

## Conclusions of the summary report on invalidity in employment relationships

The Curia's jurisprudence-analysing working group completed its examination of the judicial practice on invalidity in employment relationships in November 2020, and recorded its findings in a summary report. The main conclusions of the analysis are as follows:

If an employee loses his ability to meet a requisite job requirement specified in the employment contract (employment relationship) after the employment contract or employment relationship validly came into existence, during the existence of the contract or the relationship no invalidity can be established.

The absence of the employee's ability to meet the requisite job requirement at the time of the conclusion of the contract will result in the invalidity of the contract. Later no ground for invalidity can arise, even if the absence (defect) the employee's ability to meet the requisite job requirement should, in fact, be treated in the context of the conclusion of the contract as a ground for invalidity. Since the phrase "not employable" in section 44/A, subsection (2) of the Labour Code does not provide clear guidance on how the employer should act if the employee loses his ability to meet the requisite job requirement, it is justified to initiate the amendment of the Act in respect of this issue.

Section 20, subsection (3) of the Labour Code provides for the possibility for the employer to remedy an invalidity caused by a legal statement made by an unauthorised person by allowing the subsequent ratification of the legal statement made by the pseudo-representative by the person entitled to act. The Labour Code does not prescribe a time limit for making such a legal statement, hence it can be made by the entitled person without a time limit, by having regard to the principles of good faith and fairness, and in conformity with the procedural rules.

The secret provisos or hidden motives of a party shall not affect the validity of the contestation. In case of a sham contract, there is a concordant discrepancy between the actual intention of the parties and their statements, the parties' common intention being not to conclude the contract which would result from their statements, or to conclude instead a contract with a different content and legal effect. If only one of the parties' will differs from the expressed statement, it is not a sham contract, but a unilateral disguised stipulation, which does not affect the validity of the contract. Unilateral pretense is irrelevant to the validity of the contract.

Being contrary to good morals is a broader concept, whereas violating a law is a narrower concept; the mere fact that an agreement or a legal statement violates a rule pertaining to employment relationship does not in itself render the agreement contrary to good morals, which requires additional factual elements.

Where the plaintiff complains that a given measure is unlawful on several grounds, the court must examine the arising issues in the following order: first, the violation of a specific law, then, the violation of the general standards of conduct, and finally, the violation of good morals.

The courts only have to examine whether the impugned agreement (statement) has been contested in due form and time by the party entitled to do so, if so requested.

The Labour Code as in force at present clearly stipulates that the contesting statement must be communicated to the other party, in the absence of such prior proceedings the claim cannot be directly enforced in court. Consequently, the jurisprudence developed on this issue under the former Labour Code is no longer applicable.

Although section 28 of the Labour Code does not impose the obligation to give reasons on the party contesting the agreement (legal statement), legal certainty requires that the contesting party should state the ground or circumstance on which his allegation is based.

The right to bring a claim before the court, the right of contestation cannot be validly waived. The mandatory rules on invalidity are set out in Part One, Chapter IV of the Labour Code, from which the parties may not deviate even by agreement in light of section 43, subsection (1) of the Labour Code.