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**SUMMARY OF DOCTORAL THESIS:  
"JUSTIFICATION OF PAYMENT  
OF LUMP SUM FOR ACCOMODATION  
TO MOBILE EMPLOYEES OF ROAD TRANSPORT  
- JURIDICAL ANALYSIS - "**

**Cracow 2016**

The aim of the study is to present an analysis of the merits of the lump sum payment for accommodation which was made by drivers in a specialized cabin of truck means of transport during the implementation of a business trip in terms of art. 77 n. 5 of the Labour Code as well as Art. 14 and Art. 21a of the Act of 16 April 2004 concerning drivers' working time, in the context of § 9 of the Ordinance of the Minister of Labour and Social Policy of 19 December 2002 and § 16 of the Ordinance of the Minister of Labour and Social Policy of 29 January 2013.

The diploma paper, in particular, sets out the circumstances in which a lump sum payment for accommodation is unfounded, and also indicates the factual and legal circumstances in which their payment could be justified. The analysis of the main research problem issues helped articulate the conclusion that in principle, the payment of lump sum for accommodation is unfounded. The paper presents such a conclusion conditionally. Therefore, there is presented the view that the employer has no obligation to pay a lump sum for accommodation if: the drivers rested in a special accommodation cabin provided by the employer, as long as it was equipped with a place to sleep, and as long as the driver did not pay for this accommodation and as long as the driver consciously made the choice of realization of accommodation in the cabin.

This above-mentioned conclusion was drawn by analyzing the major and several subsidiary research problems of an abstract nature.

The first legal issue relates to the assessment of methodology of the paradigm of interpretation of the law, (also in the context of the analysis of the compatibility with the Polish Constitution of 2 April 1997), regulation of the national, EU and international labour rights of drivers, governing the rules of implementation of rest periods and the payment of lump sum for accommodation for the rest realized in the cabin.

The second problematic dilemma regards the analysis of the issue of dignity of implementation of rest (including sleep), in a specialized cabin during the implementation of a business trip at the level of regulations of Human Rights, the Constitution of the Republic of Poland and the main philosophical trends. The first major problematic issue of this diploma paper is reduced to a set of specific considerations concerning the interpretation: Art. 77<sup>5</sup> § 3-5 of the Labour Code, Art. 14 of the Act on Working Time of Drivers, art. 8 paragraph. 8 Reg. 561/2006 EC, Art. 8 of AETR convention, Art. 14 of the Act on Working Time of Drivers, § 9 section 4 of the Regulation of the Ministry of Family, Labour and Social Policy of 2002 and § 16 section 4 of the Regulation of the Ministry of Family, Labour and Social Policy of 2013, on the basis of abstract principles of interpretation of the law in the context of the analysis of academic achievements in the field of jurisprudence and judicature of the Constitutional

Tribunal as well as the Supreme Court relating to the paradigm of interpretation of the law, in the scope of assessing the legitimacy of lump sum payment for accommodation for a rest realized in a special accommodation cabin. These considerations come down, in principle, to analyze the use of the methodology paradigm of interpretation of the law, in terms of: a) abstraction of lump sum for accommodation and b) minimum standard of accommodation.

In addition, in this study the main problematic tasks were divided into subsidiary issues, relating in particular to a number of smaller studies. In the first place there was established the range (capacity) of the definition of a legal business trip of drivers as an institution *lex specialis* dealing with the regulation of Article. 77 n. 5 of the Labour Code. Secondly, there was analyzed the validity of the payment of lump sums for accommodation in the factual context in which the drivers did not bear any cost of accommodation in this respect, when they spend the overnight stay in a specialized cabin of the means of transport provided by the employer. There has been considered whether a lump sum payment for accommodation will serve only to cover the costs (liabilities), or whether it is their function to increment driver's assets. It has been shown that the function of a lump sum payment is, in principle, only to cover the liabilities related to the potential costs of accommodation. Another problematic subsidiary issue raised in the study is to analyze the effects of non-compliance of the rules of the paradigm of interpretation of the substantive labour law on a constitutional level. Another subsidiary issue raised in the diploma paper is the analysis of the role of internal company regulations of labor law and internal implicit agreements between the parties to the employment relationship in the context of determining the rules for the payment of lump sums per night. The last subsidiary problematic issue discussed in the thesis, is the analysis of the function of the principle of "direct effect" and "indirect effect" in the jurisprudence of the courts and the guidelines of the Main Labour Inspectorate, in the context of the legitimacy of the payment of lump sums per night, on the basis of provisions of Article. 8 paragraph. 8 of Regulation EC 561/2006.

The point of reference in the discourse on the legitimacy of the payment of a lump sum for accommodation for a rest realized in the accommodation cabin of the means of transport, is in this study (largely) judicature of the common courts of law, and the judicature of the Supreme Court, which by its own rulings sets the directions and trends in the development of the doctrine of the law. There has been made a detailed presentation of the judicature of the Supreme Court, because they exemplify the views expressed by some members of the academic community, participating in the discussion on the merits of the payment of lump sums for accommodation.

Moreover, there has been made a presentation of economic issues associated with the impact of the payment of lump sums for accommodation, which was dictated by the need to outline the broader context of the investigated issue and its complexity. In fact, it seemed to be rational to outline the social, economic, and industrial effects, which are derived from the abstract academic research.

In the diploma paper there is a special role attributed to the analysis of one of the major research problems arising indirectly from the judicature of the Supreme Court, relating to the legitimacy of the payment of a lump sum for accommodation to drivers, in the context of the protection of the "dignity of the rest" of mobile workers. The thesis demonstrated that the Supreme Court awarding payment of a lump sum for accommodation (contrary to the content of the norm, and despite the fact that the driver did not incur any costs for accommodation), incorrectly based its ruling on the position that *"it is difficult to imagine that in the XXI century, the employer could derive the beneficial legal consequences from the fact that they ensured the employee "the center of life" in the cabin of the car. "* It has been shown in particular that the Supreme Court in fact referred to the dignity of the worker, placing it above the dignity of the employer and brotherhood. The analysis of view expressed in this judgment, made it possible to draw a broader - a general and abstract conclusion on inadmissible reference to the merit of the dignity of the worker, when it parallelly would result in violation of the dignity of the employer.

Finally it has been indicated in the diploma paper that both above-articulated main research problems permeate, which is reflected in an extensive analysis of "freedom of choice" of the employee under employment legislation. It has been shown in the thesis that, in theory, subject issues are reduced to the question of the extent of causing legal consequences for the parties to the employment relationship in the context of wills. As the result, the study answers the question whether it is sufficient to express the will for a particular act or omission, in order to enable the discussion on the basis of labor law about violation of or respect for the dignity of workers. The paper provides an answer to the question whether it is acceptable to assess the lack of respect for the dignity of a driver's resting when the mobile worker acting by themselves has made (in accordance with Art. 8 paragraph. 8 Reg. 561/2006 EC and Art. 14 in connection with Art. 27 section 5 of the Act on Working Time of Drivers) the choice of implementation the rest in the accommodation cabin rather than a hotel room. In response to such question there has been given the answer, that taking into account the total of all arguments and aspects in the field of: jurisprudence, the paradigm of interpretation of the law, legal theory, logic and philosophy of law - as a rule, the employer has no obligation to pay the driver a lump sum for accommodation for a rest realized in a specialized accommodation cabin.