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**Articles**

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Karolina Badurowicz
Maria Curie-Skłodowska University (Lublin), Poland
ORCID: 0000-0002-8329-5275
karolina.badurowicz@mail.umcs.pl

# Some Comments on the Employer's Complaint against the Decision to Grant Security in the Form of the Obligation to Continue Employing a Particularly Protected Employee (Article 755(5) of the Civil Procedure Code)

## *Kilka uwag o zażaleniu pracodawcy na postanowienie o udzieleniu zabezpieczenia w postaci obowiązku dalszego zatrudnienia pracownika szczególnie chronionego (art. 755(5) k.p.c.)*

ABSTRACT

The subject of the article is an analysis of Article $755^5$ of the Civil Procedure Code, introduced under the Bridging Pensions Act of 2023, which provides for the provision of security in the form of an employer's obligation to continue employing the employee. In view of the fact that the legislator considered the introduction of this type of security as a guarantee for the fulfillment of the postulate of the permanence of the employment relationship, it is necessary to verify whether Article $755^5$ of the Civil Procedure Code actually constitutes a "weapon" of employees in the course of ongoing proceedings brought against the employer. For it turns out that the provision in question – introducing, as it were, the granting of such security "automatically" – limits the discretionary power of the judge in this regard and leaves him no choice in the matter. Moreover, the employer's right as to the possibility of challenging such a provision is also limited, since he can, in principle, only formulate objections to the failure of the court of first instance to declare the employee's claim as manifestly unfounded. The comments presented in the article lead to the conclusion that the current wording of Article $755^5$ of the Civil Procedure Code – intended to be a viable instrument for protecting the rights of employees – is an institution that, in extreme cases, can be disadvantageous even to them.

CORRESPONDENCE ADDRESS: Karolina Badurowicz, Assistant Lecturer, Maria Curie-Skłodowska University (Lublin), Faculty of Law and Administration, Institute of Legal Sciences, 5 Maria Curie-Skłodowska Square, 20-031 Lublin, Poland.

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"Correction" of the regulation in question, on the other hand, can currently take place only through the application of Article 8 of the Labour Code by the courts, which will by no means ensure the stability and certainty of the application of the security of the claim by ordering the continuation of employment.

**Keywords:** civil proceedings; collateral proceedings; employee rights; employer status

## INTRODUCTION

Starting from 22 September 2023,[1] under the Civil Procedure Code,[2] a regulation is in force granting certain employees rights related to securing their claims. Pursuant to Article 755[5] CPC, employees subject to special protection – when they bring an action to declare the termination of an employment relationship ineffective or for reinstatement – have (in principle) a mandatory right to obtain security in the form of an obligation to continue employment.

As follows from the argumentation included in the justification of the draft Bridging Pensions Act 2023, according to which Article 755[5] CPC was introduced, the main purpose of the security resulting from it is to strengthen and protect the employee's position against termination of the employment relationship with or without notice.[3] Additionally, the regulation in question is intended to be a remedy for court proceedings lasting months, which, in the legislator's opinion, makes it impossible to ensure that the employee obtains an appropriate guarantee of the durability of the employment relationship.[4]

An attempt to characterize the institution of securing employee claims referred to in Article 755[5] CPC, despite its correct assumption, cannot stand without articulating numerous doubts as to its shape. The doctrine indicates that the adopted regulation basically "leaves no choice" to the courts not only as to its application, but also as to the decision to revoke the security in question.[5] It is also emphasized

[1] On this date, the Act of 28 July 2023 amending the Act on the old-age bridging pensions and certain other acts (Journal of Laws 2023, item 1667; hereinafter: Bridging Pensions Act of 2023) has entered into force.

[2] Act of 17 November 1964 – Civil Procedure Code (consolidated text, Journal of Laws 2023, item 1550, as amended), hereinafter: CPC.

[3] Sejm of the Republic of Poland, 9th term, Justification of the parliamentary bill amending the Act on the old-age bridging pensions and certain other acts, print no. 3321, https://www.sejm.gov.pl/sejm9.nsf/druk.xsp?nr=3321(access: 23.12.2025), p. 6.

[4] *Ibidem*.

[5] K. Baran, *O zabezpieczeniu roszczeń pracowników szczególnie chronionych w trybie art. 755[5] kodeksu postępowania cywilnego w razie wypowiedzenia albo rozwiązania stosunku pracy przez pracodawcę*, "Praca i Zabezpieczenie Społeczne" 2023, no. 10, p. 23. See also B. Bury, *Nałożenie na pracodawcę obowiązku dalszego zatrudnienia pracownika do czasu prawomocnego zakończenia postępowania. Część 1. Zabezpieczenie roszczeń pracowników szczególnie chronionych w przypadku*

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that the current provision of Article $755^5$ CPC basically limits the discretionary power of the judge and imposes an obligation on him/her, without leaving any margin of decision-making.[6]

In the context of the above statements, indicating the somewhat absolute nature of the application of the security specified in Article $755^5$ CPC, the issue that requires analysis is how the obligated employer should behave in the face of such a coincidence of events. Due to this, the subject of this article is, first of all, an analysis of the circumstances whose occurrence determines the issuance of a decision to provide security for a claim. The decision in question *per se* will also not be left without comment, primarily due to the impact of its content on the further factual situation of the parties to the proceedings. Another aspect that should be addressed in the article is an attempt to examine how (if at all) an employer can effectively bring an action against the decision to grant security involving the obligation to continue employing a particularly protected employee.

## DECISION GRANTING SECURITY ISSUED PURSUANT TO ARTICLE $755^5$ CPC

As it has already been indicated above, the decision on granting security consisting in the obligation to continue employing the employee is, in its current form, issued "automatically". This means that if the conditions specified directly in Article $755^5$ CPC are met, the court hearing the case is (in principle) obligated to provide security.

As regards the first condition, i.e. the subjective scope of application of the provision in question, it should be noted that it is addressed to employees who are subject to special protection against termination of the employment relationship with or without notice. The doctrine emphasizes that – due to the multiplication of regulations – it is difficult to list exhaustively all employees who meet the indicated criterion.[7] K. Baran indicates that the broadest approach to this subjective category allows for the distinction of three subgroups of employees who, due to various characteristics, are characterized as employees subject to special protection. Thus, the author classifies employees according to their specific family situation, the

*wypowiedzenia lub rozwiązania stosunku pracy bez wypowiedzenia na podstawie art. $755^5$ k.p.c.*, "Monitor Prawa Pracy" 2024, no. 1, p. 25.

[6] K. Flaga-Gieruszyńska, *Komentarz do art. $755^5$*, [in:] A. Zieliński, K. Flaga-Gieruszyńska, *Kodeks postępowania cywilnego. Komentarz*, Legalis 2024, margin no. 4.

[7] See more K. Baran, *op. cit.*, p. 21 ff. See also T. Partyk, *Komentarz do art. $755^5$*, [in:] *Kodeks postępowania cywilnego. Komentarz*, vol. 2: *Art. 506–1217*, ed. O. Piaskowska, LEX/el. 2024, margin no. 3.

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function they perform, and finally their social merits.[8] However, this still does not allow for a definitive determination of the subjective scope of application of the provision, leading to the adoption of the thesis that each time it will be analysed whether a specific party to the proceedings (employee) will be able to submit an application for issuing a decision on security pursuant to Article $755^5$ CPC.

However, referring to the subject scope of the regulation in question, it applies only to two actions, i.e. a claim for declaring the termination of an employment relationship ineffective or for reinstatement to work. Therefore, if an employee who is subject to special protection against termination of the employment relationship with or without notice makes any of the above-mentioned claims, he/she will be entitled to apply for issuing a decision on security, consisting of reinstatement to work for the duration of the ongoing proceedings. For obvious reasons, this security will not apply if the employee files a claim for compensation.[9]

As for the temporal aspect of applying the security referred to in Article $755^5$ CPC, two issues should be pointed out. First, the entitled party/employee has the opportunity to submit an application for a decision to grant security at any stage of the proceedings.[10] Therefore, there is no obligation for this to be done in the pleading initiating the proceedings. Second, the security in question is granted until the final conclusion of the proceedings – after which it expires.[11] The doctrine indicates that such a structure of the security makes it innovative in nature, and therefore aims to satisfy the claims of the entitled party/employee during ongoing court proceedings.[12]

The last condition for applying security is to determine its basis. As for the provision of Article $755^5$ CPC, it is only sufficient to substantiate the existence of the claim. K. Flaga-Gieruszyńska points out that this is an exception to the regulation resulting from Article $730^1$ § 1 CPC, according to which, in order to obtain security, it is required not only to substantiate the existence of a claim, but also a legal interest in obtaining it.[13] Therefore, if an employee wants to obtain security in accordance with Article $755^5$ CPC, he/she is not obligated to substantiate the legal interest.[14]

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[8] K. Baran, *op. cit.*, p. 21.

[9] The security in question may be granted only when the subject of the proceedings is to recognize the termination of the employment relationship as ineffective or for reinstatement to work. See T. Partyk, *op. cit.*, margin no. 2.

[10] I. Baranowska, *Zwiększona ochrona pracowników – zmiany od 22 września 2023 r.*, LEX/el. 2023. See also K. Flaga-Gieruszyńska, *op. cit.*, margin no. 4.

[11] K. Baran, *op. cit.*, p. 23.

[12] K. Flaga-Gieruszyńska (*op. cit*., margin no. 4) points out that the security structure specified in Article $755^5$ CPC and regarding the obligation to continue employing the employee is similar to securing maintenance claims. Moreover, it is in opposition to the rule expressed in Article 731 CPC, according to which security cannot aim to satisfy the claim. See also T. Partyk, *op. cit.*, margin no. 2.

[13] K. Flaga-Gieruszyńska, *op. cit.*, margin no. 5. See also I. Baranowska, *op. cit*.

[14] T. Partyk, *op. cit.*, margin no. 4.

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The above comments allow for the conclusion that the existence of all circumstances conditioning the application of the provision of Article $755^5$ CPC, as well as the lack of a condition preventing this,[15] leads directly to the issuance of a decision granting security.

As for the decision itself regarding securing the claim of the entitled party or employee, several issues need clarification. It is assumed that the decision in question is intended to secure the claim by ordering the obligated party to continue employing the entitled party (the employee initiating the proceedings) until the final conclusion of the proceedings.

Therefore, if the court limits itself in its decision to securing the claim of the entitled party or employee by ordering his/her continued employment, it will mean that he/she will return to the exact position he/she held until the (disputed) termination of his/her employment relationship. The employer, as the obligated one, will not have any possibility of independent modification in this matter. Therefore, he will be absolutely obligated to continue employing the employee.[16] Such content of the decision will be a literal emanation of the demands of the entitled party or employee. From the employer's perspective, it will come down to obliging it to "continue" to employ the employee. It would seem that this means that the above-mentioned postulate of durability of the employment relationship is fully implemented.

However, contrary to appearances, treating the regulation in question on the basis of associating a request of the entitled party to grant security, by further employing him/her, and issuing a decision for this purpose, which in its content is limited solely to the approval of this fact, may in some cases lead to achieving a completely opposite effect to that intended. Moreover, it seems that the legislator itself has not been so restrictive in this matter, leaving some "room for maneuver" for the court in this respect.

K. Baran points out directly that Article $755^5$ § 1 CPC does not impose an order to continue employing the employee (as part of securing his/her claim) in the exact position in which he/she worked until the employment contract was terminated. Moreover, the author points out that if the legislator wanted such a relationship to exist, it would simply specify it directly.[17] This is justified because under the Labour

[15] The premise that invalidates the justification for issuing a decision granting security will be discussed separately later in the article.

[16] The decision to grant security pursuant to Article $755^5$ CPC is subject to enforcement. K. Flaga-Gieruszyńska (*op. cit*., margin no. 6) draws attention to several consequences related to this. First, the employer (obligated party) – due to the fact that reinstatement is an irreplaceable enforcement action – must receive the decision in question. Notwithstanding the above, pursuant to Article $755^5$ § 2 CPC it clearly follows that the regulation in question applies to Article $756^2$ CPC, which in turn provides for the possibility of including in the decision granting security the threatening of the party liable to pay a specific sum of money to the entitled party/employee in the event of failure to implement the content of the decision.

[17] K. Baran, *op. cit.*, p. 23.

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Code,[18] there is a regulation in which the legislator indicated that the employee's reinstatement to work should occur exactly "under the previous conditions" (Article 56 § 1 of the Labour Code).[19] As for the provision of Article $755^5$ § 1 CPC, there is no point in looking for any reference to previous working conditions in its content. It is only indicated that (after the court grants the security) the employer is obliged to continue employing the employee. Therefore, there is no reference in this provision to the convergence of working conditions after obtaining security for the claim with those that the employee had until receiving the notice of termination.

All of the above allows us to accept the thesis that the court, when making a decision on granting security for the employee's claim, does not have to, and in some cases even should not, limit itself to merely stating that it orders the employee's continued employment (until the final conclusion of the proceedings). There are no contraindications to determining the fact that the security has been granted and also specifying the conditions under which the entitled party or employee is to be further employed.[20]

The issue of appropriate presentation of the conditions for the employee's continued work in the content of the decision to grant security is important for several reasons. First of all, as K. Baran points out, the temporal aspect should be taken into account.[21] The decision to grant security constitutes the basis for "arranging" relations between the entitled party or employee and the obligated party/employer, until the final conclusion of the proceedings. In other words, throughout the duration of the court proceedings (which occasionally will last only a few weeks, but most often it will be years), the parties will be obliged to cooperate precisely on the terms specified in the decision in question. This – for obvious reasons, such as the ongoing court dispute – should be "neutralized" as much as possible. The only entity that can influence the lack of further escalation of the conflict is the court. It is the court's responsibility to analyse the specific facts and decide whether there is a need to modify the working conditions of the entitled party or employee.

Of course, in the context of the above comments, it is clear that an ongoing dispute between an employee and the employer may end with the court issuing a decision in accordance with the request of the plaintiff – the employee, which will actually result in his/her "return to work".[22] Therefore, it can be concluded that if the effect is the same, there is no real need to change these conditions only for the

[18] Act of 26 June 1974 – Labour Code (consolidated text, Journal of Laws 2023, item 1465, as amended).

[19] K. Baran, *op. cit.*, p. 23.

[20] Cf. B. Bury, *op. cit.*, p. 26.

[21] K. Baran, *op. cit.*, p. 24.

[22] Please note that the possibility of obtaining security in accordance with Article $755^5$ § 1 CPC is granted only when the employee brings an action to have the termination of the employment relationship declared ineffective or to be reinstated to work.

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duration of court proceedings. However, such an interpretation does not seem to be justified. It is worth noting that the very fact that an employee has filed a lawsuit undoubtedly proves that there is a dispute between him/her and the employer.

However, this directly generates "specific" conditions in which both parties will have to cooperate when providing security in the form of the employee's continued employment. Regardless of this, until a final decision is obtained – by definition – both parties to the proceedings have an equal chance of obtaining a verdict in their favour. Therefore, the argument that the employee will return to work "anyway" and there is no point in changing his/her employment conditions for the duration of the security is not so obvious from the employer's perspective.

When it comes to the issue of formulating a decision to grant security, consisting in ordering continued employment of the entitled party or employee, attention should be paid to one more aspect. Shaping this decision only by pointing to the order to continue employing the employee, which should *de facto* be understood as his/her return to the position he/she held until he/she received notice of termination, may sometimes be unfavourable to the entitled party himself/herself.

As indicated above, due to the conflict situation, which undoubtedly results from the employee filing a lawsuit, it may turn out that the employer will somehow "benefit" from the fact that the decision to grant security is limited only to the order to continue employment. Therefore, this may lead to a situation in which the employer will simply try to make it difficult for the employee to be allowed to work. The employer will see its reasons in this respect in the fact that there is no proper definition of what the "continued employment" of the employee should look like, because the wording of the decision does not literally state that.[23]

All the statements presented above clearly lead to the conclusion that the content of the decision to provide security for the claim of the entitled party or employee pursuant to Article $755^5$ § 1 CPC should be defined in detail, leaving no doubts in this regard. It should also be noted that based on the court's analysis of the facts of the case determined by the employee "on the occasion" of submitting the application for security, it may come to the belief that the conditions of his/her "return" to work should be modified for the time the security is granted.

Moreover, from Article $755^5$ § 1 CPC it follows that an application for security may be submitted at any stage of the proceedings. Therefore, it is permissible that the employee decides not to submit such an application before initiating the proceedings, together with the pleading initiating the proceedings, but only later. This will mean that the court, when assessing the application for security, will "inevitably" already know the position of the other party, i.e. the employer, on the matter. Of course, this will not have any impact on the issuance of the decision to grant security – the court will still rely on the request of the entitled party or em-

[23] K. Baran, *op. cit.*, p. 24.

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ployee in this respect. It seems that with such a coincidence of events, the court, when granting the security in question, will be aware of the facts of the case and, therefore, of the need to modify the employee's working conditions.[24]

Obviously, it may turn out that there are no reasons preventing the entitled party or employee from remaining employed in the position held until notice is given, without changing their terms and conditions. There may also be a situation where the specific nature of the workplace will only allow the employee to continue to be employed as he/she was until his/her employment contract was terminated.[25] However, wherever possible, the court should pay particular attention to specify the conditions under which the entitled party or employee is to perform work while "still employed" by the employer.[26]

[24] For example, an employment contract was terminated pursuant to Article 52 of the Labour Code, i.e. without notice due to the employee's fault, and the reason for taking such steps by the employer was the employee's scandalous behaviour towards other employees. It is difficult to imagine that pursuant to a decision granting security, the court – being aware of the facts of the case – issues a decision granting security that limits the order to continue employing the employee. However, the author is aware of a case in which – under the circumstances specified above – the court issued a decision in which it only indicated an order to continue employment, being aware that it is possible to "neutralize" the effects of the conflict, e.g. by specifying in the decision that the employee is to provide work under the same conditions, but working with a different staff (so-called different "team").

[25] It is possible to think of a situation where the job position in which the employee was employed – due to the scope and nature of the duties – does not allow work to be performed in any other form (e.g. it is not possible for an employee performing physical work to perform it in remote form). Obviously, the court's determination, in the decision to grant security, how the employee is to be "continued to be employed" cannot lead to such a far-reaching change in his/her duties that it would *de facto* require him/her to acquire skills from scratch. Cf. B. Bury, *op. cit.*, p. 26.

[26] It should also be noted that the legislator introduced only one method of security in the described case, i.e. an order to continue employing the employee. Additionally, Article $755^5$ § 3 CPC directly indicates the inadmissibility of changing the decision granting security. This means that regardless of what was the reason for terminating the employee's employment contract, if it results in the employee filing a lawsuit to have the termination of the employment relationship declared ineffective or for reinstatement to work, the possibility of such an employee submitting an application for security is updating. Therefore, it is now possible to order an employee to continue to be employed in the same position in a situation where the employee's employment contract was previously (disputably) terminated without notice due to his/her fault (Article 52 of the Labour Code) due to his/her violation of the competition ban. K. Baran (*op. cit.*, p. 23) points out that in such situations, the court should have the opportunity to refuse to grant security, and it sees the source for making such a decision in Article 8 of the Labour Code, which – in the author's opinion – while determining the basic principle of labour law, also applies to its procedural aspects. Regarding the prohibition to change the method of granting security, see T. Partyk, *op. cit.*, margin no. 7.

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## COMPLAINT AGAINST THE DECISION TO SECURE THE CLAIM IN ACCORDANCE WITH ARTICLE 755[5] § 4 CPC

First of all, analysing strictly procedural aspects, it should be noted that under Article 755[5] § 4 CPC the possibility of appealing against the decision granting security is clear. K. Baran points out that such a structure allows for maintaining the constitutional principle of two instances.[27] As for the regulations regarding the possibility of appealing against decisions granting security, T. Partyk points out that currently the provision of Article 755[5] § 4 CPC constitutes a repetition of the rule expressed directly in Article 741 § 2 CPC, which specifies that the decision to grant security issued by the court of first instance is examined by the court of second instance.[28]

Referring to substantive issues, the basic question that arises after – even a cursory – analysis of the regulation in question is what the complainant must actually prove in order for the complaint to bring a positive result for him/her. In other words, what should the obligated party or employer rely on to prove that the decision granting security should not be issued by the court of first instance.

As a rule, the court may issue a decision (subsequently questioned by the obligated party) to grant security when the party submitting the application meets the requirements to obtain the security in question. Pursuant to Article 730[1] § 1 CPC, the entitled party must substantiate the claim and the legal interest in granting security.[29] However, this rule will not apply when it comes to a decision to provide security for the employee's continued employment. As already indicated, under Article 755[5] § 1 CPC, there is no need for the entitled party or employee to

[27] K. Baran, *op. cit.*, p. 23.

[28] It should be noted that Article 741 § 2 CPC – until it was amended under the Act of 9 March 2023 amending the Civil Procedure Code and certain other acts (Journal of Laws 2023, item 614) – indicated that complaints against issued decisions regarding granting security were examined by the court that issued the contested decision, composed of three judges. From 1 July 2023, i.e. the date of entry into force of the Act of 9 March 2023, complaints are directed to the court of second instance (only if the decision was issued by the court of second instance, the complaint will be considered by a different composition of this court). Significantly, at the moment of entry into force of the Bridging Pensions Act of 2023 introducing the discussed provision of Article 755[5] CPC, i.e. 22 September 2023, Article 741 § 2 CPC was already in force. Therefore, it seems to be correct T. Partyk's comment (*op. cit.*, margin no. 9) that the introduction to Article 755[5] CPC of "clause" 4, which indicates that an appeal against the decision to grant security must be filed with the court of second instance is nothing more than unnecessary duplication, as it does not introduce any difference in this respect. Cf. K. Flaga-Gieruszyńska, *op. cit.*, margin no. 9.

[29] As for the conditions justifying the granting of security, see more I. Gil, *Komentarz do art. 730[1]*, [in:] *Kodeks postępowania cywilnego. Komentarz*, ed. E. Marszałkowska-Krześ, Legalis 2024, margin no. 5.

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substantiate the legal interest, and this may suggest that only substantiation of the claim is sufficient in this respect.[30]

Based on the above, it can therefore be concluded that when appealing the decision to provide security for the employee's continued employment, the obligated party or employer should specifically challenge the fact that the court did not, in its opinion, recognize that the entitled party did not substantiate the existence of the claim. However, it seems that this approach may not be sufficient to effectively appeal against the decision of the first instance court.[31]

However, clarifying the issue of effectively appealing against a decision granting security consisting in an order to continue employing an employee is inextricably linked to a condition nullifying the granting of such security, specified directly in Article $755^5$ CPC. As stated in Article $755^5$ § 1 CPC, the court refuses to grant security only when the claim of the entitled party or employee is clearly groundless. Adopting such a structure means that the court, when verifying the validity of the submitted application for security, will be able to refuse to grant security only if it finds that the claim is obviously groundless. *A contrario*, wherever the court finds that the claim pursued by the entitled party or employee is not obviously groundless, there will always be an absolute need to provide security.[32]

The comments in question allow us to derive a certain type of basic, in principle, dependency regarding the obligated party's effective questioning of the decision to grant security. When it comes to the basic regulation in this area, reference should be made to Article 741 CPC, because it is this provision that introduces the possibility of appealing against decisions of this type. Moreover, there is no doubt that the content of the allegations formulated by the obligated party should refer to two conditions constituting the granting of security, exhaustively listed in Article $730^1$ § 1 CPC. In other words, the complaint may be limited to the obligated party questioning whether the entitled party has sufficiently substantiated the claim and has a legal interest in obtaining security.[33]

However, when it comes to a decision granting security consisting in ordering the employee's continued employment, the possibility of its effective challenge by the obligated party is completely different. It results from the fact that Article $755^5$ CPC constitutes *lex specialis* both in relation to Article $730^1$ CPC and Article 740

[30] K. Flaga-Gieruszyńska, *op. cit.*, margin no. 5. See also T. Partyk, *op. cit.*, margin no. 4.

[31] B. Bury, *op. cit.*, p. 26.

[32] Adoption in Article $755^5$ § 1 CPC of such a restrictive construction regarding the possibility of the court refusing to grant security has been widely criticized in the doctrine. It was explicitly pointed out that this led to a limitation of the court's jurisdictional power. See K. Baran, *op. cit.*, p. 23.

[33] D. Rystał points out that the complaint against the decision granting security should not constitute a substantive polemic with the claim itself, but refer in a strictly procedural manner to the very fact of granting (or not) security. See more D. Rystał, *Komentarz do art. 741*, [in:] *Kodeks postępowania cywilnego. Komentarz*, vol. 2: *Art. 459–1217*, ed. T. Szanciło, Legalis 2023, margin no. 3.

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CPC and thus introduces different conditions both as to the possibility of obtaining security for the claim by the entitled party and, subsequently, of effectively contesting it.

As already mentioned, the basis for granting security in the form of ordering the employee's continued employment is solely to substantiate the existence of a claim. However, at the same time, the court cannot refuse to grant security if it is convinced that the entitled party or employee has not substantiated the existence of the claim. Refusal may only occur if the court finds that the claim is clearly groundless.[34]

All the above-mentioned observations allow us to formulate the thesis that the obligated party or employer, against whom a decision has been issued to secure the employee's claim by ordering his/her continued employment, in order to effectively challenge such a decision, must prove that the employee's claim is obviously groundless.

Since the only circumstance that nullifies the issuance of a decision to grant security is the court's recognition of the claim as manifestly groundless, then in the event of such a decision being issued, the obligated party or employer shall have no other option to defend itself than to formulate arguments proving the obvious groundlessness of the entitled party's or employee's claim. The legislator not only treats Article $755^5$ CPC as *lex specialis* in relation to Article 741 CPC, but also literally indicates that the fact that the claim is clearly groundless is the only condition for preventing its securing.

Therefore, in order to effectively challenge the decision to grant security for the claim of the entitled party or employee, the obligated party/employer, by formulating allegations in the complaint, has no other option than to point out the obvious groundlessness of the employee's claim. Any other argumentation – even if justified – will not result in the repeal of the decision in question. Only arguments regarding the obvious groundlessness of the claim will lead to an effective challenge to the decision and thus its reversal.[35] However, what is worth noting is the coincidence of events in which the issued decision to secure the claim of the entitled party or

[34] B. Bury (*op. cit.*, p. 26) rightly notes that the requirement for the claim to be justified is redundant in the context of the "overriding" requirement for the groundlessness of the claim.

[35] From Article $755^5$ § 3 CPC, it clearly follows that it is not permissible to change the decision granting security. T. Partyk (*op. cit.*, margin no. 7–8) emphasizes that when it comes to a decision granting security consisting in ordering further employment of the employee, Article 742 § 1 CPC does not apply thereto. Pursuant to this provision, the obligated party has the right (in certain cases) to request the repeal or amendment of a valid decision that granted security. However, since, pursuant to Article $755^5$ § 3 CPC, a change to the decision is unacceptable, this means that the obligated party/employee is not entitled to submit an application in this respect. Marginally, it should be noted that as regards the request by the entitled party/employer to revoke the decision to grant security issued pursuant to Article $755^5$ § 1 CPC this is possible, however, the requirements specified in Article $755^5$ § 3 CPC must be met.

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employee is then effectively appealed against and repealed by the second-instance court, which clearly indicates that, based on a given case, the first-instance court would have to come to the conclusion that the claim is obviously not groundless.

As for the obvious groundlessness of the claim, it will be necessary to refer to the provision of Article 191[1] CPC. Pursuant to this provision, in a situation where, already at the stage of cursory verification of the pleading initiating proceedings in the case, as well as the submitted attachments and the facts referred to in Article 228 CPC, the court comes to the conclusion that the filed claim has no reason to exist, it is possible to dismiss the claim at a closed session, without serving a copy of the claim to the defendant. The doctrine emphasizes that the regulation in question is intended to avoid multiplying the work of the court and involving the other party in the proceedings when the outcome of a given case is already known "in advance".[36] Referring only to procedural issues, the regulation in question is intended to shorten the list of actions undertaken by the court, and the admissibility of such action is seen in the essence of the claim presented by the plaintiff.

However, importantly, the assessment of whether a given claim meets the requirement of "obvious groundlessness" must be undisputed. T. Partyk points out that a claim that is obviously groundless is verifiable "at first glance".[37] The jurisprudence emphasizes that a claim is manifestly groundless when the state of the case is entirely clear, and even a cursory analysis indicates that the claim was not accepted.[38]

Applying the above comments to the complaint proceedings initiated by the obligated party or employer, it should be concluded that the only possibility for the court of second instance to annul the decision on securing the claim of the entitled party or employee is to demonstrate that the claimed claim is clearly groundless. It will therefore be necessary to formulate procedural objections which will indicate that security for the claim of the entitled party or employee should not be granted. The basis for making such allegations should be the claim of the obligated party or employer that based on the initiating pleading presented by the entitled party or employee, the documentary evidence submitted, as well as on the basis of generally known facts – the court of first instance should come to the belief that the claim of the entitled party or employee not should be recognized at all.

Moreover, an attempt to analyse the effectiveness of filing an appeal by the obligated party or employer should be considered not only based on the specific facts of the case and statements regarding the reasons presented by the entitled party

[36] T. Szanciło, *Komentarz do art. 191[1]*, [in:] *Kodeks postępowania cywilnego. Komentarz*, vol. 2: *Art. 459–1217*, ed. T. Szanciło, Legalis 2023, margin no. 3.

[37] T. Partyk, *op. cit.*, margin no. 4.

[38] Judgment of the Court of Appeal in Katowice of 1 June 2022, V ACa 237/22, Legalis no. 28441068.

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or employee, suggesting the validity of filing a lawsuit. What is important in the discussed context is the fact that the first-instance court did not have any doubts as to the presented claim and that, based on its analysis, the decision was made to recognize it as manifestly groundless. The court of first instance will also take into account the granting of legal protection to the person initiating the lawsuit, because he/she still uses procedural institutions in accordance with his/her purpose, and the recognition of his/her claim as manifestly groundless will undoubtedly prevent him/her from fully exercising his/her right to court proceedings.[39]

The above comments – made in the context of the position of the obligated party or employer who wants to effectively appeal against the decision to grant security in accordance with Article $755^5$ CPC – lead to the conclusion that the possibility of annulment of the decision in question by the second-instance court will be rare and exceptional. The possibility for the obligated party or employer to question the issuance of the decision granting security was limited solely to pointing out the obvious groundlessness of the claim of the entitled party or employee.

This means that both the court (at the stage of issuing the decision to grant security) and the obligated party or employer (when appealing the decision in question) are unable to "go beyond" analysis of the case at the level of the obvious groundlessness of the claim.

## CONCLUSIONS

Securing the employee's claims by ordering his/her employer to continue employing him/her until the final resolution of the proceedings seems to be a regulation that fully meets the requirement of durability of the employment relationship. Therefore, in accordance with this assumption, Article $755^5$ CPC is intended to provide the basis and certainty for the employee that he/she will be employed by the employer during court proceedings, the subject of which is to question the termination of his/her employment relationship.

The analysis of the individual components constituting the basis for the court to grant security by ordering the continued employment of the employee leads to the conclusion that – when positive conditions occur – the court shall be generally obligated to issue a decision and, therefore, to grant security. This may also be considered a positive feature, proving the above-mentioned guarantee of the durability of the employment relationship. However, unfortunately, the introduction of such far-reaching regulation may result in negative consequences not only for the

[39] E. Gapska, *Przeciwdziałanie nadużyciom prawa procesowego w znowelizowanym Kodeksie postępowania cywilnego. Część II – Powództwo oczywiście bezzasadne*, "Monitor Prawniczy" 2019, no. 16, p. 865.

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employer, but also for the employee himself/herself, which will lead to a distortion of the idea of regulation under Article $755^5$ CPC.

The above-mentioned comments and the presented relationships lead to the conclusion – already raised in the doctrine – that, in specific cases, the only possibility of "freeing" from the provisions of Article $755^5$ CPC will be a direct reference to Article 8 of the Labour Code.[40] In such a case, the court will each time be obligated to assess whether the employee's actions while performing work, leading directly to the termination of the employment contract, violated the principles of social coexistence or whether the employee exercised his/her rights in a manner contrary to the social and economic purpose. If the court finds that such a condition has been met, it will be entitled to refuse to issue a decision granting security. However, as B. Bury rightly notes, the adoption of such a construction and treatment of Article 8 of the Labour Code as a kind of "safety valve" is in complete opposition to the postulate of legal certainty and the treatment of referring to the construction of abuse of law in exceptional situations.[41]

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[40] K. Baran, *op. cit.*, s. 23. See also B. Bury, *op. cit.*, p. 27.

[41] B. Bury, *op. cit.*, p. 27.

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ABSTRAKT

Przedmiotem artykułu jest analiza, wprowadzonego na mocy ustawy pomostowej z 2023 r., art. $755^5$ k.p.c., stanowiącego o udzieleniu zabezpieczenia w postaci obowiązku pracodawcy dalszego zatrudniania pracownika. Z uwagi na fakt, że ustawodawca uznał wprowadzenie tego rodzaju zabezpieczenia za gwarancję spełnienia postulatu trwałości stosunku pracy, konieczna jest weryfikacja, czy art. $755^5$ k.p.c. faktycznie stanowi „oręż" pracowników w trakcie trwającego postępowania wytoczonego przeciwko pracodawcy. Okazuje się bowiem, że przedmiotowy przepis – wprowadzając niejako udzielenie takiego zabezpieczenia „z automatu" – ogranicza w tym zakresie dyskrecjonalną władzę sędziego i nie pozostawia mu w tej kwestii żadnego wyboru. Co więcej, ograniczone jest również prawo pracodawcy do możliwości zaskarżenia takiego postanowienia, gdyż może on zasadniczo formułować jedynie zarzuty dotyczące braku uznania przez sąd pierwszej instancji powództwa pracownika za oczywiście bezzasadne. Prezentowane w artykule uwagi prowadzą do uznania, że w aktualnym brzmieniu art. $755^5$ k.p.c., mający w założeniu stanowić realny instrument ochrony praw pracowników, jest instytucją, która w skrajnych przypadkach może być niekorzystna nawet dla nich samych. „Korygowanie" zaś przedmiotowej regulacji może aktualnie odbywać się wyłącznie poprzez zastosowanie przez sądy art. 8 k.p., co w żadnej mierze nie zapewni stabilizacji i pewności stosowania zabezpieczenia roszczenia poprzez nakaz dalszego zatrudniania pracownika.

**Słowa kluczowe:** postępowanie cywilne; postępowania zabezpieczające; prawa pracownika; status pracodawcy