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The Lawyer Fighting for LGBTQ Protection in the Polish Workplace

Employment and Labor

Interviews and Profiles



In 2019, an employee at IKEA's Krakow store [was fired](#) after posting on the company's intranet a quote from the Bible preceded by a personal opinion on homosexuality. IKEA is now facing a civil lawsuit by the employee for wrongful dismissal, and the HR manager that fired the employee is facing charges of religious discrimination brought by the public prosecutor's office.

Daniel Ksi??ek, senior managing partner at Baran Ksi??ek Bigaj (BKB), spoke with the *ACC Docket* about the case and its potential impact on labor and employment law and the LGBTQ community.



Daniel Ksi??ek, senior managing partner, Baran Ksi??ek Bigaj

You are a defense attorney in the now famous case concerning LGBTQ rights in Poland. What is the subject of the case?

It all started with a comment posted by an employee. Their employer was celebrating International Day Against Homophobia, and the employee posted the following comment:

Acceptance and promotion of homosexuality and other forms of deviation sow degradation. The Bible says "woe be they who stumble, it would be better for them to have a large millstone hung

around their neck and to be drowned in the depths of the sea,” and “Anyone who lies with a man as with a woman commits an abomination. They must be put to death and their blood is on them.”

After a few days of discussion with the employee and complaints made by other employees who were offended by the post, the employer terminated the employee agreement. This action, in my opinion, was lawful, as it says in the Labor Code. The employee filed an appeal with the labor court, and the Minister of Justice quickly became involved in the case. In the following days, proceedings were instigated and the person who signed the termination agreement was indicted.

There are currently two separate proceedings in this case. How are they different?

There are two cases, one before the criminal court and one before the labor court. In the case before the labor court, the parties are the dismissed employee and the employer.

Before the criminal court, the two parties are the public prosecutor's office and the person who signed the termination notice. The employer is not a party in the case before the criminal court. In my almost 20 years of experience in labor court cases, I have never seen a public prosecutor become involved in a pending labor court case. This is extraordinary and demonstrates how involved the public prosecutor's office is in this case.

In the criminal case, the employee who signed the termination notice is alleged to have breached article 194 of the Criminal Code, which states that “anyone who restricts a person's rights on the grounds of belonging or not belonging to a church faces a fine, restriction of liberty, or a prison sentence of up to two years.”

At what stage are both these proceedings?

The first hearings have been held and the first witnesses have been examined. The next hearings are scheduled for April. It is highly likely that a judgment will be given in one of the cases in the next two months.

The prosecutor uses the narration that the employee was dismissed for posting quotes from the Bible.

Yes, as part of the defense team for the accused, we are arguing that the employee was not dismissed for quoting the Bible, but for their own comment that precedes that quote. In addition, when arranged in that way, the two parts of the post are grounds for fear on the part of members of the LGBTQ community for their safety. In my view, the public prosecutor did not pay regard for the entirety of the post. Moreover, the public prosecutor does not consider the labor law. We are raising all of these arguments before both the labor court and the criminal court.

Did employers in Poland modify their internal regulations on the equality and freedom of speech after the proceedings had started?

How does this case affect the functioning of multinational companies in Poland?

I cannot speak for the parties, but such quick and intensive involvement of the public prosecutor in cases concerning how a workplace is created definitely means that any employer who implements a D&I policy will look twice at the wording of the policy and sometimes consider the scale to which it should be implemented. I do not have any particular entity in mind, but this is based on the experiences of the last 10 or so months.

It is important however, that this should not lead to reticence. Policies are implemented and observed. Of course, there are a number of questions and concerns about the wording. Questions have been raised about whether implementing a policy might cause an employee to post a similar comment, and what should be done in that situation. Should action be taken in the same way as the employer that is being sued, and should they risk a decisive reaction on the part of the public prosecutor? In a criminal case the accused can be a particular individual and not an organization. These are not simple questions. This is not right. Equality issues are clearly regulated by international law, the Constitution, and labor law. I think that if there is any doubt, that is due to a failure to understand the purpose of D&I policies.

Are court cases concerning the freedom of speech and the rights of LGBTQ people frequent in Poland?

In general, since that incident, the LGBTQ community in Poland has been one of the main subjects in social and political discourse, in which the senior figures in the country have become involved. As far as I know, the cases are pending before various courts. Judgments will be given within a few months. That is my expectation. These cases are different, however, from the cases I am handling. My cases concern the workplace and employee rights. There are a number of provisions in the Labor Code that are in conjunction with European laws that prohibit discrimination. Each case needs to be evaluated. I can comment on those I am handling. Certainly, the cases I am handling are unprecedented in their scale.

Why is the Polish Ombudsman involved in the case?

The Commissioner for Human Rights is monitoring the case. The message coming from the Commissioner is that the case of the employee dismissed for making a comment about LGBTQ people concerns extraordinarily important human rights issues: religious freedom and the limitations of that freedom and the broader context of combatting discrimination in the workplace. For this reason, the Commissioner, who also acts as an independent body on equality, cannot ignore the current public debate on this topic. The Commissioner will consider whether there are grounds for taking further action following review of the judgment delivered in the case.

Is it likely that this case will create a precedent in Poland?

It will definitely create a precedent in terms of labor law, and more specifically employee rights. It will be an azimuth for some employers as to whether to promulgate a D&I policy. Above all, this is a question of the smaller firms that do not have strong legal representation.

I have been assisting employers for a decade or so, and there is one thing I can say with

confidence: The employer that is being sued has always considered it important to create the best possible working environment for its employees, regardless of the diversity among the employees hired. As an employer, it has the highest standards regarding equality in the workplace, which it constantly observes. It needs to be remembered that equality is something that every employer is required to respect.

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