

Editors

Izabela Florczak, Zbigniew Góral

Developments in Labour Law from a Comparative Perspective



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UNIwersytetu
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Izabela Florczak, Zbigniew Góral – University of Łódź, Faculty of Law and Administration
Labour Law Chair, 90-232 Łódź, Kopcińskiego 8/12

REVIEWER

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e-mail: ksiegarnia@uni.lodz.pl
tel. (42) 665 58 63, faks (42) 665 58 62

TABLE OF CONTENTS

Introduction.....	7
Darja Senčur Peček – The self-employed, economically dependent persons or employees?	9
Jaana Paanetoja – The broadening interpretation of ‘worker’ in the European Union	25
Izabela Florczak, Barbara Muszyńska – Selected differences between civil law and employment law contracts related to work on the grounds of the Polish legislation	43
Juhani Korja – Surveillance in the workplace and worker privacy	59
Karolina M. Szymorek-Chachula – Concluding an employment agreement via electronic media	73
Senad Jasarević – Serbian anti-discrimination labour legislation	85
Tatiana Wrocławska – Permanence (stability) of an employment relationship of older employees – analysis of changes	99
Bojan Urdarevic – Perspectives of the right to strike in the Republic of Serbia	119
Zbigniew Góral, Ewa Staszewska – Polish labour law 10 years after the accession to the European Union (certain issues linked to the determination of the direction of change)	133

INTRODUCTION

The need for comparative studies of labour law seems indisputable, inasmuch it arises from the international character of many labour law norms, as well as from the interconnection between working and social relations which are often conditional and international. Thus, it appears that academic research into the field of labour law would be incomplete without its comparative facet. For these reasons, numerous networks of international cooperation between labour law scholars are being established on both formal and informal levels. The underlying idea is to find a common denominator for the discourse concerning the present condition of labour law, and pathways for its further development. The *Labour Law Education Society*, established in 2012 at the initiative of Prof. Charles F. X. Szymanski, is one of the networks attempting to accomplish this objective. Its early days were crowned with *Developments in Labour Law From a Comparative Perspective*, a conference held on 23rd–24th of May at the Allerhand Institute's branch in Cracow, Poland. The present volume, which is an outgrowth of that conference, presents certain current issues frequently discussed in the realm of labour law. Also, it contains chapters considering the most significant developments within the discipline.

As its paradigm is changing to the requirements of the post-industrial economy, in its nature work is becoming less subordinated. Therefore, it appears natural that the legal status of worker in labour law relations has become one of the main strands of research. The issue is approached from different vantage points in three chapters of this monograph. In the first one, Darja Senčur Peček analyses various aspects of self-employment, considering the degree of similarity and dissimilarity in the legal status of self-employeds and employees. The above leads us directly to the discussion concerning the notion of 'worker', commonly used in EU legislation, which becomes the focal point of Jaana Paanetoja's analysis. Paanetoja attempts to ascertain what characteristics are required for worker to be protected by EU legislation. The last chapter devoted to the changes in the status of worker as an object of labour law is that by Izabela Florczak and Barbara Muszyńska, who explore selected differences between labour law employment and the economically competitive civil law employment.

The character of contemporary labour law is increasingly shaped by modern technologies, which affects many dimensions of working relations. This influence is studied by Juhani Korja and Karolina M. Szymorek-Chachuła. Korja discusses the concepts of surveillance in the work place, employee privacy, and changes in the working environment resulting from technological development. Szymorek-Chachuła focuses on the use of modern technologies with regard to the possibility of concluding employment contracts.

The present monograph also reports on other subjects that are relevant to the current research in labour law and its developments. Senad Jasarević outlines Serbian anti-discriminatory regulations which, given the country's non-EU status, seem crucial in terms of the future adjustments to EU legislation. Tatiana Wrocławska, on the other hand, analyses employment stability among older employees. In yet another general contribution to this book Bojan Urdarevic considers the right to strike in Serbian legislation. The monograph ends with a chapter by Zbigniew Góral and Ewa Staszewska, who summarise the changes in Polish labour law legislation in the past ten years of Poland's EU membership, providing a valuable point of reference for comparative studies.

As the scope of developments in labour law seems extremely wide, an exhaustive compilation would be a formidable task. For this reason, the present book seeks to present only a selection of developing tendencies, all of which, however, form a reliable basis for further comparative studies both within and without the *Labour Law Education Society*.

Izabela Florczak
Zbigniew Góral

*Darja Senčur Peček**

THE SELF-EMPLOYED, ECONOMICALLY DEPENDENT PERSONS OR EMPLOYEES?

1. Introduction

Labour law traditionally protects employees, i.e. persons who perform work within the framework of an employment relationship. The main characteristic of employment relationship was (and still is) organisational integration of the person who carries out work in relation to the other contractual party, which allows the latter (employer) to direct and supervise the work. The employee does not look for opportunities in the market, but only works for the employer, is not in charge of the business, but instead undertakes to perform a specific job (part of the business), under the direction and supervision of the employer. As the weaker party in this relationship, the employee may not be able to ensure adequate regulation of their rights and obligations under the contract alone; therefore, labour legislation provides him with minimum rights, while additional rights may be agreed upon in collective agreements.

Unlike employees, the self-employed are persons who operate independently in the market, perform work on their own account, possibly for a number of contracting authorities, relationships with whom are regulated by civil or commercial contracts. They are thus subjects to the rules of corporate law, law of obligations, or commercial law, with labour law mainly applicable if they are also employers (if they employ workers).

Currently, an increasing number of persons carry out their work on a self-employed basis, i.e. without the employment relationship, however, not all of them

* Ph.D., Associate Professor at the Faculty of Law, University of Maribor, Faculty of Law, Labour Law Chair, 2000, Maribor, Mladinska 9, Slovenia.

perform their work in the market, at their own risk and independently. In order for labour law to ensure protection for every person who carries out their work in pendant relationships and is in need of protection, it must also deal with the issue of distinction between employees and self-employed, and determine who should be protected by labour law (in full or in part)¹.

The fact is that it is not always easy to distinguish between employees and self-employed. This is so because between a typical employment relationship and a typical relationship between two independent contractors there is a range of relationships where elements of the employment relationship are not explicitly expressed, or where elements of both relationships are intertwined. This is a so-called grey area between labour law and commercial law² which is ever increasing.

This grey area also includes those economically dependent persons who are self-employed, but are also in need of protection due to their economic dependence on the contracting partner (client), similarly to employees.

A special category³ consists of persons who only appear to be self-employed, but actually carry out their work in a relationship where elements of employment relationship are present. These persons must be fully protected by labour law.

This article starts with a discussion of the concept of a self-employed person, different categories of self-employed and their legal status. It then contemplates economically dependent persons, their definition and legal protection. Special emphasis is put on the problems of false self-employment and on a solution of this issue.

2. The self-employed and their legal status

The intention of labour law is to protect employees as the weaker party in the employment relationship. Labour legislation (and case law in some jurisdictions), therefore, provides a definition of an employee or an employment relationship, or sets out certain criteria that a person must meet to be considered an

¹ In this respect, see: *Thematic Report 2009, Characteristics of the Employment Relationship, European Network of Legal Experts in the field of Labour Law*, 2009; G. Davidov, B. Langille (ed.), *Boundaries and Frontiers of Labour Law*, Hart Publishing, 2006. See also: D. Senčur Peček, *Komu zagotavljati delovnopravno varstvo*, Podjetje in delo, 6–7/2007, p. 1223–1237.

² See Green Paper: *Modernising labour law to meet the challenges of the 21st century*, COM (2006), 708 final, p. 11; A. Perulli, *Economically dependent/quasi subordinate (parasubordinate) employment: legal, social and economic aspects, a study prepared for the European Commission*, Brussels 2003, p. 15; E. Sanchez Torres, *Self-employed Worker: The Spanish Law on Dependent Self-employed Workers: A New Evolution in Labor Law*, "Comparative Labor Law & Policy Journal" 2010, Vol. 31, No. 2, p. 3.

³ Which, according to some, also falls in a grey area, or is even described as a primary grey area. See: A. Perulli, *op. cit.*, p. 15; E. Sanchez Torres, *op. cit.*, p. 3.