

**Employment law-projection on recalling a managing directors being party of an employment relationship, a decision in principal taken recently by the Curia**

The management of a company may be entrusted to a managing director as a contractor or an employee, subject to the agreement of the parties. If a managing director carries out his duties in an employment relationship, then both the legal provisions applicable to corporate companies and the relevant labor law rules should be taken into account in connection with the legal relationship, which may in many cases lead to difficulties in applying the law.

The judicial practice in terminating the employment of managing directors recognizes that the recall of a managing director by means of an appropriate act based on company law provisions may not only terminate a senior executive position in company law, but also terminate the employment of a managing director. Recalling Company Act must also comply with relevant labor law provisions. If the recall does not comply with the provisions of the labor law and therefore the managing director applies for the claim, the employer will be obliged to bear the financial consequences of the unlawful termination of the employment relationship. consequences of the unlawful termination of the employment relationship.

In a recent case-by-case decision of the Curia, the question in principle was whether it is legally possible to stipulate in a management contract that the dismissal of a managing director from office without a justification (which is possible under the relevant company law rules) will immediately terminate the employment of the managing director. In this respect, it is important to note that under the relevant labor law rules, the employment of a managing director may be terminated without notice by reason of termination (in accordance with earlier terminology) or, with extraordinary termination. (with a prior notice of extraordinary termination), or where appropriate, by an immediate termination notice by reason (with a prior notice of extraordinary termination).

The above mentioned decision of the Curia sets the principle that the contractual provision that would allow a managerial contract to terminate the employment of a managing director by means of an unjustified recall (i.e. by the resolution of the appropriate supreme body) with immediate effect also terminates the employment contract. That is, the Curia stated that provision of the employment contract examined in the case in question, that the employer is not obliged to justify the recall, may not apply for immediate termination, but only for regular termination. According to the reasoning of the Curia decision, according to the general provisions of the Labor Code, the employment relationship can be terminated by mutual agreement, termination or immediate termination, and no derogation is possible in this aspect.

This means – irrespective of whether the employment relationships of senior employees are subject to special and more flexible and broader derogations than the general rules – that a provision in a management contract that would in practice lead to no difference in content cannot validate an



immediate termination and a termination, i.e. both measures would ultimately terminate the employment contract without reasoning and with immediate effect.

Although the decision of the Curia does not explicitly state that this also constitutes a restriction on the possibility of departing from the general provisions regarding the notice period in the case of a termination, however it can be inferred from the decision in principal that the possibility of derogation in this respect cannot be unlimited, i.e. it is not possible to completely exclude the use of the notice period for termination of employment relationship.