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International Labour Organization

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Dear Sirs,

I kindly request that you carry out an analysis of the compliance of the regulations in force in the Republic of Poland with international standards for the protection of the rights of workers and unemployed persons.

The subject of this letter is Article 219 of the Act of 20 March 2025 on the labour market and employment services (Journal of Laws, item 620, as amended) of Polish law, which regulates the rules for granting unemployment benefit, in particular with regard to the so-called negative grounds for acquiring entitlement to the benefit prior to registration with the District Labour Office (PUP).

The literal wording of the provision:

Article 219. [Negative conditions for entitlement to benefits relating to the situation prior to registration with the PUP]

An unemployed person is not entitled to benefits if, prior to registration with the PUP:

1)terminated their last employment relationship or service relationship by giving notice, unless the termination of the employment relationship or service relationship by giving notice occurred due to a change of residence or the employee terminated the employment contract pursuant to Article 55(1) and (11) of the Act of 26 June 1974 – Labour Code;

2)caused the termination of their last employment or service relationship without notice through their own fault;

3)terminated their last employment relationship entered into on the basis of a referral by the district administrator to an employer receiving funds from the Labour Fund in connection with that referral.

2. The provision of paragraph 1 shall not apply where the last employment relationship or service relationship does not constitute the basis for entitlement to the benefit.

Under section 219 of the Act, an unemployed person is not entitled to benefits if, prior to registering:

- terminated their employment with notice (with certain exceptions),
- caused the termination of their employment without notice through their own fault,
- terminated an employment relationship established on the basis of a referral by the district administrator.

In practice, this means that a person who terminates their employment relationship of their own accord – even for legitimate personal or professional reasons (which do not always fall within the statutory exceptions) – may be completely deprived of the right to unemployment benefit.

In my view, this regulation may raise concerns in the context of:

- the principle of proportionality,
- the right to social security,
- the protection of the employee as the weaker party in the employment relationship,
- standards regarding protection against poverty and social exclusion.

Particular concerns have been raised regarding the automatic nature of the sanctions, which fail to take into account the individual circumstances of the person concerned, including the reasons for the termination of employment, which do not always stem from the employee's fault. Furthermore, the provision fails to define the concept of 'fault', nor does it provide a precise definition of dismissal due to a change of residence, which leads to interpretative ambiguities and the risk of arbitrary assessment by administrative authorities.

Furthermore, the specific grounds set out in Article 219 of the Act of 20 March 2025 on the labour market and employment services (Journal of Laws, item 620, as amended) raise the following concerns:

- with regard to termination of employment with notice – the provision does not take into account a broad range of legitimate reasons for resigning from work (e.g. workplace bullying, deterioration of working conditions, the need to care for a family member or partner, retraining, change of residence – lack of a legal definition, other personal circumstances), by limiting exceptions in an excessively narrow and imprecise manner,
- regarding the termination of an employment contract without notice due to the employee's fault – the lack of a definition of 'fault' creates legal uncertainty and the risk of disproportionate consequences,
- regarding the termination of an employment relationship established on the basis of a referral by the district administrator – the sanction is of a special nature and may lead to unequal treatment of this category of employees compared to others,
- the lack of a mechanism for the administrative authority to assess the unemployed person's situation on a case-by-case basis, resulting in automated decisions, a restriction of the principle of social justice, and excessive interference in the individual's private life, e.g. the right to freely choose one's work.

The above factors may lead to a situation in which an unemployed person is deprived of the minimum means of subsistence despite having committed no fault or where there are legitimate grounds for terminating employment.

These concerns are also reflected in international standards, in particular:

- Convention No. 102 of the International Labour Organisation (ILO), a UN agency, concerning minimum standards of social security, which highlights the need to ensure effective access to benefits in the event of unemployment,
- ILO Convention No. 168 concerning the Promotion of Employment and Protection against Unemployment, which permits restrictions on access to benefits only in a proportionate manner and taking individual circumstances into account (unfortunately, Poland has not yet ratified the Convention),
- ILO Convention No. 122 concerning Employment Policy, which emphasises the state's obligation to pursue an active policy supporting employment and combating exclusion.

Our analysis shows that Article 220 of the Act of 20 March 2025 on the labour market and employment services (Journal of Laws, item 620, as amended) also violates international labour law:

“Article 220. [Negative conditions for entitlement to benefits relating to the situation following registration with the Labour Office]”

An unemployed person is not entitled to benefits from the date of registration with the Job Centre if they:

- 1) have received compensation for the shortening of the notice period under their employment contract;***
- 2) have received a benefit provided for in separate regulations in the form of a one-off cash equivalent for miners' leave, a one-off social severance payment, a benefit payment, a cash payment following social assistance, a one-off conditional severance payment or an unconditional cash severance payment;***
- 3) is undertaking a paid graduate placement and receives a monthly cash benefit in respect thereof in an amount exceeding half the minimum wage;***
- 4) has registered as unemployed during the period of suspension of business activity reported to the CEIDG (Central Registration and Information on Business Activities), if the period of conducting that business activity forms the basis for or is taken into account for the acquisition of the right to the benefit;***
- 5) terminated their last employment or service relationship by mutual agreement, unless such***

agreement was reached due to a change of residence or due to the employer's bankruptcy, liquidation or a reduction in staff for reasons relating to the workplace;

6)through their own fault, after being referred by the Labour Office or entering into an agreement, failed to commence or discontinued the form of assistance, unless the reason for failing to commence or discontinuing it was taking up employment, other gainful work or business activity;

7)refused, without good cause, an offer of community service;

8)refused to participate in the preparation of the Individual Employment Plan (IPD).

2. An unemployed person referred to in paragraph 1 who meets the conditions set out in Article 218 shall be entitled to the allowance:

1. after the expiry of the period for which they received the equivalent, severance pay or compensation referred to in paragraph 1(1) and (2);

2. upon completion of a graduate placement and receipt of a monthly cash benefit in respect thereof in an amount exceeding half the minimum wage;

3. after a period of 90 days from the date of registration with the Labour Office in the cases referred to in paragraph 1(4) and (5);

4. after the expiry of the period specified in Article 65(1)(2) – in the case referred to in paragraph 1(6);

5. after the expiry of the period specified in Article 65(1)(3) – in the case referred to in paragraph 1(7);

6. after the expiry of the period specified in Article 65(1)(12) – in the case referred to in paragraph 1(8).

3. Periods of employment, other gainful employment, non-agricultural business activity, receipt of sickness benefit following the termination of employment, cessation of other gainful employment, non-agricultural business activity and receipt of income, referred to in Article 226(1) and the periods referred to in Article 226(2), shall be included in the periods referred to in paragraph 2.”

The role of the International Labour Organisation in this regard is significant: Poland, as a member state, is obliged to submit periodic reports to the ILO on the application of ratified conventions. The ILO Committee of Experts analyses these reports and, where discrepancies are found between international law and practice (including the findings of the National Labour

Inspectorate), makes appropriate observations. Thus, national legislation and its application are subject to ongoing monitoring and assessment in the context of international standards.

In the light of the above standards, the automatic withdrawal of entitlement to benefits may be regarded as an excessively restrictive measure and a violation of human rights and freedoms.

Furthermore, this provision raises significant doubts under national law. Pursuant to Article 30(1) and (3) of the Act of 26 June 1974 – Labour Code (i.e. Journal of Laws of 2025, item 277, as amended), the termination of an employment relationship may occur, inter alia, by notice given by either party, which constitutes a fundamental element of freedom of employment. The introduction of a sanction in the form of loss of entitlement to benefits in the event of using this form of termination of the employment relationship may lead to an actual restriction of this freedom.

“Article 30. [Termination of the employment contract]

§ 1. An employment contract is terminated:

1) by mutual agreement;

2) by a declaration of one of the parties subject to a notice period (termination of the employment contract with notice);

3) by a declaration of one of the parties without notice (termination of the employment contract without notice);

4) upon the expiry of the period for which it was concluded.

5) (repealed)

§ 2. A fixed-term employment contract for a probationary period shall terminate upon the expiry of that period, and may be terminated before its expiry by giving notice.

§ 2¹ The notice period for termination of an employment contract covering a week or a month, or a multiple thereof, shall end on a Saturday or on the last day of the month, as appropriate.

§ 3. A notice of termination or termination of an employment contract without notice by either

party must be given in writing.

§ 4. The employer's notice of termination of a fixed-term employment contract or an indefinite-term employment contract, or of termination of an employment contract without notice, shall state the reason justifying the termination or termination of the contract.

§ 5. The employer's notice of termination of the employment contract or its termination without notice shall include information regarding the employee's right to appeal to the labour court."

Furthermore, the provisions of Article 219 of the Act of 20 March 2025 on the labour market and employment services (Journal of Laws, item 620, as amended) may be in conflict with the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483, as amended), in particular:

- Article 2 (the principle of a democratic state governed by the rule of law and the principle of proportionality arising therefrom),
- Article 32 (the principle of equality before the law),
- Article 65(1) (freedom to choose and pursue work),
- Article 67(1) (the right to social security in the event of unemployment).

In particular, the automatic withdrawal of entitlement to benefits, the lack of a definition of 'fault', the lack of a precise definition of dismissal due to a change of residence, and the failure to examine individual circumstances may be regarded as a breach of the principle of proportionality and the essence of the right to social security.

The provisions of Polish law violate Articles 12 and 13 of the European Social Charter drawn up in Turin on 18 October 1961 (Journal of Laws of 1999, No. 8, item 67, as amended) as they completely deprive the unemployed of the right to benefits and, consequently, to social security and social assistance. They thereby violate the fundamental human rights enshrined in Articles 4, 8, 14 and 18 of the Convention for the Protection of Human Rights and Fundamental Freedoms, drawn up in Rome on 4 November 1950, subsequently amended by Protocols Nos. 3, 5 and 8 and supplemented by Protocol No. 2 (Journal of Laws of 1993, No. 61, item 284, as amended).

The cited provisions of Polish law (Articles 219 and 220 of the Act ...) violate Article 6(1) of the International Covenant on Economic, Social and Cultural Rights, opened for signature in New York on 19 December 1966 (Journal of Laws of 1977, No. 38, item 169) in that the State Party to

this Covenant introduces statutory regulations which indirectly restrict the right of every person to earn a living through work freely chosen or accepted, in such a way as to deprive them of the right to social security and restrict the right to freely chosen work, and thereby fails to take appropriate steps to ensure the realisation of that right.

They also violate Article 9 of the International Covenant on Economic, Social and Cultural Rights, opened for signature in New York on 19 December 1966 (Journal of Laws of 1977, No. 38, item 169) because the State Party to this Covenant does not recognise the right of everyone to social security, thereby excluding a large group of people from the right to social security.

The provisions also violate Article 15(1) and Article 34 of the Charter of Fundamental Rights of the European Union insofar as they deprive individuals of the right to social security benefits and to social services providing protection in cases such as loss of employment, in accordance with the principles laid down in EU law and national legislation and practices. The EU recognises the right to social assistance for those who do not have sufficient means to support themselves, ensuring a dignified existence. By applying Articles 219 and 220 of the Act of 20 March 2025 on the labour market and employment services, Poland is in breach of the principles of European Union law.

Convention No. 102 of the International Labour Organisation concerning Minimum Standards of Social Security, from Article 19 to Article 24, requires the provision of adequate financial support for unemployed persons and does not provide for the complete withdrawal of financial support from unemployed persons.

In the repealed Act of 20 April 2004 on the promotion of employment and labour market institutions (i.e. Journal of Laws of 2025, item 214, as amended), Article 75(1)(2) of Polish law provided for certain temporary restrictions on the entitlement to benefits (waiting period), but did not completely deprive persons who had terminated their employment relationship on their own initiative of this right; for example, if the contract was terminated by mutual agreement or by notice, then unemployment benefit was granted only after a 90-day waiting period and reduced by the number of days elapsed.

‘Article 75. [Exclusion from entitlement to unemployment benefit]

1. An unemployed person shall not be entitled to benefits if:

[...] 2) within 6 months prior to registering with the district labour office, terminated their employment or service relationship by notice or by mutual agreement, unless the mutual agreement was due to the employer’s bankruptcy, the employer’s liquidation or a reduction in

the workforce for reasons relating to the workplace; or the termination of the employment or service relationship by notice or by mutual agreement occurred due to a change of residence; or the employee terminated the employment contract pursuant to Article 55 § 1¹ of the Act of 26 June 1974 – Labour Code; [...].”

It should also be noted that the Civil Liberties Foundation has lodged complaints regarding this matter with the Ombudsman in Poland, and administrative proceedings are currently pending before the second-instance appeal body concerning an individual citizen’s case, which underscores the ongoing process of verifying and assessing the provisions in practice.

In view of the above, pursuant to Articles 22 and 24 and point (f) of Annex III to the Constitution of the International Labour Organisation, we request:

1. an assessment of the compliance of the aforementioned provisions with the conventions and recommendations concerning social security and the protection of the unemployed,
2. an indication as to whether such restrictions are consistent with the international labour standards established by the ILO and monitored as part of the supervision of the application of the conventions,
3. any recommendations regarding legislative changes to ensure greater protection for the unemployed.

We would be grateful if you could provide your views on this matter. Given the risk of imminent legal proceedings, we would ask, if possible, for a prompt response or statement of your position.

Yours faithfully,

Paweł Krzyżanowski

Chairman of the Auxiliator Civil Liberties Foundation.