

**PROCEDURAL OBSTACLES IN THE VINDICATION OF CLAIMS
RELATED TO LABOUR RELATIONS UNDER THE POLISH SPECIAL
PROCEDURE COVERING LABOUR LAW CASES**

**PROCEDURALNE UTRUDNIENIA W DOCHODZENIU ROSZCZEŃ
ZE STOSUNKU PRACY NA GRUNCIE POLSKIEGO POSTĘPOWANIA
ODRĘBNEGO W SPRAWACH Z ZAKRESU PRAWA PRACY**

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ABSTRACTS

The protection of an employee as a weaker party of labour relation is the primary function of labour law. Its analyses generally focus on the provisions of substantive law and the effectiveness of their implementation. However, the effectiveness of labour law, including the realization its protective function, requires the procedure which ensures effective vindication by an employee his or her rights. The paper examines selected provisions of the Code of Civil Procedure, the Act on Costs of Legal Proceedings in Civil Cases and some regulations of the Labour Code to indicate the procedural difficulties in vindication of claims related with labour relation under the Polish special procedure covering labour law cases. An analysis of the issues discussed in the article clearly demonstrates that the problems appear in the phase of taking a case to labour court as well as in the phase of its adjudication. The Polish special proceeding regards with labour law cases still requires improving, however it also involves numerous procedural facilities which determine the promptness, the level of (in)formalisation, and the increased self-induced activity of the court.

Ochrona pracownika jako słabszej strony stosunku pracy jest podstawową funkcją prawa pracy. Analiza tego zagadnienia zwykle koncentruje się na przepisach prawa materialnego i skuteczności w ich realizacji. Tymczasem efektywność prawa pracy, w tym urzeczywistnianie jego funkcji ochronnej, wymaga procedury zapewniającej skuteczne dochodzenie przez pracowników przysługujących im praw podmiotowych. Artykuł stanowi analizę wybranych regulacji kodeksu postępowania cywilnego, usta-

wy o kosztach sądowych w sprawach cywilnych oraz regulacji kodeksu pracy ze wskazaniem proceduralnych utrudnień w dochodzeniu roszczeń ze stosunku pracy. Wskazuje na proceduralne problemy w dochodzeniu roszczeń ze stosunku pracy zarówno na etapie wnoszenia powództwa do sądu pracy, jak i postępowania sądowego oraz dokonuje ich oceny.

KEY WORDS:

Special procedure covering labour law cases, vindication of claims from labour relation, trade union, labour inspector, composition of labour court, employment protection

Odrębne postępowanie w sprawach z zakresu prawa pracy, dochodzenie roszczeń ze stosunku pracy, związek zawodowy, inspektor pracy, skład sądu pracy, ochrona zatrudnienia

INTRODUCTION

Under the current Polish labour law procedure, labour law cases are defined as civil cases (Art. 1 PCCP); thus, their resolving before the court requires applying the rules envisaged for civil procedures. However, the specific character of labour law results from the necessity to protect employees as the weaker party in labour relations and in this context labour disputes influence the civil procedure applied in resolving labour disputes. Consequently, selected rules of the civil procedure are applied directly, others are modified, while the third group of rules applied to resolve labour disputes are dedicated only to labour law cases (Zieliński, 1986, pp. 172-179). All such rules contribute to create a special procedure applied in labour law cases. Labour proceedings are differentiated from other civil proceedings mainly by their emphasis on the protecting function involved in such proceedings (Mędrala, 2011, p.5). Let us examine in order to assess the effectiveness of the current regulations and to indicate the obstacles that employees may encounter when they attempt to get access to justice.

THE PARTICIPATION OF THE SOCIAL VOICE IN RESOLVING LABOUR CASES

Although labour courts are formally affiliated with common courts¹, they are organised as separate departments. This organizational distinction is introduced to satisfy the specific character of labour law cases, which

require a special style of adjudication distinct from other civil proceedings. To provide a relevant environment for judging such cases the procedure envisages a special role of the jury in resolving labour cases. To ensure a high level of adjudication Art. 158 CCO² (Act from 07 October 2005 on common courts' organisation, henceforward as CCO) provides that a an expert in labour law should be elected to sit in the jury in a given case. In view of the complexity of current labour law, whose understanding often requires professional education, such provisions play an essential role in ensuring that there should be a good and objective understanding of the legal status of a given case by the jury. However, the weak point of the regulation about the organisation of the jury under Art. 158-175 CCO is the lack of verification of the alleged experts' knowledge in labour law. Such persons are selected from candidates suggested by trade unions and employers' organizations under their declarations of knowledge in labour law. There is no sanction for, for instance, possible future invalidity of the judgment given by a court whose jury is composed in such a way that it does not meet the legal provisions³. It must be concluded that all these factors contribute to the situation in which the real role of the jury, i.e. that of ensuring the participation of the social voice in resolving labour cases, can often be limited (Bentkowski, 2012, p. 208).

THE LEGAL ASSISTANCE *EX OFFICIO*

Given the complexity of current labour law, an important guarantee of securing the equality of the parties' security in legal proceedings can be seen in providing legal assistance *ex officio*. This is regulated under the general rules in the Code (Art. 117-124 PCCP) which for all parties in legal proceedings grant the right to be assigned a legal assistant *ex officio* in order to equal the parties' chances in the proceedings if the question of inequality arises. Moreover, the right to apply for legal assistance *ex officio* is independent of any previous exemption from court fees (The Constitutional Tribunal of 16 June 2006, P 37/2007)⁴. Legal assistance *ex officio* is granted by the court if the court finds a "need to involve a lawyer" (Art. 117 § 5, PCCP). The court's decision is of a discretionary nature, however, it requires that the court's decision is taken with care, not to reject an application too hastily, and not to deprive the applying party of an access to justice (Art. 379 point 5 PCCP)⁵. It is assumed that legal assistance is required when the party in question is incompetent, has a problem with following the procedural actions, or when the dispute is

of complex legal and factual nature⁶. In this way an applicant's subjective assessment with regard to his or her need for legal assistance *ex officio* can be verified and the decision whether or not such assistance should be granted can be objectively taken (Resolution of District Court in Rzeszów of 12 October 2012, I ACz 672/12). Taking such a decision the court should assess the objective necessity of awarding legal assistance *ex officio*. After amendment of Polish civil procedure in 2005, Art. 87(1) PCCP introduced as mandatory the legal representation of the parties in the proceedings by professional agents for litigation in labour cases heard before the Supreme Court. Authorising a person other than a relevant lawyer as one's agent in litigation, as regulated in the Art. 465 § 1 PCCP, does not anymore fulfil the requirements cited in Art. 87(1) PCCP. In this context there arises the question of the obligation of providing legal representation in labour law proceedings before the Supreme Court that would not limit the right to trial. In fact the regulation imposes additional mandatory costs of legal assistance. Parties that are not able to afford a private lawyer can apply for legal assistance *ex officio*. The current regulation obligates the courts to take decisions in favour of disadvantaged parties if "the need for legal assistance of a lawyer exists" (Art. 117 § 4, PCCP). However, in this case "the need" appears automatically as one of the parties lacks the competence to officially act as a party before the Supreme Court. In this situation the party's application for legal assistance *ex officio* should most probably meet with the court's consent. Thus, securing the employee's right to sue before the Supreme Court requires a proper interpretation of the current regulation related to the availability of legal assistance *ex officio* and the conditions under which such assistance should be granted (Resolution of the Supreme Court of 21 September 2000, III CZP 14/2000).

THE VALUE OF THE OBJECT OF THE DISPUTE

The costs of proceedings at law are an important aspect in the context of real and functional access that the parties may have to labour courts (Verdict of the European Tribunal of Human Rights of 16 October 2012 in the case *Piętka vs. Polska*, 34216/07)⁷. The attempt of an equalization of the economical position of the parties is expressed mostly through the institution of the judicial exemption from costs of proceedings at law, legal assistance *ex officio*, as well as possible exemption from court's fees. The last instrument is dedicated mainly for employees as the weaker part in proceedings. Until 2005, special proceedings, including labour

law proceedings, were in most cases conducted free of charge. However, fundamental changes were introduced by Act of 28 July 2005 on Costs of Legal Proceedings in Civil Cases (Act of 28 July 2005 on Costs of Legal Proceedings in Civil Cases, henceforth as CLP). It introduced some limitations to the rule of free proceedings for both parties in labour law proceedings. The changes were justified by the fact that unjustified petitions in an excessive number were directed to court. In relevant literature it was underlined that there was a lack of rational justification for exempting employees from all court fees (Sadlik, 2006). Under the current regulation on costs in labour proceedings, such costs depend on the characteristics of the party in question, the employee or the employer and their role as a petitioner or a respondent.

The cost of filing a petition with the court in labour law cases is the most reliable factor for assessing the availability of access to court. Article 35, CLP, indicates that some appeals have the fixed costs of 30 zlotys (around 8 Euros), regardless of the type of petitioner who files them and whether the petitioner is an employee or an employer. Registering a petition with the court is included as one of such cases. It means that regardless of the fact who the party is, and what role they play, and irrespective of the value of the dispute, the petitioner will pay 30 zlotys when he or she files the case. Further adjustments included in CLP provide different treatment for an employee and an employer.

An employer, regardless of his or her role, i.e. whether he or she is a petitioner/claimant or a respondent, is generally obligated to cover the costs of legal proceedings under the general rule, i.e. the court's fees and spendings incurred during the proceedings unless he or she has been exempted from the costs by the court (Art. 102, 103, CLP).

If an employee is acting as a claimant, his or her position depends on the value of the object of the claim. With the exception of the basic fee in the amount of 30 zlotys in the categories of cases indicated in Art. 35, CLP, special proceedings including labour law cases related to employees are free of charge if the value of the dispute is below 50 000 zlotys (around 12 000 Euros). This exemption includes not only the cost of the petition, but also all spendings incurred during the proceedings. The exemption *ex officio* is temporary. In the case when the court's verdict is negative for the employee, the court adjudicates to return the spendings to the employer. In cases of higher value, the employee has to pay a fee in the amount of 5% of the value of the dispute. In such a case, all costs incurred during

the proceedings will be paid by the employee under general rules (Art. 35 CLP).

If the employee acts in the role of the respondent in the proceedings, he or she will pay the costs of the proceedings (mostly the costs incurred during the proceedings) under the general rules. So the position of employee as a respondent and the position of the employer, regardless of the role that the employer plays in the proceedings, is equal.

To distinguish the cases which are paid and those that are free of charge (with the exception of the basic fee of 30 zlotys under Art. 35, CLP, for registering the case in court), the criterion of value of the object of the dispute is applied. The axiological justification for such a procedure is that claims with the value of the dispute exceeding 50 000 zlotys are taken to court by employees with remuneration higher than average remuneration in Poland. And if in a particular situation this criterion should fail, the employee can apply for judicial exemption from the costs of the proceedings (Mędrala, 2011, p. 313).

This regulation creates at least two further problems. Firstly, in order to avoid paying the costs of the proceedings in labour law cases, employees and their agents for litigation can in some cases attempt to truncate their claims, and avoid their cumulating, not to exceed the value of the dispute of 50 000 zlotys. This practice may lead to enlarging the number of cases in labour courts of first instance (Mędrala, 2011, p. 313). The other problem is linked with the regulation under the Polish civil procedure which directs how the value of the object of the dispute should be calculated. The matter is clear in cases of pecuniary claims. Under Art. 19 § 1, PCCP, the value of the object of the dispute in pecuniary claims means the value of the claim brought before the court. The value of non-pecuniary claims, for instance the claims related to labour relations, their establishing, recognition of the existing ones, or their dissolution, is regulated under Art. 23(1) PCCP, which raises further problems. According to the rules, the value of claims of money in the context of labour contracts for a fixed term is the sum of remunerations for the period covered by the claim; however, the amount must not exceed remuneration envisaged for one year. In the case of indefinite labour contracts – for the period of one year. If the claimant files a few claims in one petition, the value of the object of the dispute means the total value of such claims because the court cumulates them (Art. 21 PCCP).

The regulation seems to be justified if it is taken into account that

claims with the value of the object of the dispute that exceeds 50 000 zlotys involve employees who earn a lot. However, the method applied under Art. 23(1), PCCP, to count down the value of the object of the dispute in non-pecuniary claims impairs this justification. In judicial practice, the most frequent types of non-pecuniary labour law disputes are linked with unjustified termination of employment and with a violation of the legal provisions related the termination of an employment contract (Nawrocki, 2011, pp. 27-28). In such a situation, due to Art. 45 PLC, an employee can choose between three alternative claims: for compensation, for reinstatement in his or her job, or, if the period of notice has not expired, for the recognition of the notice of the labour contract as inefficient and invalid (Art. 45 § 1, PLC)⁸.

Both the claims of a reinstatement in one's job and the recognition of the notice of a contract as inefficient are not of pecuniary nature. In these types of cases the value of the object of the dispute (usually it is one year remuneration) departs from the real material value of the claim brought before the court. Let us examine this matter with some examples. When an employee issues a claim for recognising the notice as ineffective (due to Art. 45 § 1 PLC), even though he or she does not receive any amount under a relevant judicial verdict, the person has to indicate in his or her petition the value of the object of the dispute as the amount of one year remuneration (or in case of a fix term contract – for the contested period, not exceeding one year – Art. 23(1) PCCP). When the court adjudicates the reinstatement in the person's job, in the same verdict it will adjudicate with regard to the remuneration for the period in which the person was not working, although the maximum amount of remuneration for the time out-of-work is not more than three months' remuneration (Art. 47 PLC and Art. 57 § 1 PLC). If the court applies Art. 45 § 2, PLC, the labour court will reject the employee's demand to declare the notice of termination ineffective or to reinstate the employee in his or her job. If it is determined that the demand cannot be satisfied as it is impossible or pointless, the labour court will award compensation. Art. 47(1) PLC provides the lump sum of compensation for defective dissolution of a labour contract, which is usually closely related to the person's remuneration for the period of two week to three months. Thus, the total amount of compensation is usually below 50 000 zlotys⁹ (Art. 47(1), PLC). If the court adjudicates an alternative claim, this does not change the non-pecuniary nature of the claim brought by the employee before the labour court, Thus, even

if the court should convert non-pecuniary claims for reinstatements, or recognition of termination notices as ineffective, into pecuniary claims for compensation, the value of the object of the dispute is calculated according to prior non-pecuniary claims (Art. 23(1) PCCP).

In each of the situations indicated above, if the value of the object of the dispute should exceed 50 000 zlotys, the claimant who files his or her petition with the court would have to pay 5% of the amount of the value of the dispute. Such situations do not happen rarely in the context of claims with the value of the dispute calculated pursuant to Art. 23(1) PLC (non-pecuniary claims, which means that the value of the dispute is usually equal to one year's remuneration). In such a case for an employee to exceed the value of 50 000 zlotys, it is enough that the person's monthly remuneration is at the level of at least 4170 zlotys (around 900 Euros). Taking into account that the average remuneration in Poland in 2013 is 3740,05 zlotys (Central Statistical Office, 13 May 2013), these situations can be quite often.

That regulation may influence the type of claims chosen by employees if the employee in question has a choice between filing a pecuniary claim and a non-pecuniary claim, as evidently the latter is more favourable. Thus in the case of alternative claims arising from defectively resolved employment contracts, an employee will typically chose the more frequent claim for compensation where the value of the dispute is calculated pursuant to Art. 19 PCCP (not exceeding three months' remuneration) as he or she may be partially exempted *ex officio* from paying the costs of the proceedings (with the exception of the fee of 30 zlotys – 8 Euros), instead of choosing a claim for reinstatement, or a claim for a recognition of termination notice as ineffective, where the value of the dispute is calculated pursuant to Art. 23(1) PCCP (usually one year's remuneration) and where an employee, being a claimant, will not be exempted from 5% of the value of the dispute court fee. That regulation of the court's fees can also determine the number of employee's pecuniary claims.

To summarize, the introduction in 2005 of moderate unified costs in the amount of 30 zlotys (around 8 Euros) for filing petitions with the court regardless of the type of the party in the proceedings who performs it, seems to be justified as it motivates the parties to be active during the proceedings and helps to limit the number of unjustified cases being filed. However, the method in which the value of the object of the dispute is calculated in cases of non-pecuniary claims, performed pursuant to Art. 23(1), PCCP, should

be improved because the proportional fee administered in labour courts is detached from the real value of the object of the dispute and, as such, it can be assessed as a real financial obstacle in proper access to court in cases where the value of the dispute is defined according to the amount of one year's remuneration.

Taking into account the role of subjects who act as parties in the proceedings also seems to be important. The Polish Code of Civil Procedure provides a widened spectrum of subjects who can act as a party in special proceedings. It includes subjects such as prosecutors and ombudsmen under the general rules applied to civil proceedings¹⁰ and NGO's (including trade unions), as well as labour inspectors as entities dedicated solely to acting in their special role in labour law proceedings (Art. 63(1) PCCP). All these subjects are *ex officio* exempted from paying costs of such proceedings regardless of the value of the dispute and, as a result, they are not limited by financial matters at the stage of taking a case to the court, as well as at the stage of engaging in procedural actions linked with the fees (Art. 96 of the Act of 28 July 2005 on Cost of Legal Proceedings in Civil Cases, henceforward as CLP). In practice a labour inspector and trade unions act in their main role as subjects more specialised in labour law cases and exempted from paying the costs of legal proceedings only in special proceedings including labour law cases (Art. 96 point 8 CLP). This means that if a labour inspector, or a representative of a trade union, take to a labour court a case whose value of the object of the dispute exceeds the amount of 50 000 zlotys, they are exempted from paying the proportional fee of 5 % of the value of the dispute, as well as the basic fee of 30 zlotys. The economic profit for an employee can be seen in that he or she can avoid paying 5% of the costs for taking a petition to court for starting the proceedings even if an employee will join the proceedings started by a labour inspector or a trade union. Thus, labour inspection, as well as trade unions, can play an important role in enabling employees' access to court, especially in cases where such employees are not exempted from paying the costs of legal proceedings *ex officio* (claims exceeding the amount of 50 000 zlotys), and are not exempted from paying court fees under the general rules (Art. 102, CLP). However, to assess their real influence on labour law proceedings, it should be taken into account the limitations of their competences and that not in all workplaces trade union are active, which favours employees employed in workplaces where they can count on trade unions.

The competences of labour inspectors under the Polish law as participants in legal proceedings as a party are limited only to taking to court cases of cessation of employment (Art. 63(1) PCCP). Labour inspectors have the authority to file such cases related to cessation of employment when the parties made a non-labour contract (for example a civil contract) that contains the features of labour relations indicated under Art. 22 § 1 PLC¹¹. However, labour inspectors also have the right to file cessation of labour relations cases when the parties had no official contract (Jędrzejewska, 2007). The procedural competences of labour inspectors are limited to actions related to cases of establishing the positive aspect of a labour relation. It means that a labour inspector has no procedural competences for filing other cases with the court, thus, he or she cannot initiate a legal action to establish, for instance, a lack of a labour relation between the parties. Some obstacle impeding an employee's access to justice can emerge in the context of the competences that a labour inspector possesses. To initiate legal proceedings related to a cessation of a labour relation, the labour inspector must pre-judge the type of the existing relation between the parties and the employee has no competence to appeal against a possible refusal to start such proceedings or to act if the labour inspector remains inactive (Baran, 1996, p. 42)¹². The possible participation of a labour inspector in labour proceedings is not under the judicial review either. On the other hand, a labour inspector's official assertion that the legal relation between the parties has typical characteristics of an employment relation is not equivalent with a judicial decision on this matter and is not itself a final confirmation of the existence of a labour relation either for the employee or for a third party, such as for example the national insurance company (Góral, 1996, p. 21).

Another guarantee for securing equality of the parties' situation in labour law proceedings can be seen in entitling the NGOs under Art. 62-63 PCCP and Art. 462 PCCP to act as a party in such proceedings. Some matter arises as obstacle in an employee's access to justice in relation to this regulation. The right to start a legal action in labour law cases belong only to these NGOs whose statutory goals include the protection of citizens in labour law matters (Art. 462, PCCP) (Majkut, 2011). In matters other than discrimination at work, it is enough that a certain NGO's article of association include a clause related to protecting employees' rights. In cases related to the lack of equality, the NGO's statute must explicitly provide that the NGO's aims include securing equality at the workplace

and actions aimed at preventing discrimination in legal relations; it is not enough if such a statute only generally mentions protection of employees' rights. Under the current Polish legal regulations there is no list of NGOs eligible to sue in that scope¹³. The only criteria used to authorise selected NGOs to have the right to sue in labour law cases are their statutory goals. Moreover, one of the judgments of the Supreme Court states that given NGOs have the competence to sue in labour law cases only in favour of employees hired at workplaces included in the NGOs' statute. This applies both to employees associated in a trade union, as well as employees not associated in that organisation (Resolution of the Supreme Court of 5 July 2002, III PZP 13/02). Consequently, this regulation favours trade unions and places them above other NGOs. Moreover, it privileges employees hired at workplaces where trade unions act.

THE COSTS OF PROFESSIONAL AGENTS FOR LITIGATION IN LABOUR LAW CASES

Another fiscal inconvenience which affects the situation of an employee in labour law proceedings is related to the costs of agents for litigation. Under § 11 of the Ordinance of the Ministry of Justice of 2002 about fees for legal assistance Ordinance of the Minister of Justice of 28 September 2002 on fees for legal assistance given by solicitors and rules of bearing by the Treasury the costs of legal assistance awarded *ex officio*, henceforth as FLA), the costs of professional agents for litigation are lower in labour law cases in comparison to other civil cases. The related fixed fees depend on the pecuniary or non-pecuniary character of the claim in question. In general, in non-pecuniary claims, as for example in cases related to creating labour contracts, reinstatements in jobs, recognition of termination notices as ineffective, recognition of the method of resolving labour relations, or other non-pecuniary claims, it is 60 zlotys, i.e. around 12 Euros (§ 11 point 1.1. FLA). In pecuniary cases, the fee depends on the value of the object of the dispute, although, generally, it is 25% or 50% lower than in other civil cases (§ 11 points 1.2. and 1.5.)¹⁴. The *ratio legis* of lowering the fees of professional legal assistants in labour litigations was probably the protection of employees who, in the case of non-admission of their claims would have to cover all the costs and fees paid by their employers (Art. 97, FLA). Thus, the court will only judge the fee of the employer's solicitor in the amount corresponding with the rates regulated under § 11, FLA. However, such justification seems to be incorrect. Setting

a low fee for professional legal agents for litigation discourages them from specialising in labour law. This means that in order to secure good quality legal assistance an employee would often try to find a legal assistant on his or her own, paying higher costs than could be recovered if the claim was admitted on a regular basis (Mędrala, 2011). Thus, the current regulation presents the employee with a dilemma, he or she can either apply for legal assistance *ex officio*, where the legal assistance may not have a high level of expertise in labour law, or to search for legal assistance on their own taking into consideration possible additional costs. From this point of view the regulation does not seem to be effective either for employees or for employers.

Under this regulation a few further problems arise. The rules how to calculate the fees of agents for litigation, as well as the method for estimating the value of the object of the dispute can be of an essential significance in what type of claim an employee chooses to pursue. On the one hand, under the regulation related to the method of calculating the value of non-pecuniary claims (Art. 23(1) PCCP), an employee, as well as the legal assistant for litigation, are both more interested in pecuniary claims for compensation than in non-pecuniary claims, which are expensive for an employee and not profitable for a solicitor. On the other hand, the reasons for which solicitors' fees were sub-divided according to different types of claims raise some doubts. The regulation is related mostly to fees for legal assistance in claims for reinstatement in one's job or recognition of termination notice as ineffective (non-pecuniary claims), and in claims for compensation (pecuniary claim). Both types of proceedings require that a legal assistant use the same methods of conducting the dispute to prove that the termination of a labour contract was unjustified or did not follow the rule of the law (Merski, 2003, p. 3). In addition, pursuant to Art. 45 § 2, PLC, labour courts can convert an employee's demand to declare the notice of termination ineffective or to reinstate the employee in his or her job, if the demand to administer compensation is impossible or pointless; however, solicitors' fees remain calculated according to the type of claim as originally brought before the court. This defect has also been pointed out by the Supreme Court in one of its judgments (Resolution of the Supreme Court of 7.08.2002, III PZP 15/2002). At present, the literary interpretation of relevant legal regulations leads to an unjustified diversification of remuneration received by lawyers who represent clients in various types of labour law cases. This may discourage competent

lawyers from participating in less profitable proceedings related to non-pecuniary claims. In situations where the employee can file an alternative, i.e. pecuniary, claim, for which the lawyer will also receive a higher remuneration, this distinction may lead to a new practice in which lawyers will favour pecuniary claims, wherever there is a choice

CONCLUSIONS

Legal regulations have to balance different interests. For example, on the one hand a social factor must often be considered in adjudicating in labour law, but on the other hand, the promptness and economy of proceedings must not be forgotten. The latter is linked with limiting the scope of labour cases judged in courts by a panel composed of a number of judges. Thus, in the organizational aspect, the improvements in relevant regulations can already be positively assessed; however, there is still much space for further improvement, for instance in the field of verifying the jury's knowledge of labour law in the context of labour law cases.

It must also be recognised as a positive sign that the list of subjects authorised to represent an employee before the court has been extended. It has to be acknowledged that widening the competences that social organisations and labour inspectors have in this context, in their capacity as agents for litigation for employees has been a positive move. However, the real problem in proper access to justice can be seen in the mandatory requirement that an employee must be provided with professional legal representation by a solicitor in labour proceedings before the Supreme Court. The interpretation of "the need to involve a lawyer" in order to provide legal assistance *ex officio* pursuant to Art. 117 PCCP is interpreted by courts as related to the party's incompetence and as related to the legal obligation to be represented in the proceedings. When judgments given by regional courts exhibit incorrect adjudication, the permissibility of claiming before the Supreme Court affects the decision to award legal assistance and, in consequence, can limit a potential claimant's access to the Supreme Court. Thus, a rejection of the application filed by a party to be awarded legal assistance *ex officio* requires from a labour court a thorough legal and factual examination of the case in question so that the party's right to sue is not impeded.

Some doubts also arise in connection with the fiscal aspect of labour proceedings. The rule of a partial payment introduced in 2005 with regard

to filing a case with the labour court can be assessed positively as a way to eliminate excessively numerous unjustified petitions and motivate the parties to be active in providing evidence. However, the method in which the value of the dispute in non-pecuniary claims is calculated pursuant to Art. 23(1) PCCP, related to the obligatory proportional court fee of the amount of 5% of the value of the dispute exceeding 50 000 zlotys, causes problems in practical application and the realisation of the protection function in labour law proceedings. Thanks to the procedure of exemption from paying court fees granted to the party who cannot cover the costs “without detriment to the necessary maintenance of the party and the party’s family” (Art. 102, point 1, CLP), the potential inability to cover the costs does not prevent either an employee or an employer from having access to court, but the lack of equality between, for example, non-pecuniary claims for recognition of termination notice as ineffective and the value of the dispute calculated under the rules cited in Art. 23(1) raises doubts with regard to the rationale of that regulation. Another problem is the influence that this regulation may have on an employee’s choice of the type of the claim, or his or her decision to break down one claim into a number of more detailed claims in order to reduce the value of the dispute so that it should not exceed 50 000 zlotys and to be able to avoid higher proportional court fees. Next to the doubts indicated above, there are also numerous fiscal facilities for an employee who acts as a party in labour proceedings. For example, the rules for adjudicating the costs of legal proceedings. According to Art. 108 § 1, PCCP, the court adjudicates with regard to the costs of proceedings in the final decision finishing the very proceedings. Pursuant to Art. 97, CLP, the party who loses the case pays the costs. The principle of the responsibility for the result of legal proceedings applies equally to employees and employers in order to avoid bringing evidently unjustified cases before the court. However, according to the Supreme Court, in its judgment the court can reduce or remove an employee’s obligation to cover the costs of the proceedings brought by the opposite party if the circumstances justify such a decision. In practice, courts often use their discretion and decide not to assign paying the costs to an employee. As a relevant justification the court will often indicate circumstances such as the employee’s feeling that the claim is justified, the employee’s illness, the fact that the claim has been dismissed solely due to negative prescription, the precedent character of the case, etc. According to the Supreme Court, the obligation to cover court fees arises only exceptionally in justified situations. Such exceptional situations take

place when the behaviour of an employee during the proceedings has not been appropriate, for instance when such an employee failed to provide a relevant explanation without a justified reason, unduly delayed providing evidence, produced false evidence, etc. Thus, the fiscal aspect of labour proceedings first of all widely protects employees as the weaker party in legal proceedings. However, selected matters, such as the method of calculating the value of some non-pecuniary claims still require improving.

Regardless of the difficulties in the vindication of claims related to labour relations, the Polish special proceedings related to labour law cases involve numerous facilities mostly of the *stricte* procedural character, which determine the promptness, the level of (in)formalisation, and the increased self-induced activity of the court. However, even the regulation that widely protects the interests of employees as the weaker party in labour proceedings could still be improved, and the present paper suggests selected points for such future improvements.

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(Endnotes)

- 1 In contrast to administrative courts creating the jurisdiction structure separated from common courts. At the top of this structure there is the Supreme Administrative Court for administrative legal disputes not connected with the Supreme Court for civil, criminal and military legal cases.
- 2 Art. 158 § 3 CCO states: “In judging labour law cases a labour law expert should be elected as a member of the jury”.
- 3 The conditions of invalidity of proceedings are regulated under the Art. 379 PCCP (Polish Civil Code of Procedure) and a lack of knowledge on the part of the jury in a labour law case is not indicated as an invalidating factor.
- 4 By the decision of the Constitutional Tribunal of 16 June 2006, P 37/2007, the previous exemption from the court fees ceased to be the requirement for applying for establishing legal assistance ex officio for a party in the proceedings. Cf. also the Resolution of District Court in Rzeszów of 18 January 2013, III AUz 3/13, where the Court states that “the condition to award the solicitor ex officio to represent the party who have not been exempted from court’s fees is justified if the party cannot pay the remuneration for a legal assistant without detriment to the means of support of the party or of the party’s family (i.e. means allowing maintaining the family’s members at the level of average income)”.
- 5 Unjustified refusal of legal assistance ex officio leads to invalidity of proceeding (Art. 379, point 5 PCCP). Cf. also the verdict of the European Tribunal of Human Rights of 13 March 2007 in the case *Laskowska vs. Poland*, 77765/2001, where the Tribunal ruled that the party was deprived of an efficient access to the Supreme Court because the Regional Court dismissed the party’s application for legal assistance ex officio to prepare the cassation. The Regional Court argued that in the given case the party was not entitled to sue before the Supreme Court, while in fact the appeal and cassation were permissible.
- 6 The resolution of the Regional Court in Warsaw of 24 October 2006, III AUz 201/2006, LexPolonica No. 1218494; Decision of District Court in Białystok of 12 March 2013, III AUa 949/12, LEX 1293585, where the Court states that “in the situation when the party has an adequate knowledge of the rules according to which the proceedings are conducted, the court’s refusal to award a legal assistant ex officio cannot lead to invalidity of the proceedings due to the party’s being deprived of the possibility to defend his or her rights. Invalidity justified by such a reason arises when the party was deprived of the opportunity to act against their will. It should be self-evident that the party’s applying to award him or her a solicitor ex officio does not obligate the court to award it. The decision to grant such a solicitor is given when the court decides that there is a need for a solicitor to participate in the proceedings (Art. 117 § 1, PCCP). Such a situation takes place when the party’s incompetence or the legal and subject matter complexity of the case deprive the party of the possibility to proceed in an adequate way”.
- 7 Verdict of the European Tribunal of Human Rights of 16 October 2012 in the case *Piętka vs. Polska*, 34216/07, where the Tribunal decided that the court fees can limit the access of a party to the court. It depends on the party’s ability to cover the costs, as well as on the stage of the proceedings at the time when they are imposed on the party.
- 8 Art. 45 § 1, PLC: “If a labour court determines that the termination of an employment contract concluded for an indefinite period of time is unjustified or violates the provisions of law on serving notice on employees, the labour court, at the demand

of an employee, will declare the notice of termination ineffective, and if the contract has already been terminated – will decide on reinstating the employee in his job on the previous conditions, or on compensation”. Cf. Nowik, 2012, p. 230 to compare with the regulation on termination fix-term contract with violation the provisions of law.

- 9 Art. 47(1) PLC: “The compensation referred to in Article 45 is due at the level of remuneration for the period of between 2 weeks and 3 months, though not less than the remuneration for the period of notice”.
 - 10 The prosecutor has a competence for taking the case to the court under Art. 7, PCCP and Art. 55-60 PCCP to maintain law and order and to secure the citizens’ rights and public interest. The competences of an ombudsman are regulated under the Act of 15 July 1987 on Ombudsman.
 - 11 Art. 22 § 1, PLC: “By establishing an employment relationship, an employee undertakes to perform work of a specified type for the benefit of an employer and under his supervision, in a place and at the times specified by the employer; the employer undertakes to employ the employee in return for remuneration”.
- Art. 22 § 1(1) PLC: “Employment under the conditions specified in § 1 is considered as employment on the basis of an employment relationship, regardless of the name of the contract concluded between the parties”.
- Art. 22 § 1(2) PLC: “Employment contracts cannot be replaced with a civil law contract where the conditions of the performance of work specified in § 1 remain intact”.
- 12 K.W. Baran states that establishing “the existence of substantial prerequisites for claiming on behalf of an employee in order to recognize the labour relation rests solely with the labour inspector and it is not covered by labour court’s review”.
 - 13 The previous legal regulation which does not exist now (Ordinance of the Ministry of Justice of 10 November 2000 on the roll of social organizations entitled to act before the court on behalf of or in the interest of citizens, O.J.2000.100.1080) indicated in § 6 a list of social organizations entitled to act as a party in labour law proceedings, which included for instance: trade unions, human rights’ protection organizations, associations for disabled persons, etc., while the current regulation refers to statutory goals of NGO without creating a closed list of their types. However, comparing these provisions leads to a conclusion that the scope of indicated organizations in both cases is similar.
 - 14 Under general rules (§ 6 FLA) the minimal fee for a solicitor’s legal assistance in pecuniary claims depends on the value of the object of the dispute; for example, if the value of the dispute is below 500 zlotys (120 euros), it is 60 zlotys (14 Euros); if the value of the dispute is 500-1500 zlotys, it is 180 zlotys; and if the value of the dispute is 1500-5000 zlotys, it is 600 zlotys, etc. Under § 11, point 1.2. and 1.5., the minimal fees in pecuniary labour law cases are in general 50% or 75% of fees in civil cases.