Suspension from work

Suspension may be a consequence of an obligatory or optional legal action of the competent entity or it may result from a statutorily determined legal event. It may also be a form of preventive measure applied by virtue of the prosecutor's decision under Article 276 of the Code of Criminal Procedure. [7].

The purpose of this institution is to deprive the employee of the right to perform official acts (duties) for a definite period of time, to remove the employee from undertaking activities arising from the performance of a particular type of work, in connection with which the alleged act was committed. The institution of suspension in activities (duties) is analysed both in the con-

text of the change in the content of the employment relationship (it is argued that it is a special form of a change in the employment relationship, or a legal construction separate to the change in the employment relationship), and of disciplinary responsibility (sanction) (the grounds for suspension lie in the charge, which is the subject of the investigation preceding the disciplinary proceedings, and the institution itself is usually placed in the system of regulations concerning disciplinary responsibility).

It is true that suspension of an employee may cause a temporary change in the content of the employment relationship, but the essence of the act under consideration is not to modify the content of the employment relationship, but to achieve a specific preventive objective realized by removing the employee from performing his/her activities. Possible change of the content of the employment relation is here only a consequence of the suspension of the employee in his duties, and not its aim. A person suspended in his/her professional duties (activities) may not perform his/her work, which is tantamount to temporary suspension of the exercise of professional competences, rights or duties. The legal status of a person suspended in activities is not uniformly regulated, and the differentiation of rights depends primarily on the reason for suspension. The most significant change concerns the right to remuneration and other benefits [2].

The salary situation of the employee in the case of suspension on the basis of a legal action of a competent authority is not uniformly regulated. According to the prevailing solutions, in such a case the employee retains not only the right to remuneration, but also to other benefits due under the employment relationship (e.g. state officials, court superintendents, members of the civil service corps, UP experts, NIK and PIP employees). The above means that in the sphere under consideration the suspension does not produce any legal effects, and the legislator operates here with a legal fiction, equating the period of suspension with the period of actual performance of duties as an employee. However, there are also such variants possible, in which [1]:

- a) the basic salary of the employee may be reduced to a maximum of half, depending on the family status of the suspended person, while depriving the right to salary supplements and remuneration for overtime hours (teachers, science employees). The authority, on the basis of the criterion given, has both the discretion to make a possible decision reducing the salary and the scale of the reduction,
- b) the salary may be reduced by up to 50% (e.g. attorneys general, prosecutors). The criterion for the discretionary decision to suspend and the scale of the reduction in remuneration in this case are the circumstances of the particular case and the interests of the service.

The reinstatement of the previous remuneration is possible in the event of the repeal of the act of suspension by the competent authority or the elimination of such act from circulation in appeal proceedings. In the event of a discontinuance of criminal (disciplinary) proceedings or an acquittal, the employee shall be paid the remainder of the remuneration. As a rule, this does not apply to conditional discontinuance of criminal proceedings.

Some regulations contain separate provisions concerning the effects of suspension decisions in the sphere of other employee rights of the suspended person, in particular, counting the period of suspension towards seniority, stipulating that this period is counted towards the period of employment on which employee rights of the suspended person depend (e.g. civil service, pragmatics of court and prosecutor's office employees). In the absence of such a regulation, it should be assumed that the suspension does not cause any negative effects in the employment sphere of such a person [5].

4. Reinstallation

Inactive status is an institution that is currently regulated with respect to employees only in the teachers' pragmatics. It was also provided for in the Civil Service Acts of 1996 and 1998, which are no longer in force, but subsequent Civil Service Acts have abandoned the regulation of this institution [2]. The transfer into the status of inactive causes a temporary deprivation of the employee of the possibility of active functioning in his/her profession combined with his/her readiness to resume employment at the call of a superior. The justification for such a transfer in the case of teachers is the partial liquidation of the school or organizational changes resulting in a reduction of the number of departments in the school or changes in teaching plans, which make it impossible to continue the employment of a teacher on a full-time basis. From the procedural point of view, it is a formally unilateral, and materially bilateral, action, because it is undertaken by the employer represented by the headmaster in relation to the teacher, but on condition that the employee submits a relevant application [2].

In order to be effective, the transfer to the status of inactive does not require a changing notice, nor can it be equated with a changing agreement. Inactive status results in suspension of the employee's obligation to perform work for reasons attributable to the employer, but it does not deprive the teacher of the right to a monthly basic salary and other employee benefits, including social allowances, until the employment relationship expires (Art. 20.6). It does, however, constitute a source of change in the employment relationship in that

it deprives the employee of the right to certain benefits to which active teachers are entitled, e.g. the right to certain salary supplements or, as it is claimed in the literature, the right to holiday leave or health leave [5].

5. Changes in the employment relationship resulting from the imposition of a disciplinary penalty

From the above presented changes of the employment relation that occur as a result of a legal act of a superior one should distinguish the changes that occur as a result of the execution of a disciplinary punishment [1]. They can have the character of positive or negative changes shaping the status of the employee. In the first case the matter concerns penalties aimed directly at the transformation of the content of the employment relation, whereas in the second case the penalties serve the purpose of temporarily depriving the employee of the expectative (expectation) of the transformation of the content of the employment relation, e.g. of a promotion in office or salary. The set of penalties that directly cause transformation of the employment relationship includes reassignment of the employee to a lower position, transfer to another place of employment, removal of functions, reduction of remuneration, reduction of official rank or a change involving simultaneous assignment to a lower position and reduction of remuneration or imposition of a reprimand with a reduction in basic remuneration. The transfer of an employee to a lower position involves the assignment of a type of work related to a lower level of the official hierarchy and usually connected with a different setting of duties, responsibilities and remuneration, which in the literature is referred to as demotion (civil servants, counsels of the Attorney General's Office) [8].

Transfer to another official position is provided for in the pragmatics of judges and prosecutors and means the designation of another court or prosecutor's office in which the transferred employee will perform official duties. Another change, i.e. removal from the function or position, does not lead to termination of employment, however, it is a source of transformation of the existing employment relationship, in which the employee remained before removal from the function (position) by exclusion of the rights and obligations arising therefrom and transformation of the remuneration for work. The modification of the employment relationship involving a reduction in remuneration as a result of a disciplinary penalty has been provided for in the civil service pragmatics. The reduction is temporary (for a period not longer than 6 months) and concerns basic remuneration. The penalty of a reduction in a civil service rank leads to a similar result, since the rank held determines the amount of the civ-

il service allowance. A change of working conditions involving simultaneous transfer of the employee to a lower position and a reduction in remuneration has been envisaged for the employees of the Supreme Audit Office and the State Labour Inspection, whereas the punishment of a reprimand with a reduction in basic salary has been envisaged for court registrars [9].

A specific, negative form of the situation considered are the disciplinary rulings, which contain an indirectly expressed ban on changing the content of the employment relationship (official relationship) by temporarily depriving the punished employee of the possibility of promotion (civil servants, employees of the Supreme Audit Office, the State Labour Inspectorate, the Civil Service, court superintendents, advisors to the General Prosecutor's Office) or depriving him of the right to perform managerial functions in a given unit (employees of science and higher education, experts in the Supreme Chamber of Control) [2]. The prohibition may also result from the imposition of such a punishment on the employee, with which the law links the effect of temporary deprivation of the opportunity (expectation) of official promotion (judges, prosecutors). This means that in the period covered by the disciplinary prohibition, the competent official superior has no legal possibility to take acts changing the content of the employee's employment within the scope covered by the disciplinary restrictions.

It should be added that the transformation of the content of the employment relationship (official relationship) generally takes place directly on the basis of the disciplinary ruling, which means that the effect in the form of modification of the employee's status or inclusion of the employee in the ban on promotion occurs automatically with the pronouncement of the disciplinary penalty (its becoming final), and not on the basis of a separate decision, which the authority would be obliged to take following the imposition of the disciplinary penalty constituting a change in the content of the employment relationship. This means that the employer's actions aimed at enforcing such a disciplinary ruling are of a purely technical (recording) nature and do not consist of making a declaration of intent regarding a change in the employment relationship, as this occurs as a result of a legally valid punishment ruling. Similarly, the consequences connected with the occurrence of further, e.g. salary-related, effects of a specific disciplinary ruling should be assessed. They are not conditional on taking a separate legal action, which would only constitute a formal basis for further changes in the employment relationship adjusting the amount of remuneration to the new position.

This stems from the fact that a change in the conditions of remuneration as a result of punishing an employee with, for example, a reduction in rank

in the civil service, or transferring him to a lower post, is automatic in nature, because the grades and positions are assigned correspondingly specific rates of service allowance and job classification categories. The above is tantamount to a statement that the employer is not left any margin of discretion as to the possibility of choosing a different consequence connected with the penalty, which is in fact tantamount to depriving him in this regard of substantive decision-making (managerial powers) [6].

6. Changes in the employment relationship resulting from a legal event

They refer to the situation of transformation of the content of the employment relationship by force of law, as a result of an event that is not a legal act. They have a normatively determined character and may result from an act or omission of the employee himself, or occur independently of his will. They refer to events that cause the suspension of the employment relationship by force of law such as temporary arrest of the employee or his/her appointment to military service [2].

Most of the pragmatics establish a rigid rule that in the case of suspension by force of law in the event of temporary arrest the employee receives half of the remuneration to which he/she was entitled until the date of temporary arrest (civil servants, members of the civil service corps, local government employees, professional probation officers, advisors to the General Prosecutor's Office, NIK employees, UP experts). According to other solutions, remuneration during the period of temporary arrest is reduced to a maximum of half - depending on the family status of the suspended person, with simultaneous deprivation of the right to allowances and remuneration for overtime hours (science employees, teachers). This construction has a complex character. On the one hand, the suspension is connected with the obligatory effect of losing the right to the indicated allowances and reduction of (basic) remuneration by force of law, but on the other hand the competent authority has the right to moderate the scale of remuneration reduction due to the indicated criterion of "family status". [1].

The issue of the content of the employment relationship in connection with the appointment of an employee to non-professional military service is regulated differently. The pragmatics of judges and prosecutors governing this issue assume that when a judge (prosecutor) is called to such service, his/her official rights and obligations are suspended for the duration of the service. However, these subjects retain their position and the right to remuneration.

neration, and the time of military service is included in the period of the service relationship in the position of a judge. This means that - in addition to remuneration for work - the indicated persons were deprived for that time of all other benefits related to the status of active judges and prosecutors [5].

Conclusion

The above discussion leads to the conclusion that the employment law regulates the issue of unilateral changes in the employment relationship of appointed employees in an exhaustive and comprehensive manner, both in terms of substance, competence and procedure. Such changes may be the result of actions taken by the employer, the head of the service, the disciplinary committee and other entities, e.g. the prosecutor, as a consequence of a legal action, a legal event or a disciplinary ruling.

Limiting the considerations to the most typical changes resulting from the actions of entities situated within the structure of the employment or service relationship, it should be noted that due to the fact that at the decision-making stage such changes are always formally unilateral in nature (which also applies to transfers to another job carried out at the request or with the consent of the employee) the employee is in the position of an unequal party in relation to the entity - the disposer of the change. The employee is in the position of an unequal party to the entity - the person disposing of the shift. Submission to the disposed change is within the scope of his obligations, even if the change is the result of a prior request of the employee or an agreement between the parties. While the nature of the changes resulting from, e.g. a disciplinary ruling or suspension from work excludes the possibility of applying to them the provisions of the Labour Code concerning the procedure and form of termination of conditions of work and pay, the exhaustive and comprehensive regulation of the institution of changes resulting from a unilateral act of a superior transferring to another job means that also in this case there are no grounds for applying the provisions of the Labour Code concerning the changing termination.

The Code-imposed changing termination notice and transfer to another position by a superior's act, regulated by the pragmatics, are two categorically separate institutions realizing different principles and assumptions, on which the obligatory (based on the equality of parties) structure of termination of work and pay and the service (based on the unequal status of parties) structure of transfer to another job are based. Pursuant to the above, an appointed employee, who was transferred to another position by an act of his/

her superior pursuant to the provisions of the relevant pragmatics, and thus without the need to make the termination of his/her work and pay, does not have the claims to which he/she is entitled in the case of an unjustified or illegal termination of an employment contract (Article 45 of the Labour Code) or of its conditions (Article 45 of the Labour Code in connection with Article 42 of the Labour Code).

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