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## CENSORSHIP AND WHISTLEBLOWING IN A WORKPLACE: SELECTED ISSUES

**Abstract.** The article will present four cases of abuses against Polish whistleblowers, including the last one from the period of the COVID-19 pandemic. Therefore, this article aims to draw attention to the problem of abuses against whistleblowers in Poland in the context of the employee's obligation to care for the welfare of the workplace and the integrally related loyalty to the employer. The author used the upcoming implementation of the Directive of the European Parliament and the Council (EU) 2019/1937 of 23 October 2019 on the protection of persons reporting breaches of EU law as a background for her considerations. The author claims that the legislator in Poland will confront the challenge of redefining the issue of loyalty in labor law and the related freedom of expression of employees.

**Keywords:** employee loyalty, COVID-19 pandemic, whistleblower, whistleblowing, Polish labor law, employees, dismissal, censorship.

## CENZURA I SYGNALIŚCI W MIEJSCU PRACY: WYBRANE ZAGADNIENIA

**Streszczenie.** W artykule zostaną przedstawione cztery przypadki nadużyć wobec polskich sygnalistów, w tym ostatni z okresu pandemii COVID-19. Celem niniejszego artykułu jest zwrócenie uwagi na problem nadużyć wobec sygnalistów w Polsce w kontekście problemu pracowniczego obowiązku dbałości o dobro zakładu pracy i integralnie związanej z tym lojalności wobec pracodawcy. Autorka wykorzystała, jako tło rozważań nadchodzącą implementację dyrektywy Parlamentu Europejskiego i rady (UE) 2019/1937 z dnia 23 października 2019 r. w sprawie ochrony osób zgłaszających naruszenia prawa Unii. Autorka stawia tezę, zgodnie z którą ustawodawca w Polsce stanie przed wyzwaniem ponownego określenia zagadnienia lojalności w prawie pracy i związanej z tym wolnością wypowiedzi pracowników.

**Słowa kluczowe:** lojalność pracownicza, pandemia COVID-19, sygnalista, polskie prawo pracy, pracownicy, zwolnienia, cenzura.

### 1. INTRODUCTION

Whistleblowers are one of the most effective ways of detecting and preventing activities and irregularities that threaten the public interest. Reporting about irregularities is of great importance in times of crises that may weaken economic

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processes, and normal supervision over the decision-making process may be impaired. To respond effectively to this crisis requires transparency, honesty and accountability in government, and the need for regular and reliable information from our public institutions. Suitable whistleblower protection and confidential reporting channels are therefore essential to ensure transparency, compliance with security rules and, more generally, public accountability in managing this crisis. Whistleblowing in the workplace is the employee's disclosure of irregularities in the workplace's functioning by informing people who have the opportunity to take action to prevent such irregularities (Jubb 1999, 77–94).<sup>1</sup> Employees are often the most reliable source of information about inappropriate situations in the workplace. However, revealing them exposes themselves to several risks, including harassment, harassment, and even dismissal. Negative associations related to reporting are remnants of communism in Poland. In Poland, labor law does not provide adequate protection, among others, to employees, interns, apprentices, former employees, and even people who perform atypical work.<sup>2</sup> The whistleblower's role is not limited to revealing the irregularity, which is the fundamental element of the disclosure process; however, as the recent whistleblower's actions in Poland show – the whistleblower is a crucial element in the recovery process of the institution where the disclosure took place. Consequently, whistleblowing is necessary for the fight for fairness and the public interest, especially during the COVID-19 pandemic. The purpose of this article is to explain the problem of abuses by employers against whistleblowers in Poland in the context of a violation of basic employee obligations, including the principles of loyalty and freedom of expression. The coronavirus pandemic exposed the problem of employee censorship, especially at workplaces whistleblowers who made public disclosures in the general interest. The problem of employee censorship is a broad problem, which can be noticed, especially where there is a confrontation of employee loyalty to violations in the workplace, which will also be presented in this paper.

## 2. CENSORSHIP AND LOYALTY IN A WORKPLACE

In this paper, I assume that employee censorship is inherently related to the issue of loyalty to the employer, which, according to some authors, may have two dimensions – internal and external. From the point of view of this study, the most

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<sup>1</sup> Due to the lack of a definition in the domestic doctrine, the author follows the definition of P. Jubb, who describes reporting of irregularities as “an intentional, voluntary act of disclosure that enters a public register and is made by a person who has or had privileged access to the data or information of an organization about non-trivial illegality or other offense or actual, suspected or anticipated, which implies and is under the control of that organization, to an external entity that has the potential to remedy the offense”.

<sup>2</sup> For instance: fixed-term contract or temporary work.

controversial aspect is caused by the external aspect, i.e. disclosure of information to the employer outside, but only those that may constitute irregularities or dysfunctions in the workplace. The debate on whistleblowing is not gaining momentum, even though there is little to implement the Directive's provisions on whistleblower protection in Poland. The pandemic, which has become the cause of many cases of abuse against employees reporting irregularities in Poland, is also not conducive to this situation.

The coronavirus pandemic has caused a renewed reflection on the problem of employee censorship, which is of great importance for proper employee–employer relations. The Polish Labor Code does not base the concept of loyalty on reciprocity, assuming that “when someone does something for you, you should also do something for that person” (Gerrig, Zimbardo 2021, 546). The Labor Code imposes a duty of loyalty on an employee towards the employer in Art. 100. § 1 point 4 of the Labor Code Any form of breach of the employee's duty to care for the company's welfare is punished with disciplinary dismissal as a form of retaliation against employees. Most often, the employer refers to Art. 52 § 1 (the Labor Code): “The employer may terminate an employment contract without notice due to the employee's fault in the event of a gross breach by the employee of basic employee duties”. In such a situation, the employee may prove before the labor court that the reason for the termination of the employment relationship was untrue or indicate that the employer violated the terms of the formal termination of the employment contract without notice, within the scope of Art. 52 § 1 of the Labor Code above, such as failure to notify the trade union of the intention to terminate the employment contract with the employee or dismissal of the employee after more than one month from the date the employer became aware of the employee's misconduct. The coronavirus pandemic is a considerable challenge for the economies of the world countries and a test for labor law and the security of the broadly understood work process. The diversified response to the pandemic resulted in increased social control of government actions, primarily to minimize the effects of the pandemic on the economy. The state is obliged not only to stop the pandemic but also to take measures to strengthen economic processes. It is also necessary to maintain, as far as possible, work processes that will make it possible to secure the professional and social interests of employees as much as possible. In Poland, in March 2020, many sectors of the economy almost ceased to function correctly, and in others, activity was drastically limited. This had a negative impact on the masses of employees, including people employed under civil law contracts and self-employed persons. The legal status regarding the prevention of COVID-19, including employee rights, is changing very dynamically in Poland. The current crisis has shed light on two problems in our economic system that have been underestimated in recent years: securing the work process and freedom of speech. During the crisis, freedom of speech played a significant role in Poland that cannot be ignored. The current crisis has revealed the full importance of the

value of freedom of speech in signaling irregularities in workers' work processes. The economy cannot function properly without workers and freedom of speech and their response to irregularities, especially under a pandemic threat. Employers who own capital are not the only ones at risk. All employed are also exposed to dangers – threats to health and safety. Most importantly, occupational health and safety, control and settlement of working time, and responsibility for the equipment necessary to perform them must be controlled even in the face of a pandemic. It should be indicated that the time of a pandemic may serve many cases of abuse against employee rights, e.g., censorship, retaliation against employees who, by reporting to e.g. the media, reveal abuses against employee rights or other irregularities. As mentioned above, the regulations are designed to protect workers' rights during a pandemic, although not to the full extent. The pandemic revealed in Poland a substantial legal loophole in protecting employees based on a traditional employment contract and other employed persons who, regardless of the reasons, make public disclosure of abuses. Moreover, the disclosures made in Poland were very costly for the whistleblower who disclosed them outside. In the first case concerning the whistleblower from the pandemic period and those whistleblowers who disclosed irregularities outside the pandemic period, whistleblowers suffered retaliation, i.e., disciplinary dismissal and the related condemnation of such action by the employer.

### 3. CENSORSHIP AND THE PUBLIC INTEREST

International literature indicates that disclosure of classified information or documents is justified if it serves the public interest (Boot 2020, 1–34).<sup>3</sup> The problem with this thesis is that the concept – public interest – is too often vague and broad. This is highly worrying as it leaves potential whistleblowers without sufficient certainty of protection, not only against the possible disclosure of their identity, but also against retaliation by their superiors and finally in court in the event of the whistleblower's dismissal for disclosure of public irregularities. With the untrammelled definition of the public interest or the process of determining it, the risk of abuse against whistleblowers, especially during a pandemic, can be tremendous. Polish legal doctrine also has a problem with defining the concept of acting in the public interest. This concept is still very abstract (e.g. Boć 2004, 24; Zdyb 1991, 215). In the context of the presented issue, at the present stage of the lack of provisions protecting whistleblowers and the high degree of abstractness of considerations, it will not be possible to use the Polish doctrine, for which there will undoubtedly be time.

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<sup>3</sup> The problem of the definition of the public interest is extensive and will not be the subject of this article.

Realizing what whistleblowers are guided by is crucial from the whistleblower's point of view, not only by the employer but also by society. The main factors that take part in the whistleblower's decision-making process are: broadly understood morality (Bouville 2008, 579–585), low efficiency (Miceli, Near, Rehg, Scotter 2012, 923–954), public interest (Kobroń-Gąsiorowska 2019, 333–343; Schubert 1960, 22), loyalty to the employer (Larmer 1992, 125–128), nature of the breach (Miceli, Near, Schwenk 1991, 113–130), but it can also be a financial incentive.<sup>4</sup> However, these factors may change as the information process develops.

Despite the lack of provisions protecting whistleblowers, Polish labor law knows high-profile cases of disclosure of irregularities that initiated the improvement of working conditions of many employees and discussions on reporting irregularities. A well-known example is Bożena Łopacka, an employee of a well-known supermarket chain in Poland. In the years 2000–2004, Łopacka was the manager of the “Biedronka” shop. On March 7, 2003, she filed a lawsuit against the Portuguese owner of “Biedronka” – the company Jerónimo Martins Dystrybucja – for payment for 2,600 worked and unpaid overtime. Simultaneously, Bożena Łopacka revealed information about the terrible working conditions in the supermarket chain “Biedronka”, which employed about 10,000 people. Workers loaded the goods onto handcarts, not electric ones, and pulled overloaded carts. The employee became a symbol of Poland's struggle and workers' rights and became the first whistleblower. Following her, other employees also filed claims for payment of overtime.<sup>5</sup>

The most prominent case of acting in the broadly understood public interest is a midwife from a hospital in Nowy Targ. An employee posted a photo on Facebook wearing a protective mask made of a disposable handkerchief. There was also a thread of a makeshift face mask made of a paper towel. The midwife wanted to report how challenging the conditions are in Polish hospitals. In response to the post on Facebook, the employer handed the midwife a statement about the employment contract termination without notice because she violated essential employee obligations, ie, care for the workplace's good.<sup>6</sup> The above-mentioned facts confirm the problem, because it was not the only case when whistleblower in Poland experienced retaliation for reporting irregularities at the workplace.

The ECtHR made also statements about the Polish whistleblowers described below. One of the doctors, Ryszard Frankowicz, issued a private opinion on the treatment of one of the patients at the Tarnów Hepatology Clinic. Shortly after

<sup>4</sup> Common e.g. in the USA.

<sup>5</sup> Available in Polish at: <http://www.hfhrpol.waw.pl/precedens/aktualnosci/koniec-sprawy-bozeny-lopackiej-przeciwko-jeronimo-martins.html> and <https://wyborcza.pl/1,75398,3558611.html>

<sup>6</sup> Available in Polish at: [https://serwisy.gazetaprawna.pl/zdrowie/artykuly/1463864,koronawirus-w-polsce-uciszanie-lekarzy.html?fbclid=IwAR0TugvIMeeqz1pb5vX7Rk\\_xqbgY8-8SmWbaB8bKujPfiVWYeZVfI76aHtE](https://serwisy.gazetaprawna.pl/zdrowie/artykuly/1463864,koronawirus-w-polsce-uciszanie-lekarzy.html?fbclid=IwAR0TugvIMeeqz1pb5vX7Rk_xqbgY8-8SmWbaB8bKujPfiVWYeZVfI76aHtE)

that, disciplinary proceedings were instituted against him before a medical court, where he was charged with violating Article 52 of the Polish Code of Medical Ethics. In connection with which disciplinary proceedings were instituted against him, punishing him with a reprimand. In a general manner, the doctor stated that, as a doctor, he should have the right to express his opinion on the treatment given to his patient by another doctor. He emphasized that the Medical Court's reprimand was an element of persecution by medical authorities and was caused by the fact that he was the President of the Association for the Protection of Patients' Rights in Poland and fought to defend the interests of patients. The case ended in the ECtHR, which indicated that the disciplinary sanctions for expressing a critical opinion on the patient's treatment constituted an interference with his right to freedom of expression. This interference was provided for by law and was consistent with the legitimate aim of protecting others' rights and reputation. The Court indicated that the domestic authorities had not examined whether the applicant had been defending a socially justified interest. The Court considers that the doctor's opinion did not constitute a personal attack on another doctor but contained a substantive analysis of the patient's medical records. Thus, it concerned issues of public interest. (Judgment of the ECtHR of December 16, 2008 in *Frankowicz v. Poland*, application no. 53025/99). The case of Dr. Barbara Sosinowska was also the subject of proceedings of the European Court of Human Rights. The doctor was a specialist in lung diseases at the hospital in Ruda Śląska. In 2004, the doctor critically assessed the superior's decisions regarding the diagnosis and treatment of patients. In this case, she wrote a letter to a regional medical consultant in lung diseases. On October 13, 2006, a case against her was brought to the District Medical Court in Katowice for disciplinary offenses specified in Art. 52 sec. 1, 2, and 3 and article 1 clause 3 of the Code of Medical Ethics, including for "openly criticizing the supervisor's diagnostic and therapeutic decisions in the presence of other colleagues and medical and non-medical staff." The Court reprimanded Dr. Sosinowska. The doctor submitted a complaint against this decision to the ECtHR. The Court found that there had been a violation of the doctor's freedom of expression. In the Tribunal's opinion, her criticism was substantive, and the action was aimed at drawing the attention of competent authorities to severe, in its opinion, dysfunctions in the supervisor's work. The Court noted that the medical courts did not consider whether the doctor's opinion was justified and expressed in good faith and whether it was aimed at protecting the public interest. The disciplinary courts focused solely on the fact that another doctor was criticized, which the Code of Medical Ethics found a disciplinary offense. As stated by the Tribunal, such an interpretation carries the risk of doctors refraining from providing patients with objective information about their health condition for fear of disciplinary sanctions (ECtHR Judgment of October 18 2011, *Sosinowska v. Poland*, application no. 10247/09). Moreover, the Tribunal indicated art. 10 of the Convention that freedom of speech is one of the fundamental

foundations of a democratic society and one of the primary conditions for its development and self-fulfillment of every person. The Court emphasized that the provision also applies to “information” that is favorably received or perceived as harmless or indifferent, but also to those that offend, shock or disturb. This is due to the principles of pluralism, tolerance, and an open mind, without which there is no “democratic society” (Judgments: *Oberschlick v. Austria* (no. 1), 23 May 1991, § 57, Series A no. 204; and *Nilsen and Johnsen v. Norway* [Grand Chamber], no. 23118/93, § 43, ECHR 1999 VIII). As in *Frankowicz v. Poland* the Court emphasized that Article 10 guarantees freedom of expression to “everyone” and applies to all kinds of information, ideas, or forms of expression, including when the type of purpose pursued is profit-oriented or relates to commercial activities. applicants (*Casado Coca v. Spain*, 24 February 1994, § 35, Series A no. 285 A; *Barthold v. Germany*, 25 March 1985, § 42, Series A no. 90; *Stambuk v. Germany*, no. 37928/97, § 43 52, 17 October 2002; and *Frankowicz v. Poland*, no. 53025/99, § 39, 16 December 2008).

#### 4. EUROPEAN UNION AND WHISTLEBLOWING LEGISLATION

The EU Directive on whistleblowers fulfills a significant legislative gap in European law and member states such as Poland. At the European level, the most critical changes in the field of law were initiated by the Council of Europe (CoE) and the extensive jurisprudence of the ECtHR. On November 26, 2019, the European Union faced a huge challenge, which consists in not only legal, but social implementation of the institution of reporting irregularities. Directive (EU) 2019/1937 of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law was published in the Official Journal of the European Union,<sup>7</sup> commonly called Directive on the protection of whistleblowers.<sup>8</sup> Starting from December 17, 2019, Member States have two years to implement in national legal systems regulations providing, inter alia, new

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<sup>7</sup> See: Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L 305, 26.11.2019, pp. 17–56.

<sup>8</sup> See more: European Parliament resolution on organised crime, corruption and money laundering: recommendations on action and initiatives to be taken (final report), (2013/2107(INI)), 23 October 2013, Strasbourg; European Parliament resolution of 23 October 2013 on organised crime, corruption and money laundering: recommendations on action and initiatives to be taken (final report), (2013/2107(INI)), OJ C 208, 10.06.2016, pp. 89–116, point 14; European Parliament resolution of 25 November 2015 on tax rulings and other measures similar in nature or effect (2015/2066(INI)), OJ C 366, 27.10.2017, pp. 51–95, point 19; European Parliament resolution of 16 December 2015 with recommendations to the commission on bringing transparency, coordination and convergence to corporate tax policies in the union (2015/2010(INL)), OJ C 399, 24.11.2017, pp. 74–91.

whistleblower protection institutions, which are primarily designed to provide legal protection to whistleblowers. As shown by the latest data from 21 out of 27 countries<sup>9</sup> The European Union has started the process of implementing the Directive. The Directive itself caused great enthusiasm among EU leaders. Frans Timmermans indicated that scandals such as Dieselgate, Luxleaks, the Panama Papers, or Cambridge Analytica could never have come to light if insiders had not spoken. Nevertheless, those who did it took enormous risks. The better the European Union protects whistleblowers, the more we will detect and prevent harm to the public interest, such as fraud, corruption, corporate tax avoidance, or harm to human health and the environment. In turn, Věra Jourová, Commissioner for Justice, Consumers and Gender Equality, added that the new rules could be safely called “game changer”. The new provisions are intended to support those who are ready to take the risk of exposing severe breaches of EU law.<sup>10</sup>

#### 5. THE RIGHT TO FREEDOM OF EXPRESSION AND THE LIMITS OF WHISTLEBLOWER LOYALTY

Whistleblowing (literally: informing)<sup>11</sup> in the workplace is an activity consisting in the disclosure by an employee of any irregularities in the functioning of the workplace by informing persons authorized to the concept of an action aimed at preventing identified abuses. Employees are most often the most reliable source of information about abuse in the workplace. By disclosing them, they expose themselves to high risk, such as: dismissal from work, harassment by the employer or, finally, exclusion by the co-workers themselves (Jubb 1999, 77–94; Banisar 2011; Huseynova, Piperigos 2018). Due to the historical past, the definition of whistleblower in Poland is marked by very negative associations. It is a holdover from the communist era (Kobroń-Gąsiorowska 2015, 82; Kobroń 2013, 296–300).

Notwithstanding, it can be argued that when the public is aware of the risk of misconduct by an institution (whether it is a public or private sector institution), public disapproval increases, and thus the perception of the employee who makes the disclosure changes. When the public knows what violation has been revealed and what retaliatory actions have been taken against the whistleblower, the sense of insufficient justice increases.

In Polish legal culture, the issue of whistleblowing is still very controversial and criticized for not providing adequate legal safeguards for a whistleblower. The whistleblower can be anyone, i.e., an employee, intern, apprentice, former employee, and persons outside the typical employment relationship (Kobroń 2013,

<sup>9</sup> See: <https://euwhistleblowingmeter.polimeter.org/#promises> (including Poland).

<sup>10</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_3441](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_3441)

<sup>11</sup> See: PWN Polish Dictionary, <https://sjp.pwn.pl/szukaj/informator.html>



296–302). In 2019, the S. Batory foundation<sup>12</sup> conducted a public opinion poll on the need to protect whistleblowers. Poles support the idea of informing about abuses in the workplace through internal and external reporting, e.g., to the media. Moreover, all forms of support for whistleblowers are supported, such as free legal advice, a guarantee of anonymity, protection against accusations of slander and infringement of personal rights, or a system of remuneration and compensation for whistleblowers dismissed from work and remaining in a court dispute related to the abuses they reported. Its role as a reporting mechanism for misdemeanors, fraud, and other forms of illegal or unethical behavior allows the public to become aware of violations and violations that would otherwise be detected, especially during the difficult period of the COVID-19 pandemic. Providing strong legal protection to whistleblowers is essential because the whistleblower protection regulations can protect whistleblowers against retaliation by their employers or co-workers and, above all, as it has already been indicated, whistleblowing can play a corrective role for the organization and the organizational culture prevailing there. Changing the image of whistleblowing will change the perception of “reporting” in Poland.

These and other circumstances will be important to redefine employee loyalty, which in the context of whistleblowing will be limited by the freedom of expression of employees in the context of reporting irregularities and the concept of employee loyalty. It is also worth pointing out that, for a post-communist country, some of the solutions adopted in the Directive will constitute a breakthrough in the protection of whistleblowers and the related two-dimensional freedom of expression of employees. Firstly, both the legislator and labor courts will be forced to redefine the notions of “the employee’s duty to care for the welfare of the workplace” and the integrally associated loyalty. Adequate protection of an employee-whistleblower under the Polish labor law defines at least two main elements: the right to freedom of speech of employees and determination of when the employee will be loyal, i.e., when he reports an irregularity noticed or when he refrains from reporting it.

It is difficult not to notice that in Poland, the concept of loyalty is an integral element of the employment relationship, as a subordination relationship based on the employee’s compliance with the obligations set out in Art. 100 of the Labor Code, but also the employment relationship. By the term employment relationship, I also mean non-employment forms of employment. The analysis of jurisprudence and doctrine leads to the conclusion that the lack of loyalty to the employee is the main reason for the termination of the employment contract, which weakens or causes the loss of trust (The judgment of the Supreme Court of 29 November 2012, II PK 116/2012). From the point of view of the universal principle of protection of the employment relationship or the employer-employee relationship

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<sup>12</sup> Available in Polish at: [http://www.sygnaLista.pl/wp-content/uploads/2019/06/Internet\\_Raport\\_sygnalisci\\_12-06.pdf](http://www.sygnaLista.pl/wp-content/uploads/2019/06/Internet_Raport_sygnalisci_12-06.pdf)

in performing work – loyalty is of great importance because it affects mutual trust and employee satisfaction at work. At the same time, it should be emphasized that both notions constitute an indefinite phrase, which ceases to be relevant in the context of whistleblowing. In the context of signaling breaches affecting security, it is reasonable to ask whether whistleblowing is a sign of lack of loyalty and distrust. On the contrary, the whistleblower's use of internal reporting channels manifests the employee's trust and loyalty to the employer. Is anyone who reports a misconduct first through internal reporting channels disloyal in the context of 52 § 1 of the Labor Code? (Kuczyński 2004, 2–7; Chobot 1983, 53–54; Witek-Barylska 2013, 83; Pokrzywniak 2013; Szewczyk 2013; Szewczyk 2007; Judgment of the Supreme Court of September 26, 2001, I PKN 638/00, Judgment of the Supreme Court of June 1, 2003, I PK 208/02).

In my opinion, the concept of loyalty must be seen in the context of reporting irregularities indicated in the Directive, in which the European legislator perceives the whistleblower as a source of reporting breaches in the employer. The Directive presupposes the idealistic assumption that the whistleblower will treat his employer as a thing. Whistleblowing is an act of opposition to the illegal activities of public or private organizations, which consists in the disclosure of those violations of the legal rights of citizens, government corruption, or corruption in public or private bodies that have an immediate or potential threat to collective public interests that are presented in the Directive as European public interest (Kobroń-Gąsiorowska 2019). The second dimension of the perception of loyalty is its definition by the doctrine of Polish labor law. In Polish labor law, there is a personal relationship between the parties to the employment relationship, which, according to this model, is to be based on trust and mutual loyalty (Borek-Buchajczyk 2018, 48). The relationship between private and public employers in Polish labor law is based on trust and loyalty. Employers, when terminating an employment contract with an employee with a notice period or terminating an employment contract without notice, due to the employee's fault, refer to loyalty, although the concept of loyalty is not defined in the notice.<sup>13</sup>

## 6. FINAL CONCLUSIONS

The COVID-19 pandemic has renewed the discussion on employee censorship through the prism of employee loyalty. As it turns out, employee censorship is a much broader problem in Polish labor law. The purpose of this short article was to identify the problem of the whistleblower situation, not least during the current COVID-19 pandemic. In the Polish context, the only way to retaliate against a whistleblower who has violated loyalty to the employer or care for the

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<sup>13</sup> The judgment of the Supreme Court of 22 April 2015, II PK 158/14, LEX No. 1681881.

welfare of the workplace is the so-called disciplinary dismissal due to a severe breach of primary employee duties, that is, the employee caring for the welfare of the workplace. I do not deny the obligation itself, which the Polish Labor Code imposed, but not only during the COVID-19 pandemic, it is a substitute for retaliation against whistleblowers.

Two central problems have been identified in the article. Firstly, courts still play a massive role in the protection of employees/whistleblowers in Poland, which do not judge in a discretionary manner whether a given disclosure has resulted in more benefits than losses for the public interest because the labor court in Poland only assesses the legitimacy of such dismissal in the event of dismissal. Unfortunately, in the context of whistleblower protection, this is insufficient as this approach qualifies the whistleblower as only an employee and not an employee of the whistleblower. Second, I see a growing need to redefine employee loyalty in the context of whistleblowing. The Polish legislator and courts must redefine employee loyalty, assuming that either such a concept does not exist because the employee who performs work receives remuneration for its performance or loyalty exists when an employee reports irregularities noticed at the workplace.

## BIBLIOGRAPHY

- Banisar, David. 2011. "Whistleblowing: International Standards and Developments". In *Corruption and Transparency: Debating the Frontiers between State, Market and Society*. Edited by Irma E. Sandoval. Washington: World Bank-Institute for Social Research. [https://www.researchgate.net/publication/228124587\\_Whistleblowing\\_International\\_Standards\\_and\\_Development](https://www.researchgate.net/publication/228124587_Whistleblowing_International_Standards_and_Development)
- Boć, Jan. Ed. 2004. *Prawo administracyjne*. Wrocław: Kolonia Limited.
- Boot, Eric. 2020. "The Feasibility of a Public Interest Defense for Whistleblowing". *Law and Philosophy* 30: 1–34. <https://doi.org/10.1007/s10982-019-09359-1>
- Borek-Buchajczyk, Renata. 2018. "Brak lojalności pracownika jako przyczyna rozwiązania umowy o pracę w orzecznictwie sądowym. Wybrane uwagi". *Annales Universitatis Mariae Curie-Skłodowska Lublin – Polonia* 65(2): 47–57. <https://doi.org/10.17951/g.2018.65.2.47-57>
- Bouville, Mathieu. 2008. "Whistle-blowing and Morality". *Journal of Business Ethics* 81(3): 579–585. <https://doi.org/10.1007/s10551-007-9529-7>
- Chobot, Andrzej. 1983. *Pracowniczy obowiązek dbałości o dobro zakładu pracy a ograniczenie zasady wolności pracy*. Poznań: Wydawnictwo Naukowe UAM.
- Gerrig, Richard. Zimbardo Phillip. 2021. *Psychologia i życie*. Warszawa: Wydawnictwo Naukowe PWN.
- Huseynova, Dilara. Katerina Piperigos. 2018. *Justice for justice: Protecting whistleblowers in the EU. Protection of whistleblowers – the why and the how*. College of Europe Transparency Group. [http://transparency.eu/wp-content/uploads/2018/04/WB\\_Transparency-Group-CoE-17-18.pdf](http://transparency.eu/wp-content/uploads/2018/04/WB_Transparency-Group-CoE-17-18.pdf)
- Jubb, Paul. 1999. "Whistleblowing: A Restrictive Definition and Interpretation". *Journal of Business Ethics* 21: 77–94. <https://doi.org/10.1023/A:1005922701763>
- Kobroń, Łucja. 2013. "Whistleblower – strażnik wartości czy donosiciel?" *Palestra* 12–13: 297–301.
- Kobroń-Gąsiorowska, Łucja. 2015. "Czy Polskę czeka era 'etycznych donosów'?" *Zeszyty Naukowe Towarzystwa Doktorantów UJ. Nauki Społeczne* 10: 81–92.

- Kobroń-Gąsiorowska, Łucja. 2019. „Interes Publiczny jako element podstawowy funkcji ochronnej prawa pracy w kontekście ochrony sygnalistów”. *Roczniki Administracji i Prawa* 2: 333–343. <https://doi.org/10.5604/01.3001.0013.3605>
- Kuczyński, Tadeusz. 2004. “O właściwościach pracowniczego obowiązku dbałości o dobro zakładu pracy”. *Praca i Zabezpieczenie Społeczne* 7: 2–7.
- Larmer, Robert. 1992. “Whistleblowing and employee loyalty”. *Journal of Business Ethics* 11: 125–128. <https://doi.org/10.1007/BF00872319>
- Miceli, Marcia. Janet Near. Michael Rehg. James Van Scotter. 2012. “Predicting employee reactions to perceived organizational wrongdoing: Demoralization, justice, proactive personality, and whistle-blowing”. *Human Relations* 65(8): 923–954. <https://doi.org/10.1177/0018726712447004>
- Pokrzywniak, Jakub. 2013. “Obowiązek lojalności jako element stosunku obligacyjnego”. *Monitor Prawniczy* 19: 885–889.
- Schubert, Glendon. 1960. *The Public Interest: A Critique of the Theory of a Political Concept*. Glencoe: Free Press.
- Szewczyk, Helena. 2007. “Pracodawczy obowiązek dbałości o dobro pracownika”. *Państwo i Prawo* 11: 69–81.
- Szewczyk, Helena. 2013. “Obowiązek współdziałania stron w wykonywaniu zobowiązań oraz obowiązek lojalności stron jako składnik zobowiązaniowych stosunków pracy”. *Monitor Prawa Pracy* 4: 173–178.
- Witek-Barylska, Ilona. 2013. *Lojalność pracowników współczesnych organizacji. Istota i elementy składowe*. Łódź: Wydawnictwo Uniwersytetu Łódzkiego. <https://doi.org/10.18778/7525-937-7>
- Zdyb, Marian. 1991. *Prawny interes jednostki w sferze materialnego prawa administracyjnego. Studium teoretyczno-prawne*. Lublin: Wydawnictwo UMCS.

### Legal Acts

- Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L 305, 26.11.2019, pp. 17–56.
- European Parliament resolution of 23 October 2013 on organised crime, corruption and money laundering: recommendations on action and initiatives to be taken (final report), (2013/2107(INI)), OJ C 208, 10.06.2016, pp. 89–116.
- European Parliament resolution of 25 November 2015 on tax rulings and other measures similar in nature or effect (2015/2066(INI)), OJ C 366, 27.10.2017, pp. 51–95.
- European Parliament resolution of 16 December 2015 with recommendations to the commission on bringing transparency, coordination and convergence to corporate tax policies in the union (2015/2010(INL)), OJ C 399, 24.11.2017, pp. 74–91.