

**Dear Readers,**

we present you with an additional edition of *HR Perspectives*.

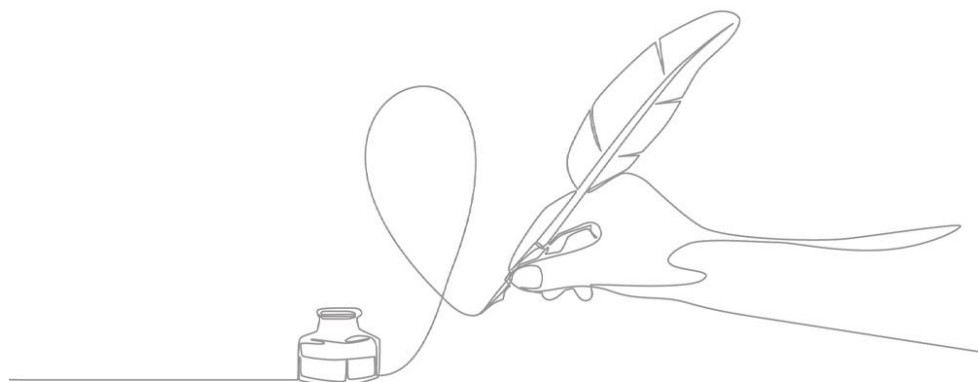
We would like to inform you that from October 2021, Przemysław Rosati became of counsel at PCS | Littler. Together with his team he supports PCS | Littler in compliance and business crime matters.

Przemysław Rosati is not only an engaged criminal lawyer but is also actively involved in advocate self-government. Since 2021 he has been President of the National Bar Council.

We would like to invite you to read a conversation on the intersections of **employment and criminal law**.

**Enjoy your reading!**

**Sławomir Paruch  
Karolina Kanclerz  
Przemysław Rosati**



**PCS Paruch Chruściel Schiffter Stępień | Littler Global, a first choice HR law firm in Poland, is expanding its criminal law practice by establishing permanent cooperation with Przemysław Rosati. Are corporate clients looking for support also in criminal matters?**

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KK: Yes, we have sought this cooperation precisely as a response to our clients' needs. Our law firm provides comprehensive support in all HR areas, which sometimes go well beyond the employment law. Running a business often requires our clients to make very difficult decisions, associated with several risks, including personal risk.

Any business that involves the human factor is exposed to the risk of irregularities and abuse. We give our clients reassurance and confidence that by supporting them in HR matters, we also look after them in areas of personal liability.

We have over 500 clients and we know where business risks are and when managers must proceed with due caution. We provide legal assistance based on our extensive business experience and our clients appreciate this very much. We are not afraid of difficult cases; on the contrary, we thrive on them. Working with Przemysław Rosati means that we can offer our services on another level, with obvious benefits for our clients. A client who has received an anonymous report on bribery in a company can rest assured. We will take care of everything, starting from an internal investigation completed with a report for the management board, through providing support in the area of criminal liability. In the case of a fatal accident at work and the potential liability of managers, an advocate is involved in the work of the team managing the case from the very beginning.

**The employment and criminal law often overlap. What are the challenges that employers face most frequently in this area?**

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PR: Criminal and misdemeanour liability of employers, or rather their managers, is very often connected with violation of employee rights, for example within the area of occupational health and safety, working hours, salaries. Moreover, trade union representatives often claim that employers obstruct union activities, which is their way of exerting pressure on employers. But these are only a few examples of the matters we deal with. We handle the cases of fatal accidents at work, which the employer is obliged to report to the prosecutor, white-collar crime, corruption in business, and many others. We deal with a growing number of company irregularities, including internal investigations.

**However, regardless of the outcome of criminal proceedings, its formal initiation can be regarded as a kind of failure to the company. Is this really so? And is it possible to manage risk in such a way as to completely eliminate the chance of violating the criminal laws?**

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KK: Unfortunately, it is not entirely possible. However, appropriate compliance practices can reduce the risk to an acceptable level. The implementation of internal procedures regulating sensitive aspects of company operations is the key to success in this area. And such success is exactly what we strive for. However, it requires concerted action - even 100% compliance in one area is useless if other areas are neglected. We are now drawing up social media policies for many clients. Employers have been scourged by defamations on various employer review sites. We want to fight against impunity for such acts. The key is to develop greater awareness among employees and to encourage a positive approach

to whistleblowing. Together with our clients, we are working on incorporating all of the above issues into projects concerning preventive measures.

### **What is the lawyer's role in all of this?**

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PR: The involvement of a criminal lawyer at an early stage of business operations helps to notice any potential problems and avoid them altogether, often without even the slightest risk of making a mistake. This is the desired *modus operandi* of a criminal lawyer. It also allows for more efficiency in project management by clearly assigning responsibility for individual areas to particular team members. Without our support, it sometimes happens that responsibility gets diffused in corporate structures, making it very difficult to answer the question of who exactly is responsible for what. It may lead to serious consequences. When undesirable events happen, several managers may become involved in criminal proceedings. It often triggers the blame game which may irrevocably damage the foundations of trust and team spirit at the company. It is completely unnecessary and avoidable.

Another advantage for our clients is the sense of security derived from the fact that an experienced criminal lawyer oversees their affairs. We want to evoke and nurture this sense of security in our clients. It eliminates the stress connected with doing business, which affects even the toughest business leaders, and helps to boost the effectiveness of management work. It allows our clients to concentrate on their business. Finally, there is no better person more appropriate person to conduct training on the personal liability of top management or to deal with crises than a criminal lawyer.

### **What circumstances make it particularly difficult for members of an organisation to comply with internal and general rules, which may lead to increased risk of criminal liability?**

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KK: There are at least a few such circumstances. What we always tell our clients is that it is the leaders that set the example. This way, if top managers go off the rails, they are implicitly giving their subordinates permission to do likewise. An employee who sees a manager failing to comply with the AML policy or the Anti-Corruption Code by not reporting a gift from a client that goes far beyond the generally accepted standards will also fail to report a gift from a client who is counting on gaining some benefits in return. Once the unwanted practice starts, it may send a company on a slide down a slippery slope. This is also caused by the lack of the evident victim. Employees often perceive an employer as an entity with unlimited resources and who, as a consequence, cannot suffer a loss, contrary to an individual with limited assets, who would suffer from any loss. In short: a person can be robbed, but not a company. This misconception needs to be dispelled and this is what we are trying to do. Another issue that has come to the fore recently is the ubiquitous remote working and organisation problems with overseeing employees' work. Without actual and regular monitoring of employees' activities, it is definitely more difficult to verify their compliance and discover potential irregularities. It may partially be explained by poor whistleblower protection systems and deficient internal reporting channels. Developing and implementing them is one of our missions.

**The above examples concern situations where an employer, as a result of some violation, needs protection against criminal liability. Does it happen that a situation is reversed and an employer is a victim in criminal proceedings?**

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PR: Yes, it happens just as often, although it is much less talked about. One of the most serious unlawful actions against employers is a violation of trade secrets or, more generally, disclosure of confidential information. Such violations often constitute grounds for starting an action for the prosecution of the offender, e.g. under Article 266 of the Criminal Code, which typifies the offence of disclosing or using information learned in connection with the function or work performed. We work on a number of highly confidential cases and we realise how important the confidentiality issues are from the business point of view. Recently, there has been a lot of media coverage about a police officer who mined bitcoins using equipment provided by their (public) employer. Apart from the fact that the employment relationship of the police officer is significantly different from the one based on a "standard" employment contract, the police officer's action was nothing short of illegal use of programs and data. But there is no need to look that far. Most frequently employers fall victim to less "fancy" crimes, such as theft. Even though according to the police statistics the number of theft offences has been decreasing year by year, thefts are still rife in the workplace environment. An employer who finds out that an employee has stolen company property can, of course, dismiss the employee summarily, but this does not exhaust the legal options available to the employer. If the stolen object is, for example, a computer and not a stapler or a packet of biscuits, the employer should take decisive action. We suggest introducing a zero-tolerance policy and reacting not only to a large-scale asset misappropriation but also to any attempt at stealing an employer's property. After all, private property is sacred.

**Although you have pointed out a broad range of matters in which expert legal advice may prove to be not only useful but necessary, it seems that still too few employers realise the gravity of the situation. Is this true?**

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KK: Unfortunately yes, risk awareness among organisations is still quite low. But we are trying to change this and with considerable success so far.

**What can employers do to raise such awareness?**

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KK: There are plenty of ways. Introducing proper procedures, carrying out training sessions and monitoring the results are just a few examples. We are regularly asked by clients to develop appropriate compliance procedures for their companies or to carry out training sessions on the criminal liability of board members, especially if the board include non-national members. Forcing employers to learn about compliance procedures achieves the opposite effect – they only become more reluctant to learn, hence the low awareness. What interests employers the most is how they can protect themselves and their company. When developing a strategy, we do not just focus on implementing procedures and providing training. This is the least we can do, but we try to go far and beyond. For example, we suggest organising a Company Compliance Day once a year, during which we conduct less formal workshops for the team with quizzes, riddles and team competition activities to refresh their knowledge of the basic compliance rules in a more accessible manner.

**If, however, a problem is reported too late, preventive procedures fail, or it is simply not possible to avoid criminal proceedings, what do clients-entrepreneurs expect from an attorney managing their case?**

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PR: First and foremost, they want to believe that they are in good hands and that the attorney overseeing the case will do everything in their power to bring it to a successful conclusion. It is natural to expect commitment from a law firm, and it is something we are pleased to offer. Very often, the first question asked at a meeting is "When does the attorney-client privilege begin?". Keeping that privilege is crucial for trust-building which, in turn, is fundamental to establishing a successful attorney-client relationship.

The attorney-client privilege is also at the heart of values valued by the advocate self-government, to which I am deeply committed. I make it my personal mission to constantly point out and remind my colleagues that every advocate must maintain the confidentiality of any information and data received, obtained or disclosed by a client in connection with the entrusted case.

This ethical and legal duty is binding absolutely and indefinitely. Apart from being high-principled, lawyers are also expected to be easily available and responsive. Clients also want the complicated language of legal procedures to be translated into the plain language without the loss of substantive value.

**Do you think that the union of two significant players on the Polish legal market - an experienced advocate and a first choice HR law firm – will be able to meet the challenges that you have mentioned?**

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KK i PR: It certainly will. We have brought together the two seemingly distant worlds of criminal and labour law to achieve synergies that will allow us to give our clients the best of both worlds. Especially considering that labour and criminal law intersect at many points. By working together, we complement each other's knowledge, education and experience gained in our specific areas of expertise. Clients appreciate this, also because it gives them a much-needed sense of security.



Interviewees:

Karolina Kanclerz, attorney at law, Approved Compliance Officer, Partner at PCS Paruch Chruściel Schiffter Stępień | Littler Global



Przemysław Rosati, advocate, Of Counsel at PCS Paruch Chruściel Schiffter Stępień | Littler Global