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EVOLUTION OF PROCEEDINGS IN MATTERS OF LABOUR LAW IN POLAND

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Abstract

A debate regarding the shape and form of civil procedural law and the optimum structure and systematics of the Code of Civil Procedure has been ongoing in Poland for years. Nowadays, labour law cases are examined in separate proceedings – a variation on trial. Deviations from general procedural rules tie in with the peculiarities of such litigation, its social importance and gravity, and the nature of the legal relationship subject to protection. Special-purpose legal regulations have been designed to protect the employee. They augment the procedural position of the subject recognised as the so-called vulnerable party in litigation with the employer. The scope of introducing separate proceedings is determined by intricate and complicated definitions of phrases such as *"labour law cases"* and *"employee"*.
Preserving such a judicial trial model will encounter criticism in Poland, given the postulate of uniformity in examining civil law cases, and the belief that separate proceedings in labour law cases are a relic of previous structures (so-called socialist trials) and the contemporaneous political system in Poland, not to mention the confidence that the model in question does not correspond with contemporary reality or labour market requirements. An additional argument in favour of eliminating the solution involved the introduction of other separate (subject-dispersed) proceedings in cases involving consumers in 2023, also designed to boost the so-called vulnerable party in judicial proceedings. Regardless, one ought to bear in mind that substantive law provisions are regulated by a separate law (the Labour Code), whereas the need for legal and procedural protection for employees in Poland remains essential, as duly proven by the complex and multi-stage evolution of related legal regulations over the last several dozen years.

Keywords: Proceedings under civil law, labour law, justice system, protecting vulnerable parties of legal relationships.

1. Introduction

The need to provide special protection to employees dates back to the 18th and 19th century, and the contemporaneous changes to economic and social relations in the aftermath of the industrial revolution. The need to regulate the *"social matter"* prevailed across all European countries, notions of improving labour conditions in individual socio-economic systems clashing with respective revolutionary programmes[863]. All have contributed to the development of labour law; while a derivative of civil law and remaining in close association therewith, it has nonetheless been most usually considered a separate regulatory branch. Labour law is a social policy implement, the state obliged to intervene in assorted ways in the area of labour relations, which should not be formed exclusively through full freedom of parties, and/or the liberty to enter agreements.

Science and the law of procedure in Poland recognise a number of litigation (dispute-based proceedings) varieties, wherein two groups can be identified: regular (typical, ordinary) proceedings designed to examine

[863] Florek (2016), p. 981.

the majority of cases under civil law pursuant to regular processual forms; and extraordinary proceedings referred to as separate, established for purposes of specific categories of cases. In terms of structure, ordinary proceedings remain the principal solution, provisions regulating them applicable as required in all separate proceedings.

In Poland, labour law cases are examined in separate proceedings not identifiable as an individual course of judicial preliminary proceedings: the procedural framework spans assorted categories of separate proceedings[864]. Proceedings in matters of labour law have been identified on the basis of a subjective criterion, their importance further tying in with expansive and comprehensive substantive regulation ensconced in the Labour Code Law[865]. Substantive law has been designed to provide employees with a minimum of rights and maximum of responsibilities, and restrict sanctions for any potential breach of the latter[866]. Conversely, processual law pondered herein serves the purpose of providing employees with supplementary privileges to the end of guaranteeing an authentically equal playing field for parties to judicial dispute[867]. It is conducive to actual elimination of labour law provision breaches, such as curbing specific employee rights.

Special-purpose legal regulations have been designed to protect employees in dispute before a court of law. In the case in point, derogations from general preliminary procedure rules arise from the specificity of court cases, social gravitas and significance, and nature of the legal relationship to be protected. They augment the procedural position of the subject recognised as the so-called vulnerable party[868] in litigation with the employer. Not only does the statistical employee find him- or herself in a worse economic position – he/she is unfamiliar with procedural law to any extent effective in terms of having his/her rights safeguarded. The scope of introducing separate proceedings is determined by intricate and complicated definitions of phrases such as *"employee"* or *"labour law cases"*[869].

Preserving such a judicial trial model will encounter criticism in Poland, given the postulate of uniformity in examining civil law cases. It is claimed by some that separate proceedings in labour law cases are a relic of previous structures (so-called socialist trials) and the contemporaneous political system in Poland, not to mention the belief that the model in question does not correspond with contemporary reality or labour market requirements. An additional argument in favour of eliminating the solution bases on the introduction (in 2023) of other separate (subject-dispersed) proceedings in cases involving consumers, also designed to boost the so-called vulnerable party in judicial proceedings.[870] Regardless, one ought to bear in mind that substantive law provisions are regulated by a separate law, whereas the need for legal and procedural protection for employees in Poland remains essential, as duly proven by the complex and multi-stage evolution of related legal regulations over the last several dozen years. It would therefore be justified to reference legal solutions applied in pre-war Poland and the post-war Polish People's Republic period (so-called socialist trials), as well as present-day codification.

[864] Manowska (2010), p. 11.
[865] Labour Code Law of June 26th 1974 (uniform text: *Journal of Laws* 2022, item 1510).
[866] Szubert (1970), p. 61.
[867] Góra-Błaszczykowska (2008), p. 51.
[868] Zembrzuski (2016), p. 843.
[869] The term primarily references cases involving claims under employment agreements and/or related issues; cases to determine the existence of an employer-employee relationship; claims under other legal relationships labour law provisions apply to; and claims sought from employers pursuant to provisions regarding accident at work and/or occupational disease benefits.
[870] Zembrzuski (2023), in press.

2. Transformations to the labour law justice system in Poland

In the wake of Poland regaining independence in 1918, as many as four processual law systems prevailed across Polish territories, all tying in with the legislation of partitioning states: Austrian, German, Russian and Hungarian. Influences of two legislative systems (Roman and German) kept colliding[871]. In order to lay down foundations for modern procedural law in Poland, achievements of assorted legal orders had to be drawn from, a phenomenon referred to as a *"legislative kaleidoscope"*[872]. As a symbol of unity of the state idea and state unification, unification of law was of paramount importance. While the act of protecting the employee was originally of public law nature, the evolutionary introduction of individual legal remedies arose from inevitable growth of law, and gradual development of the rule of law[873]. Judiciarisation of employer-employee relations was a process as intricate as it was long-term. Methods of expanding the scope of employee protection became ever-more proliferate.

While Poland's former 1930 Code of Civil Procedure[874] did recognise the specificity of some matters under labour law, it generally provided for a uniform rule for such cases, i.e. no significant or special rules to protect the employee, or strengthen his/her procedural position[875]. Efforts to expand the circle of persons protected by the state based on assumptions to the effect of a uniform level of protection extended to all entities, their qualities or type of work performed notwithstanding[876]. Established for the first time in 1928[877], contemporaneous labour courts[878] were nonetheless formed as special-purpose courts operating outside the common court system[879], professional justices and jurors ruling therein[880].

System, social and political changes introduced after World War II had major influence over the evolvement of the justice system and processual law form alike. While disputes under labour law formally fell under common court cognisance in 1950[881], the change was partial and ostensible in nature[882]. Multiple community-based justice system bodies, such as factory or field reconciliation committees, gained true and dominant significance in the 1950s, ruling responsibilities entrusted to trade union representatives and/or state-owned enterprise management members. Until as late as the mid-1970s, employee disputes had, in all actuality, been resolved by non-judicial bodies[883]. That was when a decision was made[884] to move district labour and social security courts beyond the common courts hierarchy again, the latter – staffed by professional justices and jurors – serving as an appeal structure for reconciliation committee rulings. Poland thus had a mixed legal protection system, since community-based committees used to be the first instance scheme, with appeals entrusted to actual courts of law. The arrangement is referred to as a community-

[871] Zembrzuski (2017), p. 130.
[872] Hroboni (1933), p. 3.
[873] Raczyński (1930), p. 5.
[874] Ordinance of the President of the Republic of Poland of November 29th 1930, Code of Civil Procedure (*Journal of Laws* 1930, No. 83, item 651).
[875] Zieliński (1985), p. 307.
[876] Florek (2016), p. 983.
[877] Labour Courts Ordinance of the President of the Republic of Poland of March 22nd 1928 (*Journal of Laws* 1928, No. 37, item 350).
[878] On the magistrates' and district court level.
[879] Such nature of labour courts was duly preserved pursuant to the Labour Courts Law of October 24th 1934 (*Journal of Laws* 1934, No. 95, item 854).
[880] Appointed by trade unions and employers' organisations.
[881] The decree of the Council of Ministers of October 26th 1950 on transferring labour justice cases to common courts (*Journal of Laws* 1950, No. 49, item 446), came into force on January 1st 1951.
[882] Baran (2010), p. 1.
[883] Notably, though, the establishing of the Chamber of Labour at the Supreme Court in 1962 was of considerable significance, the Chamber charged i.a. with the oversight of reconciliation committee rulings.
[884] District Labour and Social Security Courts Law of October 24th 1974.

judicial system[885], its development fostered by the enactment of the Labour Code as of July 5th 1974, the law introducing clearer order into matters of protecting the employee under substantive law.

Qualitative transformation was only brought through 1985 changes[886], once labour courts were made part of the common court structure[887]. Labour divisions of district courts would examine labour law cases in the first instance, labour and social security divisions of voivodship (regional) courts serving as second-instance bodies[888]. Embedding labour law justice into the common court system tied in with the liquidation of factory and field reconciliation committees. *De lege lata*, labour law cases are tried by specialised organisational units of common courts on all levels. Contemporarily, labour courts have extensive cognisance, having become a permanent fixture in Polish judicial structures.

3. Processual law in labour law cases

Regardless of the intricate labour law judiciary evolution, the matter of regulating proceedings concerning labour law cases in procedural law was of considerable significance. Decisions had to be made as to the extent to which respective disputes ought to be governed by separate principles, and/or tried pursuant to uniform rules. As of the date of the binding 1964 Code of Civil Procedure coming into force[889], it was decided that regulations concerning labour law cases would prevail under separate proceedings (Articles 459-477). Yet the decision as such did not arise from an effort to accelerate the course or simplify the nature of civil law cases of a specific category[890]. In this particular instance, prevalent factors have ultimately included the specificity and nature of employee-related cases, combined with social and economic changes taking place over the years.

The specific nature of legal relations was conducive to the introduction of particular employee-centred processual privileges[891]. The solemn importance and forceful social interest of labour law cases[892] were consistently emphasised in Supreme court adjudication, the latter a legacy of the so-called socialist trials period[893]. Making it easier for employees to seek redress before courts of law, enhancing employee rights protection in the course of judicial proceedings, and reducing the extent of formalities in proceedings with intent to expedite relatively swift case closure became determinants for modifications to general processual rules[894].

Contemporaneously outdated, attempts at combining employee right breaches with violations of the Polish People's Republic interests collide with assumptions for a judicial process designed to follow classical rules, the most significant of which include principles of truth and equality of parties, adversarial and dispositive principles, and that of formalism of proceedings[895]. Post-1989 watershed changes in Poland

[885] May (2022), p. 281.
[886] Law of April 18th 1985 on courts examining cases under labour and social security law (*Journal of Laws* 1985, No. 20, item 85).
[887] Szubert (1988), p. 1.
[888] Labour and social security divisions were introduced to appellate courts in 1990. The move tied in with the reconstruction of the common court system in Poland, in turn preceding the restoration of the appellate-and-cassation system intended to replace the audit and review system, the latter typical for the socialist trials era.
[889] Code of Civil Procedure Law of November 17th 1964 (uniform text: *Journal of Laws* 2021, item 1805, as amended).
[890] This applied i.a. to injunction or writ-of-payment proceedings.
[891] Ereciński (2009), p. 8.
[892] Resolution of the Civil Law Chamber of the Supreme Court of June 27th 1953, file ref. No. C. Prez. 195/52, Supreme Court Adjudicature 1953, No. 95.
[893] Jodłowski (1961), p. 15.
[894] May (2021), p. 319.
[895] Zembrzuski (2018), p. 5.

began gradually eliminating investigative principle components from procedural law. They restrained the activeness of the court of law, its role that of an impartial arbitrator ruling with regard to the justifiability of processual claims submitted by respective parties. Such transformations have formed the contemporary judicial process in Poland, bringing its inherent solutions and mechanisms closer to those followed across Western Europe. Nonetheless, the assumption of particular social importance of the category of cases pondered herein seems to be timeless in nature. The prevalent political system regardless, it remains a significant guideline in judicial practice[896], albeit not every postulate to expand employee rights may prove indispensable or indeed purposeful in terms of safeguarding implements.

Notable peculiarities typical for labour law proceedings in Poland include i.a. the inadmissibility of rejecting a suit for reason of judicial channel mis-identification[897], particular jurisdiction-related regulations[898], an expanded catalogue of entities admissible as attorneys *ad litem*[899], abandonment of mechanisms restricting the admissibility of evidence gathered through witness testimony and the hearing of parties[900], examining dispositive actions accounting for the additional condition of the employee's legitimate interest[901], the option of courts recognising other alternative claims employees may be eligible for[902], and/or the possibility of enforcing a non-final judgment in a part not exceeding one month's salary[903]. It is further noteworthy that in disputes under labour law, the court has a considerably greater capacity to take *ex officio* action; occasionally, the burden of proof may be reversed, shifting from the employee acting as the plaintiff onto the defendant employer. Unambiguously pro-employee, such regulations make it easier for employees to seek redress.

Over the years, the legislator has been gradually renouncing specific solutions under separate proceedings. Examples include the elimination[904] of the preliminary employee claim examination mechanism[905], and the option of adjudicating on an employee's claim beyond original demands[906]. The significance of the dispositive and adversarial principles has thus been showcased, the private nature of claims and principle of autonomy in litigation duly emphasised. Notwithstanding the above, the regulatory core of separate proceedings in labour law cases has not been modified. Based on the intent to express the principle of employee prerogative, the unilaterally mandatory provisions of labour law have been preserved, and continue to determine the specificity of separate proceedings in labour law cases in Poland.

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[896] Zieliński (1969), p. 92.

[897] A suit cannot be rejected for reasons of judicial channel inadmissibility, should another body be identified as competent to examine the case. Under such circumstances, the court of law shall duly hand the case over to aforesaid body. Should, however, said body have previously self-declared itself as non-competent, the court of law shall examine the case (Article 464 §1 of the Code of Civil Procedure).

[898] Action may be brought before a court of general jurisdiction over the defendant, or a court in whose jurisdiction employment-related duties are, were, or were to be performed (Article 461 §1 of the Code of Civil Procedure).

[899] An employee may be represented by a professional plenipotentiary (barrister or legal advisor), and/or by a trade union representative, labour inspector, or employee of the entity the principal is or has been employed at (Article 465 §1 of the Code of Civil Procedure).

[900] In cases where documentary evidence is or should be submitted (Article 473 §1 of the Code of Civil Procedure).

[901] E.g. with regard to assessing the admissibility of a court settlement, action withdrawal, or appeal measure (Article 469 of the Code of Civil Procedure).

[902] E.g. by awarding compensation, should reinstatement not be possible.

[903] By rendering the judgement enforceable with immediate effect (Article 477^2 §1 of the Code of Civil Procedure).

[904] Law of July 4th 2019 with regard to amending the Code of Civil Procedure Law and selected other laws (*Journal of Laws* 2019, item 1469).

[905] Purposes of aforesaid proceedings have been absorbed by general regulations regarding preliminary sessions preceding civil law trials. See Orzeł-Jakubowska (2021), p. 91.

[906] Law of July 2nd 2004 with regard to amending the Code of Civil Procedure Law and selected other laws (*Journal of Laws* 2004, item 1804).

4. Justifiability of preserving regulations regarding separate proceedings for labour law cases

A debate regarding the shape and form of civil procedural law and the optimum structure and systematics of the Code of Civil Procedure has been ongoing in Poland for years[907]. The processual law is expected to be a coherent and non-casuistic piece of legislation, safeguarding the right to fair trial in private dispute cases openly, fairly and without undue delay. This ties in with appeals for processual regulations to be simplified, and judicial proceedings – under civil law in particular – to be deformalised and expedited.

In aforesaid context, the phenomenon of progressive multiplication of separate proceedings has been encountering disapproval. The Code of Civil Procedure identifies nearly twenty particular proceedings recognised as separate in status; there is not even a consensus in reference literature as to their number[908]. In these terms, Poland has for years been listed among the infamous *"world leaders"*[909]. Labour law and social insurance cases apart, examples include proceedings in matters of matrimony, parent-child relationships, commerce, intellectual property, and infringement of possession, as well as numerous summary proceedings, such as injunctions, writ of payment, or simplified restructuring proceedings. Engaging in legislative works in the area of separate proceedings invariably prompts analyses of the nature and purpose of individual solutions. The question concerning the advisability of creating or maintaining specific exceptions to the ordinary process has resurfaced, including the justifiability of such solutions bestowing the nature of separate proceedings upon individual procedures[910].

While proceedings under civil law have never been, and – in all likelihood – never shall become uniform in nature, the number and scope of special-purpose (separate) proceedings triggers justifiable objections, producing a conclusion that the model of and relations behind ordinary and separate proceedings, respectively, have been transformed[911], the negative trend ever more profound. The principle-to-exception ratio has been reversed. The practice of introducing successive separate proceedings is harmful to the structure of the Polish Code of Civil Procedure, amassing practical processual law problems, not least in terms of the ever-increasing issues with applying the occasionally contradictory and non-complementary legal provisions[912]. Such are the unavoidable consequences of distorting in-house system interdependencies in proceedings under civil law[913]. The aforesaid clashes with the postulate and expectations of bestowing the quality of effectiveness upon civil law proceedings, i.e. the capacity for issuing correct judicial rulings in a possibly prompt procedure[914]. Excess differentiation of processual law regulations depending on the category of examined cases should be deemed inappropriate.

An attempt at restoring a uniform civil procedural model does not have to – and even should not – entail complete elimination of separate proceedings in Poland. While one might well ponder the optimum form of proceeding in cases under labour law alongside a catalogue of procedural solutions, its functioning *per se* is a necessity, the proposition backed by the aforementioned need to safeguard employee privileges, and the nature of cases examined[915]. System transformation and associated socio-economic changes involving

[907] Ereciński (2011). p. 3.
[908] Grzegorczyk (2011) p. 71.
[909] Zieliński (1985), p. 311.
[910] Zembrzuski (2022) p. 248.
[911] May (2022) p. 279.
[912] The introduction of a mechanism involving the applicability of newly-established proceedings inasmuch as that they do not contradict provisions of a given section is an increasingly common practice accompanying the insertion of new separate proceedings in Poland. Contrary to appearances, the mechanism is incapable of resolving the growing doubts in practice.
[913] Cieślak (2013) p. 132.
[914] Zembrzuski (2021) p. 48.
[915] Ereciński (2009) p. 14.

a transition to market economy notwithstanding, no need arose to eliminate peculiarities serving the purpose of duly protecting the employee as a vulnerable party in legal relationships[916]. Separate proceedings should continue to foster the protective purpose of labour law norms in their processual aspect with legitimate employee interests duly recognised, the time it takes to try a case under civil law among the most significant. Particular processual prerogatives can do more than impact the course of judicial proceedings – by indirectly aiding assisting the process of resolving multiple social and economic issues, they take on powerful axiological significance. Processual employee-shielding guarantees have to combine ubiquitous legal protection with particular institutions of the same, against the backdrop of broadly defined labour law.

Furthermore, one would do well to bear in mind that the organisational-and-functional separation of labour courts within the common courts' structure, a feature well-grounded in the Polish legal order, has contributed to a process of specialisation among justices adjudicating in employee-employer disputes. Source literature posits that preliminary proceedings be simplified through the elimination of the majority of separate proceedings, while preserving the specialisation of justices responsible for ruling in certain case categories[917]. Therefore, it seems that potential renunciation of separate proceedings in labour law cases, and examining the same pursuant to general civil law processual rules, would not necessarily entail a general restructuring of common judiciary organisational hierarchies[918].

While the respective Polish debate may ostensibly be local in nature, its general significance to the development of labour law – in terms of substantive and processual provisions alike – makes it considerably more important. It becomes part of a discussion regarding social changes in the global world. The labour law is facing increasingly novel challenges[919]. Employee protection evolvement is an invariable combination of progress in terms of the safeguarding idea as such with the ever-increasing awareness of the need to foster it, and expand legal institutions serving the purpose[920]

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[916] Florek (2016) p. 981.
[917] Ereciński (2011) p. 8.
[918] May (2022), p. 289.
[919] Pisarczyk (2021), p. 149.; Dzienisiuk (2021), p. 69.
[920] Florek (2016), p. 988.

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