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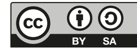

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The right to disconnect in the context of the constitutional right to rest and leisure

Summary

Employees' problems with maintaining a balance between personal and professional life, resulting from the increasing popularity of remote work, are the starting point for the need for clear separation between working time and free time. The purpose of this study is to refer to the so-called right to disconnect to the provisions of the Constitution of the Republic of Poland and the provisions of the Labour Code, and to assess the need to introduce detailed regulations in this regard.

Keywords: right to disconnect, working time, right to rest and leisure

1. Introduction

The COVID-19 pandemic and the development of remote work have resulted in an increase in the number of complaints from employees about the blurring of the boundaries between work and private time, the unpredictability of working hours, the need to work overtime, the negative impact on their physical and mental health and their privacy[1]. In addition, it has become standard to expect an employee to respond to a business phone call or email promptly, or within 24 hours at the latest. "More accessible" and responsive individuals are seen as more engaged at work and even favoured over employees who, for family or health reasons, cannot always answer the phone or email after hours[2].

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[1] J. Tlatlik: *Kwestia regulacji "prawa do odłączenia" w polskim porządku prawnym z perspektywy aktualnych przepisów KP*. "Monitor Prawa Pracy" 2022, no 1, p. 17.

[2] K. Naumowicz: *Prawo pracowników zdalnych do bycia offline – rozważania prawnoporównawcze*. "Roczniki Administracji i Prawa" 2021, no 21, p. 541.

In response to these challenges, the European Parliament adopted a resolution on 21 January 2021[3] with recommendations to the Commission on the right to disconnect. A key objective of the new EU directive is to set minimum standards of protection for all workers in the EU who use digital tools for professional purposes. The acceleration of work on the introduction of the right of employees to disconnect is dictated by the growing problem of increasing stress in the workplace and the need to implement the postulate of work–life balance.

The Constitution of the Republic of Poland grants the right to rest and leisure, safe and hygienic working conditions and the protection of private and family life, therefore it is a reference point for detailed regulations on the right to disconnect. The aim of this article is to analyse the possibility and necessity of introducing a separate right of employees to be offline into the Polish legal system, and to attempt to relate this right to constitutional regulation.

2. The right to rest and leisure in the Constitution of the Republic of Poland

The right to rest and leisure, as articulated in Article 66 para. 2 of the Constitution of the Republic of Poland, includes a guarantee of statutory holidays and paid annual leave, as well as maximum standards of working time[4]. This is a reference to the protection of private and family life guaranteed by Article 47 of the Constitution. The above-mentioned constitutional provisions provide specific rights that may be asserted within the limits specified in the statute, and therefore they cannot be treated only as an expression of one of the principles of state policy or a norm of a purely programmatic nature[5]. It is worth noting that it is inadmissible for employees to make positive claims

[3] European Parliament resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect (2019/2181(INL)).

[4] Art. 31 para. 2 of the Charter of Fundamental Rights of the EU (Journal of Laws UE. C. 2012 no. 326, p. 391) also contains a formula similar to art. 66 para. 2, which provides that every worker has the right to a reduction in maximum working hours, to daily and weekly rest periods and to paid annual leave.

[5] L. Garlicki, S. Jarosz-Żukowska: *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom II*. Ed. M. Zubik. Warszawa 2016, art. 66, LEX/el.

based solely on Article 66 of the Constitution, and going further than those provided for in the relevant acts[6].

The dichotomy between the concepts of "rest time" and "working time" is emphasised both in the case law of the Court of Justice of the European Union and in the legal framework of the International Labour Organization. The criterion for distinguishing these concepts is the employee's dependence on the employer – working time is the period during which the employee is obliged to be at the employer's disposal, whereas rest time is the period that the employee can freely manage. It should be noted that national law does not allow for the introduction of an intermediate category of time between working time and rest time[7].

The guarantee of the right to days off from work is an expression of the protection of private life, while the guarantee of the right to rest is motivated by the need for physical and mental recovery, increased efficiency and productivity at work, improvement of occupational health and safety conditions, and the reduction of potential hazards and workplace accidents. Rest also contributes to the proper development of interpersonal relationships, particularly family bonds. Both the right to rest and its integral component – the right to days off – are subjective rights under the Constitution. Therefore, they cannot be understood as a mandate not to work on days off or an obligation to rest[8].

Article 66 para. 2 of the Constitution is intended to serve as a real guarantee of workers' rights by restricting the freedom to shape working conditions in contracts or sub-statutory acts. In order to fulfil this obligation, the law must define the content of the concept of working time itself and any exceptions to this concept[9]. According to the judgment of the Constitutional Tribunal, time which has not been recognised by law as working time is – in constitutional terms – non-working

[6] Judgement of the Constitutional Tribunal of 24 October 2000, K 12/00, OTK 2000, no. 7, pos. 255; Judgment of the Constitutional Tribunal of 2 October 2012, K 27/11, OTK-A 2012, no. 9, pos. 102; Judgement of the Constitutional Tribunal of 5 October 2015, SK 39/14, OTK-A 2015, no. 9, pos. 140.

[7] A. Bigaj: *Prawo do urlopu wypoczynkowego*. Warszawa 2015, p. 48.

[8] J. Rumian: *Praca w niedzielę i święta*. Warszawa 2024, pp. 124–128.

[9] M. Florczak-Wątor: *Konstytucja Rzeczypospolitej Polskiej. Komentarz*. Ed. P. Tuleja. Warszawa 2023, art. 66, LEX/el.

time[10]. Working time is defined in labour law as the time during which an employee is at the employer's disposal in the workplace or other place designated for the performance of work[11]. Thus, the concept of working time also includes on-call duty performed in the system of attendance at the workplace, regardless of whether and to what extent the employee actually performed work, since in this case the employee is not able to freely dispose of his time and carry out activities belonging to his private sphere[12].

The determination of the maximum working time consists in setting a limit on a daily, weekly and monthly basis, which the working time may not exceed. Especially with regard to remote employees, there is the problem of their excessive availability, involvement in the work process and contact with the workplace. Thus, the question arises as to the classification of time during which the employee does not perform his or her duties in the strict sense, but is available to the employer and remains in contact with him[13].

As far as the right to rest and leisure is concerned, the 1997 Constitution refers only to two specific entitlements exercising the right to rest and leisure: days off from work and annual paid leave, and the legislator is also obliged to set maximum standards of working time.

3. The concept and scope of the right to disconnect in the European Union

On the right to disconnect, the discussion at EU level was launched by the European Parliament with the adoption of a resolution on the matter in 2021, in which a draft directive was presented. The directive would set minimum requirements to enable workers who use digital tools for professional purposes to exercise their right to disconnect and to ensure that employers respect this right. The right to disconnect means not to engage in work-related tasks outside of working hours and not participating in communication through digital tools, directly

[10] Judgement of the Constitutional Tribunal of 23 February 2010, K 1/08, OTK-A 2010, no. 2, pos. 14.

[11] M. Barzycka-Banaszczyk: *Prawo pracy*. Warszawa 2001, p. 186.

[12] P. Kuczma: *Prawa pracownicze*. In: *Realizacja i ochrona konstytucyjnych wolności i praw jednostki w polskim porządku prawnym*. Ed. M. Jabłoński. Wrocław 2014, p. 569.

[13] J. Tlatlik: *Kwestia regulacji "prawa do odłączenia"*..., p. 19.

or indirectly. Such a definition of the right to disconnect is intended to guarantee employees in particular the possibility of real rest – by ensuring freedom from thinking about working[14]. In practice, this would mean that an employee would be able to ignore e-mails, text messages and phone calls that come to them outside of working hours, during vacation or sick leave without fear of the employer's reaction, even if they do not require the employee to take further action, but only, for example, confirm a given fact, provide information, indicate the contact details of another person. It is worth noting that in the implementation of the right to be offline, not only the employer but also colleagues should refrain from contacting one another for work-related matters outside of working hours[15].

In the light of the regulations in the EU, especially in the context of the provisions of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time[16], it is worth noting that there is no intermediate category between working time and rest period. Therefore, it seems that compliance with the provisions indicating the separation of working time and rest time would result in the lack of need to create a new law, i.e. the right to disconnect[17].

Since right to disconnect means not engaging in telephone and electronic communications related to work duties outside of working hours, the question arises whether this right would apply to all employees or only to those working remotely. International research shows that remote employees often work much longer hours than those who perform their duties in the workplace[18]. With this in mind, it seems reasonable to grant protection only to this group of employees. The intention of the European Parliament is that the right to disconnect

[14] I. Miernicka: *Prawo do odłączenia się w świetle Rezolucji Parlamentu Europejskiego z dnia 21 stycznia 2021 roku zawierającej zalecenia dla Komisji w sprawie prawa do bycia offline*. "Przegląd Prawa i Administracji" 2022, vol. 129, p. 129.

[15] K. Naumowicz: *Prawo do bycia offline a praca zdalna*. In: *Praca zdalna w polskim systemie prawnym*. Ed. M. Mędrala. Warszawa 2021, p. 85.

[16] Journal of Laws 299 of 18 November 2003, p. 9.

[17] E. Pachała-Szymczyk: *Prawo do bycia offline odpowiedzią na upowszechnienie narzędzi cyfrowych w zatrudnieniu*. "Transformacje Prawa Prywatnego" 2022, no. 4, p. 11.

[18] Eurofound: *Living, working and COVID-19*. COVID-19 series, Luxembourg: Publications Office of the European Union. https://www.eurofound.europa.eu/system/files/2020-10/ef20059en.pdf (accessed 12 February 2024).

should be available to all employees who use digital tools for professional purposes, regardless of their status, form of work organisation, industry and private or public sector. Therefore, the draft directive does not provide for any subjective exemptions, e.g. due to the size of the enterprise or the position of the employee. In particular, the directive does not explicitly introduce exceptions for sectors where the lack of contact with an employee may have particularly significant consequences, e.g. in critical infrastructure enterprises or healthcare entities, or for management staff[19]. The only exceptions would be allowed only in extraordinary circumstances, such as force majeure or other special circumstances, and any use of such a derogation would have to be justified to the employee in writing. It is worth considering whether the introduction of the requirement for a written justification is not too far-reaching and will not simply become another dead provision. It should be assumed that in most emergency situations, it will be crucial to contact the employee as soon as possible. In practice, therefore, such a written justification will be prepared subsequently, *de facto* after the employee has been involved in professional activities after working hours.

It should be emphasised that the employee's right will be matched by the employer's obligation to take action to ensure that subordinates can exercise this right. This obligation of the employer will consist of a number of specific obligations set out in the proposed directive, including the establishment of objective, reliable and accessible systems for measuring working time that do not infringe on the employee's right to privacy; adopting fair, lawful and transparent procedures for the exercise of employee's right to disconnect; carrying out a health and safety assessment in relation to the right to disconnect, taking into account psychosocial risks; taking a variety of measures to make employees aware of the possibility of exercising their right to disconnect, including the organisation of training in this area.

It seems problematic to impose specific organisational or technical solutions in this field, so it would be rational to leave employers relatively free to shape their internal policies, as this will allow them

[19] M. Kurzynoga: *Propozycje Parlamentu Europejskiego unormowania prawa pracowników „do odłączenia" (the right to disconect).* "Praca i Zabezpieczenie Społeczne" 2022, no. 5, p. 7.

to adapt the procedures to the specifics of a given company[20]. The most important issue seems to be the employer's obligation to inform each employee in writing of his or her rights and of the arrangements made to ensure the exercise of those rights. This is a key point, because one of the obstacles to exercise the right to disconnect is, among other things, the lack of awareness on the part of both supervisors and employees themselves that the employee is not obliged to respond to phone calls and emails outside of working hours. Supervisors often do not seem to remember that contacting subordinates after working hours can violate employees' right to rest and leisure. On the one hand, employees do not know their rights, and on the other hand, they are convinced, not always justifiably, that they are expected to respond immediately. Unambiguous information from the employer that employees have the right to "switch off" will allow for the development of new rules of communication with employees.

Member States will be required to compensate the employees for breaches of his or her rights. It is highly probable that Member States will decide to require the employer to provide the employee with an equivalent rest period in lieu of the right to recuse infringed, and only when it is objectively impossible to grant such a period of recuse will it be able to provide them with adequate monetary compensation.

Another solution to ensure the proper exercise of the right to disconnect is to protect employees against discrimination based on availability, less favourable treatment, dismissal or other unfavourable treatment in retaliation for exercising or wishing to exercise the right to disconnect. Not only will employees have the right to switch off, but also, and this may be even more important in practice, they will be protected from sanctions for their lack of availability. On the other hand, the employer will also not be able to reward or promote subordinates for staying in constant contact with the company. In view of the actual difficulties in proving that an employee has been the victim of unfavourable treatment for the exercise of his or her rights, the Directive shifts to the employer the burden of proving that the difference in treatment of the employee was based on other grounds, in the

[20] B. Surdykowska: *Prawo „do odłączenia" – coraz większe wyzwanie we współczesnym świecie pracy*. "Monitor Prawa Pracy" 2019, no. 12, p. 6.

same way as in the case of discrimination based on criteria other than the availability of the employee.

The last of the solutions adopted in the draft directive is the obligation for Member States to establish effective, proportionate and dissuasive sanctions for breaches of the employer's obligations related to the employee's right to recuse. The Polish legislature may treat a breach of obligations related to the implementation and observance of the right to disconnect in the same way as any other breach of working time regulations. In addition, the exercise of the right to disconnect by an employee may be regarded as a discriminatory criterion. In the event of discrimination on this ground, the employee would be entitled to compensation in an amount not lower than the applicable minimum wage. Harassing employees with after-hours emails and expecting constant availability can even be considered as mobbing.

When analysing the proposed changes in the draft directive, it is important to consider the concerns raised by legal scholars regarding the purposefulness and accuracy of these solutions in their practical application. Specifically, the question arises whether they will provide a genuine benefit and relief for employees or merely impose additional obligations on employers[21].

4. Normative basis of the right to disconnect in the Polish law

In Poland, there is no separate right of an employee to disconnect, but such a right can be inferred both from the general provisions on working time and from the decisions of labour courts and the Supreme Court. Polish Labour law currently contains regulations that give employees respect for their free time. An employee remains at the employer's disposal only during working hours. Therefore, the employee is obliged to be at the employer's disposal within the working time and working time schedule determined in accordance with Article 130 of the Labour Code. After this time, the employee is no longer at this

[21] See: A. M. Świątkowski: *Prawo do bycia „offline”*. “Monitor Prawa Pracy” 2024, no. 3, p. 20; S. Kubiak, A. Magnuska: *Prawo do bycia offline. Realna ulga dla pracowników czy tylko dodatkowe obowiązki dla pracodawców?* Warszawa 2021, *passim*.

disposal. As a general rule, an employee is not required to answer the phone or respond to emails after working hours or while on vacation[22].

Outside of such working hours, the employer may order the employee to work only overtime or oblige the employee to be on call, i.e. to be on standby outside normal working hours. It should be emphasised that both overtime work and on-call duty cannot, as a rule, violate the minimum periods of daily and weekly rest of an employee. Rests are periods intended for the employee's rest and are to be free from the performance of professional duties. In addition, overtime work is compensated by a salary supplement or time off. The on-call work is compensated by time off or remuneration in accordance with the rules set out in the Labour Code. Thus, the regulations concerning the definition of working time and rest periods outline the basic principles of employee availability.

Unfortunately, the law often misses the practice. Most employees report that they feel pressure from their supervisors to answer phone calls after work and be available at all times. An employee who receives an email in the evening may feel like they are expected to respond immediately. In terms of labour law, this means nothing more than work in excess of the employee's working time standards, for which the employee must be paid or given additional time off. On the other hand, the employer should have the tools to call on the employee to work overtime in case of special needs.

Even if there are no specific laws on the right to disconnect, employers can still regulate their own rules internally, as long as they are beneficial to employees. The implementation of the right to disconnect can take place at the level of enterprises by introducing internal policies on contacts after working hours, specifying the appropriate rules of communication, but also the rules of contact with the employee, if the employer actually needs to order the employee to work overtime, due to special needs or breakdowns.

The key issue in this context is not the law, but the issue related to the management culture and employees' awareness of their rights, so this should be more widely addressed at the level of companies by promoting good practices. Training is necessary not only for employees,

[22] Judgement of the Supreme Court of 8 March 2017, II PK 26/16, OSNP 2018, no. 4, pos. 43.

but also for management. It is a matter of a specific work culture, because the definition of working time and rest periods sets the framework for cooperation between the employer and employees, and the indicated areas have already been regulated at the national and EU level. The challenge will be to frame the right to disconnect within the framework of a legal norm that will not limit the employer's right to order overtime work or recall an employee from leave[23].

Then the question arises whether further, detailed regulations are needed and whether they will not cause the problem of overregulation. The final assessment of the introduced regulations depends, of course, on the degree of concretisation of the proposed regulations. However, there is no doubt that, in any case, they would lead to even more bureaucracy, which in turn would increase labour costs. What's more, a total ban on answering emails or phone calls from employers outside of working hours can cause chaos in many industries and increase costs[24].

An employee who is not at the employer's disposal during the working hours resulting from his or her working time schedule, overtime or on-call duty, is not obliged to remain in contact with the employer in order to perform work. Therefore, taking into account also the provisions of the Labour Code in the field of working time and rest time, in my opinion, there is currently no need to create a new right to disconnect, and the undertaking of any work on the basis of national law concerning the right to disconnect will depend on the course of the above-mentioned negotiations between the social partners at the European level[25].

5. Conclusion

The analysis of the scope of the so-called right to disconnect leads to the conclusion that this right is not a new, separate entitlement, but is in fact a specific element on the border of broader issues such as

[23] K. Moras-Olaś: *Prawo do bycia offline jako podstawowe prawo pracownika*. "Studia z Zakresu Prawa Pracy i Polityki Społecznej" 2021, no. 4, p. 316.

[24] J. Tlatlik: *Kwestia regulacji „prawa do odłączenia"…*, p. 20.

[25] Reply of the Labour Law Department to the petition of 3 January 2023, on the introduction in Poland of a a legislative solution guaranteeing the right to be offline, 19 January 2023, https://www.gov.pl/attachment/a1607833-146f-421f-bccb-7a2beb000320 (accessed 01 January 2024); Cf. B. Surdykowska: *Prawo "do odłączenia"…*, p. 7.

the right to rest and the right to safe and healthy working conditions. While the Constitution itself does not provide grounds for employee claims, the provisions of the Labour Code concerning working time and leisure time would, in my opinion, be sufficient to enforce the right to disconnect, under the condition that an appropriate work culture is applied. If, in justified situations, an employer may allow an employee to finish work earlier due to personal matters, then the employee should also be open to engaging in urgent and unforeseen workplace needs even outside of regular working hours. In my view, this does not constitute a violation of the right to rest but rather reflects the fulfilment of the duty to care for the well-being of the workplace, as stipulated in Article 100 § 2 point 4 of the Labour Code. Some legal scholars justify the need to regulate the right to be offline by referencing the recently promoted culture of the "constantly available employee" and the expectation that employees remain perpetually ready to engage in work-related matters[26]. In my opinion, emphasis should be placed on soft measures, such as informing employees about their working time rights, and a significant role should be given to employers in the introduction of internal legislation on the right to disconnect.

Since we are talking about the right to disconnect, the question arises: can we speak of the category of "disconnection time"? The right to disconnect is, in my view, merely an emphasis of enforcement of the employee's right to rest and leisure and not a separate category of time. Thus, since this matter is exhaustively regulated both at the EU and national level, there is no need to introduce additional, detailed regulations.

Bibliography

Barzycka-Banaszczyk, M.: *Prawo pracy*. C.H. Beck, Warszawa 2001.

Bigaj, A.: *Prawo do urlopu wypoczynkowego*. Wolters Kluwer Polska, Warszawa 2015.

Florczak-Wątor, M.: *Konstytucja Rzeczypospolitej Polskiej. Komentarz*. Ed. P. Tuleja. Wolters Kluwer Polska, Warszawa 2023, art. 66, LEX/el.

Garlicki, L., Jarosz-Żukowska, S.: *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom II*. Ed. M. Zubik. Wolters Kluwer Polska, Warszawa 2016, art. 66, LEX/el.

Kubiak, S., Magnuska, A.: *Prawo do bycia offline. Realna ulga dla pracowników czy tylko dodatkowe obowiązki dla pracodawców?* Wardyński & Wspólnicy, Warszawa 2021.

[26] L. Mitrus: *Pracownicze prawo od bycia offline*. "Monitor Prawa Pracy" 2022, no. 3, p. 19.

Kuczma, P.: *Prawa pracownicze*. In: *Realizacja i ochrona konstytucyjnych wolności i praw jednostki w polskim porządku prawnym*. Ed. M. Jabłoński. Wydawnictwo Uniwersytetu Wrocławskiego, Wrocław 2014.

Kurzynoga, M.: *Propozycje Parlamentu Europejskiego unormowania prawa pracowników „do odłączenia" (the right to disconect)*. "Praca i Zabezpieczenie Społeczne" 2022, no. 5, pp. 3–13.

Miernicka, I.: *Prawo do odłączenia się w świetle Rezolucji Parlamentu Europejskiego z dnia 21 stycznia 2021 roku zawierającej zalecenia dla Komisji w sprawie prawa do bycia offline*. "Przegląd Prawa i Administracji" 2022, vol. 129, pp. 123–140.

Mitrus, L.: *Pracownicze prawo od bycia offline*. "Monitor Prawa Pracy" 2022, no. 3, pp. 15–20.

Moras-Olaś, K.: *Prawo do bycia offline jako podstawowe prawo pracownika*. "Studia z Zakresu Prawa Pracy i Polityki Społecznej" 2021, no. 4, pp. 305–323.

Naumowicz, K.: *Prawo do bycia offline a praca zdalna*. In: *Praca zdalna w polskim systemie prawnym*. Ed. M. Mędrala. Wolters Kluwer Polska, Warszawa 2021.

Naumowicz, K.: *Prawo pracowników zdalnych do bycia offline – rozważania prawnoporównawcze*. "Roczniki Administracji i Prawa" 2021, no. 21, pp. 535–544.

Pachała-Szymczyk, E.: *Prawo do bycia offline odpowiedzią na upowszechnienie narzędzi cyfrowych w zatrudnieniu*. "Transformacje Prawa Prywatnego" 2022, no. 4, pp. 7–26.

Rumian, J.: *Praca w niedzielę i święta*. Wolters Kluwer Polska, Warszawa 2024.

Surdykowska, B.: *Prawo "do odłączenia" – coraz większe wyzwanie we współczesnym świecie pracy*. "Monitor Prawa Pracy" 2019, no. 12, pp. 7–18.

Świątkowski, A. M.: *Prawo do bycia „offline"*. "Monitor Prawa Pracy" 2024, no. 3, pp. 17–20.

Tlatlik, J.: *Kwestia regulacji „prawa do odłączenia" w polskim porządku prawnym z perspektywy aktualnych przepisów KP*. "Monitor Prawa Pracy" 2022, no. 1, pp. 18–22.

Prawo do odłączenia w kontekście konstytucyjnego prawa do wypoczynku

Streszczenie

Problemy pracowników z utrzymaniem równowagi pomiędzy życiem osobistym a zawodowym, wynikające ze wzrostu popularności pracy zdalnej, stanowią punkt wyjścia dla konieczności wyraźnego rozgraniczenia czasu pracy i czasu wolnego. Celem niniejszego opracowania jest odniesienie tzw. prawa do odłączenia do przepisów Konstytucji Rzeczpospolitej Polskiej i do przepisów Kodeksu pracy oraz dokonanie oceny konieczności wprowadzenia szczegółowych regulacji w tym zakresie.

Słowa kluczowe: prawo do odłączenia, czas pracy, prawo do wypoczynku