Termination of Employment Relationship:
The Legal Situation in Poland

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Introduction

The report on the Termination of Employment Relationships in the fifteen Member States of the European Union was published by the European Commission in 1997. Enlargement of the European Union made it necessary to present a report on the termination of employment relationships in the ten new Member States.

The report on *the Termination of Employment Relationships - Legal Situation in Poland* presents different ways in which an individual employment relationship can come to an end. These are regulated by the Polish Labour Code of June 26th, 1974, numerously amended, as well as specific provisions of statutory Polish labour law. The basic tendency of the Polish labour law is to promote the legal equality of the parties (an employee and an employer) within employment contracts and guarantee the stability of employment relationship in case of dismissal by employer for economic reasons. The Polish report is structured along the same lines as the previous report on *The Termination of Employment Relationships – Legal Situation in the Member States of the European Union*, presented in 1997.

For the purpose of the Polish report the following terminology, used within the 1997 report, is used:

- Dismissal: Termination of employment relations at the initiative of employer. This includes dismissal attributable to the employer;
- Resignation: Termination at the initiative of the employee;
- Summary dismissal/resignation: Dismissal/resignation by the employer or employee respectively without period of notice;
- Constructive dismissal: Resignation due to the conduct of the employer.

1. Sources of law

(1) Constitutional status of the rules on the right to work

The right to work (*prawo do pracy*) has constitutional status in Poland, however, it is not being considered as a vested personal right. The Constitution of the Republic of Poland of April 2nd, 1997 (Dz.U. Nr 78, item 483) guarantees every individual, freedom of choice of employment and profession (art.65 sec.1). Legal obligation to engage in employment may be imposed only by the statutory legislation passed by the Polish parliament (*Sejm*) (art.65 sec.2). The state is required to conduct its policy towards ensuring full and productive employment by establishing programs to combat unemployment and to provide or promote vocational guidance, training and employment services (art.65 sec.5).

(2) International agreements and conventions

Poland has not ratified the ILO Convention 158 on the termination of employment relationships at the employer's initiative. The other ILO conventions related to the protection of the right to work ratified were:

- ILO Convention 135 concerning protection and facilities to be afforded to workers' representatives in the undertaking - ratified on June 6th, 1977;
- ILO Convention 145 on the continuity of employment of seafarers - ratified on October 10th, 1979;
- ILO Convention 151 concerning protection of the right to organize and procedures for determining conditions of employment in the public services - ratified on July 26th, 1982.

The European Social Charter of 1961 was signed by Poland on November 26th, 1991 and ratified on June 25th, 1997. The Revised European Social Charter was signed on October 25th, 2005.

(3) Sources of law and their hierarchy

There are the following sources of law regarding the termination of employment relationships in Poland. They are listed in the following order:

- Constitution of April 2, 1997;
- Labour Code of June 26,1974 (Dz.U. of 1988, No. 21, item 94 as amended);
- Statutory act of September 16, 1982 (Dz.U. of 2001, No. 86, item 953 as amended) on state employees;

- Statutory act of May 23, 1991 (Dz.U. of 2001, No. 79, item 854) concerning trade unions;
- Statutory act of December 29, 1993 (Dz.U. No. 199, item 1674 as amended) concerning protection of employees' claims in case of insolvency;
- Statutory act of March 13, 2003 concerning termination of employment relationships for reasons not related to employees (Dz.U. No. 90, item 844);

The legal rules concerning grounds for termination of employment relationships possess a *semi*-imperative character. Departure from statutory provisions by either collective agreements or the individual employment contracts is allowed if it is to the employee's advantage. Collective agreements may include provisions dealing with the legal rights and obligations of the parties to an individual contract. Social partners are free to regulate any matters related to the employment relationships, termination of employment contract included (e.g. extension of the period of notice), with an exception that their regulations do not obstruct the legal rights of the third parties (art.240 § 3 of the Labour Code). It is common practice though, that most collective agreements primarily regulate wages and hours of work.

Labour Code allows parties to the individual employment relationships to depart from the legal rules established either by statutory acts or collective agreements when such individual regulation is to the advantage of interested employees (art.18).

Due to the multiplicity of legal sources in the field of labour law, there is a strict hierarchy of legal sources. The hierarchy of legal sources is precisely and strictly regulated by art.9 of the Labour Code. This provision lists the Labour Code, and other statutory acts issued by the parliament, other statutory regulations – ordinances issued by the executive branch of the state government (Council of Ministers, Minister of Labour and Social Policy). These legal regulations set minimum standards of legal requirements where legal rights of workers and the legal duties of employers are concerned. The other sources of labour law listed in art.9 § 2 and 3 of the Labour Code, such as collective agreements, work regulations and by-laws may only extend the level of workers rights to that guaranteed by statutory regulations. The same principle applies to individual contracts of employment, which considered the sources of legal obligations.

(4) Role of judge-made law and custom

The only power the judiciary holds in Poland is the power of interpreting statutory laws and collective agreements. Judge-made laws play an important role in the interpretation of the sources of labour law and employment contracts, particularly in defining legal grounds for dismissal. This is due to the Polish Labour Code using general terms to define grounds for dismissal. For instance, termination of employment contract with notice should be based on the "just cause" (art.45 § 1).

There is no room for custom to play any role in regulation of termination of employment relationships.

2. Scope of rules governing the termination of employment relationships, special arrangements

(1) Ways of terminating an employment relationship

An employment relationship may come to an end by the virtue of labour law without further action of its parties. The cessation of an employment relationship may take place as the legal consequence of a declaration of will by one or both parties. An employment contract can be dissolved upon:

- mutual agreement of the parties (*porozumienie stron*) involved (art.30 § 1 item 1 of the Labour Code);
- a declaration by either party (an employer or an employee) with observance of the period of notice (*wypowiedzenie*) (art.32 §1 of the Labour Code);
- a declaration by either party but without observance of the period of notice (*rozwiazanie bez wypowiedzenia*) (art.52 § 1 and art. 53 § 1 of the Labour Code in case such decision is made by an employer; art. 55 § 1^1 of the Labour Code in case such decision is made by an employee);
- after the lapse of the period for which the employment relationship was concluded (*uplyw czasu*) (art.30 §1 item 4 of the Labour Code).

A declaration of either party of an employment relationship may be different and include: a dismissal (with notice, or without notice for cause) – when it is served by an employer, and a resignation (with notice without cause or without notice with cause) – when served by an employee.

(2) Exceptions or specific requirements for certain employees or sectors

In Poland there are special rules for civil servants. The statutory acts of September 16, 1982 concerning the state employees, of December 18, 1998 concerning civil servants, state that the employment relationship of those state employees and civil servants employed on the basis of an administrative act of the state government may be terminated only in cases listed in specific statutory acts listed above. Common rules apply to employees employed by the state and its institutions and to employees employed under the ordinary contract of employment. In Poland the ordinary rules do not apply to civil servants, employees employed by the central state government, employees employed by municipal authorities, teachers. Members of the armed forces and police officers are not considered employees under the art.2 of the Labour Code. Their legal status is regulated not by the rules of labour law but by the provisions of administrative law.

(3) Exceptions or specific requirements for certain types of contract

According to the Labour Code there are the following special features for employees employed under:

- fixed-term contracts of employment (*umowy o prace na czas okreslony*);
- apprenticeship contracts (*umowa na okres probny*).

In a fixed-term employment relationship concluded for a specific period of time neither party (an employer or an employee) may give notice of termination unless special agreement is made by the parties who concluded such contract for at least a period of six months (art. 33 of the Labour Code). Summary dismissal is possible in cases listed by the Labour Code (in case of serious infringement of basic obligations or duties). Fixed-term contracts of employment concluded with the purpose to perform certain type of jobs, cannot be terminated with notice. Ordinary rules apply to part-time employment relationships, probationary contracts and contracts concluded with the purpose of replacing another employee temporary relieved from his/her obligation to perform job for his/her employer (intermittent work, work on call, seasonal contracts). Contrary to the rules regulating termination of employment contract concluded for indefinite period, the terms of the termination with notice of above mentioned temporary contracts of employment are listed either in weeks or days.

Home workers, the self-employed and apprentices are not considered employees under the Labour Code. Their contracts do not constitute contracts of employment and their termination is subject to special rules.

(4) Exceptions or specific requirements for certain categories of employers

There are no exceptions or specific requirement against dismissals served by small employers. The law on protection against dismissal is applicable in all undertakings regardless of number employees employed. Due to social reasons the labour court may decide not to reinstate unlawfully dismissed employees whose contract of employment was terminated by the employer employing limited number of employees, if such reinstatement may be treated by the court as contrary to social rules (art.45 § 2 in conjunction of art.8 of the Labour Code).

(5) Exceptions or specific requirements for certain categories of employees

In general there are no exceptions. Periods of notice and severance payments vary between employees depending on their seniority (length of employment) with particular employer. Longer periods of notice to be observed by employers, apply to employees who have been employed by the same employer for more than 6 months (one month notice), or three years (three months' notice) (art.36 § 1 of the Labour Code).

Directors and managers at the highest managerial positions within the undertaking are not entitled to reinstatement regardless of the reason for the termination of their employment relationship (art.69 of the Labour Code) Although, the ordinary rules apply to managers and directors if they are employed under a contract of employment.

Fixed-term employment contracts may be terminated with notice by employers without reason. Shorter periods of notice apply during probationary periods of employment: 3 working days in case of two weeks probation; one week in case of probation longer than two weeks; two weeks in case of three months probation (art. 34 of the Labour Code) as well as other fixed-term contracts – 3 working days (art. 33^1 of the Labour Code).

3.1. Mutual agreements

Dissolution of an employment relationship with the mutual agreement of the parties is permissible irrespective of the type of employment relationship that binds the employer and employee. By concluding mutual agreement, the parties in the employment relationship may terminate any contract of employment, either concluded for indefinite, or definite period as well as any employment relationship established by nomination or administrative decision. The mutual agreement must be a result of an autonomous decision of both parties concerned, that is, it should not be compulsory.

(1) Substantive conditions

The general rules of civil law on contracts apply to a mutual agreement on the termination of an employment relationship. The parties of that agreement are free to decide the day and conditions of termination of employment relationship. The mutual agreement may be contrary to the legislation on job security. Freely concluded mutual agreement on the termination of an employment relationship, does not guarantee an employee any legal protection against the termination of an employment relationship provided by the state legislation. The mutual agreement is subject to judicial control, which may be exercised at the request of either party, claiming the given party did not express its will to conclude such an agreement. Generally, the labour court will control whether or not an employee who concluded such an agreement expressed his/her free will to enter into it. A mutual agreement concluded without an explicit declaration of the employees' wishes to terminate an employment relationship, may be declared null and void by the court. In the case of a pregnant female employee who did not know her condition (pregnancy) during the time the mutual agreement was concluded the Supreme Court ruled that such an agreement ought to be considered void (Supreme Court order of June 11, 2003, I PK 206/02, Monitor Prawa Pracy [Labour Law Monitor] 2004, No.4, p.4). It was argued that the pregnant female employee by concluding the mutual agreement lost her maternity rights.

(2) Procedural requirements

Only for purpose of evidence the mutual agreement should be concluded in writing. The written form requirement applies to cases of termination of employment contract with notice or without notice (art.30 par. 3 of the Labour Code). A mutual agreement concluded in oral form is not *per se* considered null and void. An employer is not obliged to consult in advance. with trade unions or work councils terms and conditions of termination of employment relationship by the way of mutual agreement. Only in cases, where the mutual agreement is considered as part of collective redundancies, the employees' representatives must be consulted by the employer.

Generally, there are no procedural requirements concerning termination of employment relationships by mutual agreements.

(3) Effects of the agreement

The legal consequence relating to the conclusion of a mutual agreement is the termination of an employment relationship.

Severance payments:

There are no legal entitlements to severance payments, unless agreed otherwise by the parties. If agreed severance payment is not paid by the employer, it has no effect on the validity of such agreement. Only the statutory act of March 13, 2003 on collective redundancies provides for severance payments to employees whose contract of employment was terminated either by the mutual agreement, or notice for reasons not related to that particular employee.

Unemployment benefits:

An employee is entitled to unemployment benefits if he or she looses work involuntarily. Termination of an employment relationship with mutual agreement does not guarantee a dismissed employee the right to claim unemployment benefit, due to the fact that he/she together with his/her employer was made responsible for termination.

Retirement pensions:

Termination of an employment relationship by mutual agreement does not influence negatively entitlements to public and private pension schemes.

Sickness insurance:

There are no effects on entitlements under public insurance schemes. Sickness benefits are paid to individuals who became ill within a period of 14 days (in some cases three months) starting from the day they ceased to be covered by the public health insurance scheme and maintain to be ill for at least a period of 30 days.

(4) Remedies

If an employee claims the mutual agreement is unlawful, or invalid, there is a judicial procedure established by the Code of Civil Procedure with the purpose of adjudication of labour law claims. The burden of proof is in general, with exception of claims of discrimination in employment, on the plaintiff. There is legal assistance for persons on a low income who are unable to pay the lawyers' fee. Trade unions may act on behalf of any employee regardless of membership. Legal proceedings may be brought before the labour court without any specific statutory time limit. However, an employee ought to bring evidence within 12 months from the day of the conclusion of the mutual agreement that he or she withdraws his/her previous consent to terminate the employment relationship by the mutual agreement. Legal action is possible within one year of termination.

(5)Vitiating factors

The general civil law principles concerning an error, threat and fraud are applicable in case of legal action brought with the purpose of declaring the mutual agreement null and void.

(6) Penalties

Only certain severe acts performed by the employer terminating employment relationships may be considered as administrative violations, which may lead to a fine (art.281 sec.3 of the Labour Code). However, they concern only the employer's violations of the workers' rights in cases of termination of employment contracts with notice or without notice..

(7) Collective agreements

Collective agreements do not regulate the terms and conditions of the termination of an employment relationship by the mutual agreement, even when there is no legal obstacle to settle this issue by social partners.

(8) Relations to other forms of termination

The termination process of an employment relationship is regarded either as a mutual agreement or as a dismissal. Mutual agreement in connection with a dismissal may occur when the parties to the employment contract, which was terminated by notice, agree to reduce the notice period. Summary dismissal in connection with a mutual agreement is also possible in case when one of the parties to the employment relationship to be terminated by the mutual agreement on an agreed day before that date unilaterally decides to terminate still effective employment relationship without previous notice.

3.2. Termination other than at the wish of the parties

The employment relationship may come to an end without further action of the parties.

(1) Grounds for an employment contract to come to an end by operation of labour law

A contract of employment is terminated without further action of the parties in the following situations:

- expiry of a fixed-term contract (art.30 § 1 sec.4 of the Labour Code);
- expiry of probationary period (art.30 § 2 of the Labour Code);
- completion of specific task (art.30 § 1 sec.5 of the Labour Code);
- death of the employee (art.63^1 § 1 of the Labour Code);
- death of the employer when his undertaking was not inherited by the survivor (art.63^2 § 1 in conjunction with par. 3 of the Labour Code);
- imprisonment of the employee for a period exceeding three months (art.66 §1 of the Labour Code).

(2) Procedural requirements

There are no procedural requirements in the case of termination of the employment relationship without further action of the parties.

(3) Effects of the existence of grounds for dismissal.

If there is one of the grounds listed above (1) the employment relationship is terminated *ex lege* (by the virtue of law).

Severance payments:

An employee is not entitled to any severance payment. There are no severance payments guaranteed by statutory regulations.

Unemployment benefits:

Employees are entitled to unemployment benefits under the condition that they meet the requirements stated by the act of April 20th, 2004 concerning the promotion of employment and labour market institutions (Dz.U. No.99, item 1001 as amended) on condition that they qualify for such benefits. Unemployment benefits may be claimed if the party in question is registered for a period of 7 days (at least), worked for at least 365 days as an employee within 18 months preceding his or her unemployment, and earned at least minimum wage.

Retirement pensions:

Termination by the virtue of law does not have an effect on the entitlements under public and private pension schemes.

Sickness insurance:

No effect on entitlements.

(4) Remedies:

Judicial remedies are available in case of disagreement between parties concerning termination of employment relationship by the virtue of law. An employee has the right of access to the labour courts. Legal claims with demand to declare that the employment relationship was not *ex lege* terminated may be brought without any specific time limit. Trade unions are entitled to start such legal action on behalf of any employee. They may also help their members who decided to start legal proceedings on their own. The burden of proof is in general on the plaintiff. There is no priority for remedy proceedings in these types of cases. The labour court is obliged to act *ex officio* in cases in which existence of the employment relationship is at stake. The court must be satisfied if it is proved that there are sufficient grounds for termination of an employment relationship by virtue of law.

(5) Penalties

There is no penalty due to the lack of employer's engagement in the termination of an employment relationship.

(6) Collective agreements

The role of collective agreements is very limited. In order to describe the potential function of collective agreements one has to run an extensive survey. It is due to the fact, that in theory, collective agreements may regulate any issues related to labour matters, which do not impose any restrictions on the rights of third parties. Some collective agreements may contain provisions on severance payments.

3.3. Dismissals in Poland: Overview

The Labour Code makes distinctions between:

- dismissal with notice, which is recognised as the standard way of the termination of an employment contract. The employment relationship is terminated at the end of a statutory or contractual period of notice. If the employer terminates with notice an employment contract concluded for a definite period of time, no grounds are required. In case of termination by an employer of an employment contract concluded for indefinite period, justified grounds ought to be stated.
- For summary dismissal which is recognised as a premature termination of the employment relationship before the end of a notice period, even when the notice is not served, the employer must present substantial grounds. Art.52 §1 of the Labour Code lists three grounds for the summary dismissal issued by the employer: serious violation of employee's basic duties; an evident offence that renders further employment impossible; lack, through employee's own fault, of professional qualifications. Art.53 § 1 of the Labour Code authorizes an employer to terminate an employment contract in case of employee's prolonged absence from work (1,3 or 6 months, depending on the reason for justified absence and seniority) due to the fact that it may complicate the organization of work. Art.55 § 1^1 of the Labour Code allows an employee to terminate an employment relationship without notice in case of serious violation of employer's obligation.

A dismissal (with notice and summary dismissal) is unjustified if it is not based on substantial grounds. That statement concerns termination of the contracts of employment concluded for indefinite period with notice and all types of contracts terminated without notice by employer. A dismissal with notice is unjustified if it is not a result of employee's behaviour or serious reasons related to the undertaking. The summary dismissal may be justified exclusively by misbehaviour of either party of the employment relationship.

The trade union representing an employee facing dismissal must be informed of the prospective termination of employment relationship. The negative opinion of the trade union which may be issued within period prescribed by the Labour Code (5 days in case of terminations with notice – art.38 § 2; 3 days in case of summary dismissal – art.52 § 3) does not affect validity of the dismissal, but enables dismissed employee to bring an appeal against the dismissal on the grounds that is unjustified.

If there are no justified grounds for dismissal, the employment relationship is nevertheless terminated but the employee is entitled to bring an appeal to the labour court and demand reinstatement or compensation for illegal and/or unjustified dismissal.

A termination of employment contract may be contested by the dismissed employee in the labour and social security court if it is either held to derive from illicit motives (e.g. employee's trade union activities), or it prejudices vital interest of the employee and it is not related to his/her professional conduct, personal character which are contrary to the interest of the undertaking which make further employment inadvisable.

In generally, justified dismissals are based on:

- serious unlawful conduct by the employee;
- relate to the employees' capacities (e.g. failure to adopt to changes arising from new technology or equipment);
- collective dismissal, based on structural, technological, economic reasons. The employer must inform, meet employee's representatives and reach an agreement with them on the scale, timetable and effects of the prospective redundancy. Dismissed employees are entitled to compensation according to length of service (one month salary in case of employment shorter than two years; two month salary in case of employment with the same employer between two and eight years; three month salary in case of employment longer than 8 years) and basic remuneration;
- some other substantial reason.

3.3.1. Dismissal contrary to certain specified rights or liberties

A dismissal contrary to certain specific rights of the employee, e.g. trade union activity, pregnancy, gender, race, creed, colour, religion, political opinion, sexual preferences, atypical employment is prohibited. Grounds which are prohibited by labour law are taken into consideration by the labour courts asked to denounce validity of termination and declare dismissal unlawful.

A dismissal cannot be based on unlawful motives such as:

- activity as an employees' representative (trade union, works council, board of directors, non professional labour inspector);
- participation in legal strike;
- age, race, colour, gender, marital status, sexual orientation, religion, political opinion, ideological conviction, national or social origin;
- pregnancy, maternity leave of absence, child care during paternal leave of absence from work;
- absence from work as a consequence of excused reasons: military service, civil or political duties, educational leave, holidays, sickness. Illness is in general no grounds for dismissal. However, illness for a lengthy period (9 or 12 months) or repeated illness may be considered as real and serious grounds due to the reason as it may cause disruption in the organization of work;
- having lodged a complaint against an employer concerning equal treatment of male and female employees with regard to working conditions or having exercised one's right in a legal way;

Moreover,

- members of the trade union board, the works council, the special negotiation body of the European Works Council, the parliament, the municipal council, lay judges, boards of professional organizations, legal councilors, non-professional labour inspectors and war veterans can only be dismissed on important grounds (summary dismissal) and with the prior consent of relevant organization defending their legal rights: trade union board, the works council, the national or local council.

A dismissal contrary to the protective rules presented above is effective if it is not challenged in the labour and social security court. The dismissal terminates the employment relationship. On the request of a dismissed employee or trade union which may claim the dismissal to be illegal, the relevant labour court may declare the dismissal void. If the court order is announced before the end of the notice period, the employment relation continues. If the court order is proclaimed after the end of the notice period, the employee will be reinstated with the back payment of wages or pecuniary compensation fixed by the labour court, not higher than three months of lost wages. Only employees enjoying the labour law special protection in case of illegal termination of employment relationship (e.g. pregnant females, employees on maternity, members of trade union boards, etc.) are entitled in case of reinstatement to back payment of lost wages form the day of their dismissal to the day of their reinstatement. The other employees are entitled to 1, 2 or 3 months wages.

3.3.2. Dismissal on "disciplinary" grounds

(1) Substantive conditions

A dismissal can only take place if there are justified grounds and if notice was given or summary dismissal served. In Poland there is no legal rule that a dismissal must be "*ultima ratio*". An employer can terminate an employment relationship by giving notice. The periods for termination of employment contract concluded for indefinite period of time are:

- two weeks; if an employee is employed by particular employer for less than 6 months;
- one month; if an employee is employed more than 6 months and less than 3 years;
- three months; if an employee is employed for at least three years (art.36 §1 of the Labour Code).

Summary dismissal (premature termination before the end of the notice period) is possible if the employer has substantial grounds listed by art.52 §1 or art.53 § 1 of the Labour Code. Such grounds include for instance an offence against workers duties, committing crimes, loss of professional qualification. If the employer neither gives sufficient notice nor has substantial grounds, the employment relationship is nevertheless terminated. However, the employee is then entitled to reinstatement or compensation. If there are no such grounds, the dismissal is void. However, the employee must apply (within seven days in case of termination with notice or two weeks in case of summary dismissal) to the labour and social

security court for a ruling that the dismissal is invalid. If the employee fails to do this, the dismissal is considered valid.

(2) Procedural requirements

The employer has to inform the trade union which represents an employee before the dismissal. The employer has to present the trade union the grounds for dismissal within 5 working days in case of termination (art.38 of the Labour Code) with notice, and 3 working days in case of dismissal without notice (art.52 § 3 of the Labour Code). If the employer terminates an employment contract before the end of the 5 or 3 days' period or before trade union response, the dismissal is void. The dismissed employee is entitled to bring a claim against dismissal and demand either reinstatement or compensation. The possibility to lodge an appeal to the labour and social security court by the dismissed employee does not depend on the reaction of the trade union (whether or not the trade union has protested against the dismissal). In cases when an employee is not represented by any trade union, the employer is relieved from the obligation to get into the process of trade union consultation in the matters concerning dismissal.

Where there is special protection against dismissal (employees' representatives, pregnancy, maternity, etc.) the employer may dismiss the protected employee only without notice, with the prior consent of competent institution, mostly the trade union. The dismissal is invalid but effective if the necessary consent is not given. Its effectiveness depends on legal action undertaken by the dismissed employee. The dismissed employee is entitled to lodge an appeal to the labour and social security court. If the court finds that the employer ignored the procedure and did not receive the necessary consent, the employer has to reinstate the illegally dismissed employee to their previous position with back payment. The same order the labour court issues if it considers an appeal well founded (no grounds for termination without notice).

(3) Effects of the dismissal

The employment relationship is terminated as a result of dismissal.

Severance payments:

The employees are entitled to severance payment if an employment contract is terminated with notice due to grounds not related to the dismissed employee. The severance payment in case of redundancy is equivalent to one month, two month or three month wages depending on the employee's length of employment (seniority) with the same employer (up to 2 years; 2-8 years; longer than 8 years).

If an employer decides, due to insolvency or other grounds not related to employees, to cut the notice period from three month to one month he is obliged to pay an employee a compensation for remaining period of two month notice (art.36^1 of the Labour Code).

Unemployment benefits:

Employees registered as unemployed with the state employment office are in general entitled to unemployment benefits within 7 days from the date of registration. The employee is entitled to unemployment benefit if he has been working at least for 365 days during the 18 months prior to the registration as unemployed (art.71 of the statutory act of April 20th, 2004).

Sickness insurance:

No effect on entitlements.

(4) Remedies

The judicial remedies are guaranteed for dismissed employees to pursue their claims. A legal action may brought before the labour and social security court within 7 days of receiving termination with notice and within two weeks of receiving summary dismissal. Trade unions may help employees either by starting legal action on behalf of a dismissed employee regardless of his/her membership, or helping him/her to pursue the case. The employee may be represented before the labour court by the trade union representatives. In theory all labour law cases must be given priority treatment. In practice though, there is no priority for remedy proceedings in case of dismissal. The employee may lodge an appeal against the dismissal on the grounds that the dismissal is either unjust, or unlawful. The burden of proof rests with the employer. The employer has to prove that the dismissal was given writing, consulted when required by law and based on justified grounds. The appeal will succeed if the employee's rights either substantive or procedural are impaired by the dismissal, e.g. dismissal is based on incorrect facts about an employee, his/her behaviour or his/he work performance wrongfully claimed by the employer detrimental to the interests of undertaking. In case of an undertaking's economic requirements conflicting with the continued employment of the employee concerned, an appeal will succeed if the dismissed employee provides an evidence that different grounds for his/her termination of employment relationship existed, and moreover proves that those reasons were not related to an economic necessity of the particular undertaking in which he/she was employed.

(5) Suspension of the effects of the dismissal

There are no specific suspension procedures in labour law matters. In theory general rule of civil procedure concerning interim injunctions may be applied in labour law cases. However, in practice labour courts are reluctant to issue an interim order which imposes an

obligation addressed to the employer to reengage the dismissed employee, as long as a court case is going on. Only in matters of termination of an employment contract with notice, the labour court on demand of plaintiff may impose an obligation upon the defendant (employer) to continue employment relationship until the final judgment (on condition that the court order pronouncing termination with notice null and void was issued before the end of termination period (art 477^2 § 2 of the Code of Civil Procedure)). In practice, due to the back log of cases in the labour courts, such an interlocutory injunction is a rarity.

(6) Restoration of employment

If dismissal is declared void before the end of a notice period, the employment relationship continues. If this declaration is made by the labour court after the end of notice period, the employment relationship is reinstated. In the latter case the employer has to pay the salary for the interim period to these employees, whose right to work is specially protected by labour regulations (e.g. members of trade union's board, works council, pregnant female workers, workers on maternity leave, paternal leaves, holidays). Other employees who do not enjoy special protection receive only one (minimum) or two (maximum) months salary. The principle established by the Labour Code relates to an amount of salary paid to the reinstated employee for the length of notice period: the longer the period of notice, the smaller the salary is paid in case of reinstatement. The choice is limited, though. In case of three months notice, one month salary is paid for the interim period regardless of its length. In case of one month or two weeks notice, two months salary is paid for the interim period (art.47 of the Labour Code).

In case of summary dismissal which was declared void the employer upon the labour court order is obliged to reinstate dismissed employee to his/her previous position and pay the salary for the three months period (art. 57 § 1 of the Labour Code). Only in cases of the dismissal of specially protected employees, is the employer obliged to pay the salary for the entire interim period. Unjustly or unlawfully dismissed employee may opt for compensation which can not be higher than three month salary (art.50 § 3 and art.58 of the Labour Code). The labour court itself may decide that the reinstatement of the dismissed employee is either impossible or pointless. In such a case the court may decide to impose upon the employer a compensation instead of reinstatement (art.45 § 2 of the Labour Code). The latter option can not be chosen by the labour court while deciding the case of an employee whose right to work is specially protected (art.45 § 3 of the Labour Code). The court is bound by the claim to reinstate the employment relationship brought by any employee listed by the labour law as specially protected (e.g. members of trade union board, works council, pregnant female,

employees on maternity and parental leaves of absence, non-professional labour inspector, and others specified already in this report).

(7) Penalties

The employer may be fined by the professional (state) labour inspector and then, by the court in the event of ignoring the legal regulations concerning either ordinary or special protection rules issued with the purpose of providing employees with job security. Therefore he may be sentenced for failure to send a copy of the dismissal proposal to the trade union, for not delivering a written copy of the dismissal to the employee concerned, or failure to state the real and sound grounds to justify dismissal. The fine imposed, may be as high as 5.000 PLN (1.250 Euro). The employer who refuses to reinstate an employee, whose dismissal had been declared null and void by the labour court, may be fined by the civil court. There is no upper limit in the Code of Civil Procedure for a pecuniary fine which may be imposed by the ordinary court acting in a legal capacity of a body charged with a task to implement the labour court order of reinstatement.

(8) Collective agreements

Despite a wide scope of application of collective agreements which are applicable to all employed by an employer bound by the collective agreements, even to those employees who are not trade union members, collective agreements in general do not provide for rules on periods of notice, grounds for dismissal, procedural requirements, legal sanctions, compensation and special protective rules which differ from the provisions of the Labour Code. In very exceptional cases some collective agreements may provide for more favourable provisions on the period of notice. It is fair to conclude that in Poland collective agreements have in general the same substance as legal provisions of the Labour Code.

3.3.3. Dismissal at the initiative of employer for reasons related to the capacities or personal attributes of the employee, excluding those related to misconduct

A distinction between dismissal on disciplinary grounds, dismissal on grounds related to the employee's capacities and redundancy is not made by the Polish labour law. The same legal rules apply to all forms of dismissal. The basic distinction between dismissals relies on the period of notice or lack of it.

(1) Substantive conditions

If the case of a termination of an employment contract with notice, the "just reason" is required. The Labour Code does not define the notion of objective grounds which may affect the employee's work. That task was left to the Supreme Court. Such grounds can include:

- insufficient performance at work;
- inability to perform because of illness, either regular sickness or sickness for a lengthy period of time may constitute such grounds if it results in considerable burden for the employer;
- lengthy absence from work if the functioning of the undertaking is disturbed;
- not excused failure to report for work;
- employee's inaptitude;
- employee's failure to adopt to technical changes;
- employee's inability to perform his working duties.

Generally, the capacity or personal attributes of an employee may be used by an employer as grounds for dismissal under the regulation concerning termination of employment relationship with notice, provided that the employers do not discriminate their employees and consider objective grounds for dismissal.

In cases of termination of an employment relationship with notice with employees employed by the institutions of the state as well as in case of summary dismissal, the labour law provides for an exhaustive list of grounds for dismissal. Article 52 §1 of the Labour Code states that an employee may be dismissed without notice on three grounds:

- an employee commits serious violation of his/her basic duties;
- an employee commits an offence that makes his/her further employment impossible;
- an employee looses by his/her own fault the qualifications required by law to perform a particular job.

The grounds listed above enable an employer to terminate an employment relationship without notice due to the employee's fault. The employer may dismiss an employee without notice during the 30 days he was notified of grounds which could be used as the legal reason for summary dismissal (art.52 § 2 of the Labour Code).

Article 53 § 1 of the Labour Code lists one reason for summary dismissal which cannot be attributed to the employee's fault. It is absence from work due to illness or other excused reasons for a long period stated in this provision (1, 3, 6 or 9 months) which in practice make the employer's organization of work difficult.

Article 13 sec.1 of the act of September 16th, 1982 on the state employees, states four grounds for termination with notice of employment relationships. These are related either to

an employee's performance (item1), his/her lack of qualifications (item 3), state of health (item 4), or liquidation of reorganization of the state office and inability to transfer a state employee to another office (item 2).

Article 14 sec.1-4 of the above mentioned act of September 16th, 1982 provides grounds for the summary dismissal of an employment relationship. Those grounds include those listed in art.52 § 1 of the Labour Code and others which include: fines, cases when a sentenced state employee is unable to perform his/her functions (deprivation of public rights, discharge from office) and deprivation of citizenship.

(2) Procedural requirements

An employer must notify the employee in writing of the dismissal before the period of notice starts. He has to state to the employee the grounds for the dismissal. If an employee is represented by the trade union, an employer ought to repeat the grounds for dismissal which where presented earlier, submitted to trade union during the consultation proceedings. He also must state the date of the termination of contract. Taking into consideration what was written concerning the construction of termination with notice, (according to which, the notice period expressed by the Labour Code in months ends on the last day of the month, while period of notice expressed in weeks ends on the last day of the week), one has to bear in mind that the end of notice period will end on the last day of the next month (in case of one month notice period) or exactly after three month if the dismissal is served on the last day of the month which proceeds period of notice. For instance, the termination with notice of an employment contract concluded on the basis of an indefinite period with the employee employed by particular employer for more than three years, delivered in writing on December 31st, 2005 will end the employment contract on March 31st, 2006.

(3) Effects of the dismissal

The employee relationship is terminated as a consequence of the dismissal.

Severance payment:

There are no severance payments in case of dismissal related to capacities or personal attributes of the employee.

Unemployment benefits:

There is entitlement to unemployment benefits for an unemployed person registered by the state employment agency after seven days waiting period.

Sickness insurance:

There is no legal effect of dismissal related to capacities of personal attributes of the employee on sickness insurance.

(4) Remedies

See 3.3.2.

(5) Suspension of the effects of the dismissal

See 3.3.2.

(6) Restoration of employment

See 3.3.2.

(7) Penalties

See 3.3.2

(8) Collective agreements

See 3.3.2

3.3.4. Dismissal for economic reasons

This chapter examines the termination of an employment contract at the initiative of the employer for reasons not related to the individual employee. Such dismissal mostly concerns a great number of employees (collective dismissal). In Poland there are specific rules on collective dismissals stated in the statutory act of March 13th, 2003. An individual employee may be dismissed on the grounds stated by the act of March 13th, 2003. In that case common procedural rules concerning the dismissal procedure are applicable.

(1) Substantive conditions

The dismissal because of redundancy is deemed to be "*ultima ratio*" and it is treated by art.1 sec.1 of the act of March 13th, 2003 as the "necessity" (*koniecznosc*). In undertakings with more than 20 employees, a group of employee (at least 5 of them), or one employee can be dismissed in case of necessity if there are reasons which are not related to employees. An employer decides whether or not he could run the undertaking with the number of current employees. The labour court does not have the power to check the employer's decision on which the redundancy is based. However, the labour court is obliged to check whether or not the decision to terminate employment relationship on the grounds not related to an individual employee is sound. The employer is obliged to do its best to avoid the collective dismissal. Even if the current law does not mention the grounds for dismissal not related to an individual employee, that dismissal is in practice based on economic difficulties, technological changes, production-related or other comparable reasons such as decisions made to eliminate particular jobs. According to the rule on evidence stated in art.6 of the Civil Code in conjunction with art.300 of the Labour Code the employer is obliged to present a proof that one of the above mentioned necessity not related to the individual employee is supporting his decision to

dismiss an employees due to the reasons not related to them personally or their on the job performance. On the other hand, the dismissed employee or employees are obliged to present evidence that their contract or contracts of employment were terminated by employer due to the grounds related to them and those grounds are false and have been covered by the employer as grounds related to the "business necessity".

The judiciary established under the previous statutory regulation: the act of December 28th, 1989 concerning collective dismissals due to the reasons related to employers' practice, depending on which grounds for dismissal are not considered to exist if the dismissal is preceded or followed by the engagement of new employee entrusted with similar duties, as dismissed employee claiming reinstatement. This practice is still important because an employer's decision to employee another employee which serves as the replacement for the dismissed employee plays an important role as an indicator that the grounds of dismissal stated by the employer are not real.

It must be stated though, that the employer's economic or organizational decision cannot be review by the labour court. The labour judge is restricting to checking whether there is a relationship (junction) between the economic, technical or organizational grounds stated by the employer and the dismissal due to the reason not related to an employee. The dismissal which does not meet these requirements is unlawful and void but effective if not challenged in the labour court by the dismissed employee.

(2) Procedural requirements

Polish labour law introduced specific legal rules which apply to dismissal on economic grounds which are considered a collective dismissal. For such specific requirements on collective dismissals see below (3).

(3) Specific requirements for collective dismissals

Poland follows the Community legislation applicable in case of collective redundancies which provides for employees' representatives to be informed and consulted in good time with a view to reaching an agreement. These consultations must cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences by recourse of accompanying social measures. The employer has to notify public authority in writing of any projected collective redundancies. Such redundancies may take effect not earlier than 30 days after the notification. These procedures do not apply to:

- state authorities and public institutions;
- employees with fixed-term contract;

- persons working on ships.

With regard to definition of “collective redundancy” Member States have certain discretion.

In Poland there are three kinds of collective dismissal:

- 10 employees within 30 days in enterprises with less than 100 employees;
- 10 per cent within 30 days in enterprises with 100-300 employees;
- 30 employees within 30 days in enterprises with more than 300 employees.

The employer has to give all necessary information to the trade unions which exist in the undertaking and consult with them possibilities of reducing collective redundancy, chances of re-adaptation of categories of employees facing redundancy. He has to notify them in writing the reasons of collective dismissals, number of employees to be dismissed (broken down by sectors of the undertaking and professional qualifications), the criteria applied for selection of employees to be dismissed, time table according to which the collective dismissals are scheduled, and the amount of severance payments guaranteed to dismissed employees. The employer must send a copy of the notification and accompanying information with exception of information concerned severance payments to the local employment agency. Within 20 days of notification the employer and trade unions must conclude an agreement concerning above mentioned matters related to collective dismissals. That agreement must be concluded with all trade unions functioning in a particular undertaking. In case the employer is unable to negotiate that agreement with all trade unions he may conclude an agreement exclusively with the most representative trade union. If the latter agreement can not be concluded, the employer is obliged to declare the rules accordingly to which collective redundancy will be carried on. In those rules the employer ought to include proposals submitted by trade unions. In undertakings in which no trade union exists, the details of collective redundancies should be specified by the employer.

(4) Effects of dismissal

The employment relationship is terminated as the consequence of the collective dismissal.

Severance payments:

In undertakings which employ more than 20 employees, the employee receives severance payment of one month remuneration is he/she was employed by particular employer for less than two years. An employee employed between two and eight years

receives a severance payment as high as two months remuneration. Those employees with seniority longer than eight years are entitled to severance payment equal to three months remuneration.

Trade unions may negotiate with an employer the social plan to mitigate effects of redundancies. The social plan can provide for further severance payments.

Unemployment benefits:

Dismissed employees who did no create the grounds for the summary dismissal within the period of 6 months before registration, are entitled to unemployment benefits if they meet the conditions set up by the statutory act of April 20th, 2004 (art.75 sec.1 item 3 of the above mentioned act).

Retirement pensions: See 3.3.2.

Sickness insurance:

There are no effects to entitlement under the public sickness insurance scheme.

(5) Remedies

An infringement of the procedure established by the act of March 13th, 2003 and/or an agreement concluded by the employer with trade union may be contested by dismissed employee in the labour court. An individual action may be brought either by an employee or trade union acting on his/her behalf within seven days starting from the date in which notice of termination on the grounds of collective dismissals was served. There are no specific procedures on priority. Ordinary rules concerning adjudication of labour cases apply. See 3.3.2.

(6) Suspension of the effects of the dismissal

Suspension procedure does not exist. See 3.3.2.

(7) Restoration of employment

See 3.3.2.

(8) Administrative or criminal penalties

No special regulations. See 3.3.2.

(9) Collective agreements

There are no collective agreements on redundancy. In undertakings with more than 20 employees, the employer and trade unions may conclude an agreement in order to mitigate the effect of collective dismissals.

(10) Special arrangements (Insolvency, Transfer of firm, Closure of business)

The following categories of employees are protected against collective dismissals:

- workers short of four years from pension able age;
- pregnant employees, those on maternity leave;
- works council members;
- members of the trade union board;
- members of the special negotiation body of the European Works Council;
- non professional labour inspectors;
- employees called into military services.

In case of collective dismissal effecting not specially protected employees, the employer may only change the terms and conditions of the above mentioned employees whose job security is guaranteed by the labour law. Those changes may occur only after previous notice. This statement does apply to wages of those employees. The employer is obliged to pay them previous remuneration until the end of the period in which they enjoy the special protection guaranteed by labour regulations.

Apart from that there are no special requirements in case of insolvency and business closure.

The transfer of an undertaking does not effect the continuation of the employee employment relationship. The new employer takes the place of the previous employer with regard to the rights and obligations related to employment relationship. Both employers: (transferor and transferee) are obliged to inform their employees within at least 30 days prior to the transfer about the prospective transfer of undertaking, its grounds, and legal, economic and social consequences. Those two mentioned employers are equally responsible for any obligation undertaken by the previous employer towards their employee before the transfer took place. The employee may resign within two months from the transfer, after giving the new employer 7 days notice. He/she then has the same rights as if he/she was dismissed with the regular notice by the employer. If the new employer intends to reduce the number of employees for any reasons not related to them, he is obliged to follow the procedures concerning collective dismissals. Dismissals in connection with the transfer which are not justified as the *ultima ratio* are considered as unjust but effective. Where a dismissal in connection with a transfer happens for economic, technical or organizational reasons, the fairness of such dismissal will be judged according rules regulated by the statutory act of March 13th, 2003.

3.4. Resignation by the employee

This part deals with the termination of an employment relationship at the initiative of an employee.

(1) Substantive conditions

No grounds are required for resignation by the employee in case of termination of employment relationship with notice. The employee must observe the notice period. There are the following minimum periods of notice:

- in employment contracts concluded for an unspecified period: two weeks, one month or three months according to the length of service. Art.36 §1 of the Labour Code applies to both parties of employment relationship; Collective agreements cannot extend this period, due to the fact, that the extended period of notice is considered less than favourable, than that which is regulated by statutory act;
- in contracts for specified period (fixed-term contract): two weeks, according to whether the contract is concluded for period longer than 6 months, and parties to that contract agreed to include into it the termination clause (art.33 of the Labour Code);
- in contracts concluded for probationary period, according to the length of such contract: 3 days during two weeks probationary period; one week during probationary period between 2 weeks and 3 month; two weeks in case of 3 months probationary period (art.34 of the Labour Code);
- in contracts concluded with purpose to substitute an absent employee, the period of notice is 3 working days (art. 33^1 of the Labour Code).

If those periods of notice are not respected, the employer is not entitled to damages. He may terminate the employment relationship without notice with an employee who did not observe the notice period.
Resignation without notice by an employee is possible, if there are important grounds to terminate the employment contract without notice. The employee may terminate the contract without notice, if the employer has substantially neglected his obligation, e.g. non payment of wages (art.55 § 1^1 of the Labour Code). An employee is entitled to compensation equal to his/her salary during the notice period. The legal effects of the resignation by an employee without notice are treated by the Labour Code (art.55 § 3) as termination of employment relationship by employer.

An employee may resign without notice if the physician declares that the work he/she performs is detrimental to his/her health, and the employer does not transfer him/her in the time limit indicated in the medical certificate to some other post appropriate to the state of his/her health and his/her professional qualifications (art.55 § 1 of the Labour Code).

The resignation with notice or without notice cannot be declared invalid.

(2) Desertion of the post

At the present time there are no specific rules which deal with the issue of failure to appear by an employee at his/her place of work or his/her desertion of the post. The desertion of the post by an employee is considered by art.52 § 1 of the Labour Code as grounds for summary dismissal.

(3) Procedural requirements

The written resignation is legally required in case of resignation with notice. If the reason for resignation without notice is the employer's culpable failure to obey his duties, an art.55 § 2 of the Labour Code requires the employee to inform the employer in writing about the grounds for summary dismissal. Art.52 § 2 of the Labour Code respectively applies to the employee (art.55 § 2 of the Labour Code).

(4) Effects of resignation

The employment relationship is terminated as a consequence of resignation.

Payments of the employer to an employee:

An employee is entitled to compensation if he/she terminates the contract of employment due to employer's severe neglect of his obligations. If there is good reason for an employee to resign without notice, the employer has to pay compensation equal to the salary during the notice period. In case of a fixed-term contract, two weeks salary ought to be paid.

Unemployment benefits:

Unemployment benefits are no payable to those unemployed, who within 6 months before registration at the state employment office terminated their employment relationship (art.75 sec.1 item 2 of the act of April 20, 2004). An exception is made to those unemployed, who terminated during the above mentioned period their employment relationship due to insolvency, bankruptcy, reduction of the workforce and displacement.

Retirement pensions:

No effect on public pension schemes.

Sickness insurance:

No effect on entitlement.

(5) Remedies

The employer may ask the labour court to declare the wrongful character of resignation without notice. The time limit is one year (art.291 § 2^1 of the Labour Code).

(6) Compensation to the employer

The employer is entitled to compensation for an employee's resignation without notice, if an employee cancels the employment relationship without grounds. The employer can demand compensation corresponding to the length of notice period. In case of groundless summary dismissal of the employment contract concluded for definite period of time, the employer may demand from an employee a payment of compensation equal to the period of two weeks (art.61^1 , art.61^2 § 1-2 of the Labour Code).

(7) "Contrived" resignation

There is no legal prohibition addressed to an employee to terminate an employment relationship. Therefore, neither in Polish labour law, nor in jurisprudence are there legal grounds to find the basis for contrived resignations.

(8) Collective agreements

There are no collective agreements on collective resignation, although there is no legal obstacles for social partners to regulate that matter in collective agreement.

4. General questions relating to all forms of termination of employment relationship

(1) Non-competition agreements

A non-competition agreement is only valid if:

- it is in writing (art.101^3 of the Labour Code);
- it is limited to areas in which the employer carries on professional activities. Financial compensation by the employer is not required for the agreement to be valid.

An employer may require an employee to conclude such agreement. The employee's refusal to conclude such agreement may serve as the grounds for termination of the employment contract.

There are two types of non-competition agreements (*umowa o zakazie konkurencji*):

- during the period of employment relationship (art.101^1 of the Labour Code) (*w ramach stosunku pracy*);
- after the termination of the employment relationship (art.101^2 of the Labour Code) (*po ustaniu stosunku pracy*).

The latter type of non-competition agreement can be entered into at the demand of the employer if there is a particular important reason for it. In assessing this reason, an account is taken of the position and duties of the employee, in particular the need to protect particularly important information, disclosure of which could endanger the employer's business operation. In case parties of employment relationship decide to conclude non-competition agreement effected after termination of an employment relationship they have to agree on the:

- amount of the lump sum compensation (at least 25 per cent of the employee's salary for the period of agreement is entered into);
- the length period for non-competition agreement to be exercised. There is no maximum period for non-competition agreement.

The non-competition agreement may be terminated either by the mutual agreement of the concerned parties, or with the notice served by one party. The latter option may exercised only, if both parties to non-competition agreement decided that such agreement could be terminated with notice. In absence of provisions related to termination of the non-competition agreement, the employer has to pay the compensation, even if the former employee was notified by the former employer that he/she is free to carry any activities he/she wants and is not bound by the non-competition agreement. Relief from obligation to refrain from particular activity described by the parties in non-competition agreement, does not *per se* excuse the former employer from the obligation stated in the non-competition agreement which is still valid.

An employer may sue an employee for damages caused by the breach of non-competition agreement. The case is adjudicated by the labour court.

(2) Agreements to the effect that the employee will not terminate the contract of employment during certain period

There is no specific legislation or case law on that matter. The general rules of the labour law apply. One of them is an employee's freedom to enter into the employment relationship (art.10 § 1 of the Labour Code). In practice, an employee whose training was paid for by the employer often agrees to pay compensation if he resigns or is dismissed without notice before a specified date because of his misconduct. Such an agreement is valid if training was genuine and the compensation reasonable.

(3) The issuing of a reference

On termination of the contract of employment, the employer is required to issue to an employee without any request a certificate (*swiadectwo pracy*) stating the dates of the beginning and end of the employment relationship and type of work performed (art.97 § 2 of

the Labour Code). The employer is also obliged to mention the details concerning the dismissal (whether the contract of employment was terminated with notice or without notice, and which party: an employer or employee terminated it). If the salary of employee was seized by the state execution office that information must included in the reference. On request of an employee the employer has to provide information on the amount of salary earned by the employee. The employer is liable for damages (up to the six weeks of salary) if he fails to furnish such information in the references, or provides inaccurate information therein.

(4) Full and final settlement

There are no specific rules. The settlement does not constitute renouncement by the employee of all possible claims on the employers, in particular it does not affect the financial claims (e.g. payment of wages).

Conclusion

The law on termination of employment relationship in Poland was adjusted to the principles of:

- legal equality of parties to the employment relationship;
- social protection;
- market economy.

In the rapidly growing private sector the prevalent form of employment is an employment contract for a fixed period of time. This new trend is one the most distinctive features of the new employment relations. The increasing importance of this type of employment contract is due to the fact, that it automatically terminates when the period on which it is based expires.

According to the principle of freedom of contract, either party to an employment relationship is free to terminate an individual employment contract. Since 1989, important changes have been introduced concerning employer's freedom to terminate the employment contract that contains a prior notice provision. Polish labour law recognizes "business necessity" (economic grounds) as a justified reason for terminating employment contracts In the case of collective redundancy, special procedure have been developed to provide greater protection for certain groups of employees. The law introduced a special procedure for collective dismissals. In cases of individual dismissals, the regular procedure adopted by the Labour Code applies to cases where individual employment contracts are terminated by employers with prior notice. Illegal and/or unjust dismissal is effective but may be successfully challenged by the employee. Labour court will then either reinstate dismissed employee or award him/her with compensation.

Employees are free to terminate their employment relationship.

The peaceful revolution that has continued in Poland since 1989 has energized changes in different areas of economic and social life. Labour law has also been affected by these changes, which occurred during the transition period from a centrally planned to market economy. Polish labour law is no longer oriented toward the protection of workers' rights at any price. Rather, the pendulum of economic changes towards a market economy has swung to the employers' side.

Appendix: Legislation on "probationary period"

Trial period

According to art. 25 § 2 of the Labour Code an employment contract for a trial period can proceed all other contracts of employment, including employment contracts for indefinite periods, for definite time periods or for the time of completion of specified tasks. As the name of the contract indicates, an employment contract for a trial period is a contract used by the employer to check the other party's (an employee's) capabilities and willingness to work before a more permanent form of labour contract is concluded.

Art.25 § 2 of the Labour Code has determined only the maximum – not the minimum - duration of the employment contract for a trial period. According to this provision of the Labour Code, and employment contract for a trial period can not exceed three months. Within the boundaries set by the Polish labour law (from one day to three months), parties to a given contract may freely decide on the length of the contract. However, it must be borne in mind what was stated before; that duration of a trial period contract influences the length of period of notice (art.34 of the Labour Code). The period of notice is: 3 working days for a trial period not exceeding two weeks, 1 week for a trial period longer than two weeks, and 2 weeks for a three months trial period.

An employment contract for a trial period may be terminated with notice or without notice by either party. There is need on the part of an employer to state any grounds for such termination. In case of summary dismissal either party to an employment contract for a trial period is bound by the regulations applicable to the other types of employment contracts. However, in a case of termination of an employment contract for trial period, an employer is not obliged to notify the trade union even when the employee about to be dismissed belongs to or is represented by the trade union organization.

It cannot be stated, though, that an employee does not enjoy any legal protection against illegal or unfair dismissal during a trial period. In case of a breach of formal requirements (e.g. lack of written form of termination) or termination of an employment contract for trial period on legally prohibited grounds (e.g. discrimination because of gender) the employer has to pay compensation until the end of the employment contract for a trial period (art.50 § 1 of the Labour Code).

The employment contract for a trial period automatically comes to an end if the parties decide no to conclude any other kind of employment contract (for indefinite or definite

period). The same parties cannot enter into a new employment contract for a trial period for the same post. Only the employment contract for trial period concluded for at least one month period with three months pregnant female employee is extended by virtue of law to the day of delivery of the new born child (art.177 § 1 and 2 of the Labour Code).