Introduction to Polish Labour Law with Cross-Border Aspects

Excerpt

Chapter 1. Introduction to Labour Law

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1.1. Human Work and the Law: General Notes

In the most general sense, human work means any effort of a human being aimed at attaining a socially useful goal. Thus understood, the notion of work includes a wide array of activities: gainful and non-profit, undertaken for the benefit of someone else or in order to satisfy the working person's own needs, performed in a team environment or independently from others, involving mental and physical abilities. As a social phenomenon, human work is usually entangled in a whole set of relationships, and is, therefore, subject to various social and praxeological rules, including standards whereby certain legal or extra-legal obligations are established. Not all human work is regulated by law, though. The extent of the legislator's interference in the performance of work depends on many factors, such as the degree of the society's civilisational development, tradition, culture, and even the socio-political system of the state. Unlike in the past, when human labour was subject to customs or general regulations of family or civil law, it is nowadays governed by specialised branches of the legal system. The law as a regulator of selected social relations covers only a certain part of human activity that meets the characteristics of work in the above-mentioned sense. Numerous manifestations of human work are legally indifferent and are, therefore, not subject to legal regulations. The law starts "taking interest" in certain social phenomena only when, as part of relations between people, they give rise to conflicts that disturb social homeostasis or threaten the legitimate interests of the community or individuals. Of course, the extent of legal interference in interpersonal relationships arising in connection with work depends primarily on the social system prevailing in the country, and especially the scope of freedom enjoyed by the citizens. In totalitarian states, all social issues must, as a rule, be subordinated to the general interest, which in fact results in the majority of areas of social life being regulated by the law and controlled by the apparatus of power. In those systems, personal life choices,

especially in areas such as employment, become also a public (political) matter. To illustrate this, well-known phenomena from the past can be mentioned in that respect, such as the instrument of "assignment to a workplace" or criminal liability for the failure to perform employee duties. In democratic countries, however, there is no reason to limit the principle of freedom of work and to make activities unlikely to threaten the public good (e.g. social or hobby activities) subject to specific legal regulations.

The remainder of this book will deal only with the phenomenon of human work as a legal category, and – more specifically – with legal regulations providing for that phenomenon. In modern legal systems, there is usually a group of legal norms focused solely on the issues. These form a coherent whole, and, as such, are referred to as the "labour law" or "employment law."

Labour law is a relatively new branch of law that dates back to the early 1800s, its rapid development occurring in the twentieth century. This does not mean, though, that in the earlier period work was not regulated by law at all.[1] However, due to the meagre importance of wage labour, the problem remained in the shadows. Customary norms and, later on, rules pertaining to family, contractual or even property relations (in systems based on slave labour) were fully sufficient in that respect. The driving force behind the development of labour law in the modern sense was the quick development of industry in Western Europe, dating back – in some of the countries – to the seventeenth century (England), and in others taking place at the end of the 18th and in the 19th centuries. The demand for a workforce made the rural population flow into the cities to supply the swelling army of wage-earners. It soon turned out that the existing legal arrangements concerning wage work, including the contract modelled after the Roman contract of *locatio conductio operarum* (the hire of work), did not actually suit the emerging needs. The original arrangements were based on the idea of the full equality of parties. Since all that an employee was able to hire out was their labour potential, they were worth to the employer only as much as their skills and muscle, put to the latter's disposal, were worth. And thus, the employers, by taking advantage of their incomparably stronger position, could impose unfavourable employment conditions on the wage

[1] Sometimes, the regulations were quite elaborate. See, for instance, the municipal regulations of Gdańsk, Tadeusz Maciejewski, "Prawo pracy w Wilkierzu Miasta Gdańska z 1761 r.," in *Człowiek – obywatel – pracownik. Księga jubileuszowa poświęcona Profesor Urszuli Jackowiak*, eds. Alina Wypych-Żywicka and Jakub Stelina (Gdańsk: Wydawnictwo Uniwersytetu Gdańskiego: 2007), 153ff.; Tadeusz Maciejewski, "Umowa o pracę (najem usług) we wczesnonowożytnym prawie miasta Gdańska (XVI w. – 1793 r.)," in *Wolność i sprawiedliwość w zatrudnieniu. Księga pamiątkowa poświęcona Prezydentowi Rzeczypospolitej Polskiej Profesorowi Lechowi Kaczyńskiemu*, eds. Michał Seweryński and Jakub Stelina (Gdańsk: Wydawnictwo Uniwersytetu Gdańskiego, 2012), 205ff.

workers, all the more so that the number of those willing to take up employment always exceeded the number of jobs available. Hard working conditions also caused frequent accidents, resulting in bodily injuries and even the deaths of workers, and thus a loss of livelihoods by them and their families. When becoming incapacitated for work, the workers lost the only thing they could sell, and thus became completely useless to their current employer. A chance for claiming compensation under civil law schemes remained mostly theoretical. The problem kept growing just as the numbers of wage workers did.

As the described phenomena posed a serious threat to society, various actions on the part of the state had to be taken to eliminate or weaken the hazards. At the initial stage of the development of labour law, three main lines of activities can be distinguished, driven by the ideas of **self-protection**, **state pragmatism**, and **axiological premises**.

The sense of grievance and the feeling of being exploited radicalised the workers, who would launch mass protests in defence of their basic economic interests and their dignity. As early as in the mid-nineteenth century (in some caseseven earlier) the first workers' associations (syndicates) began to emerge, aiming to improve the living conditions of their members. Over time, the syndicates, gaining in strength, proved able not only to launch strikes, rallies, and other industrial actions, but to even make political demands. Forms of social dialogue developed slowly and not without difficulty, yet steadily; and at the end of each strike or workers' demonstration, efforts were being taken to make arrangements with the employers (later referred to as collective labour agreements), which then evolved into an important instrument of regulating wages and other benefits, and then the conditions of employment.

On the other hand, the increasing exploitation and poor working conditions in factories resulted in a constantly increasing number of people incapable of undertaking any activity, much less earn their living. The states saw the situation as detrimental to their basic interests, including economic potential and military capability. In any case, the problem became so serious that the public authorities began to interfere in relations between employees and employers by imposing certain labour standards. Initially, the states acted not so much for altruistic reasons, as in defence against a threat of social revolution. Therefore, at first, state intervention was limited to the most pressing issues (prohibition of child labour, limitation of daily working time to 12 hours); with time, however, it expanded to cover ever more employment-related areas.

Axiological premises were of importance, too. The need to protect the dignity of every human person, including working people, and to reject the immoral exploitation of man by man was gradually emphasised. This is how workers' problems began to be seen in the doctrine of the Catholic Church at

the end of the 19th century. In 1891, Pope Leo XIII issued the encyclical *Rerum Novarum*, in which the pontiff attempted to solve the so-called workers' issue through the recognition of empowerment of the human being and the latter's right to a dignified life. The Pope called on factory owners to treat workers fairly and on the workers to refrain from pursuing their legitimate rights by force. The encyclical gave rise to the development of the Catholic social teaching that has exerted impact on the law of employment in many countries.

It should be noted, however, that legal regulation of human labour does not have to be uniform, which is mainly due to the fact that, while being omnipresent, the phenomenon of work is highly diversified and exists in different contexts. Nowadays, at least several divergent ways and methods of the regulation can be distinguished and, consequently, there exist several branches of law that make human work the object of their interest. Apart from those only incidentally dealing with human work (e.g. tax or business law), at least six legal regimes of employment can be identified within Poland's legal system, represented by various fields of law, them being: labour law, civil law, administrative law, constitutional law, criminal law[2] and – last but not least – canon law. Accordingly, a distinction can be drawn between employment based on the provisions of labour law and that relying on the above named civil, administrative, constitutional, criminal and canon law. Civil law employment includes gainful activities performed under civil law contracts (such as e.g. the contract of mandate or the contract for a specific task or work) or under the self-employment scheme, while administrative employment concerns public service done by officers of militarised services (most often the so-called uniformed officers, e.g. policemen, soldiers, prison guards, etc.). Other types of employment are of less practical importance, as it is the case with, for example, constitutional employment of persons holding key state positions (e.g. president) or sitting on collective state bodies (e.g. parliamentarians), criminal employment (regarding detainees), and canonical employment (of clergy).

As may be seen, contrary to what the terminology used might suggest, labour law is not the only branch of law governing the matter of human work. The significance of labour law among the aforementioned branches of law is, however, uncontested, as unlike civil, administrative, criminal, canon, and constitutional law, the law in question emerged and has developed precisely because of human work being the main and dominant object of its regulation.

[2] Walerian Sanetra, "Uwagi w kwestii zakresu podmiotowego kodeksu pracy," in *Prawo pracy a wyzwania XX wieku. Księga jubileuszowa Profesora Tadeusza Zielińskiego*, eds. Maria Matey, Lesław Nawacki and Barbara Wagner (Warszawa: Biuro Rzecznika Praw Obywatelskich, 2002), 315.

1.2. The Notion and Subject-Matter of Labour Law

1.2.1. The Notion of Labour Law

The system of law, in its objective meaning, i.e. understood as a set of legal rules, is divided into fields distinguished according to the object of regulation. Accordingly, labour law (understood objectively) means a set of legal standards (a normative subsystem) regulating human interactions arising in connection with human work. In normative categories, the social relationship arising in connection with work is referred to as the **employment relationship**. Under it, the employee is obliged to perform work for the employer in exchange for the agreed remuneration and other benefits. However, due to the existence of the employment relationship, in the realm of the law, other types of legal relationships also arise, subsidiary – in terms of nature – to the employment relationship. They are established and owe their very existence to the employment relationship; without the latter their occurrence usually would not be justified. These are, for example, legal relations related to employee recruitment, employee representation, supervision of working conditions, etc. The relations in question, like the employment relationship, are subject to regulation by labour law. Therefore, it can be generally stated that **the subject matter of labour law is employment relationships and other legal relations closely related to them**,[3] the employment relationship being the labour law's main legal construct that makes this branch of law a **homogeneous normative subsystem**. Proof of this is the existence itself of the employment relationship as a single, central and leading legal construct integrating all labour law.

Putting it all together once again, it should be recognised that labour law includes the legal provisions (norms) that regulate the employment relationship and other legal relations, the operation of which is justified by the existence of the former (accessory relations, auxiliary to the employment relationship). This is where the homogeneity of labour law actually lies; the branch of law is built around a single central concept (the employment relationship) – other legal relations that fall into its subject play a complementary (and not competitive) role to it.

According to the traditional approach, labour law does not pertain to employment based on civil law or administrative law regulations. Such employment includes legal relations concerning those engaged in the so-called militarised state services (e.g. the army, police), and relations arising in

[3] Tadeusz Zieliński, *Prawo pracy. Zarys systemu, t. 1* (Warszawa–Kraków: PWN, 1986), 19; Wacław Szubert, *Zarys prawa pracy* (Warszawa: PWN, 1980), 9–10; Wiktor Jaśkiewicz, in *Prawo pracy w zarysie*, eds. Wiktor Jaśkiewicz, Czesław Jackowiak and Włodzimierz Piotrowski (Warszawa: PWN, 1985), 14.

connection with rendering specific services under civil law contracts. Among Polish law scholars, however, opinions are sometimes voiced that the scope of labour law is now becoming extended to cover the work provided under civil law relations, and even service relations,[4] which then could, if accepted, change the very nature of labour law and transform it into the law of occupation. At the moment, the intentions remain mere postulates (being normative facts to a much lesser degree), although the extension of certain social rights, typically enjoyed by those employed under labour law (for example, rights related to parenthood or minimum wages) onto persons pursuing occupation of other types can be recently observed. Only in the area of collective labour law, legislative changes have recently taken place that essentially put the freedom of association (the right to form trade unions) of employees and other people involved in gainful occupation on an even level.

1.2.2. The Employment Relationship

As far as the main part of the subject matter of labour law – the **employment relationship –** is concerned, it is one of the few types of the relationships under which work is done, as indicated above. Since it is subject to labour law, it is referred to as the **labour law employment relationship**. In order to draw up a distinction between the labour law employment relationship and other legal relationships under which work is done, specific features of the former are being indicated. The features are derived, first of all, from the normative definition of the employment relationship as contained in Art. 22 § 1 of the Labour Code (hereinafter: LC). The regulation provides that **by entering into an employment relationship, the employee undertakes to perform work for and under the direction of the employer and at the place and time designated by them, and the employer undertakes to employ the employee against remuneration**.

Hence, it should be assumed that the employment relationship in its legal meaning is a social relationship concerning the performance of work being (a) **voluntary** (b) **subordinate**, (c) **paid**, (d) **personally** performed for the employing entity. The catalogue of the characteristics of work done under the employment relationship should be further supplemented to include: the feature of (e) **cooperation (teamwork)**, the fact that (f) the subject matter of the employee' s service is the performance of work itself, so the obligation arising is the obligation to **act diligently** (and not to achieve a specified result), as well

[4] Jan Jończyk, *Prawo pracy* (Warszawa: PWN, 1992), 15; Walerian Sanetra, *Prawo pracy* (Białystok: Temida 2, 1994), 28 and 32; Tadeusz Kuczyński, *Właściwość sądu administracyjnego w sprawach stosunków służbowych* (Wrocław: Kolonia Limited, 2000), 50ff.

as the fact that (g) the employee **does not bear the risk** of the fulfilment of the obligation.

Re a) **Voluntary** nature of work means that the obligation to perform it may only arise through a free decision (statements of will) of the employee and employer, i.e. by means of an agreement (contract) concluded between the two. The opposite of voluntariness understood that way is legal coercion, giving rise to an obligation to perform work against the will of the performer. **Unilaterally assigned work** is then talked about. An example of such work is chores done by persons held in custody (and – earlier – the service of draft soldiers).

Voluntariness is a typical feature of private law contractual relationships (and such are, in fact, employee obligations). It is also confirmed by the Constitution and by the axiological foundations of labour law expressed, among others, in the so-called core principles of labour law. In accordance with Art. 65 paras. 1 and 2 of the Constitution of the Republic of Poland, everyone is guaranteed the freedom to choose and practice their profession and to choose their place of work (exceptions being provided by the law). An obligation to work can only be imposed statutorily. Pursuant to one of the core principles of labour law expressed in Art. 10 LC, everyone has the right to a freely chosen job. No one, except in cases specified in law (an Act of Parliament), may be prohibited from practicing a profession. Therefore, no one may be compelled to take up labour law employment nor may anyone be forced to hire an employee (the exception to this rule being the employer's obligation to engage a war-disabled person – based on the referral of the *starosta*, i.e. the head of the county administration).[5]

Re b) The most essential element whereby (labour law) employment relationships can be distinguished from occupations not based on labour law but performed under civil law or as a public service is the subordination of the employee to the employing entity. In the broadest sense, subordination can be understood as employee's dependence on the employer,[6] whereas in Art. 22 § 1 LC it has been referred to as the "employer's direction," meaning that the employer is authorised to give instructions to the employee. Provisions of the Labour Code make it possible to distinguish between two types of employee subordination – contractual (obligation-based) and statutory. The **contractual subordination** results from the employee's obligation to perform a specific type of work. An essential element of the contract of employment and other legal transactions constituting the basis for the employment relationship is the **type**

[5] Art. 18 of the Act of 29 May 1974 on the Provision for War and Military Invalids and Their Families.

[6] Tomasz Duraj, *Podporządkowanie pracowników zajmujących stanowiska kierownicze w organizacjach* (Warszawa: Difin, 2013), 74.

of work, meaning a set of interrelated factual activities the person is supposed to carry out. In practice, the agreed type of work is most commonly explained by indicating the job position. The employee, consenting to the performance of work specified by type, agrees to remain at the employer's disposal within the limits resulting from the type of work agreed upon. Therefore, the employer has the opportunity to exercise control over an employee in terms of **place, time, and manner of work performance**. The direction provided by the employer is necessary for the fulfilment of the employee obligation – without instructions regarding the above-mentioned elements, the employee would not know where, when, and how to do the agreed upon work. The legal transaction alone, establishing the employment relationship, due to its general nature, would hardly suffice for the work to be started.

The other type of subordination, i.e. **statutory subordination**, consists in the employer being able to exercise control over an employee outside the boundaries set out by the employment contract. Under exceptional circumstances, it is allowed to assign to the employee work other than that agreed upon (e.g. during downtime, as Art. 81 § 3 LC provides, or for a period of three months during a calendar year where the justified needs of the employer require so – Art. 42 § 4 LC).

Both types of employee subordination are subject to certain natural limitations. The employee is obliged to carry out only such instructions that are not contrary to the law or employment contract (Art. 100 § 1 LC) and to the principles of community life (Art. 58 § 2 LC in conjunction with Art. 300 of the Civil Code).

In some cases, employee subordination is modified, compared to the traditional paradigm. Such is the case with **temporary employment** carried out through a temporary employment agency. Characteristic of the scheme is a shift of the direction from the employer being a party to the employment contract (the temporary employment agency) to the entity actually using the employee's work (the user employer), all characteristics of labour law employment being otherwise retained. Other types of modifications can be noted in the case of what is termed **telework**, where the subordination of the teleworker, in terms of place and time of work, is practically abolished. Yet, other changes of employee subordination take place as regards employees holding independent positions (e.g. of medical doctors, legal counsels, etc.), where the employer's influence on the way in which work (e.g. the treatment of patients) is performed is excluded. These cases are sometimes referred to as instances of **autonomous subordination**. Finally, notice should be taken of labour relations in public administration, in which the scope of subordination is actually wider than under the conventional, contract-based employment relationship.

Employee subordination is the key element allowing to identify a particular legal relationship under which work is done as an employment relationship. As for the type of work, it is the parameter determining the "broadness" of the employee's commitment and the extent of the person's availability. In civil law relations, the subject of the obligation of the work-providing party is definitely "narrower," as it is limited by the parameter of specified activities or work. Such a definition of the obligations limits the ordering party's capacity to exercise control over the other one. That is why, under civil law relationships, there is no room for instructions of the employing entity, and they are not even necessary due to the fact that the work particularities have been precisely agreed upon beforehand. Thus, **it is the way in which the subject of the commitment has been defined, and then the manner of its implementation that is crucial for the legal qualification of particular employment**.

Subordination is also the factor that allows for distinguishing between labour relations and the relations of service, as established with officers of militarised services (e.g. soldiers, policemen). These are subject to so-called increased availability, reflected in the commands they are given and the fact that they can be moved within the entire militarised formation, being entrusted positions not listed in the legal act upon which their service relationships have been established.

Recently, labour law employment is ever more frequently replaced by employment not based on labour law provisions, mainly civil law. In addition to contracts for providing services, contracts of mandate, and contracts for a specified task or work, the phenomenon of so-called **self-employment** has become omnipresent. This consists in natural persons registering themselves as person carrying out business activity and offering their services to other entrepreneurs. A person like that happens to be bound by a contract with just a single entity, gaining all or most of the income from only one source. That is why it is more and more often suggested that the notion of subordination as an element characterising the employment relationship should be broadened, to include not only the current organisational, but also economic subordination.[7]

Re c) The employee is entitled to the remuneration agreed upon for the work performed, and –where there is a legal basis for it – also to remuneration for the time of work not being done (e.g. holiday leaves or certain other paid leaves of absence from work). **Remuneration for work** is a mandatory element of the employment relationship, with the employee not being allowed to renounce the right to remuneration or its transfer to another person (Art. 84 LC). In addition,

[7] Alain Supiot, *Beyond Employment. Changes in Work and the Future of Labour Law in Europe* (Oxford: Oxford University Press, 2001), 14–16.

employees retain the right to remuneration for their readiness to perform work, if the work could not be done for reasons beyond their control. The prohibition to waive the right to remuneration means a restriction of the freedom of the parties to the employment relationship in this regard. Once the employee and employer do not have the right to exclude the right to remuneration, it should be inferred that the latter is a statutory consequence of the establishment of a legal relationship based on the requirement of personal work and subordination of one of the parties to the other one.

The issue of payment has been provided for differently by civil law regarding contracts concluded under provisions of the latter. The Civil Code, following the principle of freedom of contract, does not prohibit the exclusion of the right to remuneration, and in relation to the mandate contract, explicitly states the rule in Art. 735 ("Where it is not apparent from the contract or the circumstances that the person accepting the order undertook to carry it out without remuneration, remuneration shall be due for carrying out the order"). However, one should not lose sight of Art. 8a para. 4 of the Act on Minimum Remuneration for Work. Indeed, it provides, "they that take the order or provide a service may not waive the right to remuneration in the amount resulting from the amount of the minimum hourly rate nor transfer the right to this remuneration onto another person."

The exception to the principle of payment for the subordinated work is so-called **volunteering**, the scheme of which, however, can only be applied regarding entities specified by law. In accordance with Art. 42 of the Act of 24 April 2003 on Public Benefit Activities and Volunteering, volunteers may work solely for non-governmental organisations and other entities conducting public benefit activities, public administration bodies, organised entities reporting to public administration bodies or supervised by them, healthcare entities, international organisations, and associations of which the volunteers are members.

Re d) Another element characteristic of work performed under an employment relationship is the **requirement to do work personally**. It is derived directly from Art. 22 § 1 LC, viz. from the phrase "the employee undertakes ..." In addition, other labour law regulations, in particular provisions requiring that the employee should have due qualifications and maintain an appropriate health status correspond with this requirement. Thus, it should be assumed that the employee only performs their obligation when they personally do the work, with it being not allowed to the employee to provide a substitute – the work of such a person would not mean meeting the obligation arising from the employment relationship. Moreover, the requirement of personal work performance also

results from the concept and nature of the employment relationship, where it is the person and not the object of the obligation that counts. Therefore, the employment contract that gives rise to the employment relationship, no longer resembles its aforementioned "hire of work" (*locatio conductio operarum*) prototype, but rather a "hire of a worker" scheme. Work must not be treated simply as an object, detached from the employee as a person.

Re e) **Cooperation** in performance of work means doing it in a team. The most elementary team is that composed of the employer and employee, although the employee side usually includes more people. The employer is the one that organises the work and the entity on whose behalf it is performed.

Re f) An important feature of the employment relationship is also the fact that the employee's obligation is a **commitment to do work diligently** (on a best effort basis) and not to achieve a specific effect. Thus, the employee undertakes to perform work honestly and diligently, but cannot guarantee the achievement of a specific result. The person doing the work is not responsible for failing to achieve the result expected by the employer provided that they duly meet their obligations. Therefore, the remuneration is due for the performance of the work and even for the time when it is not performed, if a legal regulation provides so.

Re g) The labour law doctrine identifies four types of employment-related **risk**: economic, technical, social, and personal. The **economic risk** means the employer is burdened with the obligation to pay remuneration and other benefits arising from the employment relationship, regardless of the economic effects of the business run. The employment relationship is not like the one binding partners in a partnership, in which the parties participate in the losses, but also the profits of their activities. The employee has no influence on the management of the work establishment, being subject to direction exercised by the employer, so they should not bear the economic risk associated with the ailments of the project. Therefore, the employer cannot make payment of the remuneration conditional upon the expected profits, pleading its poor financial standing as an excuse. When calculating operating costs, the employer should take employee remuneration into account regardless of the results of its business activities.

The employer is also obliged to pay remuneration for the period in which work was not done for technical and organisational reasons, if the employee was ready to perform work (**technical risk**) or in the event of the employee's absence from work for important personal reasons (e.g. illness, childcare, etc.), thus bearing what is termed the **social risk**. Finally, it is the employing entity that is burdened with the consequences of the non-culpable (though sometimes even

culpable) behaviour of the employee causing damage to the employer (**personal risk**).

Exposing the employer to the risks associated with employment does not mean it is unable to take actions to reduce or, in some cases, eliminate certain risks. For example, the economic risk can be reduced by the introduction of a wage system based on rewards or other discretionary benefits, the granting and amount of which depend on the employer's bottom line (although it is not allowed to base the employee's entire remuneration upon such rules). Meanwhile, in the event of downtime for technical and organisational reasons, it is possible to assign the employees to other tasks, thus reducing technical risk. Also, while it may be possible to eliminate social risk by the purchase of insurance against certain events by the employer, personal risk may be lowered thanks to a thorough recruitment process, followed by the continuous improvement of qualifications by employees.

The qualification of a given legal bond as employment relationship depends on the existence of the set of work features discussed above. In accordance with Art. 22 § 11 and 12 LC, employment under conditions corresponding to those characteristics **has the nature of a labour law employment, regardless of the name of the contract concluded by the parties**. It is also unacceptable to replace employment contracts with contracts of a different nature, the conditions of work performance not being changed. However, as it can be easily noticed, the above-mentioned features of work done under the employment relationship are not uniform in character and status. Should the nature of a given legal relationship be decided based on the existence of all of them, insurmountable difficulties can easily arise. In the real world, even now, there is a tendency to place, among contractual clauses, elements that could contradict the nature of a given relationship as an employment relationship (e.g. clauses shifting the work-related risk to the employed person). In addition, problems emerge with the actual will of the parties, often concealed by means of contractual clauses (e.g. a formal exclusion of the requirement to do the work personally). In such a situation, it may be hard to distinguish between the elements of crucial importance for the legal qualification of a given relationship and those being contrary to labour law provisions (and, as such, devoid of legal significance). In the case described above, the contractual transfer of risk onto the employed entity should be found unlawful if the obligation having arisen between the parties is an employment relationship. Under such circumstances, it is necessary to precisely determine where the above-mentioned border should be drawn. This inevitably leads to the conclusion that there exists a certain **hierarchy of employment relationship features**. Therefore, a question arises of when an employment relationship begins, i.e. after the fulfilment of which conditions

can it be reasonably stated that the relationship does, in fact, exist. It seems that placed at the top of the hierarchy should be those features of the employment relationship that are directly derived from the content of the above-mentioned 22 § 1 LC. These include: the **requirement of personal performance of the work, employee subordination**, and **payment for work** (understood, however, as the statutory consequence of doing subordinated work).

1.2.3. Legal Relationships Associated with the Employment Relationship

Besides the employment relationship, other legal relationships closely related to employment relationships are also covered by labour law.[8] These are, first of all, ones:

1) that precede the existence of the employment relationship (e.g. relations connected with the recruitment of employees and job placement);
2) the existence of which is justified by the existence of the employment relationship itself (e.g. relationships regarding employee representations, relationships associated with the supervision of working conditions or those connected with the promotion of employment);
3) concerning dispute resolution (e.g. conciliatory proceedings);
4) associated with the legal liability of parties to the employment relationship (e.g. disciplinary liability);
5) occurring after the termination of the employment relationship (e.g. concerning the pursuit of claims arising out of the employment relationship).

Thus, the link between the above mentioned legal relationships covered by labour law and the employment relationships results, on the one hand, from the strictly accessory nature of certain legal relationships, which largely perform executive functions vis-à-vis an employment relationship (e.g. relations immediately preceding the establishment of the latter, such as connected with medical examinations, recruitment, etc. or employee liability relations). At the same time, labour law includes legal relations connected with employment relations not as closely as the ones described above, but the existence of which is conditioned upon the existence of the employment relationship. It is thus

[8] Wiktor Jaśkiewicz, in *Prawo pracy w zarysie*, eds. Wiktor Jaśkiewicz, Czesław Jackowiak and Włodzimierz Piotrowski (Warszawa: PWN, 1985), 14; Urszula Jackowiak, in *Prawo pracy. Podręcznik dla studentów prawa*, Urszula Jackowiak, Waldemar Uziak and Alina Wypych-Żywicka (Kraków: Zakamycze, 2006), 35; Teresa Liszcz, *Prawo pracy* (Warszawa: LexisNexis, 2007), 21; Walerian Sanetra, in *Prawo pracy a wyzwania XX wieku. Księga jubileuszowa Profesora Tadeusza Zielińskiego*, eds. Maria Matey, Lesław Nawacki and Barbara Wagner (Warszawa: Biuro Rzecznika Praw Obywatelskich, 2002), 32.

functional or axiological connections that are dealt with in such case. Here, in turn, mention should be made of collective labour relations, relations connected with the settlement of labour disputes, legal relations concerning the supervision of working conditions, and legal relations associated with promotion of employment and combating unemployment.

The above indicated scope of legal relations connected, in real life, with the employment relationship, is specific for the broadest approach to labour law, i.e. that presented by legal scholars and teachers. However, one should be aware that not all of these legal relationships are part of labour law when it comes to law application. For example, the relations of a procedural nature fall within the subject of civil proceedings law, and most legal relations concerning employment promotion – into the subject of (substantive and formal) administrative law.

The parties to legal relations associated, in the realities of life, with employment relationships, not always include employees and employers. In collective labour relations, the parties are composed of employers and their representatives as well as employee representations (trade unions, workers' councils, etc.). Sometimes the parties are job seekers and employers-to-be, as well as former employees and employers or family members of the employees (as regards, for example, the right to death severance pay). The affinity of the discussed group of legal relationships to labour law is beyond doubt (due to their close functional connection with the employment relationship).

Attention should also be paid to the phenomenon of what is termed the **labour law expansion** beyond the traditional area of its influence. It consists in the application of specific labour law provisions to legal relationships of employment not based on labour law by virtue of a statutory authorisation (or that granted by an implementing regulation).

In earlier literature, legal relations of **social insurance** were also included in the subject of labour law, which was justified by the fact that they would arise as a legal consequence of persons enteringan employment relationship. In fact, until the early 1990s, social insurance was mostly a scheme concerning employees. It was only the political changes started after 1989 that led to the extension of the personal scope of social insurance; now, covered by it are almost all persons remaining in occupation or living on proceeds from their own activities. At present, no reasons exist that would justify the inclusion of social insurance matters into labour law.

1.3. The Systematics and Functions of Labour Law

1.3.1. The Systematics of Labour Law

Labour law is a relatively extensive body of law, its scope encompassing many legal relationships of different natures (especially if the broadest doctrinal and didactic approach to it is taken). It is therefore necessary to further systematise labour law, i.e. to distinguish, within it, smaller areas consisting of specific sets of legal norms that regulate various types of legal relations the branch of law deals with.

The criterion most frequently used in the doctrine when systematising labour law, is the criterion of the object of regulation. In its simplest form, the system's internal division follows the lines demarcating the various types of legal relations that are covered by labour law. Using a slightly more elaborate approach, the **general part of labour law** should be distinguished in the first place (covering issues such as labour law principles, sources and norms). Only afterwards may individual areas of labour **law** be indicated – the **law of the employment relationship** (referred to as individual labour law), which deals with the employment relationship and the accessory relations, **collective labour law**, **labour dispute law** (procedural labour law), the **law of the supervision of working conditions**, as well as **labour administration and employment promotion law**. Each of the specific part is subject to further internal systematisation.

Labour law may also be subject to internal differentiation using the personal criterion, with the addressees of legal norms being taken into account. Following that criterion, labour law can be divided into common and sectoral (industry-wise). The **common labour law** covers all those employed, either directly (as the law is applicable to a given group of persons), or indirectly, as the alternative law applied in matters not regulated by special provisions. Meanwhile, the **sectoral labour law** includes sets of legal norms distinguished within the system due to the limited scope of their application to selected professional groups. Sectoral labour law may be comprehensive (examples being teachers' labour law or the law of academic staff) or particular (e.g. specific health and safety provisions applied to individual sectors of the economy). It is well-worth mentioning that in Poland, unlike in Germany, France, Spain, and other countries, the law of public servants, i.e. the law providing for the legal status of the officials employed in state administration, is also a part of labour law.