

The Evolution of Personal Scope in Polish Individual Labour Law – A 20th-Century Historical Analysis

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ABSTRACT

This paper examines the historical development of Polish labour law, focusing on the expansion of its personal scope and its adaptation to broader socio-economic changes. In Poland, labour law began to take shape after the country had regained independence in 1918, driven by industrialisation and the need to regulate the relationship between employers and employees. The study examines key milestones, including early regulations covering both workers and knowledge workers, attempts at codification in 1949, and the introduction of the Labour Code in 1974, which, despite numerous amendments, remains the core of the Polish labour law system. Particular attention is paid to the gradual inclusion of different categories of workers, extending beyond traditional employment to the service sector and non-standard working arrangements. By analysing these developments, the article highlights the historical foundations that have shaped the Polish labour law and offers insights into how these principles can influence future legislative reforms to strengthen labour protection.

KEYWORDS

Personal scope, labour law, employee, employer, employment relationship, Poland.

Evoluția competenței personale a dreptului individual al muncii din Polonia – o analiză istorică a secolului al XX-lea

REZUMAT

Acest articol examinează dezvoltarea istorică a dreptului muncii din Polonia, concentrându-se asupra extinderii sferei sale personale și a adaptării acesteia la schimbările socio-economice mai ample. În Polonia, dreptul muncii a început să se contureze după recăștigarea independenței în anul 1918, fiind determinat de industrializare și de necesitatea reglementării raporturilor dintre angajatori și angajați. Studiul analizează etape esențiale, inclusiv reglementările timpurii care acopereau atât muncitorii, cât și lucrătorii al cunoașterii (knowledge workers), încercările de codificare din 1949 și introducerea Codului muncii din 1974, care, în pofida numeroaselor modificări, rămâne nucleul sistemului polonez de drept al muncii. O atenție deosebită este acordată includerii treptate a diferitelor categorii de lucrători, depășind cadrul tradițional al raporturilor de muncă pentru a cuprinde sectorul >>

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>> serviciilor și formele atipice de muncă. Prin analiza acestor evoluții, articolul evidențiază fundamentele istorice care au modelat dreptul muncii polonez și oferă perspective asupra modului în care aceste principii pot influența viitoarele reforme legislative menite să consolideze protecția muncii.

CUVINTE CHEIE

Sferă personală, dreptul muncii, angajat, angajator, raport de muncă, Polonia.

I. INTRODUCTION

The origins of modern labour law can be traced back to the economic changes that began in England in the 18th century. The shift from the intensification of labour to that of capital and the development of capitalism in the 19th century created the conditions for the birth of the modern labour market.² On the European continent, the key event in this regard was the French Revolution of 1789. The collapse of state society and feudal structures made possible the establishment of a liberal state in which Napoleonic codifications enshrined the principles of freedom of contract and the inviolability of private property.³ In this context, wage labour was born, fuelled by the development of the Industrial Revolution. Urban workshops and rural cottage industries were replaced by factories powered by steam and wind.⁴ Despite technological advances, working conditions remained difficult, especially for women, children, and unskilled workers. These problems led to the introduction of regulations on job security, working hours, wages, and the minimum age of workers.⁵ Moreover, the employment contract gradually ceased to be seen as a mere lease of services based on the principle of equality of parties and freedom of contract. Legislation began to stress the introduction of minimum standards for the protection of workers, which formed the basis of modern labour law.⁶

An analysis of early labour legislation indicates that its focus was on improving the working conditions of those workers who were associated with heavy or large-scale industry, requiring close co-operation and subordination to the instructions of a supervisor or manager overseeing the work process. Over time, labour laws began to expand their scope to absorb more and more new categories of workers, not only those strictly associated with factory work but increasingly those associated with the service sector. These changes did not omit Poland either, which, after regaining its independence in 1918, became actively involved in the process of industrialisation and, consequently, the legal regulation of the relationship between employees and employers.

The following article aims to provide a historical analysis of the tendencies of Polish labour law, focusing on changes in the coverage of the given groups of employees within

2 Jan Lucassen (2023): *Historia pracy: nowe dzieje ludzkości*, Znak Horyzont, Kraków, p. 395.

3 Andrzej Dziadzio (2020): *Powszechna historia prawa*, Warszawa, p. 197–199.

4 Lucassen (2023): p. 403.

5 Tadeusz Zieliński (1979): *Zarys wykładu prawa pracy*, Katowice, p. 84.

6 Ludwik Florek (1990): *Ochrona praw i interesów pracownika*, Państwowe Wydawnictwo Naukowe, Warszawa, pp. 11–14.

the scope of labour law regulation. This is even more important considering the current regulation, which draws its legitimacy from the Labour Code⁷ (hereinafter LC), introduced into the Polish legal order in 1974, although repeatedly amended and re-interpreted. An analysis of the development of the personal scope of individual labour law throughout the 20th century will enable the broadest possible understanding of the foundations that have shaped labour relations in Poland. It may also prove helpful in creating the premises of a new regulation that realises more extensively the principle of labour protection provided for in the 1997 Constitution of the Republic of Poland. The first part focuses on the early development of Polish labour law after the restoration of independence, with particular emphasis on two regulations governing the conditions of work under an employment contract for workers and knowledge workers. The second part analyses the times before the adoption of the Labour Code and the attempted codification of labour law in 1949. The third part takes a closer look at the regulation of the scope of subjects formed under the regime of the Labour Code. The last part, serving as a conclusion, will consider the current form of the regulation in the context of the situation of persons performing work on a basis other than employment (for example, the situation of self-employed persons or those employed under civil law contracts).

II. PERSONAL SCOPE OF LABOUR LAW IN THE SECOND REPUBLIC OF POLAND

With the rebirth of the statehood of the Second Republic of Poland, labour legislation faced the challenge of uniformising the regulations governing employee relations inherited from the three separate legal systems of the partitioned states and adopting new and unique labour law solutions. Besides the challenge of unifying the disparate provisions of labour law,⁸ the Polish legislator was also tasked with ensuring the protection of workers in accordance with the nature of the newly-established state and the constitutional position of labour, as set forth in the Constitution of the Republic of Poland of 17 March 1921.⁹ Initially, labour law was referred to as “factory legislation” due to the limited scope of the subject matter at that time. The first regulations of working time, safe and hygienic working conditions, or wage protection concerned the legal situation of factory workers in industrial establishments, where working conditions were the most severe. Subsequently, as labour legislation evolved, one began to speak of “industrial legislation”¹⁰ or “workers’ law”.

7 Act of 26 June 1974 Labour Code (Journal of Laws of 2023, item 1465).

8 Cf. Sebastian Kwiecień: Umowa o pracę robotników – polskie regulacje prawne okresu międzywojennego, *Roczniki Nauk Prawnych*, 4/2018, pp. 87–110, pp. 90–92; Monika Tomaszewska (2021): Umowa o pracę, in Krzysztof Wojciech Baran (ed.): *System Prawa Pracy. Historia polskiego prawa pracy*, Warszawa, pp. 234–240.

9 Journal of Laws 1921 no 44, item 267.

10 As J. Licki or Z. Salwa points out, this term was both too narrow and too broad; cf. Zbigniew Salwa (1989): *Prawo pracy w PRL w zarysie*, Warszawa, pp. 13–14; Jerzy Licki (1961): *Prawo pracy PRL. Zarys wykładu. Część I – ogólna*, Państwowe Wydawnictwo Naukowe, Łódź–Warszawa, p. 6.

The first act within the framework of labour legislation was the Decree of the Head of State on the 8-hour working day,¹¹ which was adopted in November 1918 and was subsequently replaced by the Act on Working Time in Industry and Commerce.¹² The personal scope of the Act extended to all workers employed on a contractual basis in industrial, mining, metallurgical, artisanal, communication and transport, commercial enterprises, as well as other workplaces that were run in an industrial manner, regardless of their ownership status. Other categories of workers related to, for example, outworking, agriculture and gardening, sailors, appointed and contract workers employed in state offices and institutions, scientific and school employees or domestic servants, remained outside the scope of many regulations, such as factory law,¹³ children and women work act,¹⁴ working time regulation.¹⁵ Such shaping of the personal scope of the regulation clearly shows that in the early period of the second Republic of Poland, labour legislation focused on employees in heavy industry and trade, excluding from regulation other subjects whose work equally involved more or less subordination to the employing establishment.

The first attempt at regulating the personal scope of workers¹⁶ was made through two regulations issued by the President of Poland in 1928: *Regulation of Employment Contract of Workers*¹⁷ and *Regulation of Employment Contract for Knowledge Workers*.¹⁸ The regulations were *lex specialis* in relation to provisions introduced in the 1933 Regulation of the President of the Republic of 27 October 1933 Obligation Code (hereinafter Obligation Code),¹⁹ and the provisions of the Obligation Code could only be in force if the matter was not regulated therein. Both regulations, of course, concretised the personal scope of their application to different types of workers. However, as can be observed in other European countries,²⁰ lawmakers use different methods to achieve this goal. Article 2 of the *Regulation of Employment Contract for Knowledge Workers* provides an exhaustive list of employees covered by the Regulation, taking into account, in particular, the position held by the employee and the nature of the work

11 Pol. of 1918 no. 17, item 42.

12 Journal of Laws 1920 no. 2, item 7.

13 Journal of Laws 1927 no. 53, item 468.

14 Journal of Laws 1924 no. 65, item 636.

15 Beata Bury (2007): *Praca w godzinach nadliczbowych jako obowiązek pracownika*, Warszawa, pp. 15–16. For more on the material scope of labour law in the interwar period, cf. Antoni Dral (2015): *Rys historyczny rozwoju prawa pracy i ubezpieczeń społecznych w Polsce w okresie dwudziestolecia międzywojennego*, in Karol Dąbrowski Sebastian Kwiecień (eds.): *Ochrona pracy w okresie międzywojennym w Polsce. Studium historyczno-prawne*, Lublin.

16 It should be added that the inter-war legislation also considered civil servants—for whom the basis of the employment relationship was not a contract but administrative acts—to be employees. This was, therefore, an example of the establishment of the employment relationship of employees on a non-contractual basis. Tomaszewska (2021): p. 244.

17 Journal of Laws no. 35, item 324.

18 Journal of Laws no. 35, item 323.

19 Journal of Laws no. 82, item 598.

20 Division to “standard” workers and knowledge workers was applied in the legislation of e.g. Belgium, Italy, or Austria. In Denmark, France, and Russia, there was no such distinction of workers. Aleksander Raczyński (1930): *Polskie prawo pracy*, Warszawa, p. 41.

performed.²¹ The catalogue of knowledge workers was based on an enumerative method, generally adopting the catalogue provided in the Decree of 24 November 1927 on the insurance of knowledge workers,²² with the exception of teachers, educators and captains, as well as officers of sea or river vessels.²³ According to Art. 3, the Minister of Labour and Social Welfare, in consultation with other Ministers, granted the possibility of adding to knowledge workers further groups of workers not listed in Article 2 through legislation.²⁴ Article 4, on the other hand, excluded three groups from the notion of knowledge workers, who, unlike the groups not included in Article 2, could not be drawn in by regulation under Article 3. These were schoolchildren and apprentices (whose status fell under the provisions of the traineeship contract in the Obligation Code), persons employed on seagoing vessels and persons employed in state or local government offices and institutions.²⁵ The definition of “standard” worker in the second regulation was created through negation. First and foremost, provisions regulating the employment contract for workers did not apply to knowledge workers, nor did they apply to agricultural workers, persons employed in state and municipal offices and state schools, or to those performing activities analogous to those of lower state officials, domestic servants, and house caretakers. Outworkers, who were not employed under a contract of employment, apprentices and dockworkers were also not considered workers.²⁶ In disputed situations, it was to be decided by the court whether a worker was a knowledge worker or a “standard” worker.²⁷

Due to its subsidiary nature in relation to the two regulations mentioned above, the Obligation Code shaped the legal situation of only a few groups of subjects, i.e. agricultural workers, domestic caretakers, domestic teachers, and domestic servants. As M. Świącicki points out, the labour relations of the first two groups were regulated by collective labour agreements and arbitration rulings, while different provisions for teachers were introduced by Article VIII of the provisions introducing the Obligation

21 Łukasz Baszak: Regulacje prawne umowy o pracę pracowników umysłowych w latach 1928–1939, *Folia Iuridica Universitatis Wratislaviensis*, 1/2016, p. 13.

22 Journal of Laws no. 106, item 911.

23 Stefan M. Grzybowski (1947): *Wstęp do nauki prawa pracy*, Księgarnia Powszechna, Kraków, pp. 119–120.

24 In the interwar period, this opportunity was taken up once in the Regulation of 21 August 1934 on the classification of navigators and pilots of aircraft in the category of knowledge workers (Journal of Laws, no. 78, item 729).

25 Baszak (2016): p. 13.

26 Dockworkers were protected based on the Regulation of the President of the Republic of Poland of 27 October 1933 (Journal of Laws, no. 85, item 646). Within the meaning of this regulation, a dockworker was a worker employed in port handling, recognised as a dockworker by the Qualification Commission and registered with the Intermediary Office for Dockworkers in Gdynia; cf. Ignacy Rosenblüth (1937): *Pracy prawo, Encyklopedia podręczna prawa prywatnego*, Warszawa, p. 1690.

27 What had a huge importance due to different protection provisions to different categories of workers; for more details, cf. Baszak (2016): p. 14; Łukasz Baszak: Regulacje prawne umowy o pracę robotników w latach 1928–1939, *Folia Iuridica Universitatis Wratislaviensis*, 2/2017, p. 14 and the case-law mentioned therein.

Code.²⁸ As regards domestic servants, it should be noted that the Code only had a subsidiary effect on their situation due to the normative acts of the partitioned states that were still in force.²⁹

The scope of subjects who could employ workers under the regulation of employment contract for workers was broad, extending to anyone who hired a worker to perform work for remuneration. The employer could be a legal entity under either private or public law, or even a natural person. Surprisingly, the regulation of the employment contract for knowledge workers did not specify who an employer can be. Thus, the general provisions of the Obligation Code should apply. In this regard, it can be briefly stated that an employer could be anyone who had the capacity to enter into an employment contract with an employee in his/her own name, and the law did not establish any special characteristics for an employer. In the Second Republic of Poland, the employer was considered solely as a debtor to the employee, to whom the general civil law provisions on the performance of obligations applied. The employer's primary obligation was the payment of wages.³⁰

To conclude this part of the research, the goal of the regulations was to unify labour legislation across the territory of the Republic of Poland³¹ and to increase the uniformity of its coverage, while also removing many provisions that reflected economic and social underdevelopment.³² Thus, it was neither the form nor name of the contract but the nature and type of work performed that was decisive in the employment classification process governed by the provisions of the regulation on the contract of knowledge workers and the contract of workers. Nevertheless, none of the regulations eliminates the general provisions of employment contracts of partitioned states.³³ Moreover, we can observe in both regulations a high level of "randomness"; for instance, many of the general norms found in one decree are not found in the other, and vice versa.³⁴ The wording of provisions found in both texts is not identical, although it would be difficult to determine the reasons for these differences.³⁵ Additionally, it should be emphasised that the distinction between "standard" and "knowledge" workers was, in fact, artificial. Indeed, it was difficult to identify types of work that did not require any degree of mental engagement. The distinction between manual and non-manual workers, therefore, remained ambiguous, as a non-manual worker

28 Maciej Świącicki (1960): *Instytucje polskiego prawa pracy w latach 1918–1939*, Państwowe Wydawnictwo Naukowe, Warszawa, p. 148.

29 Świącicki (1960): pp. 139, 148.

30 Raczyński (1930): p. 126 ff.

31 In the end, the regulation did not apply to the Silesian Voivodeship; for more details, cf. Jerzy Wengierow: *Postępy unifikacji prawa pracy w Polsce*, *Przegląd Prawa Pracy*, 5/1939, p. 260.

32 Świącicki (1960): pp. 141–142. On the material scope of both regulations, cf. Maria Bosak-Sojka: *Status prawny robotników na podstawie rozporządzenia o umowie o pracę robotników z 1928 roku*, *Roczniki Administracji i Prawa*, 2/2021, pp. 151–162; Baszak (2016): p. 13–24.

33 Świącicki (1960): p. 150.

34 For instance, the definition of employer in the regulation on employment relationship for workers and the lack of such a definition in the second regulation.

35 Świącicki (1960): p. 139.

was still fundamentally a worker, and a manual worker was often expected to exert a mental effort. This distinction between the regulations of the employment contract of workers and knowledge workers had both theoretical and practical importance, particularly concerning notice periods and holiday entitlements that were different for these categories of workers.³⁶

As an aside, it is worth mentioning that there were drafts in progress for laws on the employment contract for domestic workers, domestic teachers, homeworkers, and agricultural workers, but these were never adopted.³⁷

III. PERSONAL SCOPE OF LABOUR LAW IN THE FIRST YEARS OF THE POLISH PEOPLE'S REPUBLIC

After the end of the Second World War, labour legislation underwent significant changes due to the necessity of unification and adjustment to the new, state-socialist system. Nevertheless, the Polish People's Republic maintained the legislation from the interwar period. Firstly, the new state extended the legislation to the territory of the "Regained Territories" that were in force in the Upper Silesian part of the Silesian Voivodeship.³⁸ It also adopted the Decree of 8 January 1946 on extending the validity of certain provisions of labour legislation to the entire territory of the Polish State.³⁹ The former decree incorporated around 35 degrees and regulations from the interwar period to the new socio-economic system, which formed the core of labour law in post-war Poland.⁴⁰ At the same time, the decree repealed legal acts dating back to feudal-state relations, such as the Regulation for Servants, from the former Kingdom of Poland.⁴¹ Another major change brought about in the post-war period was the state takeover of the means of production, also known as "nationalisation". This change had profound consequences for the employer–employee relationship. The State became the main employer and exercised its powers in various forms. The economy was managed according to a centralised planning system. Gradually, labour relations and autonomous acts were incorporated into this system. The degree of autonomy granted to economic structures and units

36 Cf. Zygmunt Fenichel (1930): *Zarys polskiego prawa robotniczego*, Kraków, pp. 38–43.

37 Świącicki (1960): pp. 116–117, p. 140.

38 Decree of 13 November 1945 on the Administration of the Regained Territories, *Journal of Laws* 1945, No. 51, item 295.

39 *Journal of Laws* 1946, no. 4, item 30.

40 Aneta Giedrewicz-Niewińska (2021): Wybór, in Krzysztof Wojciech Baran (ed.): *System Prawa Pracy*. Historia polskiego prawa pracy, Warszawa, pp. 331–332. It is noteworthy that the "problematic succession" of interwar legislation was brought to a resolution at the General Assembly of the Supreme Court of 25 November 1948 on the importance of the jurisprudence of the decisions of the two chambers of the Supreme Court in the interwar period: 1918–1939. The Supreme Court decided, *inter alia*, that in view of the fundamental differences between the pre-war and post-war legal orders, part of the case-law based on the principles of the previous system has lost its relevance and that the continued reliance in current case-law of the ordinary courts on rulings and legal principles established in the interwar period should be differentiated. Licki (1961): p. 52.

41 Świącicki (1960): p. 150.

fluctuated over time. Private activity was limited, and the larger organisational structures in the economy were state-owned.⁴² Additionally, the term “labour law” began to be used, aligning with the terminology commonly found in the legislation of other countries (*droit du travail*, *Arbeitsrecht*, *derecho del trabajo*). It can be said that it represented the strict sense of the term, as its scope was limited to work in its most common form, subordinate work.⁴³ Civil law relationships such as the project contract, the contract of mandate, the agency contract, the contract of services, etc., which also involve the performance of work but do not have the characteristics of subordination found in employment relationships, fell outside the scope of labour law.

The formation of Polish labour law encompassed the codification of labour law. During this period, the Labour Law Codification Commission was established with a dual objective: systematising and technically improving the existing law and creating new regulations. The principal codification work was conducted between 1948 and 1949.⁴⁴ Unfortunately, due to “serious difficulties of both a political and a technical-legislative nature” in the 50s Poland, the Codification Commission decided to suspend its work on the codification of labour law, which delayed codification for the next 20 years.⁴⁵ It is noteworthy that in the first editions of the labour code the concept of “employment contract” was replaced by “employment relationship”. Art. 2 stated, “[i]n an employment relationship, an employee performs work for remuneration under the direction of the employer or his representative”. This definition created space to include within its scope not only relations arising from the employment contract but also civil service and administrative relations, related to the establishment of the employment relationship by appointment, election, and nomination. Eventually, the separate definition of the employment relationship was removed, and its content was largely repeated when defining the employment contract itself. Consequently, in the drafting of the labour code, the term “employment contract” began to be treated as synonymous with the term “employment relationship”, which was also the result of the removal of non-contractual forms of employment from the draft.⁴⁶

Due to the continued application of the interwar legislation, both regulations on the employment contract for workers and knowledge workers dictated the scope of labour law regulation. It was considered that an employee could only be an individual, based on the wording of Article 447 of the Code of Obligations, which reserved the obligation to provide work in person. Moreover, according to Art. 52 of the Act of

42 Łukasz Pisarczyk (2021): *Specyficzne źródła prawa pracy*, in Krzysztof Wojciech Baran (ed.): *System Prawa Pracy. Historia polskiego prawa pracy*, Warszawa, pp. 176–177.

43 Salwa (1989): pp. 14–15.

44 For a comprehensive analysis of the draft labour code from 1949, cf. Aneta Giedrewicz-Niewińska (2015): *Projekt kodeksu pracy z 1949 r.*, Napoleon V, Oświęcim.

45 Aneta Giedrewicz-Niewińska (2010): *Podstawy nawiązania stosunku pracy w projekcie kodeksu pracy z 1949 roku*, in Marian Mikołajczyk, Józef Ciąga, Piotr Fiedorczyk, Anna Stawarska-Rippel, Tomasz Adamczyk Andrzej Drogoń, Wojciech Organiściak, Karol Kuźmicz (eds.): *O prawie i jego dziejach księgi dwie. Studia ofiarowane profesorowi Adamowi Lityńskiemu w czterdziestopięciolecie pracy naukowej i siedemdziesięciolecie urodzin*. Księga II., Białystok, pp. 495–496.

46 Giedrewicz-Niewińska (2010): pp. 488–490.

18 July 1950 on general provisions of civil law,⁴⁷ a person with limited capacity to act could, without the consent of a legal representative, undertake to provide services for remuneration and perform legal acts concerning the relationship arising from such a contract. However, if the contract opposed the well-being of that person, the legal representative could terminate the contract with the authorisation of the guardianship authority. Additionally, it should be emphasised that the employing entity could exist in two legal forms, i.e. as a legal person (enterprise, farm, office, institution, or cooperative) or as an individual. However, they could only be employers in the “non-collective sphere” of the economy. With the entry into force of the Civil Code in 1965, Article 36 was introduced, which specifically defined the so-called special legal capacity of a legal person. According to this provision, the legal capacity of a legal person was determined by law or by statutes based on the law and the scope of the person’s functions. Based on this, the capacity to enter into an employment contract was determined.⁴⁸

At this point, it is worth mentioning the definition of employee in point 2 of Article 1 of the Decree of 12 October 1950 on the inventiveness of employees,⁴⁹ which states that an employee is a person employed in a “collaborative workplace” not only on the basis of a public-law relationship or an employment contract but also on the basis of a project contract or a mandate contract. This might be considered more as an attempt to create uniformity in the concept of employee by broadening the coverage of legal relationships rather than a consistent effort to recognise other types of work providing.⁵⁰

IV. PERSONAL SCOPE OF LABOUR LAW AFTER INTRODUCING THE LABOUR CODE

Significant progress in regulating the personal scope of labour law is connected to the introduction of the Labour Code in 1974. The Code aimed to regulate labour relations in a universal, uniform, and comprehensive manner,⁵¹ establishing labour law as a distinct branch of law.⁵² As a basis, “the LC defines the rights and obligations of employees and seeks to strengthen the socialist employment relationships”. The socialist employment relationship was grounded in characteristics identical to the previous understanding

47 Journal of Laws 1950 no. 34, item 311.

48 Tomaszewska (2021): p. 263.

49 Journal of Laws 1950 no. 47, item 428.

50 Anna Musiała: *Zatrudnienie niepracownicze – uwarunkowania prawnohistoryczne*, *Czasopismo Prawno-Historyczne*, 2/2010, pp. 418–419.

51 Maciej Świącicki: *Zakres przyszłego kodeksu pracy oraz niektóre problemy jego treści*, *Państwo i Prawo*, 11/1969, pp. 753–754, which, however, was not fully reflected in the final form of the Code; cf. Tadeusz Zieliński (1986): *Prawo pracy. Zarys systemu*, Warszawa–Kraków, pp. 104, 132–134.

52 Cf. Wacław Szubert: *Zagadnienie kodyfikacji prawa pracy*, *Państwo i Prawo*, 8–9/1962, pp. 227–228; Świącicki (1969): p. 753.

of labour relations. Employees who voluntarily entered an employment relationship⁵³ were fundamentally obliged to personally perform a specified type of work in a specified position and to participate in workplace activities. Conversely, employers, understood as establishments, had the obligation to pay remuneration according to the quantity and quality of the work performed and to ensure “normal” working conditions.⁵⁴ Thus, the socialist employment relationship did not negate the civil law roots of the relationship between employees and employers, or establishments, but rather affirmed the obligatory nature of the employment relationship.

The new code established comprehensive regulations on the rights and obligations of employees engaged on various bases such as employment contracts, appointments, elections, nominations, or cooperative employment contracts. Non-contractual employment relationships began to be recognised as part of labour law due to W. Jaśkiewicz’s analysis and subsequent argumentation regarding the legal provisions, along with the lawmakers’ tendency to equalise the legal status of public servants and regular employees.⁵⁵ These relations have a mixed character, blending elements of both administrative and labour law. Consequently, for instance, a nomination act not only initiates a public servant relationship but can also serve as the basis for an employment relationship.⁵⁶ At the same time, the LC abolished the distinction between workers and knowledge workers, while retaining some differentiation in labour relations based on the place or type of work performed.⁵⁷ However, Art. 5⁵⁸ and Art. 303 of the LC allowed the Council of Ministers to establish different working conditions for a specific group of employees compared to the standard LC regulation. An employee could be a person who had reached a certain age, generally 18 years. The Labour Code permitted the employment of adolescents aged 15 to 18 years, with restrictions on the type of work they could perform. Adolescents were allowed to engage only in light seasonal and casual work or be employed for vocational training purposes. The employee’s capacity to act regulated in Art. 22 (2) was virtually a repetition of Art. 52 of the Act on general provisions of civil law.

As previously mentioned, certain legal relationships, such as those involving outworkers, partially fell outside the regulation of labour law due to their dual nature. The contract for outwork was characterised with wage-earning and occupational

53 However, temporarily in 1950, the Act of 7 March 1950 was introduced on planned employment of secondary vocational and higher education graduates that implemented an administrative work order, which limited freedom of work in the context of concluding an employment contract and to freely choose place, time, and working conditions; cf. Licki (1961): p. 116.

54 Licki (1961): pp. 115–116.

55 Wiktor Jaśkiewicz: *Pozazumowne stosunki pracy*, *Ruch Prawniczy i Ekonomiczny*, 1/1958, p. 7 ff.

56 Wiktor Jaśkiewicz: *Stosunek służbowy a stosunek pracy*, *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 2/1960, pp. 23–26, p. 32.

57 Zieliński (1986): p. 242.

58 For instance, the Council of Ministers issued a Regulation on 20 November 1974 regarding employment relationships in which the employer is a natural person (Journal of Laws no. 45, issue 272). That regulation excluded the application of certain provisions of the LC to these relationships; cf. Kamila Naumowicz (2021): *Ustawowe i podustawowe źródła prawa pracy*, in Renata Babińska-Górecka (ed.): *System Prawa Pracy. Tom XIV. Historia polskiego prawa pracy*, Warszawa, pp. 135–137.

employment of natural persons, typically performed in the worker's home. The work was carried out either individually or with the assistance of others, on the order and for the account of the supervisor, using materials supplied by the supervisor.⁵⁹ Consequently, a certain degree of similarity between persons performing contracts for outwork and employees could be observed, which justified extending labour law protections to these individuals, while taking into account the specificities of home-working. With regard to Art. 303 of the LC, the Council of Ministers issued a regulation⁶⁰ specifying the scope of application of labour law provisions to individuals performing contracts for outwork, incorporating modifications to account for the different conditions of such work.⁶¹ The regulation of the legal protection of outworkers, on the one hand, demonstrates that lawmakers acknowledged the need to provide protection nearly similar to that granted to employees for other categories of workers, who, due to the specific depiction of their employment relationship as strictly subordinated work, did not have employee status. On the other hand, the general provision in the LC, which delegated to the Council of Ministers the right to regulate the situation of non-employee workers distinctively, could have been seen as unconstitutional in a democratic state governed by the rule of law.⁶²

Due to nationalisation and the fact that the state owned most of the means of production, it not only organised the labour system but also, treating employment as a basic social obligation, enforced citizens to engage in and pursue gainful employment. As a result, it became necessary to redefine the status of the employer, which was inextricably linked to the company ownership, a *sine qua non* for an entrepreneur to hire employees.⁶³ Art. 3 of the LC defined an establishment as an organisational unit employing employees, even if it lacked legal personality. The status of an employing unit was granted, in particular to state enterprises, offices or other state organisational units, cooperatives, and social organisations. The LC also introduced the principle of single management, requiring the establishment manager to represent the establishment to the workforce and act on its behalf. In the socialist legal system, the concept of "work establishment" referred both to the subjective side of the employment relationship and to the technical and organisational unit where work was performed.⁶⁴ This distinction, although important in theory, often led to ambiguities

59 Teresa Wyka: Społeczno-ekonomiczne przesłanki rozwoju nakładztwa w Polsce, *Prawo Pracy i Polityka Społeczna*, 3/1980, p. 162.

60 Regulation of the Council of Ministers of 31 December 1975 on employment rights of persons performing outwork (Journal of Laws of 1976, No. 3, item 19, as amended).

61 For a broader commentary on the material scope of the contract for homeworking, cf. Piotr Prusinowski (2022): Komentarz do art. 303, in Krzysztof Wojciech Baran (ed.): *Kodeks pracy. Komentarz. Art. 94–304(5)*, Warszawa.

62 For instance, in the judgment of Constitutional Tribunal P 23/07, the Tribunal has drawn attention to the ambiguities related to the regulations implementing the Labour Code, in particular the lack of guidelines on the content of these legal acts, and emphasised the unconstitutionality of provisions contained in the regulation.

63 Andrzej Marian Świątkowski: O kontrowersjach wokół pojęcia „autentyczny” pracodawca, *Państwo i Prawo*, 4/2018, pp. 32, 35.

64 Zieliński (1986): pp. 239–240.

in legal and administrative practice. In the subjective sense, an establishment was defined as a legal entity with a defined organisational structure, property-separated resources, and legal capacity. The Supreme Court, especially in its jurisprudence in the years prior to the adoption of the LC, emphasised that a work establishment was a specific place where an employee actually performed his or her work in accordance with the contract. Thus, the workplace was not equated with an organisational unit located within the premises of a multi-unit enterprise, further emphasising the distinction between the term's subjective and objective meanings. These characteristics allowed the workplace to act in its own name in legal matters and bear liability for its obligations. In this view, the workplace fulfilled the role of an employer, functioning as an independent entity in its relations with employees.⁶⁵

V. CONCLUSIONS

With the changes brought by the transformation in 1989, it was expected that labour law and the Labour Code would also resemble the form that could be observed in Western countries. This shift was particularly evident in the huge amendment of the LC in 1996,⁶⁶ which aimed to eradicate the remnants of the socialist employment relationship.

One of the most significant changes introduced to the code was replacing the term “establishment” with the term “employer”. This change was dictated, on the one hand, by the privatisation of the means of production and the abolition of the state’s monopoly on commercial activity, and, on the other hand, by the development of free market capitalism, where private entrepreneurs predominantly act as employers rather than establishments. However, this shift has not dispelled doubts about the status of the employing entity and has, in some cases, even highlighted them. The management-based concept of employer still holds primacy, recognising an internal employer as a separate organisational unit with legal, organisational, property, and technical independence and the right to employ workers. Just as in the previous socio-economic system, numerous issues still arise today concerning the identification of the genuine employer.⁶⁷

On the other hand, the scope of the term “employee” has not changed, but Article 22 clarified the criteria for an employment relationship by specifying the employee’s subordination to the employer in terms of place and time. Subsequent amendments, resulting from the growing practice of substituting employment contracts with civil law contracts, introduced a prohibition on such a substitution when the conditions of an employment relationship are met. Although this amendment to Article 22 appears

65 Zbigniew Hajn (2017): *Podmioty stosunku pracy*, in Krzysztof Wojciech Baran, Grzegorz Goździewicz (eds.): *System Prawa Pracy. Tom II. Indywidualne prawo pracy. Część ogólna*, Warszawa, pp. 144–148.

66 Act of 2 February 1996 amending the Act – Labour Code and amending certain acts (Journal of Law no. 24, item 110 as amended).

67 Świątkowski (2018): pp. 36–38.

to be a necessary correction, it did not effectively address the issue of substituting employment contracts with, for example, mandate contracts.

To conclude, it is symptomatic and, at the same time, worthy of deep reflection that in the course of the evolution of labour law as a separate branch of law, there has been a simplification of the concept of employee and a growing complexity in the organisational structures on the employer's side. The scope of the employer has evolved in parallel with changes in the employment relationship, but even more so with shifts in the economic system and the organisation of work. From the very beginning of labour law regulation in Poland, the scope of entities legally authorised to employ workers was defined. According to the civil law concept of the employment contract, the employer was primarily a debtor, obliged to pay the employee for the work performed. With the change in the socio-economic system, the concept of the employer underwent a metamorphosis, coming to reflect the status of the establishment, which encompassed both the objective (as a place where work is performed) and subjective (as an employing entity) dimensions of the employer. As a result of the nationalisation and collectivisation of the means of production, workplaces became mere organisational units with their own assets and the power to employ workers, with the state acting as the *de facto* sole employer in the socialist system. After the shift to capitalism following the 1989 transition, the problem of identifying the *de facto* employer escalated, driven by globalisation, the establishment of branches by foreign companies, and the outsourcing and leasing of workers as forms of temporary work. The factual situation and the legal regulation of the status of the employer perpetuated the challenge of determining the genuine employer, an issue of particular importance in contexts such as collective bargaining. This negligence or failure to address these issues has its visible consequences in terms of, for example, the erosion of trade unions, the reduced effectiveness of collective bargaining, but also the segmentation of the labour market through the use of civil law contracts and, often, bogus self-employment.

In the subsequent decades of the 20th century, the notion of employee expanded the subjective scope of labour law to include more and more groups of employees. Initially, only a small number of industrial and commercial employees, often enumerated, were covered by the newly developing labour relations. Over time, the circle of subjects broadened to include knowledge workers or, during the People's Republic era, service relationships and non-contractual employment relationships. The legal situation of contractors performing work on the basis of civil law agreements—such as project contracts, contracts of mandate, or agency contracts—as self-employed individuals, was also a subject of growing concern. The situation of these workers, often required to perform work personally, with a limited range of clients and on a continuous basis, was difficult to distinguish from a subordinated employment relationship. In fact, due to the rise of labour legislation, the legal situation and protection of self-employed workers was often weaker than that of, for example, knowledge workers, who enjoyed better and additional protective measures.⁶⁸ Despite the similarities between the factual situations of employees and the self-employed in the form of dependent

68 Grzybowski (1947): p. 100.

self-employment, the legislator never decided to extend the labour law regulation to these subjects.⁶⁹ As A. Musiała rightly points out, the collectivist approach effectively excluded from labour law regulation, and indeed from the category of “working people”, those who did not fit into the strictly subordinated socialist employment relationship, leaving them outside the scientific discussions of labour law doctrine in the long term.⁷⁰ In the doctrine of the interwar period and the era of actually existing socialism, the subject of work performed outside the employment relationship was not widely commented upon, though it is worth noting that the thoughts of these authors remain relevant today.⁷¹ This is particularly important in the context of the two unsuccessful attempts to create a new Labour Code from scratch, in 2006–2008 and 2016–2018, during which codification committees sought to address the issue of extending labour law to non-employment work by including dependent self-employed individuals, i.e. those who provide work continuously and repeatedly, often for a single employing entity, while maintaining a civil law relationship, with the salary being their main source of income. Thus, given that self-employment in Poland oscillates around 19% of the workforce (about 3.2 million people),⁷² with over 75% of these individuals not employing workers, rights such as the minimum hourly rate, the obligation to ensure safe and hygienic working conditions, or the coverage of social contributions to commissioned contracts appear to be insufficiently guarded by the state in terms of labour protection. In order to avoid further deregulation of labour law and to strengthen the legal protection of not only the employees but of all the workers, an in-depth analysis of the personal scope of labour law and a clear definition of the circle of persons entitled to labour rights is necessary. The same applies to providing a clear definition of the entities that employ workers, to eliminate doubts about their legal status in labour relations.

69 Although such a possibility was provided for by the legislator in Article 303 § 2 LC, indicating that the Council of Ministers may define, by way of a regulation, the scope of application of the provisions of labour law to persons who perform work permanently on a basis other than an employment relationship or a contract for outwork, with amendments resulting from the different conditions of the performance of that type of work. Despite the application, this provision has so far been reflected in only one regulation. This is a vivid example that the legislator, within the labour law system, took into account the possibility of extending the scope of particular labour law regulations to subjects who are not employees within the meaning of labour law.

70 Musiała (2010): pp. 414–415.

71 Cf. Grzybowski (1947): p. 100; Tadeusz Zieliński (1988): *Podstawy rozwoju prawa pracy*, Państwowe Wydawnictwo Naukowe, Warszawa–Kraków, pp. 50–56; Witalis Ludwiczak (1955): *Umowa zlecenia*, Państwowe Wydawnictwo Naukowe, Poznań, p. 33.

72 Statistics Poland (2024): *Statistical Yearbook of the Republic of Poland 2024*. Available at: <https://stat.gov.pl/obszary-tematyczne/roczniki-statystyczne/roczniki-statystyczne/rocznik-statystyczny-rzeczypospolitej-polskiej-2024,2,24.html> (accessed on 25.12.2025).