

Case file No. III SA/Kr 148/10

**JUDGMENT  
of 23 September 2010**

CONCLUDING PART OF THE JUDGMENT

**The Voivodeship Administrative Court in Cracow, sitting in the panel of:**

Dorota Dąbek - Presiding Judge of the Voivodeship Administrative Court,  
Halina Jakubiec - Judge of the of the Voivodeship Administrative Court (Judge Rapporteur),  
Krystyna Kutzner - Judge of the Supreme Administrative Court,  
Ewelina Kalita - Reporting Clerk,

upon hearing on 23 September 2010 of the case based on the complaint of R.P. against the Voivod's decision of 16 December 2009 No. (...) on depriving him of the unemployed person status, dismisses the complaint.

STATEMENT OF REASONS

By the decision of 16 December 2009 No. (...), appealed by R.P., the Voivod upheld the decision of the President of the City of (...) 2009 No. (...) on depriving R.P. from 28 October 2009 of the unemployed person status for failure to appear at the Labour Office on the appointed date and to provide a justified reason for his non-appearance.

The legal basis adopted for the decision was Art. 33(3) and (4) point 4 of the Act of 20 April 2004 on Employment Promotion and Labour Market Institutions (*Dziennik Ustaw* [Journal of Laws] of 2008, No. 69, item 415) and Art. 138(1) point 1 of the Act of 14 June 1960 - the Code of Administrative Procedure (*Dziennik Ustaw* of 2000, No. 98, item 1071, as amended).

The decision was adopted in the following factual circumstances:

R.P. registered on 4 November 2008 at the Municipal Labour Office as unemployed. By a decision of (...) 2008 No. (...), R.P. acquired the unemployed person status without the right to unemployment benefit. With regard to the obligation of an unemployed person to make an appearance at the Labour Office in order to confirm their readiness to take up employment, the date for his subsequent obligatory appearance was set for 28 October 2009.

By a decision of (...) 2009 No. (...), the President of the City pursuant to Art. 10(7) point 1 and Art. 9(1) point 14, Art. 2(1) point 2, Art. 33(4) point 4 of the Act of 20 April 2004 on Employment Promotion and Labour Market Institutions (*Dziennik Ustaw* of 2008, No. 69, item 415) decreed that the Complainant be deprived of the unemployed person status and justified this decision with the Complainant's failure to appear at the Poviast Labour Office on the above-mentioned appointed date and the failure to notify within 7 days of the justified reason for his non-appearance. He was decreed to be deprived of the unemployed person status for a period of 3 months starting from the date of his non-appearance at the Labour Office.

When appealing the above decision, R.P. argued that he had made attempts to determine over the phone with the Labour Office the date on which he was to make the obligatory appearance required of an unemployed person in order to confirm his readiness for work. He had not appeared at the Office because, as he alleged, he had not been in possession of the information on the subsequent date of appearance and "for other reasons".

He made an allegation against the authorities that by depriving him of the unemployed person status, they deprived him of the right to healthcare benefits, as the health care insurance contributions were not remitted for him during this period. He had a doctor's referral for a medical examination which he could not undergo. In addition, he pointed to his difficult financial situation.

Reviewing the appeal, the Voivod issued the above-mentioned decision, sharing the factual findings made by the authority of first instance which may be summed up in stating that R.P. did not appear on the date appointed by the Office, which was 28 October 2009, and he did not inform of a

justified reason for his non-appearance within 7 days . As the authority stressed, a person registering as unemployed at a Labour Office acquires certain rights but also accepts certain obligations resulting from the Act. One of the basic obligations is the obligation to appear at the Labour Office on appointed dates. The Complainant was informed of these obligations, as well as of the consequences of his non-appearance, as follows from the case file. He hand-signed the Registration Sheet in its Section D which states the fact of having informed the unemployed individual of the date of their next appearance. He therefore possessed the knowledge that he should make an appearance on 28 October 2009. Furthermore, as the authority observed, the registration of the Complainant on 04 November 2008 was his subsequent registration at the Labour Office, thus the Complaint should all the more remember that a justified reason for failure to appear on the date appointed by the Office must be provided within 7 days. The reasons for his non-appearance, which the Complainant provided in his appeal, could not be taken into account, especially that he did not enclose any documents proving the cause for his non-appearance. In addition, the authority noted that the Act on Employment Promotion and Labour Market Institutions is based on the assumption that an unemployed person is capable and willing to take up employment. The aim of registration as unemployed at the Labour Office may not be solely to benefit from the rights to which the unemployed are entitled, such as health insurance, but first and foremost to seek and take up employment. One of the main tasks and duties of the Labour Office is to provide assistance to an unemployed person in their active search for work. The registration as unemployed is voluntary. When an unemployed person does register, however, they must be aware of their obligations and the consequences in case they do not fulfil them.

The complaint of R.P. against the decision of the appeal body brought to the Voivodeship Administrative Court in Cracow contained an allegation that the provisions of the Act on Employment Promotion and Labour Market Institutions, which were applied in this case, are contrary to the Constitutional guarantees of health protection and of equal access to healthcare benefits. The Complainant was deprived of the access to healthcare, financed from public funds, for dozens of days in the situation where he was also without work. He underlined that his failure to appear at the Office on 28 October 2009, the fact which he does not contradict, brought the consequences which are too far-reaching.

In response to the complaint, the appeal body upheld its position in this case and requested the Court to dismiss the complaint.

### **The Voivodeship Administrative Court considered the following:**

Administrative courts examine the legality of an appealed administrative act and are not bound in such examination with the limits of the complaint (Art. 3(1) and Art. 134(1) of the Act of 30 August 2002 on the Law on Proceedings before Administrative Courts, *Dziennik Ustaw [Journal of Laws]* No. 153, item 1270 as amended).

Within its cognizance, the Court examines whether or not in issuing the appealed administrative act the provisions of substantive law or procedural law were breached.

In the present case the Court did not ascertain a breach of any provisions of the law.

As follows from Article 33(3) of the Act on Employment Promotion and Labour Market Institutions: "the unemployed shall have the obligation to appear at the competent Poviats Labour Office within the time limit set by the office in order to receive an offer of employment or other type of aid proposed by the office or for any other purpose resulting from the present Act and defined by a Labour Office, in order to confirm their readiness to take up employment.

In a case where an unemployed person is a child support or spousal support debtor within the meaning of the provisions on the assistance to persons entitled to support, the time limit set may not be longer than 90 days." The above provision corresponds with Art. 33(4) point 4 of the Act which sets forth that: "the Staroste, subject to Art. 75(3), deprives an unemployed person of their unemployed person status for their failure to appear at the Poviats Labour Office on the appointed date and for not informing within 7 days of the justified reason for their non-appearance; the

unemployed shall be deprived of their unemployed person status for 3 months since the day when they failed to appear at the Poviát Labour Office".

In the Court's assessment, the authorities deciding on the present case, established correctly the fact that the unemployed R.P. did not appear on 28 October 2009 at the Municipal Labour Office and did not excuse his absence within the following 7 days, although he had confirmed with his hand-written signature on the day of collecting the decision, recognising him as unemployed, i.e. 04 November 2008, that he was aware of such obligation of an unemployed person. In addition, in Section D of the Registration Sheet, the Complainant's signature is placed under the date of 28 October 2009 (indicated to him by the authority as the date of the subsequent visit at the Office), which means that he had acknowledged this date. The Complainant himself did not contradict his absence at the Office on this date, admitting generally that he did not remember of the date of the required meeting, which is why he attempted to contact the Office via the telephone in order to confirm the date. In fact, it was only in his appeal from the decision of the first instance that the first excuse of his absence presented to the authority is found, in which he laconically states that "he did not possess information on the subsequent date and due to other reasons he had not been able to appear at the office earlier ". However, as the appeal body notes, this excuse may not be deemed to be the excuse within the meaning of Art. 75(3) of the Act on Employment Promotion and Labour Market Institutions because, firstly, it was presented after the seven day period from the date of obligatory appearance at the Labour Office and, secondly, no specific reason for the non-appearance follows from this statement. The provisions of Art. 33(3) and (4) point 4 of the Act on Employment Promotion and Labour Market Institutions are categorical and the authority is obligated to decide on the loss of the unemployed person status in case the unemployed fails to appear on the appointed date at the Labour Office unless they demonstrate within 7 days that their non-appearance was related to a justified reason. It is an obligation of the unemployed person to demonstrate that the reason for their non-appearance was justified. The Act does not determine the frequency of setting the dates for visits, it does impose, however, an obligation on the unemployed to appear each time at the Labour Office on the set date on the pain of being deprived the unemployed person status.

The notion of a "justified reason", however, is a non-defined notion, the final meaning of which must be defined by the authority applying the law based on the specific facts of a given case. In the caselaw of administrative courts it is assumed that justified reasons are circumstances which the unemployed person could not influence, hence, obstacles which arose independently of their will such as an illness or a lack of possibility to commute due to shutdowns in public transport. The circumstances which arise by fault of the unemployed person, even if merely through their carelessness or negligence, are not deemed to be justified reason.

In the present case it is incontestable that the Complainant did not appear at the Labour Office on the appointed date and he did not inform within 7 days on a justified reason for his failure to appear. Therefore, on 28 October 2009 the Complainant did not demonstrate his readiness to take up employment.

Referring to the Complainant's allegation on the non-conformity of Art. 75(3) of the Act on Employment Promotion with Art. 68 of the Constitution, due to the fact that because of depriving him of his unemployed person status for the period of three months no healthcare insurance contributions were remitted for him - it must be firstly noted that the invoked provision of the Constitution states that: everyone shall have the right to have their health protected (paragraph 1) and that citizens, irrespective of their material situation, shall be ensured equal access to healthcare benefits, financed from public funds, by public authorities. The conditions for, and scope of, the provision of benefits shall be established by statute (paragraph 2). Although the assessment of constitutionality of the provision applied in the present case belongs, pursuant to Art. 188 of the Constitution, to the Constitutional Tribunal, it must be stressed here, however, that the Constitution delegates the conditions and the scope of providing the healthcare benefits financed from public funds to statutes and only guarantees that such statutes may not make the access to such benefits conditional upon a person's material situation. The Act, in turn, regulates that the right to such benefits is enjoyed by insured citizens including those who have the unemployed person status.

With regard to the above, considering that the appealed decision is conform with the law, the Court dismissed the complaint pursuant to Art. 151 of the Act on the Law of Proceedings before Administrative Courts.