OUTLINE OF POLISH LABOUR LAW SYSTEM

edited by Krzysztof W. Baran

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TITLE ONE

GENERAL LABOUR LAW

Chapter I

THE CONCEPT AND SUBJECT-MATTER OF LABOUR LAW

1. Definitions of labour law

Definitions of basic concepts relevant to certain fields of study are of major importance both in empirical sciences and in practical application of the law. In the Polish literature on the subject, the term of "labour law" appeared rather late, during the interwar period, although in a rather limited scope. The terms used more frequently at that time were: "workers' law", "industrial law", "workers' and industrial law", "factory legislation" or similar. The term "labour law" became popular at the end of the interwar period and definitely prevailed after the World War II.

It became a legal term even later, under the Act of 26 June 1974 – Labour Code (*ustawa z dnia 26 czerwca 1974 – Kodeks pracy*).[1] In several legal acts of the interwar period, the set of norms governing the material scope of employment relationships (e.g. relating to industrial workers) was called "provisions on the contracts of employment"[2] and after the war the legal texts used the term "labour legislation"[3] without giving legal definitions of those terms. Therefore, by reference to the latter, it is possible to distinguish between scholarly definitions and legal (normative) definitions of labour law.

Initially, the legal doctrine defined labour law as a set of norms determining the employee status (called status definitions). Soon such definitions were considered too "narrow" and not corresponding with the scope of the labour law as a branch. At that time, definitions of labour law as a separate branch of the legal system of the Republic of Poland, governing employment relations and other social relations directly linked to employment relations, became more popular.

[1] Consolidated text: Journal of Laws [Dz.U.] of 2014, item 1502 as amended.

[2] Regulation of the President of the Republic of Poland of 27 June 1934 – Commercial Code *(Rozporządzenie Prezydenta RP z dnia 27 czerwca 1934 – Kodeks handlowy*; Journal of Laws [Dz.U.] no. 57, item 502 as amended).

[3] See, for example, Article XII § 1 of the Act on implementation of the Civil Code.

Therefore, the literature developed a specific "standard" method of defining and the related definitions of labour law which may be called "standard" definitions[4].

Both types of the definitions have certain functional elements called ontological, systemic and subject-matter:

1) the first one assumes existence of labour law (as a specific set of legal norms),
2) the second treats such set of norms as a separate, independent branch of a given legal system, and
3) the third makes reference to the set of legal norms ("subject-matter of labour law").

Since the time of codification of the labour law, our legal system has used the legal definition of "labour law". It should be understood as: "(…) provisions of the Labour Code and provisions of other laws (*ustawy*) and implementing acts (*akty wykonawcze*) regarding the rights and obligations of workers and employers, as well as provisions of collective agreements (*układy zbiorowe*) and other collective arrangements (*porozumienia zbiorowe*) based on laws, internal rules (*regulaminy*) and statutes (*statuty*) concerning the rights and obligations of parties to an employment relationship". It should be noted that consecutive paragraphs of the abovementioned article establish a specific hierarchy of sources of labour law.

Definitions of labour law assume for an element the subject-matter of a given branch of law. It is rightly pointed out that no such social relations exist which would generally be "uniform in nature" and grouping, systematisation and classification of such relations are logical measures based on a stated convention. Through "arbitrary convention" lawyers have determined also the subject-matter of labour law and agreed that this branch of law governs all social relations relating to subordinated work of people. Quite commonly, those relations were called labour law relations. Although the previously mentioned definitions of labour law give an impression of uniformity of opinions on these matters, the subject-matter of labour law still remains very controversial and the views on the labour law still vary in terms of time and space. As noted earlier, such "social employment relations" must be defined formally, through "arbitrary convention". In this regard, a reference can be made to general remarks of legal academics according to which "in the absence of appropriately general criteria" the subject-matter of labour law should be distinguished "not through a classic definition by *genus* and *differentia specifica* but through specification of its component parts". Each author of such definition, having specified the "employment relationships", to further determine the subject-matter of labour law must list and indicate those groups of social relations which he considers "practically related to work".

A relatively broader consensus was achieved in relation to the concept of "employment relationship". It is assumed that such relationship should be an obligation relationship

[4] However, some handbooks still use definitions which refer to the employee status.

and have a homogeneous structure. And the scope of "employment relationships" should be determined by the already defined criteria which distinguish them from other obligation relationships, such as: continuity of work, remuneration, performance, subordination of an employee and risk of the employer associated with the work process. However, it is still pointed out that such criteria do not ensure precise delimitation of those relationships. In this context, the legal nature of specific relations was often determined by case-law which developed, under the same legal provisions (Articles 2, 3, 22 of the Labour Code), the variable scope of that concept.

Even more discussions and scholarly disputes, causing far-reaching consequences in the practice of law enforcement authorities, arise from removal of those areas of social relations which should be considered "directly" and "intrinsically" linked to employment relationships. This applies both to specification of the groups (types) of social relations which should be a part of the subject-matter of labour law and to determination of the scope of social relations which should be included in each of those groups.

Those relations were presented in our literature on the subject in different ways:
1) by placing them on the time axis and comparing their duration to the duration of an employment relationship,
2) by taking into account both the subject-matter and the method of legal regulation of the relationships included in the labour law (see section 2 of this chapter).

Historically older is the first one, where the following relationships are distinguished besides the employment relationship:
1) relationships preceding the employment relationship,
2) relationships established along with the employment relationship and concurrent with the employment relationship or even exceeding its term,
3) relationships resulting from the already terminated employment relationship.

The relationships preceding the employment relationship include mainly: job matching, job counselling, vocational training (*nauka zawodu*), apprenticeship (*przyuczenie do określonej pracy*), legal relations connected with the conclusion of employment relationships (such as competitions, preliminary contracts); it is questionable whether some new types of social relationships, such as relationships related to internship or volunteering, should be included in this group.

The second group includes relations connected with the collective rights (of groups of workers, e.g. benefits from the company social benefits fund or, as argued by some scholars, occupational pension schemes), employee co-management relationships, relationships involving establishment of and participation in professional organisations (employers' organisations, workers' organisations, mainly trade unions). This group includes also relations within individual and collective labour disputes. Some legal scholars include in this category also legal relations concerning supervision over

The book is a complete analysis of the institution of the Polish labour law. It covers issues regarding both individual and group working relationships, especially those which involve trade unions, workers' councils and European works councils. Topics referring to the job market and the role of the state in its regulation have also been touched upon.

This comprehensive analysis of the Polish labour law will allow the readers to fully familiarise themselves with regulations of labour law which are binding in Poland.

The book will be useful not only for the readers from abroad. A number of institutions of the Polish labour law are presented in great detail. Many cases introduce different views from judicial decisions and the most appropriate manner of interpreting the provisions. Owing to the above, this book will be of invaluable assistance to practitioners working in international corporations or for international clients.

The publication takes into account the current legal status and new regulations introduced to the Labour Code with respect to contracts for a fixed term and parental leaves.

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