The basics of Polish labour law

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Polish legal system recognizes the difference between labour law and employment law. Labour law is the notion formally recognized by the name of its basic legal act — the Labour Code. Labour law regulates only part of the entire labour market, limited to subordinate forms of work conduct. Employment law is a wider notion, which has scientific rather, than legal basis. It contains labour law within, together with all other employment forms, such as civil contracts for services, self-employment etc. The article discusses the basic regulations of polish labour law. Remarks on polish labor law development after economic system change from centrally regulated to market economy introduce to the topic. After that the sources of law were presented. Those are particularly important for labour law system, which includes not only common sources, but also particular ones, like collective agreements. The article concentrates on presentation of polish individual labour law regulations which are the core of the employment system. This is the regulation of employment contract, which is contained mostly in the Labour Code. This part of article undertakes issues of employment contract types, forms, obligations of the parties and termination. Working time systems and limitations, guarantees of free time presented in the article, are very influential for the whole social system. The article presents also some atypical forms of employment, used in Poland, such as telework, temporary work and self-employment. At the end text presents the basic regulations of collective labour law: workers and employers representations and collective disputes.

Keywords: labour law, employment law, employment contract, termination of employment, working time, atypical employment, trade union, collective redundancies, collective disputes.

1. Development of contemporary polish labour law and employment law

Contemporary Polish labour law has been formed within the last 30 years as the result of works on adopting this branch of law to the needs of market economy. After the collapse od communist system and adoption of the model of social market economy (Art. 20 of Constitution), the fundamental legislative changes were carried out, in the result of which the Polish labour law nowadays is close, in general assumptions, to the legal systems of other European Union countries. However, the undemocratic communist heritage of the work system is still present in practice at workplaces. Change of mutual attitude of labour market parties to each other demands a long evolutionary process. The lack of democratic tradition shows particularly at the field of collective labour law, where representations of labour market parties show antagonistic rather, then cooperative attitude to each other.

This kind of relationship exerts strong influence on collective labour law practice and content. Employers do not see common interest in forming associations and negotiating collective agreements together. On the other hand, forming trade unions in a workplace is not well seen by the employers and illegal reprisal is quite often. Therefore such legal

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institutions as collective agreements, which play an enormous role in the system of labour law in many countries, remain in the state of permanent underdevelopment in Poland[1].

Polish legal system recognizes the difference between labour law and employment law. Labour law is the notion formally recognized by the name of its basic legal act — the Labour Code. Labour law regulates only part of the entire labour market, limited to subordinate forms of work conduct. Employment law is a wider notion, which has scientific rather, than legal basis. It contains labour law within, together with all other employment forms, such as civil contracts for services, self-employment etc.

Characteristic feature of polish labour market is a high number of individual contractors, working in flexible employment forms not covered by labour law regulations (esp. civil contracts for services, which are being illegally used also for works restricted for labour contracts) and equally high number of employees contracted under flexible forms of labour contracts, such as fixed term contracts. This is one of the consequences of the — above mentioned — underdevelopment of labour system collective features, where there are no workers representations to impose better working conditions on employers.

2. Sources of labour law

The sources of Polish labour law hierarchically below the Constitution can be divided into two groups: common and autonomous (specific) labour law. Common labour law it is state (acts and decrees) or international legal acts obligatory on the whole territory of the country and applicable to all subjects of employment relationships. Specific labour law it is all acts formed by social partners, the normative character of which comes from their recognition by the state as legal acts. The following acts shown in Art. 9 of the Labour Code belong to the specific labour law: collective agreement, collective understanding based on the act, work regulations, wage regulations, statute[2].

The hierarchy of all sources of law is based on the primary principle for the system, that is the principle of employees protection. This rule can be summarized in the following way: a legal act of lower rank cannot be less favourable for the employee than the act of higher rank. Thus, it is permissible to regulate the same scope of contents in legal acts both of higher and lower ranks but on condition that the secondary provisions do not worsen the position of the employees. The legal act of the highest rank in the discussed system is the bill issued by parliament and the implementing regulations (ordinances) must be compliant with it. Below in this hierarchy there is an external collective agreement and an external collective understanding (for at least two enterprises), and then an internal collective agreement and an internal collective understanding (for one enterprise). And still below in the hierarchy there are three regulations binding within one enterprise of equal rank: work regulations, wage regulations and statute.

The most common act of labour law is the Labour Code (The Act of 26 June 1974 Labour Code, unified text Journal of Laws of 2019, item 1040, with amendments; hereinafter referred to as LC) which, however, regulates only — and not fully — the individual labour law. The full collective labour law and the elements of individual labour law not regulated within the scope of the labour code are found in separate acts. Although the labour code was established in the communist period, in recent decades it was completely amended and adopted to the needs of market economy.

The most important act of the autonomous labour law is the collective agreement because of its broadest applications concerning its subjective and objective scope. The legal system does not inflict any content limitations for the collective agreement in the scope

[1] *Mitrus L.* Uwarunkowania rozwoju współczesnego prawa pracy // System Prawa Pracy: in 6 vols. Vol. 1: Część ogólna / ed. K. W. Baran. Warszawa: Wolters Kluwer Polska, 2017. P. 388–433.

[2] *Baran K. W., Książek D.* Pojęcie, systematyka i hierarchia źródeł prawa pracy // Ibid. P. 646–665.

of regulations of employment relationships. Thus, adhering to the principle of employees protection, it is permissible to complete in the collective agreement all aspects of employing workers on the given territory.

Collective agreements can have internal or external character. In the first case the agreement is concluded between the employer and the works' trade unions, and it is binding only for this particular workplace. The external level comprises two or more enterprises of a given trade, so their binding force can be very different. The parties to this arrangement are the representation of trade unions over the level of one workplace and the association of employers.

Collective understandings have a similar rank of importance to collective agreements only with a narrower range of application. The binding force of these understandings is equal to a collective agreements but they can only be concluded in cases indicated clearly in the act. In such incidental situations it is thus not necessary to conclude or modify the collective agreement[3].

Work regulations and wage regulations are internal rules issued one-sided by the employer though the content of the regulations is agreed upon with trade unions. This obligation is imposed on each employer who employs at least 50 employees and who are not included in any kind of collective agreements. Work regulations state the rights and duties of employees and the employer concerning the organization and order in the workplace while wage regulations deal with terms of pay.

3. Basic principles of labour law

The majority of main principles of Labour law is introduced in part I chapter II of the labour code entitled "Basic Principles of Labour Law".

The first mentioned in Art. 10 LC is principle of freedom to work. The free choice of work, profession, workplace are the basis of polish labour market. Prohibition to exercise a profession must be based on parliaments bill.

The basic principles of labour law are the principle of equality and the principle of discrimination prohibition in employment. The content of those regulations remains under the strong influence of European law and judicial decisions of the Court of Justice of the European Union, similarly as it is in other member countries of the European Union. Therefore, a general order is established in the labour code which says that all employees who are in a similar actual situation should be treated equally as well as it prohibits discrimination due to different criteria. The definitions of direct and indirect discrimination as well as harassment and sexual harassment were established, the guarantee to have the possibility to claim compensation for discrimination, and the principle to reverse the burden of proof and thus burdening the employer with the proof of objective character of his decisions and actions.

The above mentioned principle of the employees protection is very important for the creation of the hierarchy of sources of law within the system of the Polish labour law. The labour code contains also such principles of labour law as the principle of respect for dignity and protection of other personal rights of an employee, the principle of fair remuneration (referring to Art. 4 of the European Social Charter), principle of the right to rest, principle of ensuring safe and hygienic conditions of work, freedom of association of employees and employers, principle of obligation to facilitate raising of qualifications of the employees, principle of employees' participation in enterprise management[4].

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[3] *Musiała A.* Porozumienie zbiorowe jako źródło prawa pracy. Poznań: Wydawnictwo Naukowe UAM, 2013.

[4] See: *Skąpski M.* Zasady prawa pracy // Prawo pracy / ed. Z. Niedbała. Warszawa: LexisNexis, 2012.

4. Employment relationship, its parties and types

4.1. Notion and features of employment relationship

The crucial notion of the Polish labour law is employment relationship, understood as a legal bond within which one party (employer) commits himself to employ an employee for pay, and the other party (employee) commits himself to work under the supervision of the employer, in the place and time indicated by him (Art. 22 par. 1 LC). Employment relationship is a commitment relation of diligent activities within which the employee is obliged to work diligently in performing his duties but he is not, however, obliged to obtain certain results.

This definition of employment relationship is crucial for labour law as it constitutes the basis for differentiating employment from other forms of performing work. As it is in many other countries, in Poland as well there is a significant difference between employment relationship and employment based on civil or commercial law. Employing workers under civil contracts is lawful on condition that the work performed and the construction of the legal relationship does not fit the employment relationship features. But if it is not the case, the legal relationship, irrespective of its name and content of the written contract, is treated as employment relationship. As nowadays there is a wide variety of legal bonds which combine many features of different typical legal relations in their content, it is assumed that a legal bond is an employment relationship if the features of the employment relationship of this legal construction are dominating.

The basic features of the employment relationship recognized in the Polish doctrine and judicial decisions are the following: 1) worker's subordination; 2) personal character; 3) specific risk division between the parties; 4) obligatory payment[5].

4.2. Grounds for establishing employment relationship

In Poland employment relationship may be established on the basis of one of the five legal actions indicated in Art. 3 LC: contract of employment, contract for cooperative employment, appointment, nomination, election. The most common ground for the employment relationship is a contract of employment which has a universal character as there are no legal restrictions as to its application for work of different types. The other types can be applied in special cases, basically only when the provisions are clearly made in the act for their application.

Agreement for cooperative employment is the basis for employment for members of the labour cooperatives which are economic subjects functioning on the basis of work performed by their participants. It is a special employment relation in which employment is directly connected with membership in labour cooperative and rights resulting from this membership.

Appointment to a post is a declining form of employing people for managerial and independent posts. Such employment relationship is hallmarked by its impaired protection of durability, the employee can be recalled from the post at any time and with immediate effect, which results in the termination of the employment contract. This form of employment was replaced in the enterprises by managers civil contracts, while it is still used in state administration.

Taking into consideration basic features, employment relation based on election is similar to appointment. Only the activity resulting in employment (election) is different here as it has a collective character.

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[5] *Sanetra W.* Charakter prawny stosunku pracy // System Prawa Pracy: in 6 vols. Vol. 2: Indywidualne prawo pracy. Część ogólna / ed. G. Goździewicz. Warszawa: Wolters Kluwer Polska, 2017. P. 28–69.

Nomination is the basis of employment in the public sphere and it concerns first of all civil servants, teachers, judges, prosecutors, employees of the state supervisory and inspection bodies. The employment relation based on nomination comes from a public service based relation (applied in state uniformed services like the army, police, etc.) and still shows in limited scope some of its features as increased subordination and availability, stronger durability.

4.3. Parties to the employment relationship

According to Art. 2 LC an employer it is a natural or legal person as well as a non-corporate body who employs workers. It appears from this provision that lack of legal personality is not any impediment to conclude a contract of employment as an employer. At the moment of employing a worker such organizational entity attains the capacity to be a party in civil cases concerning employment matters. This approach should serve the promotion of employment by enabling the attainment of employer's status also for such entities which by virtue of law are not corporate personalities (e. g. some associations, partnerships, residents' co-ownerships)[6].

An employee in the Polish legal system can only be a natural person, adult, although several exceptions from this rule have been introduced. These frequently applied exceptions concern persons at the age of 15 to 18 years old. The traditional form of employment of an under aged person, and the one which was applied for a long time, is the contract of employment for vocational training. However it is also possible to employ under aged persons under regular employment contract (Art. 2001 and 2002 LC). The difference between employing an adult and an under aged person lies in the strict time limit for performing work by an under aged (to 12 hours a week and 2 hours a day during school year, and to 30 hours a week during holidays) and in the narrowing the types of work allowed to light jobs.

5. Content and types of contracts of employment

5.1. Notion and content of a contract of employment

Employment contract is the most frequently applied basis of an employment relation. Employment contract should be understood as a consistent declaration of will of the parties, on the basis of which an employee commits himself to perform work on conditions indicated in Art. 22 par. 1 LC Labour code orders to conclude contract of employment in the written form.

According to Art. 29 par. 1 LC, contract of employment should define parties to the contract, type of the contract, date of its conclusion and conditions of work and pay, in particular: type of work, place of performing work, payment for work enumerating its elements, time input, date of the beginning of performing work.

The components of a contract of employment enumerated in Art. 29 par. 1 LC do not constitute a closed list. Parties to the contract of employment can determine its other components depending on the character of employment and duties of the employee and the employer with respect to its specifics.

5.2. Types of contracts of employment

The labour code defines types of employment contracts in Art. 25. Concerning durability employment contracts can be divided into the following two types:

[6] *Hajn Z.* Pojęcie pracodawcy po nowelizacji kodeksu pracy // Praca i Zabezpieczenie Społeczne. 1997. No. 5–6. P. 30–34.

— fixed-term contracts (contracts: for probation, for fixed term, for substitution);
— unlimited contracts — contracts for indefinite period[7].

5.2.1. Contract for probation

This type of contract is concluded so that the employer can check the employee's usefulness on the particular post in a workplace. It can be concluded once, as the first contract of employment between parties. This contract can be repeated between the same parties only in 2 cases: 1) the employee is being employed to a different job or 2) at least 3 years have passed since termination of former employment contract between the parties. The duration of the contract for probation cannot exceed 3 months.

5.2.2. Fixed term contract

A contract for fixed term is concluded in order to perform certain tasks determined in time. The date of termination of this contract should be defined directly — by indicating a given date.

The labour code determines two general limitations of freedom of fixed term contracts (Art. 25^1 LC). The overall length of fixed term employment (meaning the length of all the contracts) between the same parties cannot exceed 33 months and no more than 3 contracts are allowed. If any of those numbers is exceeded, the employment contract is automatically treated as contract for indefinite period. This rule is not applied for contracts for substitution, contracts for performing seasonal or occasional work and contracts for certain term (e. g. 4 years term of managerial board in public limited company). The rule is also not applied if an employer indicates objective reason why contracting employees for fixed term fulfills his necessary needs. In the latter case a notification to the labour inspection is required.

Fixed term contracts can be terminated under identical conditions, as contracts for indefinite period, with the exception that justification of notice is not required.

5.2.3. Substitution contract

Contract for substitution can be concluded in order to employ a worker to substitute another employee for the time of his/her justified absence (e. g. sickness, unpaid holiday, maternal leave). Such contract is terminated at the moment of return to work of the substituted employee. Contract for substitution can be also terminated with a 3-workdays' notice by any of the parties, irrespectively from its duration.

5.2.4. Contract for indefinite period

Such a contract is concluded for indefinite duration; the date of termination is not stated. It is possible that, based on this contract, an employee will work with the same employer from the moment of employment till retirement. Contract for unlimited duration is favourable for the employee because it can only be terminated by the employer for justified grounds.

[7] *Jaśkowski K.* [Untitled] // Kodeks pracy. Komentarz / eds K. Jaśkowski, E. Maniewska. Warszawa: Wolters Kluwer Polska, 2021. P. 256–262.

6. Termination of employment relationship

6.1. Introduction

Termination of employment relationship can be the result of expiration or termination of this legal relation. Termination of employment relationship takes effect in result of submitting by one or both parties the declaration of will to terminate it, as it is defined in the labour code. Expiration of the employment relation, however, comes automatically when events, provided by the act but other than the legal action, happen and thus impede the continuation of employment.

6.2. Expiration of employment relationship

A contract of employment expires in case of: death of the employee (Art. 63^1 par. 1 LC), death of the employer, unless the enterprise has been taken over or a succession board has been established (Art. 63^2 par. 3 LC), 3-months' provisional detention (Art. 66 par. 1 LC).

6.3. Agreement of the parties

The only bilateral legal transaction leading to the termination of employment relationship is called agreement of the parties (Art. 30 par. 1 subparagraph 1 LC). This agreement is a contract between the parties to employment relationship in which they express the mutual will to terminate employment relationship and indicate the date of this termination. No other provisions are necessary in this contract although parties can additionally define the right to some benefits (e. g. the right to severance pay for the employee). Each type of employment contract can be terminated in the above described way.

The labour Code does not contain any specific provisions concerning the discussed agreement of parties except for the obligation to conclude it in writing. Any form of employee's protection against termination of contract in this form is not established, as it is assumed that the employee will not agree to the conditions of the agreement which are disadvantageous for him.

Agreement of the parties is a favourite way of terminating employment relationships by many employers as this legal transaction is almost impossible to sue. The employee can hardly sue the contents of the legal transaction to which he gave his consent.

6.4. Termination with notice

6.4.1. General issues

Notice of termination is a unilateral legal action of the employee or the employer in which they express the will to terminate employment relationship after the time called period of notice has elapsed. Notice of termination is the basic form of unilateral termination of employment relationship.

Notice of termination should be done in writing. Not keeping the written form or any other formal or content requirements of the notice of termination is threatened with the possibility of invalidation of this legal transaction in court proceedings. It needs filling a lawsuit by employee, unless a faulty notice of termination can be valid and effective.

6.4.2. Period of notice

The length of the period of notice depends on the type of contract and its duration or on the duration for which it was concluded. For a contracts for unlimited duration and fixed term the period of notice is:

— 2 weeks, in case the employee was employed for the time shorter than 6 months;
— 1 month, in case the employee was employed for at least 6 months;
— 3 months, in case the employee was employed for at least 3 years.

The period of notice for probation contract is:

— 3 workdays, for the trial period not longer than 2 weeks;
— 1 week for the trial period longer than 2 weeks;
— 2 weeks for the trial period of 3 months.

The period of notice for the substitution contract the period of notice is 3 workdays[8].

6.4.3. Protection against termination of employment — introduction

Protection against termination of employment consists of limitations of employer's freedom to dissolve employment contract. In polish labour law this protection is divided, concerning the scope of application, to common and special. Common protection is applicable to all employees and includes basic forms of protection against arbitrary and unfair termination of employment relationship. Special protection includes only some groups of employees, who, because of their special situation, are particularly threatened with the termination of employment and the forms of common protection are not sufficient to safeguard them.

6.4.4. Common protection against termination of employment relationship

In the Polish labour law two forms of common protection of employment were introduced: the obligation to consult trade unions prior to layoffs, and the obligation to justify the termination of employment contract for unlimited duration.

According to Art. 38 LC the employer is obliged to inform the trade union committee representing the employee about the intention to terminate the employment, explaining the justification of the decision. The trade union committee can, within five days, notify justified objections if the termination is, according to the union, groundless (Art. 38 par. 2 LC). Notifying objections by the trade union committee, however, does not impede the termination of employment as the consultation is non-binding.

The key form of common protection of employment is the obligation to justify the termination of employment contract concluded for unlimited duration by the employer, thus the obligation to indicate cause which makes it impossible to further employ the employee (Art. 30 par. 4 LC). The justification given by the employer can be verified as to grounds in the court proceedings, if the employee challenges it.

The Polish legislator did not make a list of causes justifying termination of employment; there is only an indication that termination of employment contract must be justified (Art. 30 par. 4 LC). It means that court has the obligation to judge the significance of the given causes in each individual case. Practice shows that courts accept different reasons for termination of employment attributable to the employee or to the employer, limiting the decisions of annulment of the terminations of employment to the cases which are obvious abuses[9].

[8] See: *Gersdorf M.* Okresy wypowiedzenia — zagadnienia praktyczne // Praca i Zabezpieczenie Społeczne. 1998. No. 11. P. 31.

[9] *Dral A.* Powszechna ochrona trwałości stosunku pracy. Tendencje zmian. Warszawa: Wolters Kluwer Polska, 2009.

6.4.5. Special protection against termination of employment relationship

Special protection concerning personal situation of the employee refers to:

— employees during excused absence at work, including rest leave (Art. 41 LC); the protection is binding till the moment when the right to terminate the employment without a notice starts (Art. 53 LC), and it prohibits terminating the employment relationship with a notice;
— persons in the period of 4 years before retirement (Art. 39 LC); this protection means prohibition of termination of employment with the notice;
— pregnant women and women on maternity leave (Art. 177 LC); the protection here means prohibition of terminating employment relationship with or without notice in the period of pregnancy and maternity leave;
— employees on parental leave (Art. 186^1 LC); From the moment of submitting the application to be granted the leave, it is prohibited to terminate employment relationship, terminate without notice for reasons related to the fault of the employee.

Special safeguarding of employment for being in charge of a function refers to:

— a establishments work safety inspector during term of office and within one year after expiry; it means prohibition of any form of termination of employment relationship;
— a representative of employees in the supervisory board of the company, also in the form of prohibition to terminate employment relationship in any form;
— a representative of trade union enumerated in the resolution of the trade union; the protection here means the requirement to obtain acceptance of the board of the trade union committee for any form of the termination of employment relationship with this employee;
— a member of the work council; termination in each form upon acceptance of the council.

6.4.6. Termination for reasons not related to the employer (collective redundancies)

Terminating employment relationships by the employer for reasons not related to the employees in enterprises employing at least 20 people is regulated in the Act of 13 March 2003 on specific terms and conditions for terminating employment relationships for reasons not related to the employees[10].

The notion of collective redundancies is defined by three elements which have to appear together. These are:

— redundancy for reasons not related to the employees;
— at one time or within 30 days;
— the number of dismissed employees: at least 10 employees — if the employer employs less than 100 employees; at least 10 % of employees, if the employer employs at least 100 people; at least 30 employees, if the employer employs at least 300 employees.

The employer is obliged to notify the company trade unions active at the employer about the intention to carry out collective redundancies, giving information about planned layoff. Not later than 20 days after the day of notification, the employer and the trade unions enter into agreement concerning collective redundancies. In the agreement all

[10] *Latos-Miłkowska M., Pisarczyk Ł.* Zwolnienia z przyczyn niedotyczących pracodawcy. Warszawa: Wolters Kluwer, 2005.

issues which are important for the projected redundancies and which were the subject of negotiation, should be determined.

If there is no trade union active at the employer, or if the agreement cannot be concluded within the 20 days, the employer determines the issues which are the subject of the agreement in a unilateral regulation of the redundancies. If there is no company trade union committee, the regulation is subject to consultation with the representation of the employees.

Employees who are made redundant on the basis of the act on collective redundancies have the right to severance payment, which amounts between 1–3 monthly remuneration, respective to seniority in the enterprise[11].

6.5. Termination without notice

One of the ways to terminate the employment contract is submitting a declaration of will about the termination without notice, which can be done both by the employer and the employee. Termination of employment relationship of this kind must be made in writing, under pain of invalidity. Concerning the special character of this legal transaction, its reasons were enumerated both for the employee and the employer.

Termination of the employment contract without notice related to the employee and performed by the employer are defined in Art. 52 par. 1 LC as:

— serious violation of basic workers' duties;
— committing a crime by the employee during employment contract, which makes further employment impossible, if the crime is obvious or was sentenced with valid judgment, and
— loss of authorisation necessary for performing work on the given post, caused by the employee.

Termination of employment contract without notice and related to the employee cannot be carried out later than one month after the moment the employer was informed about the circumstances justifying the termination (Art. 52 par. 2 LC).

The reasons not related to any fault of the employee but justifying termination of the employment contract without notice are sickness of the employee or any other excused absence from work exceeding periods specified in LC (Art. 53 par. 1 LC). If the employee was employed for the time shorter than 6 months, the employer can terminate the employment contract if the period of inability to work is longer than 3 months. But if the employee was employed for at least 6 months at the same employer, the employer can terminate the employment contract after the joined periods of the right to salary and allowance and rehabilitation benefit for the first 3 months have elapsed.

The period of protection of the employee depends on the length of time when the employee receives salary in the time of sickness, sickness allowance, and rehabilitation benefit, it could differ between 6–12 months depending on the type of sickness.

Termination of employment contract without notice by an employee is admissible only in two cases:

— obtaining a medical report confirming harmful effect of the performed job on the employee's health, if the employer did not transfer the employee to a different work, suitable for his health and qualifications, within the time indicated in the certificate, and

[11] *Rycak A.* Zwolnienia grupowe // Prawo pracy / ed. J. Stelina. Warszawa: C. H. Beck, 2016. P. 210.

— serious violation of the basic duties of the employer towards the employee (Art. 55 par. 1 and 1^1 LC).

6.6. Claims concerning unlawful termination of employment relationship

In case of groundless or unlawful termination of employment relationship, the employee may demand alternatively reinstatement to his job, or compensation. The court is basically bound by the contents of the employee's requirement except for the situation when the reinstatement to his job is impossible or pointless (e. g. closing down of the employer). In case of judicial decision stating reinstatement of the employee to his job, the employer has the absolute duty to employ the employee on the same post as previously[12].

7. Working time

7.1. Standard hours, time input and schedule of working hours

According to Art. 128 LC working hours is the time when an employee is available for the employer. Working time in a given period of time (day/week) is therefore the sum of all hours during which the employee performs work or is available in the process of work for the employer. Being available comprises both real performance of work as well as waiting for assignment of tasks and other periods of inaction, caused by employer. The condition which has to be fulfilled in order to count waiting to the working time is the presence of the employee in a designated place, ready to carry out orders.

Time input is a number of hours during which the employee commits himself to stay available for the employer within a 24-hours day, a week, a period of clearing accounts. It is determined individually for each employee in his employment contract[13].

Standard hours is the longest time input which can be arranged. Arrangement in an employment contract for an individual time input exceeding standard hours is invalid (Art. 18 LC). In Poland 8 hours a day is the basic standard hours, on average 40 hours a week in a 5-day working week (Art. 129 par. 1 LC). The basic period of clearing accounts of the standard hours is 4 months at the longest, but Art. 129 par. 2 LC allows extension of clearing period to 12 months, on ground of "objective reasons connected with technical or organizational basis".

Working hours in a week cannot exceed 48 hours in the period of clearing accounts, on average, including overtime (which means that the highest admissible number of overtime hours is 8 per week — on average — and 416 per year).

7.2. Periods of rest

The shortest period of undisturbed rest which the employer is obliged to ensure to each of his employees are:

— 11 hours per day;
— 35 hours once a week (which comprises 11 hours of daily rest), which should comprise Sunday;
— 15 minutes which are included in the working time, if the daily time input of the employee is at least 6 hours.

[12] *Liszcz T.* Prawo pracy. Warszawa: Wolters Kluwer Polska, 2020. P. 203.
[13] *Florek L.* [Untitled] // Czas pracy / ed. L. Florek. Warszawa: Wolters Kluwer Polska, 2011.

It is possible to introduce one break which is not included in the working time, not longer than 60 minutes, which is designated for a meal or arrangement of personal matters (Art. 141 LC).

7.3. Work in overtime

According to the definition in Art. 151 LC it is work performed over standard hours (not over individual time input), thus the limit is the same for all employees (8 hours a day, on average 40 hours a week).

The employer is not free to order employees to work in overtime. The prerequisites of legality of the order to work in overtime are:

— necessity to carry out a rescue operation or to repair a breakdown;
— special needs of the employer.

In the judicial decisions the feature of "special" needs was commented upon as sudden, not planned character of needs. Thus, work in overtime cannot be planned by the employer in advance as a way to solve the problem of future labour shortage[14].

For the work in overtime employees are entitled to supplement for overtime payment or free time in return. According to Art. 151 par. 1 LC for work in overtime which is performed: at night, on a day, which is free for the employee according to his schedule of working hours, the employee is entitled to 100 % overtime benefit. For overtime work on other days the employee is entitled to 50 % overtime benefit. The overtime benefit is based on employees standard salary, calculated as hourly rate.

Instead of overtime benefit the employee can be granted time off in the proportion 1:1, if he submits such application, or 1:1,5 if it is the initiative of the employer.

7.4. Flexible working time schemes

Non-standard forms of working time serve increasing the so-called flexibility of working time. The aim is to enable employers to adjust their activity to the actual economic needs and to avoid paying for overtime.

7.4.1. Equivalent working time

Equivalent working time means that lengthening of working time to 12 hours on some days is permissible and it is not treated as work in overtime as long as time off is granted for it and in the clearing period of 1 month the average week standard of 40 hours is not exceeded. The provisions regulating this form of working time establish 1 month clearing period, but above mentioned Art. 129 par. 2 LC also applies here, allowing extension up to 12 months.

In the Polish labour law there are 5 forms of equivalent working time which differ from each other by the grounds for their application, the length of maximum working time on a day. In the basic form (Art. 135 LC) the application of equivalent working time is justified by the type of work or its organisation and the longest time input for a day is 12 hours. In jobs like guarding equipment, or partial readiness to work, the admissible length is 16 hours a day (Art. 136 LC). Work like protection of property or people can be performed for 24 hours a day (Art. 137 LC). Other forms of equivalent working time are weekend work and work in a shortened working week. The former is a contract to work exclusively on Fridays, Saturdays, Sundays, and public holidays for 12 hours a day. The latter, to work

[14] *Jaśkowski K.* [Untitled] // Kodeks pracy. Komentarz / eds K. Jaśkowski, E. Maniewska. P. 867–880.

less than 5 days a week, also for the maximum of 12 hours a day. Both forms need the written consent of the employee, they can never be introduced unilaterally.

7.4.2. Divided working time

Divided working time (Art. 139 LC) is the system in which there is not more than one break on a day, not longer than 5 hours. The interruption is not counted into the working time but the employee is entitled to payment for it up to half of the basic salary rate (indicated in Art. 81 LC). In the interruption the employee is not available for the employer.

7.4.3. Task-performance working time

Task-performance working time (Art. 140 LC) is a form of employment in which registration and clearing the working time is not carried out. It is based on clearing of work done on completion of the assigned tasks. It is applied in cases in which it is impossible to clear working time. The employer, based on consultation with the employee, determines the time necessary for the execution of the assigned tasks, taking into consideration standard working hours.

7.4.4. System of continuous operation

System of continuous operation is used with work which for technological reasons cannot be stopped, or because of the necessity to provide service to community (Art. 138 par. 1 & 2 LC). In the continuous system of work it is admissible to use the schedule of working hours with the lengthened standard to 43 hours on average weekly in the clearing period up to 4 weeks. In one week it is permissible to lengthen the day of work to 12 hours.

7.4.5. Moving working time

Moving working time is the system, where employee is not obliged to come to work at particular time, but is entitled to determine the start of work himself, usually within the given period (ex. 6:00–10:00 AM). Then employee is obliged to stay at work as long as his time input is set (Art. 140^1 LC)[15].

8. Release from obligation to perform work

8.1. Rest leave

Rest leave is a paid break in working, which every employee is entitled to for 20 days a year (within the first 10 years of professional activity), or 26 days a year (over 10 years of working). Rest leave is given only for working days which means that the real break is 4 weeks (with 20 days of leave) or over 5 weeks (with 26 days of leave). The time of leave is decided upon by the employer who, as far as possible, takes into consideration the suggestions of the employees. The employer who gives rest leave must ensure the continuity of the activity of the enterprise.

If an employee changes the employer within a calendar year, his rest leave is divided proportionally between the hitherto employer and the new one, according to the part of year worked for the given employer.

[15] *Rączka K.* Systemy czasu pracy w znowelizowanym Kodeksie pracy // Praca i Zabezpieczenie Społeczne. 2002. No. 2. P. 15–22.

8.2. Maternity leave

Maternity leave is an obligatory leave from work devoted to regeneration after giving birth to a child, as well as to care of the new born child, starting, by virtue of law on the day of childbirth. Maternity leave can last from 20 to 37 weeks depending on the number of children born at one delivery. The employee has also the right to 32–34 extra weeks, if he puts forward a motion in this matter, which is based on the same principles as maternity leave but is not obligatory[16].

8.3. Parental leave

Parental leave is granted to the employee upon a motion, so that the employee can take care of a child up to the age of 6. This kind of leave can last up to 36 months, granted in no more than 5 parts. Parental leave is not a title to any sort of allowance either from the employer nor social insurance. The employee has the right to come back to the same post.

8.4. Unpaid leave

Unpaid leave is a release from the obligation to perform work, it can be granted only upon a motion of the employee and the length of time must be consulted with the employer. As an extraordinary situation in employment, an unpaid leave needs a consent of both parties. All mutual obligations of the parties are suspended at that time but the employment relationship exists.

9. Obligations of the parties to employment relationship

The basic obligations of the parties are defined in Art. 22 par. 1 LC, according to which the employer is obliged to employ the employee for pay, and the employee is obliged to perform work under the supervision of the employer, in the place and time designated by him.

Payment is vested for the work done, except for cases in which the employee retains entitlement to remuneration despite not having performed the work. These exceptions must be clearly introduced in the act and they refer to e. g. inability to do the job for reasons not related to the employee, 15-minute break on a workday, and others. The principle is that payment is done after the performance of work, in currency, at least once a month. Employee's entitlement to remuneration is legally protected in different forms so that employees receive payment regularly, in the proper form and time. Among these provisions it is worth mentioning that it is prohibited to make any deductions from the employee's salary — without the employee's consent — whatever claims of the employer towards the employee, if they were not adjudged with a valid judgment.

A general list of the employer's obligations is introduced in Art. 94 LC, and deals mostly with different aspects of organising work and influence on keeping order and maintaining good relations in workplace. The above burdens the employer as the subject who is equipped with the authoritative competence towards the employee[17].

The basic obligation of the employee is to perform work conscientiously and diligently, observing the orders of the employer or his representatives, which are not in conflict with

[16] *Zieleniecki M.* Uprawnienia pracownika związane z rodzicielstwem // Prawo pracy / ed. J. Stelina. P. 466–496.

[17] *Maniewska E.* [Untitled] // Kodeks pracy. Komentarz / eds K. Jaśkowski, E. Maniewska. P. 654–664.

the law and the content of the employment contract (Art. 100 LC). In the employment relationship the employee is obliged to do the assigned work diligently and cannot be appraised for completing given tasks as in the task-specific contract. The employee is burdened with a general obligation to care for the employer's good whilemore specific duties connected with obeying such rules as time of work, safety and hygiene, keeping the employer's matters confidential, and others, are derived from the main one.

10. Atypical forms of employment

10.1. Temporary work

Performing temporary work in Poland is regulated in the Act of 9 July 2003 on employing temporary workers (Journal of Laws No. 166, item 608 with amendments). It is the legal basis for a special trilateral employment relationship among temporary work agency, employer user, and a temporary employee. Temporary work agency employs a worker in order to send him to do a job at an employer user. Most of the obligations typical for employer burden the agency, the employer user is obliged to fulfil the responsibilities only in the time and place of work (e. g. supervision of the worker, ensuring safety at work, obeying and registering working hours). The agency concludes employment contracts with the employees only for limited period of time. The agency and the employer user cooperate on the basis of a civil contract which defines the principles of assigning the workers.

The significant aim of the act is to define limitations to the application of temporary jobs, which in assumption should fill the market niche and not substitute typical forms of employment. The most significant limitation concerns the duration of employment at one employer user (12 months in 3 years) as well as the exclusion from the possibility to use the services of temporary job agency by such employers who within the last 6 months made collective redundancies. It is also not permissible to employ a temporary worker for the post from which an employee was laid off for reasons not related to him. It is not allowed to employ temporary workers on the posts of the employees on strike[18].

10.2. Telework

In one of the amendments to the labour code the provisions ruling doing telework were added. According to the code's definition, telework is the work performed regularly outside the premises of the employer with the use of means of electronic communication. If the way of performing work fulfils at least basic requirements of the employment relationship, it can then be performed within the frame of employment relationship. But it is not excluded to conclude a civil contract for providing services and then the legal bond is not subject to the provisions of labour code.

10.3. Self-employment

It is not rare in Poland that enterprises cooperate with natural persons acting as self-employed within the registered business activity. Sometimes these are ex-employees of the employer, made redundant as the result of reorganisation of the company introducing outsourcing. Such cooperation is permissible on condition that people working as self-employed do not work on similar basis as employees, specially with respect to

[18] *Sobczyk A.* Zatrudnienie tymczasowe. Komentarz. Warszawa: Wolters Kluwer, 2009; *Makowski D.* Praca tymczasowa jako nietypowa forma zatrudnienia. Warszawa: DIFIN, 2006.

subordination, personal character of work, etc. There is a judgement of the Supreme Court stating that the entrepreneur status of a self-employed is not an impediment to deliver a decision that there is an employment relationship, if a self-employed person performs work in a typical way for the employment relationship.

11. Representation of employees and employers

Trade union is a voluntary self-governing organisation of working people, designated for the representation and defence of their rights, their professional and social interests (Art. 1 of the Act of 23 May 1991 on trade unions, consolidated act, Journal of Laws from 2001, No. 79, item 1080, with amendments). The activity of trade unions is based on three basic internationally recognized principles: freedom of association, self-governance, independence.

A trade union is called on basis of a resolution adopted by at least 10 people entitled to create a trade union. The founders adopt a statute and elect a founding committee which becomes a temporary authoritative body of the trade union (from 3 to 7 persons). Then the motion to register the trade union in the National Court Register is lodged (within 30 days from the day of passing the founding resolution). Together with the entry in the National Court Register the organisation acquires a legal personality).

The basic competences of trade unions, referring to the representation of the interests of employees are located at the level of enterprise[19]. In Poland social dialogue is being carried mostly at enterprise level, so the most important in practice are competences to negotiate with employer and conclude collective agreements at enterprise level. At the same time it is the biggest weakness of trade union system in Poland, because trade unions were not established in majority of enterprises and gather only approximately 10 % of workers.

The employers' organisations act on the basis of the provisions of the act of 23 May 1991 on organisations of employers (Journal of Laws No. 55, item 235, with amendments). The activity of these organisations is based in large part on the same principles as the activity of trade unions due to the necessity to ensure equal rules of association to all social partners. The employers' organisations act on the principles of voluntary access, self-governance, and independence[20].

12. Collective labour disputes

The act defines collective labour dispute as a dispute between employees and the employer concerning conditions of work, payment or social benefits as well as rights and freedoms of trade unions. Collective labour disputes cannot be settled in courts and therefore their settlement is left to the parties in conflict, which mostly means collective negotiations or industrial actions, including strike.

A collective labour dispute starts with the trade union putting forward the demands. The employer gets time for fulfilling the demands and it is indicated by the trade unions, but not shorter than 3 days. If the employer did not fulfil the demands or not all of the demands but only some, the collective dispute concerns those of them which the employer did not fulfil. At that moment the employer should immediately enter into negotiations on the fulfilment of the demands, which becomes the subject of the dispute. In the result of

[19] *Włodarczyk M.* Kompetencje związków zawodowych // System Prawa Pracy: in 6 vols. Vol. 5: Zbiorowe prawo pracy / ed. K. W. Baran. Warszawa: Wolters Kluwer Polska, 2014. P. 403-506.

[20] *Skąpski M.* Kompetencje organizacji pracodawców // Ibid. P. 507–534.

the negotiations the agreement is concluded which finishes the collective dispute, or a record of divergences is made.

The next obligatory stage is the mediation. The mediation can be conducted for as long as the parties to the conflict want it, nevertheless the trade union is not obliged to mediate longer than 14 days from the beginning of the dispute.

After the mediation stage an industrial action is possible (especially strike). Peaceful way of carrying out the negotiating stages of the collective labour dispute is the condition of legality of the strike which is defined in the act as employees' restraint from work in order to settle a collective labour dispute. Holding a vote (strike referendum) is the condition which must be fulfilled before carrying out a strike. The result of voting is binding if at least 50 % of all employees took part in it and majority of them declared for it. The participation in the strike is voluntary, regardless of how the employee voted in the referendum.

Conclusions

Polish labour law is in a state of constant change processes and despite many amendments in recent years there are still significant challenges ahead. One of the biggest is to regain balance between employment under labour law and private law schemes, which was distracted with development of various flexible work arrangements which replaced labour contracts in many enterprises. This may be achieved by adopting new labour code, which is — by the way — another huge challenge of contemporary Polish labour law. Labour code of 1974 was completely rewritten in countless amendments since 1990, but at the moment it looks outdated in many aspects. The idea of labour law scholar community is to adopt 2 separate labour codes, one for individual and the other for collective labour law. The draft texts were provided by the Labour Law Codification Committee in 2018 and are in disposal of the Parliament.

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Основы трудового права Польши

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Польская правовая система признает разницу между трудовым законодательством и трудовым правом. Понятие «трудовое законодательство» формально признано названием его основного правового акта — Трудового кодекса. Трудовое законодательство регулирует только часть всего рынка труда, ограничиваясь подчиненными формами трудового поведения. «Трудовое право» — более широкое понятие, имеющее скорее научную, чем правовую основу. Оно объемлет собой трудовое законодательство в известных рамках, наряду со всеми другими формами занятости, такими как гражданско-правовые контракты на оказание услуг, самостоятельная занятость и т. д. Характерной особенностью польского рынка труда является большое количество индивидуальных подрядчиков, работающих в гибких формах занятости, не охватываемых нормами трудового законодательства (например, гражданско-правовые контракты на оказание услуг, которые незаконно используются также для работ, ограниченных трудовыми договорами), и столь же большое число работников, работающих по гибким формам трудовых договоров, таким как срочные контракты. Это одно из последствий неразвитости коллективных особенностей системы труда, когда нет представлений работников о том, как навязывать работодателям лучшие условия труда. В статье представлены основные положения польского трудового права. Введением в тему служат комментарии на тему развития польского трудового права после преобразования централизованно планируемой экономики в рыночную. Затем обсуждается система источников права, что особенно важно для трудового права в связи с наличием специфических (автономных) источников, таких как коллективные трудовые договоры. Статья в значительной мере посвящена освещению польского индивидуального трудового права, которое находится в центре трудовой системы. В основном это касается положений, регулирующих трудовые отношения, которые преимущественно содержатся в Трудовом кодексе. В этой части статьи рассматриваются виды трудовых договоров, их формы, обязанности сторон трудовых отношений и правила их расторжения. В дальнейшем анализируются очень важные сферы регулирования рабочего времени, систем рабочего времени и установленных законом гарантий свободного времени. Также обсуждаются некоторые нетипичные формы занятости, такие как удаленная работа, временная работа и самозанятость; приводятся основные положения норм коллективного трудового права: представление интересов работников и работодателей и коллективные споры.

Ключевые слова: трудовое право, право трудоустройства, трудовой договор, расторжение трудового договора, рабочее время, нестандартные формы трудоустройства, профсоюз, групповые увольнения, коллективные споры.

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