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THE WORKER'S EMPLOYMENT CONTRACT —THE LEGAL REGULATIONS OF INTERWAR POLAND

INTRODUCTION

There is an area of law uniquely combining economic interests with social interests, which is labour law. Having evolved from the 19th century civil law, it regulated the legal relationship binding both on the employee and the employer. Labour law responded to widely reported social demands to have workers protected by the State and to regulate the employee–employer relationship on the basis of a contract that would protect the interests of both parties. This also resulted from the need for professionalization and the increased employees' awareness of their rights.[1] This led to the emergence of the basic role of labour law, namely its protective function, as well as a new employment contract, which was to fulfil the following functions:

1) outline the limits of the freedom to contract
2) define the rights and obligations of contractual parties
3) supplement the provisions defining the employment relationship
4) prevent the employer's abuses in relation to the employee and protect the latter against the employer's withdrawing unexpectedly from the contract, but, above all, establish mutual rights and obligations of the contractual parties.[2]

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[1] S. KEMPNER, *Prawo do pracy* (Warszawa: Towarzystwo Wydawnicze, 1919), 3–4.

[2] B. WERTHEIM, "Charakter prawny umowy o pracę chałupniczą," *Głos Prawa* 6 (1933): 713–14; J. WENGIEROW, "Jeszcze o zależności pracownika w stosunku pracy," *Przegląd Prawa Pracy* 2 (1939): 5–6.

There is no doubt that the interest of the employee and that of the employer were not the same, and reconciliation of these very different parties to a legal relationship seemed virtually impossible. The privileged position of the employer, no interest shown by the State in the problems of the group of workers, combined with social customs all contributed to a long period of disregard on the part of the jurists and politicians of the time in the sphere of legal regulations aimed precisely at providing the legal protection of employees, with the interests of the employer safeguarded.

Initially, the employee and the employer were bound by a contract which was founded on the principle of freedom of contract obliging the employee to perform work and the employer to pay the contractual remuneration.[3] However, there were no legal instruments enabling employees to effectively enforce their rights if the contractual provisions were breached by their employers. This was due to the fact that the principle of contractual freedom—an achievement of the French Revolution—was unfortunately distorted under the influence of the idea of industrial freedom, in the absence of state interference in the employer–employee relationship, and the acceptance of the principle that the employment relationship was governed solely by the interested parties themselves.

Against this background a proposal emerged for the State to interfere in the legal employee–employer relationship in order to protect the worker, who definitely was the weaker party. By its very nature, the employer, as the stronger party took advantage of the economically weaker position of the employee. The indicated interventionism of the State in the sphere of employment contract regulation was intended, at least in the initial period, to protect precisely the employee's rights against being exploited by the employer, thereby restoring the balance of the legal relationship holding between the employee and the employer.[4] From now on, such contractual relationships had to be based on the new regulations of the universally applicable law,

[3] W. JAŚKIEWICZ, "Pozaumowne stosunki pracy," *Ruch Prawniczy i Ekonomiczny* 1 (1958): 3–4.

[4] The regulation of employment relationship based on freedom to contract was accurately defined by Marceli Lewy: "The principle of contractual freedom means that the relationship between the employer and the worker and the relevant agreement is shaped according to the wishes of the economically stronger party, i.e. the employer," M. LEWY, *Prawo przemysłowe i robotnicze* (Warszawa: Wydawnictwo F. Hoesicka, 1918): 86; see also J. JOŃCZYK, *Prawo pracy*, Warszawa (Wydawnictwo PWN, 1984): 15–17; A. LITYŃSKI, [Review] "Aneta Giedrewicz-Niewińska, Projekt kodeksu pracy z 1949 r., Wyd. Napoleon V, Oświęcim 2015, ss. 218," *Roczniki Administracji i Prawa* 16, no. 1 (2016): 356, JAŚKIEWICZ, *Pozaumowne stosunki pracy*, 5–6.

which were to govern the State's intrusion into the employer–employee relationship.

Labour law was born in England and initially concerned women and children as the most vulnerable worker groups. Importantly, these regulations were trade-related. The following normative acts passed in the English legislation were of fundamental importance in this perspective and concerned employees working in cotton, linen and silk factories:

—the act of 29 August 1833 prohibiting the employment of children under 9 years of age and night work for persons under 10 years of age

–the act of 7 June 1844 introducing a ban on the employment of women under 18 years of age, their employment at night, limiting their working time to 12 hours a day

—the act of 8 June 1847 limiting the working day for women and persons aged 13–18 to 10 hours per day.[5]

The next step was to extend statutory protection to all factory workers who, due to their number and ease of organisation, in contrast to trade and craft workers, naturally had greater opportunities to stand up for their rights.

That led to a gradual evolution of the legislation for labour protection, unfortunately separately for individual trades. It was not until the turn of the twentieth century that new rules governing the employment relationship found their way into universally binding normative acts, namely the German Civil Code of 1900 (Articles 611–630), the Swiss Code of Obligations of 1912 (Articles 319–362).[6] It should be remembered, however, that the provisions of civil law regulations had a general character, in other words, they were applied only in situations where the legislator would not regulate the matter through provisions of *lex specialis*.

The legislation related to labour protection inevitably faced one more very important issue, which was the competition existing among economies of countries where no decisions had been made to implement regulations on labour protection, such as the shortening of the daily standard working time and restrictions on the work of women and children. Undoubtedly, all developments in the field of employees' benefits augmented the cost of labour, which negatively impacted the competitiveness of goods in comparison with products manufactured by entrepreneurs in countries where such regulations were not in force. Therefore, the issue had to be urgently regulated in the

[5] LEWY, *Prawo przemysłowe i robotnicze*, 88; see also B. KRZYŚKÓW, "Pojęcie ochrony pracy w prawie pracy," *Bezpieczeństwo Pracy* 6 (2006): 6.

[6] LEWY, *Prawo przemysłowe i robotnicze*, 90–91.

area of international law. In 1900, the International Association for the Legal Protection of Employees was established in Paris, with its headquarters in Basel. The Association's activities led the preparation of draft normative acts serving labour protection, adopted by countries within the framework of bilateral agreements. The Association also organized two international conferences in Bern in 1905 and 1906, at which draft conventions banning women's night work in industry and the use of white phosphorus matches production were adopted. As many as 14 countries adopted the first convention, while only 7 countries adopted the second one. Russia adopted none. The success of the two previous legislations encouraged the Basel institution to develop two more draft conventions on the banning of night work for young people and the reduction of the working day for women and young workers up to 10 hours.[7] The draft laws were presented at the 1913 conference, but the outbreak of war thwarted their adoption.[8]

THE EMPLOYMENT CONTRACT IN THE POLISH LANDS DURING THE PARTITION ERA

THE RUSSIAN PARTITION AREA

The basic normative act regulating the institution of employment contract was the Napoleonic Code,[9] containing Article 1710 in Title VIII introducing the fundamental principle of freedom of contract. According to that provision, one of the contractual parties undertook to perform specific work for the benefit of the other party in return for remuneration (hired workers). The Code provided for the possibility of signing a contract for a definite period of time or for a specific time to perform a particular job.[10] The laws in force in the Duchy of Warsaw, and later in the Polish Kingdom, did not provide for an agreement for an indefinite period of time (Art. 1779).[11]

[7] H. STERLING, *Międzynarodowa organizacja pracy i jej działalność* (Warszawa: Wydawnictwo Księgarnia Robotnicza, 1928), 11–12.

[8] Ibid., 13; see also E. STAŃCZYK, "Środowisko pracy w II Rzeczypospolitej," *Przegląd Prawa i Administracji* 77 (2008), 296–98.

[9] The Napoleonic Code, introduced in France in 1804 and promulgated in the Duchy of Warszawa in 1807 pursuant to Article 69 of the Constitution of the Duchy of Warszawa; in force in the Kingdom of Poland in 1815.

[10] This directly resulted from Article 1780 of the Napoleonic Code.

[11] *Kodex Napoleona z przypisami* (Warszawa: Drukarnia Xięży Piarów, 1811), 462–66.

The employment agreement did not require any particular form. The end date itself could be indicated directly or indirectly by specifying a specific event.

An interesting regulation was incorporated in Article 1781, abolished in Poland as early as during the period of partitions due to the implementation of civil procedure; it sanctioned the principle of inequality between the employee and the employer. In the case of a dispute over remuneration, the employer's readiness to submit a statement under oath was taken into account.[12]

In 1866, an act on industrial work was passed, which from 1891 had been in force in the Governments of Warsaw and Piotrków, and from 1897 in the entire Kingdom of Poland. The act introduced the possibility of concluding an employment contract for a definite period of time, a period of time for performing certain work or for an indefinite period of time. In addition, an obligation was introduced for such agreements to be made in writing. The employer was also obliged to confirm the conclusion of an employment contract by issuing a wage record book, where the basic terms and conditions of the contract were spelled out.[13]

THE PRUSSIAN PARTITION AREA

In the area of the Prussian partition, the normative act regulating the issue of employment contracts was the German Civil Code of 1 July 1896, which was a special act in relation to a specific group of workers.

The Prussian legislation did impose a written form on employment contracts. The contract itself could be concluded for a definite period of time, for the time necessary to perform a specific job, or for an indefinite period of time. Interestingly, it was possible to conclude a contract for the life of a given employee.

Apart from the Civil Code, employees were subject to the regulations of the Industrial Act of 25 June 1869, the Mining Act of 24 June1865, the Commercial Code of 12 May 1897, the Seafarers Act of 2 March 1902, the Act of 15 June 1895 on inland navigation and the Act of 20 December on insurance.[14]

[12] LEWY, *Prawo przemysłowe i robotnicze*, 87–88.

[13] K. ŁAPIŃSKI, *Umowa o pracę na czas określony w polskim i unijnym prawie pracy* (Warszawa: Wydawnictwo Wolters Kluwer, 2011), 20–21.

[14] Ł. BASZAK, "Regulacje prawne umowy o pracę pracowników umysłowych w latach 1928–1939," *Folia Iuridica Universitatis Wratislaviensis* 5 (2016): 11.

THE AUSTRIAN PARTITION AREA

The Austrian Civil Code, similarly to the Prussian Code, contained very general provisions regarding employment contracts. On the other hand, however, it contained a broad catalogue of provisions defining the obligations of the parties to the employment relationship which were not listed in the special acts, i.e. the Industrial Act of 20 December 1859, the Mining Act of 23 May 1854, the Trade Act of 1910, the Trade Assistants Act of 16 January 1910, the Act of 13 January 1914 on estate officials, paragraphs 200–209 of the Mining Act, and the Act of 16 December 1906 on salary insurance.

None of the above normative acts introduced the obligation to maintain a written form of employment contracts, which could be concluded for a fixed period of time, time to perform a specific job or an indefinite period of time. The right to terminate the employment contract was vested in both the employer and the worker.[15]

THE FORMATION OF LABOUR LAW AFTER THE RECOVERY OF INDEPENDENCE

Undoubtedly, the two inter-war decades was a period of rapid development in the area of labour law. The reborn Polish State faced the challenge of unifying provisions of law that were in force in the formerly partitioned areas of Poland. The process was hindered by the fact that the differences also resulted from the level and sophistication of legislation in particular regions of Poland. The legal system of the former Prussian partition was the best developed, but the one in the Kingdom of Poland was the least advanced.[16]

Consequently, the new regulations had to reconcile the interests of employees and employers in the three partitioned districts, but they also had to face the demands of social movements wanting specific professional groups to be granted certain rights and which, in the absence of a sovereign state, had not yet been satisfactorily safeguarded.

At this stage it is worth mentioning that the Provisional State Council—established by the act of 5 November 1916, had a labour department within

[15] See also Z. LESER, *Umowa o pracę* (Lviv: Wydawnictwo Księgarni Narodowej, 1935).

[16] K. ZABIEGLIŃSKI and Z. ŁABAZIEWICZ, "Polskie prawo pracy w okresie międzywojennym (wybrane zagadnienia)," *Colloquium Wydziału Nauk Humanistycznych i Społecznych* 1 (2009): 239–41.

its structures, within which the Labour Protection Commission was appointed, whose task was to prepare a draft labour code. Unfortunately, the Commission failed to prepare it. The work on the code was still continued in 1919, but to no avail.[17]

The Codification Commission, although it was entrusted with the task of preparing uniform legislation in the areas of civil and criminal law, was not obliged to prepare a draft labour code. Therefore, the burden of creating uniform regulations concerning the employment relationship was carried at the ministerial level. For this reason, the labour law was not codified, but only normative acts were issued (passed), which as a whole formed the system of sources of law for interwar Poland: 1) Ordinance of the President of the Republic of 16 March 1928 on the employment contracts of clerical workers;[18] Ordinance of the President of the Republic of 16 March 1928 on the employment contracts of workers;[19] Ordinance of the President of the Republic of 27 October 1933 on the Code of Obligations;[20] Act of 17 February 1922 on the State Civil Service;[21] Act of 2 July 1922 on the employment of juvenile workers and women,[22] and Act of 17 February 1922 on the State Civil Service (with regard to employees of state offices and institutions).[23]

The above provisions were reinforced by: 1) Decree on the 8-hour working day;[24] 2) Decree of 8 February 1919 on interim provisions concerning workers' trade unions,[25] which ensured the right to set up workers' unions with the task of defending and promoting their economic and cultural interests; importantly, the formalities for setting up trade unions were reduced to a minimum; 3) Decree of 3 January 1919 on the organisation and operation of the Labour Inspection,[26] which operated under the supervision of the Ministry of Labour and Social Welfare; 4) Decree on compulsory sickness insurance;[27] 5) Act of 19 May 1920 on compulsory sickness insurance;[28]

[17] LITYŃSKI, [Review], 356.
[18] Journal of Laws No. 35, item 323.
[19] Journal of Laws No. 35, item 324.
[20] Journal of Laws No. 82, item 598.
[21] Journal of Laws No. 21, item 164.
[22] Journal of Laws No. 65, item 636.
[23] Z. FENICHEL, "Umowa o pracę w projektu polskiego kodeks cywilnego," *Głos Prawa* 1–2 (1930), 289–91.
[24] Dz.P.P.P. [Journal of Laws of the Polish State] No. 17, item 42, replaced by Act of 18 December 1919 on the working time in industry and trade, Journal of Laws of 1920, No. 2, item 7.
[25] Dz.P.P.P. No. 15, item. 209.
[26] Dz.P.P.P. No. 5, item. 90.
[27] Dz.P.P.P. No. 9, item. 122.

6) Act of 16 May 1922 on holiday leave for workers employed in the industry and trade;[29] 7) Act of 2 July 1924 on the employment of juvenile workers and women; 8) Ordinance of the President of the Republic of Poland of 14 August 1927 on the Labour Inspection,[30] which strengthened the organisational separation of this institution; 9) Ordinance of the President of the Republic of Poland of 22 March 1928 on labour courts,[31] which were established to adjudicate cases arising from employment relationships; 10) Ordinance of the President of the Republic of Poland of 16 March 1928 on safety and hygiene at work,[32] which defined the general obligations of employers with regard to the application of measures serving to protect the health and life of employees, and created the basis for issuing specific provisions on health and safety at work; 11) Ordinance of the President of the Republic of Poland of 24 November 1927 on the insurance of clerical workers, introducing a support system for those employees by granting them disability and pension benefits;[33] 12) Act of 14 April 1937 on collective labour agreements,[34] which by the operation of law became a specific source of labour law. A collective labour agreement was binding not only on the trade union members participating in it, but also on all the workers employed in enterprises covered by the agreement.

From the perspective of this article, the most important is the ordinance on the employment contract of workers, which came into force on 24 July 1928 and was in force throughout the country. With it, the legislation of the former partitions was repealed, but only to the extent that it was contrary to the ordinance (Art. 68). The provisions of the ordinance therefore became *lex specialis* in relation to the legislation existing in the post-partition districts. We can therefore say that the 1928 ordinance caused some kind of consolidation of legal norms applicable in the different areas, but it did not explicitly repeal the partitioners' provisions, which, in my opinion, should be deemed as a fundamental drawback of this regulation.

[28] Journal of Laws No. 44, item 272.
[29] Journal of Laws No. 40, item 334.
[30] Journal of Laws No. 67, item 590.
[31] Journal of Laws No. 37, item 350.
[32] Journal of Laws No. 35, item 325.
[33] Journal of Laws No. 106, item 911.
[34] Journal of Laws No. 31, item 242. It should also be mentioned that the first regulations concerning collective labour agreements were introduced through a code of obligations. See S. ROSMARIN, "Układ zbiorowy według kodeksu zobowiązań, a ustawy o zbiorowych stosunkach pracy," *Głos Prawa* 12, no. 12 (1933): 703–13.

At this point it should be noted that the Code of Obligations, introduced by the President in 1933, contained a comprehensive section on employment contracts (Articles 441–477). At the same time, the legislator did not decide to repeal the regulations on the employment contracts of white-collar or blue-collar workers. The code regulations became an independent source of general labour-law norms, including also specific provisions. Therefore, we need to answer the question: what was the relationship between the existing legal regulations and the code regulations, which, as Stanisław Płaza points out, were on a higher level of legal legislation?[35] As a rule, the code regulations were applicable only in a situation where specific events were not governed by any of the regulations of 1928.[36] Nevertheless, it was only by the Code that the general principle of remuneration for work was specified, or the obligations of contractual parties were specified in detail.

WORKER'S EMPLOYMENT CONTRACT—THE CONCEPT

Article 1 of the 1928 ordinance defined an employment contract as a contract under which an employee undertook to perform work for an employer against some remuneration. Despite the fact that the provision did not specify directly that the employee and the employer were linked by a significant degree of economic dependence—subordination of the employee to the employer—the claim that the employee performs work for the employer allows us to assume that the legislator subordinated the employee directly to the employer under an employment relationship.

At this point, attention should be drawn here to Article 66. The provisions of the ordinance were those of *iuris cogenti*s, or mandatory regulations of law. This was the guiding principle of the ordinance, as expressed in Article 66, according to which all provisions of contracts governing working terms and conditions less favourable to workers than the ones introduced by the ordinance were invalid and replaced by the relevant provisions of the 1928 ordinance, which constituted the core of workers' rights, and the less favourable contractual provisions were invalid.[37]

[35] S. PŁAZA, *Historia prawa na tle porównawczym. Okres międzywojenny* (Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego, 2001), 280.

[36] BASZAK, *Regulacje prawne umowy o pracę*, 11.

[37] Ibid., 12.

SCOPE OF APPLICATION OF THE ACT

The provisions of the 1928 ordinance applied to employment contracts concluded between employers and workers employed by natural or legal persons or other organisational entities, irrespective of whether these were public or private entities (Art. 2). However, a worker was every employee employed under an employment agreement, with the exception of employees performing intellectual work, employed in agriculture, companies not having industrial or commercial character, or persons employed in state, municipal, domestic workers or caretakers.

The definition indicated above was not a legal definition, and given the broad application of the governing provisions and a separate regulation of the employment contract for clerical workers, the application of the two instruments caused a great deal of difficulty. It was not always clear which of these regulations should be applied to which group of employees. It seems that the legislator unnecessarily separated the concepts of the physical worker and the white-collar worker without defining a given group of workers, or a lack of consistency in their application, except for workers at agricultural, forestry, horticultural and processing plants connected with agriculture or horticulture.

Therefore, in order to organize this text, it is necessary to try to define the term "worker." First of all, we need to refer to Article 2 of the ordinance on the employment contract of clerical workers, which treated as such those carrying out administrative and supervisory roles, all watchmen with secondary vocational training, mining foremen or their deputies, mine field watchmen, explosives guards, all those mine watchmen whose activities exceed the standard scope of supervision and consist in performing control and supervision over their subordinate workers; persons practising liberal professions (painters, sculptors, singers, musicians, etc.); artistic staff of theatres, orchestras, film studios, radio broadcasting stations; literary and musical advisors, journalists, medical, dental, veterinary personnel; qualified auxiliary medical, dental and veterinary staff, persons performing office, accounting, drawing and calculation activities; telephonists and telegraph operators; pharmacists, drugstore keepers, cashiers, dispatchers, travelling salesmen, peddlers, vendors and shop and bookshop assistants, provided they have completed 6 classes of a public or private secondary school with the rights of state schools, or a vocational secondary school, or have completed a vocational further education school and an apprenticeship, the terms of which

were specified for this purpose by the Regulation of the Minister of Labour and Social Welfare issued in consultation with the Minister of Industry and Trade and the Minister of Religious Denominations and Public Education. If we juxtapose this list of professions with Article 2 of the regulation on workers' employment contracts, we can see that workers were those who were not listed in Article 2 of the regulation on the contract of employment of clerical workers; neither were they state or municipal officials, students, apprentices or staff of a seagoing vessel, performing physical or executive work, or persons employed in trade or services.[38]

The problem with defining the term "worker" was not an isolated one. European countries also struggled with it. Help came in the form of guidelines laid down by the Fourth Congress of the International Confederation, which determined that the worker was an employee in whose work physical rather than mental effort dominated.[39]

CONCLUSION OF AN EMPLOYMENT CONTRACT, OBLIGATIONS OF THE PARTIES

Pursuant to Article 3, the legislator permitted the conclusion of an employment contract in writing, orally or in any other form customarily accepted in a given workplace. This solution is puzzling because in the case of employment contracts of clerical workers—if an oral agreement had been made—such an employee could request that the oral agreement be confirmed in writing (Art. 6). Physical workers did not have a similar right. I cannot think of any justification for this solution. Even if we assume that blue-collar workers were often illiterate, they were deprived of the right to demand a written confirmation of their contractual and working conditions, which might have had an impact on the effectiveness of enforcing their rights before labour courts.[40]

However, the legislator imposed an obligation on employers to give wage record books to their employees within seven days from the date of commencement of work at the latest. The record book contained information on the most important provisions of their contract, including the amount of re-

[38] WERTHEIM, "Charakter prawny umowy o pracę," 714–15; see also W. ORGANIŚCIAK, "Prawo pracy II Rzeczypospolitej. Szkic dla celów dydaktycznych," *Z Dziejów Prawa* 2 (2009): 235–36.

[39] PŁAZA, *Historia prawa na tle porównawczym*, 279.

[40] WENGIEROW, "Jeszcze o zależności pracownika," 9.

muneration.[41] The book itself had three sections. The first section provided the following information: the name of the employer or the business name of the entrepreneur, name and surname of the employee, date of commencement of employment, type of employment contract, type of employment, amount of remuneration and the rules for calculating it, the date of payment, amount of fees for using the employer's benefits, other terms and conditions of the contract. The second section, called "instructional," contained an excerpt from the work regulations and provisions of the labour law in force or other internal documents. The accounting part was last (not obligatory), in which wage payments were recorded.[42] This part was not obligatory because the employer might have wanted to obtain permission from the competent district labour inspector not to enter wage information in the booklet if he had provided the workers with appropriate written confirmations which sufficiently recorded the payment of wages and the manner of their computation.[43]

Apart from the wage record book, the employer was obliged to keep the so-called Worker's Book, in which the working time of each employee was recorded. The book was divided into weekly cards, and each card was divided into fields in which employees' names were written, followed by the number of hours worked on a particular day, specifying whether these were payable at 100% or 50% of the daily rate.[44]

Employment contracts were concluded for:

—a probationary period[45]

—the period of a specific job

—a fixed period

—an indefinite period of time.

Interestingly, the regulation addressed the so-called general obligations of contractual parties very briefly, which was essentially limited to a statement that the basic obligation of an employee was perform work properly and conscientiously and to fulfil the duties specified by the superiors, within the

[41] Only employers with more than four employees were obliged to issue wage record books.

[42] §§ 1 and 2 of the Regulation of the Minister of Labour and Social Welfare of 8 November 1928, issued in consultation with ministers of the Industry and Trade, Treasury, Communication, Military Affairs, Public Works, Post Offices and Telegraphs, and Agricultural Reforms on wage record books, Journal of Laws No. 96, item 846.

[43] Ibid.

[44] STATE ARCHIVES IN LUBLIN, Fond *Browar Parowy Vetter*, file ref. no. 94.

[45] The contract for a trial period could be concluded for a maximum period of seven days, but could be terminated at any time by either party. It did not expire when the period for which it was concluded expired, required formal termination, otherwise it was transformed into a contract for an indefinite period of time (Art. 5).

scope covered by the contract, which obviously could not be contrary to the law and good morals (Art. 6). The employer was obliged to organise work and apply measures in a manner guaranteeing the protection of the life and health of the physical workers.

Article 6, supplemented by Article 448 of the Code of Obligations, circumscribed the limits of the physical effort which the employer could expect from the worker—the effort could not be contrary to the law and good manners, the work should be performed diligently and properly, and the employer's instructions could not be contrary to the contract, the statute and good morals.

REMUNERATION

In exchange for work performed, the employer was obliged to pay appropriate contractual remuneration, as specified in the employment contract and the wage record book. If no such documents were available, the amount of remuneration had to be equitable in accordance with the local custom. There were no statutory provisions defining a minimum wage for work that could guarantee employees that they would receive a wage in such an amount, not less. In my opinion, a reference to local customs or the principle of equity gave employers the possibility of artificial regulation, that is, lowering the wage (Art. 41).

The legislator set strict deadlines for the payment of wages, which differed depending on the type of contract. In the case of a fixed-term contract of no more than two weeks' duration, payment of wages must be made after the expiry of the term of the contract. If the contract was concluded for a period of more than two weeks, payment was made once every two weeks. If the parties had a contract for an indefinite period, the employer was obliged to pay wages at least once every two weeks. If an employee performed work under a fixed-term contract of employment, the employee was entitled to demand advance payments on future wages within a period specified in the contract of employment, but not less frequently than every two weeks, at an amount no lower than two weeks' remuneration. Of course, each payment of wages had to be recorded in the record book as a separate entry. If the employer was late paying the wage, he was obliged to pay default interest from 2 to 3% per month, calculated as of the first day of delay.

The amount of remuneration was determined by the employment contract, but the employer was obliged to specify the rules of its calculation in the record book. If the rules were too complicated to be listed in the booklet, the tables in it or tariffs posted in the workplace—previously signed by the manager of the facility and approved by a district labour inspector—were used as the basis for calculating the amount of remuneration. Regardless of it, the employer had to keep payroll ledgers in which the date and amount of payments made to a given worker were recorded.

If more than four workers were employed, the employer was obliged to keep the so-called employee's personal records. Detailed rules for their maintenance were spelled out in the Regulation of the Minister of Labour and Social Welfare on payroll ledgers and lists of payments for work and books necessary for the control of employment relationships of 8 November 1928[46] under which the obligation to keep them was imposed on all employers. In accordance with the provisions of § 1, these books were to be an accurate account of the settlements made with the employee, ensuring trouble-free verification of the correctness of payments and deductions made from wages during an inspection.

The Regulation in question specified the elements of the payroll ledger, which was kept in the form of a stringed book providing the following information: the item number, name and surname of the worker, type of employment, pay date, amount of pay[47] (specifying the hour of the actual payment, the number of overtime hours and the amount paid for them, total amount of cash pay, amount of payment in kind, and the total amount of pay), deductions[48] and the amount of wage to be paid.

Analysing the 1935 payroll ledger of the Plage Laśkiewicz workshop with its registered office in Lublin, we see that the employer kept a separate card for each employee, assigned to them by name and surname, with a separate settlement account. The first column specified the amount of remuneration paid and the others recorded the remuneration for overtime or bonuses. The second part of the ledger consisted of entries concerning any deductions, such as advances for income tax or social security contributions. This section was the most extensive, for example, it also documented contributions paid to the Shooter's Fund, bailiff's debt collections, or the

[46] Journal of Laws No. 96, item 847.

[47] The column "Remuneration" was to include such fields as: fixed remuneration, daily rates, piecework, bonus, and other extra components of the remuneration.

[48] The column "Deductions" was to include such fields as: health insurance fund, unemployment fund, other social security contributions, income tax and other deductions.

amounts collected for fuel or accommodation. Finally, the last but one column provided information on the amount of remuneration to be paid. The last column was for the employee's confirmation of receipt.[49]

The wage record book as such was the property of the employee and subject to special protection. Employees gave it to their employers for the sole purpose of entering the necessary data relating to the payment of wages. It was forbidden to enter any information related to the employee's conduct. If the book was lost, the employer was obliged to immediately issue a new one. At that time, however, the employee had to pay for the new record book (Articles 29–31).

Remuneration was paid only in cash in the net amount, that is after all deductions made by the employer. If the employee failed to observe this, the employee was entitled to a second payment of wages.[50] Importantly, if the employee made such a request, the employer could not defend itself against the allegation that the salary had been paid in any other way than in cash. If, following the request, the employee finally received a double wage, the next wage—if the employee still had the previously paid wage—was paid for cultural and educational purposes.[51]

The regulation also provided for protection of remuneration. In accordance with Article 38, the following receivables could be deducted from the employee's wage:

—sums due to the employer for fuel, light, explosives supplied to miners, or rent

—all types of current and outstanding public contributions

—sums enforced on the basis of instruments of execution and enforcement

—cash advances paid towards remuneration

—fines provided for in the work regulations.

Importantly, these amounts were deducted before the amounts enforced under the enforcement and enforcement orders, which could again be deducted up to 1/5 of the salary. Regardless of any deductions, the employee had to be paid 50% of the wage. Alimony payments could be deducted up to a maximum of 2/5 of the salary.

[49] STATE ARCHIVES IN LUBLIN, Fond *Plage Laśkiewicz*, file ref. no. 100.

[50] FENICHEL, "Umowa o pracę," 287.

[51] Regulation of the Minister of Labour and Social Welfare 31 August 1928 on the allocation of valuables and sums of money obtained pursuant to Articles 23, 43 and 44 of the Ordinance of the President of the Republic of Poland of 16 March 1928 on the employment contracts of workers for cultural and educational purposes, Journal of Laws No. 83, item 732.

WORK REGULATIONS

An employer employing more than 20 employees was obliged to introduce work regulations in the workplace not later than four weeks from the date of its start-up or employment of the required number of employees.

The regulations determined a whole range of issues related to the provision of work for a specific employer and had the character of organising regulations. However, rules concerning the following had to be included:

—start and end of work

—determination of the time and length of breaks

—time taken to clean tools and machinery

—specification of changes in the case of work establishments with continuous production

—a list of public holidays

—time and place of the payment of wages

—the basic rules of occupational health and safety

—the type of offence and the corresponding sanctions

—charges for the loss or destruction of wage record books.

The draft work regulations were displayed in the premises of the company in a place easily seen by the employees. After a week, it was sent to the district labour inspector, together with a request for their approval (Articles 51–52).

Within two weeks, the labour inspector was obliged to approve the regulations or to state his objections. Wherever the draft regulations were found to be unlawful by the inspector, he refused to approve them. The approval of the regulations was to be communicated to the staff by posting a notice along with the regulations, which entered into force after two weeks. Pursuant to Article 55, the employer was obliged to acquaint the employees with the content of the regulations before they were allowed to commence work.

The approved work regulations would become a binding source of labour law for employees and employers. If it turned out that, despite the approval, the new regulations were less favourable to the employees than those specified in their individual contracts, the employees could then claim damages before the labour court. The claim had to be filed within one month from the date of entry into force of the work regulations.

In workplaces with fever than twenty employees the regulations were optional. In such workplaces, however, the employer was required to display an internal announcement containing information on the start and end hours

of the working day, the identification of breaks, a list of public holidays and the date and place of payment of wages. The announcement in question was also subject to labour inspection with respect to its compliance with the binding legal regulations. The whole notice or its individual points were subject to invalidation by the inspector (Art. 57).

TERMINATION OF AN EMPLOYMENT CONTRACT

The contract of employment pursuant to Article 10 was terminated after its term was over, after a particular job was done, at the end of the notice period in the case of contracts of indefinite duration, when an employee was called up for active military service, or when an employee died.[52]

In contrast to the regulations of today, the 1928 regulation made it simpler to terminate an employment relationship which had been contracted for an indefinite period of time. Such an contract could only be terminated by either party by giving two weeks' notice. It was permissible to extend the notice period in the employment contract, but these periods had to be the same for each of the parties. It was possible to shorten the notice period on condition that the employee was paid for the whole notice period (Art. 11).[53]

The act provided for a number of provisions protecting employees against unauthorized termination of employment contracts. Pursuant to Article 11 para. 4, the employer was forbidden to terminate the contract of employment during:

—the first four weeks of the employee's incapacity for work resulting from an accident or illness

—an employee's military training

—holiday leave.

However, there were a number of exceptions to the general principles. The contract was terminated if the employee did not show up for work on the date specified in the contract of employment and if the workplace was closed due to the decision of state authorities, or in the case of fire, flood, accident or other random events that prevented further operation of the workplace. At that time, the employer had the right to terminate the contract by giving seven days' notice.

[52] The notice period ended on Saturday or another customary pay day.

[53] FENICHEL, "Umowa o pracę," 288.

An interesting solution was provided for in Article 15, which, in my opinion, first of all allowed room for abuse and the possibility of actually terminating any contract without notice, because its wording was quite general. Namely, each of the parties had the right to terminate the agreement immediately for important reasons or due to the other party's fault. In the case of a dispute, the occurrence of important reasons was established by the court. Articles 16 to 18 stipulated important reasons for termination but, importantly, Article 20 provided for the possibility to claim damages in the case of unlawful termination under Articles 15 to 18. It is therefore clear that Article 15, regardless of Articles 16–18, provided independently for an immediate termination of the employment relationship. It was enough for either the employee or employer to entertain a conviction that a given event was would sufficiently justify termination of the employment relationship. However, the law specified such events:

—any incident that violated good morals or principles of good faith

—acts insulting the other party

—encouragement by employers or their family members to commit prohibited acts

—cases where the employer did not fulfil the terms of the contract

—cases where the employee did not comply with health and safety regulations

—theft or wilful damage to property committed by an employee

—failure to appear at work without justification for three consecutive days or six days in a month

—the employee's failure to comply with an official order

—the employee's disclosure of a trade secret

—cases where the employee was employed on the basis of forged documents.

Termination of employment, regardless of the basis, obliged the employer to issue a certificate of employment, in which data concerning the type and time of employment of an employee should be indicated. It was forbidden to include on the certificate any comments of its own or opinions on the worker and his work (Art. 21).

CONCLUSION

The realisation of principles of labour law is not an easy task. However,

we can say that in this short and undoubtedly complicated interwar period, Poland managed to implement regulations which merely a hundred years earlier had been in the sphere of philosophical research. Undoubtedly, the regulation of 1928 was not a normative act that would address all social demands made by employees, but it was possible to implement regulations whose legislative level surpassed that of the legislation of other countries.[54]

The unique modernity of the Polish regulations and the fact that employees were covered by protection on an unprecedented scale was not always understood, especially among employers. In the period of the great crisis, demands to halt further development of workers' legislation or even to repeal it were loud because the burden placed on employer was too heavy, a fact which translated into low competitiveness of goods.

The events of May 1926 changed the political course in Poland. Intensification of anti-democratic tendencies and efforts to strengthen the central government started, exerting an impact on labour law regulations and thus the worsening of the position of employees. This was manifested primarily by the weakening of social organizations gathering employees or self-government institutions.

However, the deterioration of the situation of workers in Poland was mainly caused by the economic crisis lasting from 1929 to 1933. Widespread unemployment, which led to the weakening of workers' movements, made it easier for the legislator to introduce regulations that violated workers' rights. In the first place, insurance self-government was abolished, which had given employees serious influence over the functioning of health insurance funds and ensured control over their activities, and in place of which government commissioners were appointed.[55] Under the new law on associations of 1932, the freedom of trade unions was effectively restricted, the associations became subject to the supervision of the Ministry of the Interior, and the introduced clause of "a threat to the security of peace or public order" made it possible to disrupt any legal assembly by the supervisory authority; in addition, it was possible to subordinate the association directly to the central authority.[56]

By the Act of 22 March 1933, the weekly working hours standard was increased to 48 hours. At the same time, overtime allowances were cut by

[54] STAŃCZYK, "Środowisko pracy," 306–7.

[55] Ordinance of the President of the Republic of Poland of 29 November 1930 on the organisation and functioning of social insurance institutions, Journal of Laws no. 81, item 635.

[56] Ordinance of the President of the Republic of Poland of 27 October 1932—the Law on Associations, Journal of Laws No. 94, item 808.

half.[57] Undoubtedly, the government yielded to the demands of employers who, during the great crisis, demanded cuts in labour costs and an extension of the working week.[58] Working time standards were changed for employees in virtually all sectors. [59]

It seems, however, that from the point of view of employee rights, the most significant restrictions were introduced by virtue of Ordinance of the President of the Republic of Poland of 22 November 1938 on the protection of certain interests of the State. Pursuant to Article 8, a person who called for a general abandonment of work by employees (general strike) or the general closure of the workplace, was subject to imprisonment for up to 5 years.[60]

To sum up, despite the negative trends that emerged after 1926, if we look at the Polish labour law regulations of the interwar period and the labour law institutions formed in that period—which were not devoid of

[57] Act of 22 March 1933 amending the Act of 18 December 1919 on the working time in industry and trade, Journal of Laws No. 27, item 227.

[58] ORGANIŚCIAK, "Prawo pracy," 238.

[59] Regulation of the Council of Ministers of 26 August 1920 on the extension of working time in work establishments serving the army, Journal of Laws No. 95, item 625; Regulation of the Minister of Labour and Social Welfare of 10 November 1921 on the working time in commercial establishments on market and fair days, Journal of Laws No. 92, item 681; Regulation of the Minister of Labour and Social Welfare of 10 December 1921 on performing work at night and on Sundays and public holidays preceding production in bakeries, Journal of Laws No. 104, item 759; Regulation of the Minister of Labour and Social Welfare of 26 January 1922 on the working time of persons employed as guards, Journal of Laws No. 18, item 148; Regulation of the Council of Ministers of 3 February 1922 on the permission to introduce 3-shift work in sawmills, Journal of Laws No. 11, item 93; Regulation of the Council of Ministers of 25 July 1922 on the permission to introduce 3–shift work in sawmills, Journal of Laws No. 64, item 577; Regulation of the Council of Ministers of 4 September 1922 on the extension of the working time in sugar factories in 1922–1923, Journal of Laws No. 77, item 690; Regulation of the Council of Ministers of 30 October 1922 on the permission to extend the working time in Polish State Railway workshops, Journal of Laws No. 98, item 898; Regulation of the Minister of Labour and Social Welfare of 15 January 1924 on the working time for the performance of work preceding or following production, Journal of Laws No. 19, item 188; Regulation of the Minister of Labour and Social Welfare of 18 July 1924 on the extension of the working time in steel mills in the Upper Silesian part of Silesian Voivodeship, Journal of Laws No. 63, item 621; Regulation of the Council of Ministers of 1 October 1924 on the extension of the working time in sugar factories, Journal of Laws no. 88, item 837; Regulation of the Minister of the Internal Affairs of 9 December 1929 on the extension of trade hours before Christmas Eve and Holy Saturday], Journal of Laws No. 85, item 633; Regulation of the Ministers: of Internal Affairs, Communications, Labour and Social Welfare, and Industry and Trade of 23 May 1931 on the opening hours of commercial establishments, buffets and hairdressing establishments within railway stations, Journal of Laws No. 56, item 453; Regulation of the Minister of Social Welfare of 4 October 1933 on the working time of public road workers], Journal of Laws No. 87, item 672.

[60] Journal of Laws No. 91, item 623.

defects—the organisational rules were well thought-out, providing employees with protection exceeding that granted by the legislation of other European countries, which placed Poland among the countries setting trends in the development of labour protection legislation.

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THE WORKER'S EMPLOYMENT CONTRACT— THE LEGAL REGULATIONS OF INTERWAR POLAND

Summary

In independent Poland, the foundations for a new area of law, that is, labour law were laid, abandoning the previously crucial principle of freedom of contract underlying the contractual relationship between an employee and the employer. On March 16, 1928, the President of the Republic of Poland issued an ordinance on labour contracts, defining mutual obligations of employees and their employers under an employment contract based on which the employee undertook to perform work for the employer against remuneration. The legislator permitted the conclusion of employment contracts in writing, orally or in any other customary form accepted in a given workplace. In exchange for the work performed, the employer was obliged to pay appropriate contractual remuneration, as specified in the employment agreement.

Importantly, this ordinance contained a number of protective regulations that were designed to protect the worker and make his position towards the employer more equal. They included regulations concerning remuneration protection or the employer's obligation to specify work rules. Most importantly, however, the ordinance protected the worker from immediate and unjustified dismissal.

Key words: employment agreement; workers' employment agreement; wage protection; work regulations; termination of employment relationship.

Translated by Tomasz Pałkowski

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