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PUBLIC INTEREST IN THE ENFORCEABILITY OF LABOUR LAW WITH AN ACCENT ON THE REMUNERATION OF DEPENDENT WORK

Abstract

The presented article focuses on the protection of employees' income, one of the many public interests the state pursues. Legislation creates several levels of employee income protection, from which the public interest of the state in this area of regulation can be induced. The article describes the substantive and procedural instruments of employee protection and compares specific forms of regulation in different legal systems. Based on these findings, appropriate *de lege ferenda* changes to regulation are presented, proposed, and argued. Finally, the article draws attention to the close connection between the world of work, labour regulation, financial (tax) law and economics, and hopes to instigate discussions between experts across the different legal sectors.

KEYWORDS

public interest, enforceability of employees' subjective rights, instruments assisting in compliance with remuneration rules, Labour Law

SŁOWA KLUCZOWE

interes publiczny, możliwość egzekwowania praw podmiotowych pracowników, instrumenty wspomagające przestrzeganie zasad wynagradzania, Prawo pracy

1. INTRODUCTION

The state pursues many public interests important for the functioning of society, the protection of key common goods¹ and the improvement of the quality of life of its citizens. The remuneration of employees for dependent work² can be found among the common goods (public goods³) important to society as a whole that it seeks to achieve. Legislation creates several levels of income protection for employees, from which the public interest of the state in this area of legal regulation can be deduced. We can name the instruments of substantive protection, both public and private law, and the instruments of procedural law. This article introduces the individual instruments in more detail, classifies them clearly, and compares their specific forms, thus comparing Czech and Polish legislation. On the basis of the findings, the appropriate (successful) existing instruments helping employees to effectively assert their subjective rights related to remuneration are highlighted and their usefulness (effectiveness) is justified. Appropriate changes to the relevant *de lege ferenda* regulation are also proposed and argued. General ideas worth following are named.

It should be pointed out at the outset that non-compliance with the rules on the remuneration of employees has significant consequences not only in the world of work itself but also in the sphere of finance. Non-compliance with the Labour Code's standards on the remuneration of employees has a legitimate impact on tax collection. Even worse is the situation with the concealment of the basic employment relationship, where a civil (commercial) relationship is simulated *vis-à-vis*

¹ F. Schoch, § 49 *Widerruf eines rechtmäßigen Verwaltungsaktes*. Marginal no. 118–120, (in:) F. Schoch, J-P. Schneider (ed.), *Verwaltungsrecht VwVfG.*, C.H. Beck, 2022, 3rd edition, p. 3700.

² In particular, the public interest in achieving a minimum level of income for the performance of dependent work, which is embodied in the institution of the minimum wage.

³ K. A. Pape, *WHG § 15 Gehobene Erlaubnis*. Marginal no. 8, (in:) R. von Landmann, G. Rohmer (ed.), *Umweltrecht Werkstand*, C.H. Beck, 2022. 99th edition, p. 12 000.

the public authorities, while at the same time, the employment relationship is dissimulated. However, this article will not discuss illegal employment any further and will focus on the violations of the rules on remuneration of employees where the subjects of the basic employment relationship do not disguise the dependent performance of work.

Moreover, work is closely linked to the economy as employees are the key factor of production for entrepreneurs and the economy as a whole. Demotivated, illegally remunerated employees may decide to stop doing dependent work, may choose not to work, and may choose to run a business or do work under the guise of what in Czech is called *švarcsystém* (meaning doing dependent work covertly). All of these changes then affect the production and consumption of goods and services. The world of work, labour regulation, is thus unquestionably closely intertwined with the world of finance, economics, and financial (tax) law. If the public interest is discussed in the context of finance and economics, the discussion should not be conducted without the topic of labour regulation. It is with this aim, among others, that this article has been written.

2. DEFINITION OF BASIC TERMS

2.1. PUBLIC INTEREST

Talking about the public interest in compliance with the remuneration rules, we refer to the previously established meanings of the mentioned term. However, the public interest can generally be understood in at least two senses. Firstly, as an indicator determining the direction of policy and, secondly, as a concept with legal content. In the literature, the public interest is thus understood⁴ in the first sense as a non-private interest, an interest of society at large,⁵ precisely undefined and undefinable. This does not mean, of course, that the public interest cannot be consistent with the private interest of a particular individual. Simply put, the literature points out that the public interest in this sense is one of the material sources of law.⁶

In the second sense of the word, we can also operate with it in the context of dealing with legal norms since it is a legal corrective affecting the creation, inter-

⁴ K. Weber, *Öffentliches Interesse*, (in:) K. Weber (ed.), *Rechtswörterbuch*, C.H. Beck, 2022, 24th revised edition.

⁵ G-M. Knopp, J. Müller, *WHG § 17 Zulassung vorzeitigen Beginns*. Marginal no. 52, 53, (in:) F. Sieder, H. Zeitler, H. Dahme, G-M. Knopp (ed.), *Wasserhaushaltsgesetz, Abwasserabgabengesetz: WHG*, C.H. Beck, 2022, 57th edition, p. 4600.

⁶ K. Eliáš, *Veřejný zájem (Malá glosa k velkému tématu)*, Ad Notam, 1998, Vol. 5, p. 103.

pretation, and application of objective law.⁷ Eliáš⁸ adds to this normative understanding of the commented concept that the public interest ‘represents part of the substance of a certain legal norm. As such (in this sense), it represents a problem of interpretation of an individual legal rule’.⁹

The legal concept of ‘public interest’ (in its second meaning) is thus treated directly by positive law itself. For example, the Czech Civil Code (hereinafter referred to as ‘the Civil Code’) mentions it in connection with the protection of a person’s image and privacy or in connection with the exceptions to this protection (see Section 88(2) of the Civil Code¹⁰), and it also mentions it in connection with the appointment of a guardian for a person by a court, which is to take place if it is necessary to defend a person’s interests or if the (just mentioned) public interest requires it (see Section 465 of the Civil Code¹¹). Furthermore, the occurrence of the term in positive law can be referred to, e.g., Section 1032 (public interest and necessary way), Section 1037, Section 1038 (public interest and limitation of the right of ownership) of the Civil Code. In the context of relative property rights, the term of public interest is used in Civil Code, for example, in the case of donation (Section 2064), lease (Section 2288), and health care (Section 2650).

In the following part of the text, the public interest will be treated in its first meaning, i.e., as an indicator for policy making, for the creation of legal norms.

It may be noted that the public interest in labour relations is specified by the principles of labour law. Thus, we can speak of the public interest in the safety and health of employees at work, in a working environment free from discriminatory practices, in (fair) remuneration,¹² in the stability of employment relations (manifestations of the principle of legal protection of the employee’s position), which also protects the interest in maintaining the desired level of employment and economic growth. In all the various aspects, the public interest in respecting human rights, that is respect for the right to human dignity, can be discerned. The principles thus specify the public interest, setting out partial, yet general, objectives for the legislator’s work.

⁷ A. Gerloch, *Veřejný zájem*, (in:) D. Hendrych (ed.), *Právníký slovník*, Praha 2009. On the difference between the legal-sociological concept of public interest and the normative concept, see K. Eliáš, *Veřejný zájem (Malá glosa k velkému tématu)*, *Ibid.*

⁸ Karel Eliáš is a Czech lawyer, commercialist and the main author of the new Civil Code.

⁹ K. Eliáš, *Veřejný zájem (Malá glosa k velkému tématu)*, *Ibid.* Eliáš refers to J. Hoetzel, *Československé správní právo. Část všeobecná*, Praha 1937, p. 29.

¹⁰ ‘Consent is also not required when a likeness, a document of a personal nature or a sound or visual recording is taken or used by law for an official purpose or when someone makes a public appearance on a matter of public interest’.

¹¹ See L. Ptáček, *Komentář k § 465*, (in:) F. Melzer, P. Těgl (ed.), *Občanský zákoník – velký komentář*, Svazek III. § 419 – 654, Praha 2014, p. 136.

¹² Which is the focus of this article.

2.2. ENFORCEABILITY (REALISATION) OF EMPLOYEES' SUBJECTIVE RIGHTS

In addition to the aforementioned values, such as fair remuneration of employees, it is possible to point out another public interest in the world of work. It consists in the realisation of the rights of the subjects of law, in the enforceability of labour law,¹³ especially in the enforceability of the rights of the weaker party to the contract – employees, including the interest in the observance (implementation) of the rules relating to the remuneration of employees for the work they do. In particular, these rules are to be respected by the employer since an employee essentially goes to work to earn an income. There is thus a heightened public interest in compliance with the legal rules in this area of employment regulation.

Legal norms are to be implemented, they are not to remain only in legal texts. On the basis of this premise, the legislator should take care to create new instruments or improve existing ones. Otherwise, the law loses its purpose, which is the effective regulation of relations in society. Therefore, the following and central part of the article focuses – first in general and later in particular – on the instruments, across legal frameworks, through which the legislator seeks to strengthen the implementation of employees' rights in the area of their remuneration by the employer.

3. INSTRUMENTS ASSISTING IN COMPLIANCE WITH REMUNERATION RULES – IN GENERAL

In general, instruments to assist in compliance with labour regulation (i.e., including regulation around employee remuneration) can be divided into three categories.

- Firstly, the **instruments of public labour law**,¹⁴ which include inspection bodies that monitor whether effective legal regulation is being observed between the subjects of the underlying employment relationship. This also includes norms formulating offences and containing penalties for breaches of labour law, which act as a deterrent to the subject of the basic employment relationship, regardless of whether the liability is administrative or

¹³ See M. Blažek, *Posílená realizace práv zaměstnanců jako nová idea soukromého pracovního práva*, Brno 2023.

¹⁴ By which we mean substantive instruments. In order to be able to structure the topic more specifically, we distinguish these instruments from procedural instruments, although these also fall under the area of public law.

criminal.¹⁵ There are also other rights linked to the existence of an inspection body, such as the right to lodge a complaint with that body to initiate an inspection. The legal regulation of employers' insolvency and the state's assistance to employees should not be overlooked.

- The following are the **instruments of private labour law** which refer to employers. At a general level, we can talk about instruments that are reflected in the individual relationship between an employee and an employer, such as the possibility to claim interest for late payment¹⁶ or the possibility to terminate the employment relationship¹⁷ immediately if the employer delays the payment of remuneration. Reference may also be

¹⁵ From the Czech decision-making practice, we can point, for example, to the judgment of the Supreme Administrative Court of 25 July 2022, Case No. 6 Ads 138/2022, in which the Supreme Administrative Court considered a case where the Regional Labour Inspectorate, by its decision, found the applicant guilty of committing an offence under Section 26(1)(c) of Act No. 251/2005 Coll., on Labour Inspection, which he committed by failing to provide his employees with part of the wages for the work they had done by the end of the month following the completion of their work, in breach of Section 141(1) of Act No. 262/2006 Coll., the Labour Code. The regional inspectorate fined the applicant CZK 50,000 for the offence. Reference may also be made to the judgment of the Supreme Administrative Court of 15 June 2021, Case No. 2 Ads 370/2019, in which the Supreme Administrative Court considered a case where the employer had committed an administrative offence by failing to provide 23 employees with wage compensation. Authors' note: the decision can be found on the website www.nssoud.cz.

¹⁶ See, e.g., the judgment of the Supreme Court of 15 January 2015, Case No. 21 Cdo 403/2014, in which the Supreme Court – among other things – addressed the question of 'under what conditions and when the employer is in default of the employee's right to wages (salary) if the employee failed to appear at the specified time and place for payment and if the employer failed to send the wages (salary) to the employee at his/her own expense and risk on the next working day at the latest'.

¹⁷ On this subject, cf., e.g., the Supreme Court judgment of 14 March 2002, Case No. 21 Cdo 515/2001, in which the Court of Appeal held that the failure to pay part of the wages is also a reason for immediate termination of employment; the Supreme Court judgment of 26 April 2002, Case No. 21 Cdo 1151/2001, in which it was stated that 'The grounds for immediate termination of employment ... is given even if the employer had satisfied the employee's claim for wages or wage compensation before the immediate termination was served if the employer paid the wages or wage compensation due to the employee only after 15 days had elapsed after the wages or wage compensation were due and that the subsequent satisfaction of the employee's claim for wages or wage compensation after 15 days had elapsed may be taken into account only in the context of assessing whether the employee's conduct constituted an abuse of law'. On this topic, see also, e.g., the Supreme Court judgment of 31 October 2019, Case No. 21 Cdo 1815/2018, in which the Supreme Court addressed the question of 'whether an employee who proceeded to the immediate termination of the employment relationship on the grounds of non-payment of wages pursuant to the provisions of Section 56(1)(b) of the Labour Code abused his rights within the meaning of Section 8 of the Civil Code if he did so in a situation where he himself violated the employee's obligations arising from the employment relationship or the Supreme Court judgment of 16 December 2013, Case No. 21 Cdo 298/2013, the Supreme Court judgment of 12 October 2010, Case No. 21 Cdo 2242/2009, or the Constitutional Court judgment of 16 June 2015, Case No. II ÚS 3399/14. Authors' note: the decisions can be found on the websites www.nssoud.cz and www.usoud.cz.

made in this category to the employer's obligation to provide information on remuneration rules, whether through an individual contract, a collective agreement or otherwise. It is also necessary to draw attention to the educational activities of the private entities around the employee. By this we mean, in particular, trade unions, which can help employees to navigate through employment law.

- Last but not least, we can point to **the instruments of procedural law**. These include, in the first place, the employee's right to bring an action before the courts to claim wages (or wage compensation). This ability to assert one's rights before a judicial authority implicitly includes the power to influence the employer not to infringe the pay rules. The powers of trade unions can also be pointed out in this context – here, it is the possibility of representing employees in civil court proceedings.

Employers cannot be forced to never break employment law, and similarly, employees cannot be forced to sue their employers every time they break the law. However, in view of the public interest in ensuring that employees receive fair remuneration for their work, the legislator should continuously evaluate these instruments to see whether they help to realise the rights of employees, including in the area of income protection. The instruments should prompt the employer to violate the legal norms to the lowest extent possible and, in turn, they should influence the employees not to be afraid to defend their rights before a judicial authority or to be aware of their rights at all. Instruments to facilitate the path to justice tend to be of a procedural nature, modifying the general procedural rules in a situation where one of the parties to the dispute is the employee, the weaker party in terms of substantive law. In the following part of the text, attention will be paid to specific Czech and Polish instruments which pursue the above-mentioned public interest.

Of course, the instruments can also be structured using other criteria. It is advisable to think about the instruments in the sense of whether they are actually capable of protecting the employee's income (replacing the lost income that is not paid by the employer) – see, e.g., the regulation of employee protection in the event of employer insolvency or whether they only have a preventive, punitive effect on the employer, but the employee is not directly able to replace the income (fines, interest for late payment).

4. INSTRUMENTS ASSISTING WITH COMPLIANCE WITH REMUNERATION RULES – IN PARTICULAR

4.1. CZECH REPUBLIC

4.1.1. PUBLIC LAW INSTRUMENTS

Czech legal regulation in this sub-area is contained in the **Labour Inspection Act**,¹⁸ which, among other things, regulates the rights and obligations of subjects during the inspection and the period of sanctions for violation of the established obligations. A person commits offences by failing to ensure equal treatment of all employees in terms of their remuneration for work, for which a fine of up to CZK 1,000,000 may be imposed.¹⁹ The right of an employee to be paid the minimum wage, the right to be paid for work generally within a specified period of time and the right to compensatory time off for work on public holidays, etc., are also protected.²⁰

Furthermore, the adopted regulation which is based on the guidelines of the European Union,²¹ contained in the **Act on the Protection of Employees in the Event of Insolvency of their Employer**,²² is also crucial. Here, too, the public interest of the state in protecting the income of employees is clearly visible since it provides employees with the right to satisfaction of the outstanding wage claims not paid to them by their insolvent employer.²³ It is not only the wages themselves that are protected here but also other wage claims, such as severance pay.²⁴ Thanks to the commented regulation, an employee can contact any regional branch of the Labour Office. The latter informs the public about employers whose employees can claim their wage entitlements through its official board. The Ministry of

¹⁸ Act No. 215/2005 Coll., on Labour Inspection. Available, e.g., at: <https://www.zakonyprolidi.cz/cs/2005-251>.

¹⁹ Section 11 of the Labour Inspection Act. In addition to the aforementioned Section 11, which defines the obligation towards natural persons, there is also Section 24 of the same Act, which regulates the same obligation towards legal persons and natural persons engaged in business.

²⁰ Section 13 of the Labour Inspection Act. In relation to legal persons and natural persons engaged in business, see Section 26 of the same Act.

²¹ Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer. Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer.

²² Act No. 118/2000 Coll., the Act on the Protection of Employees in the Event of Insolvency of their Employer and on Amendments to Certain Acts (hereinafter referred to as the Employee Protection Act). Available, e.g., at: <https://www.zakonyprolidi.cz/cs/2000-118#f2020692>.

²³ See Section 1a of the Employee Protection Act.

²⁴ For the definition of other terms, see Section 3 of the Employee Protection Act.

Labour and Social Affairs also informs about them on its website.²⁵ Simply put, the Labour Office then satisfies the rights of employees (within the limits defined by law) to benefits that the employer has failed to fulfil due to its insolvency.²⁶

4.1.2. PRIVATE LAW INSTRUMENTS

In view of the regulation in Section 141(1) of the Labour Code, an employee may claim **interest for late payment**²⁷ from the employer if the employer fails to pay the wages no later than the month following the month in which the employee performed the work for which the right to wages arose. Such an employer is in default and the employee, in the position of an unsatisfied creditor, may claim interest on the default in accordance with the provision in the Civil Code applicable subsidiarily. It is thus a sanction which also has a preventive effect on the employer and it is supposed to prompt him to pay the benefits on time. However, interest on late payment does not directly have the potential to protect the employee's income.

If the employer fails to pay the employee's wages within 15 days after the due date (see the previous paragraph), the employee may **immediately terminate the employment relationship** with the employer in writing pursuant to Section 56(1) (b) of the Labour Code.²⁸

²⁵ Section 4 of the Employee Protection Act.

²⁶ Pursuant to Section 3(a) of the Employee Protection Act, an insolvent employer is defined as such an employer if it has failed to satisfy outstanding wage claims of its employees on the day following the day on which a moratorium was declared against it prior to the commencement of insolvency proceedings, or on the day on which an insolvency petition was filed against it with a competent court in the Czech Republic, or, in the case of a multinational employer, also on the day on which it was declared insolvent by a competent authority in another Member State of the European Union.

²⁷ See, e.g., the judgment of the Supreme Court of 15 January 2015, Case No. 21 Cdo 403/2014, in which the Supreme Court – among other things – addressed the question ‘under what conditions and when is the employer in default of the employee's right to wages (salary) if the employee failed to appear at the specified time and place for payment and if the employer failed to send the wages (salary) to the employee at his/her own expense and risk on the next working day at the latest’.

²⁸ On this topic, see, e.g., the Supreme Court judgment of 12 October 2010, Case No. 21 Cdo 2242/2009, the Supreme Court judgment of 14 March 2002, Case No. 21 Cdo 515/2001, in which the Court of Appeal concluded that the failure to pay part of the wages is also a reason for immediate termination of employment; the Supreme Court judgment of 26 April 2002, Case No. 21 Cdo 1151/2001, in which it was stated that ‘The grounds for immediate termination of employment ... is given even if the employer had satisfied the employee's claim for wages or wage compensation before the immediate termination was served if the employer paid the wages or wage compensation due to the employee only after 15 days had elapsed after the wages or wage compensation were due and that the subsequent satisfaction of the employee's claim for wages or wage compensation after 15 days had elapsed may be taken into account only in the context of assessing whether the employee's conduct constituted an abuse of law’. On this topic, cf. also, e.g., the Supreme Court judgment of 31 October 2019, Case No. 21 Cdo 1815/2018, in which the Supreme Court addressed the question of ‘whether an employee who proceeded to the immediate termination of the em-

In this context, it is also possible to point out the employer's obligations to inform employees or employees' representatives about sub-topics related to employee remuneration. In particular, attention may be drawn to the employer's obligation under Section 279(a) of the Labour Code to inform the employer about its **economic and financial situation** and its likely development. All employers who employ more than 10 employees have this obligation.²⁹

Workers' representatives have already been mentioned. In particular, the work of the **trade unions**, which can be a kind of first legal advice for employees, cannot be ignored in the context of income protection.

The employee's right to receive his wages in legal tender (see Section 142(1) of the Labour Code), i.e., banknotes and coins issued by the Czech National Bank (Section 16 of Act No. 6/1993 Coll., the Act of the Czech National Council on the Czech National Bank), and his right to be paid during **working hours** and at the **workplace** also constitute income protection. However, in the name of the contractual freedom of the parties, the parties may agree on other conditions for the payment of remuneration.

The employee's income is also protected under Czech law by the rule which states that **wage deductions** (among other things) may be made only on the basis of the law (Section 145 *et seq.* of the Labour Code) that an employee **cannot exempt the employer** from the obligation to provide him with wages (Section 346c of the Labour Code), which cannot be derogated from, and that the employer can only demand 'reimbursement of amounts wrongly paid' to the employee if the employee knew or must have assumed from the circumstances that the amounts were incorrectly determined or paid in error, within 3 years from the date of payment (§ 331 of the Labour Code). The possibility of **claiming compensation for damage** cannot be overlooked if the conditions under which the employee is entitled to claim compensation are met (attributability of the damage, causal link, breach of duty, damage suffered, etc.).

4.1.3. PROCEDURAL INSTRUMENTS

A trade union can help an employee to a larger extent than just providing 'mere' legal advice. According to Czech legislation in force, it can assist the employee in **asserting his or her rights** before a civil court (see Section 26 of the Code of Civil Procedure), e.g., in proceedings initiated by an action for per-

ployment relationship on the grounds of non-payment of wages pursuant to Section 56(1)(b) of the Labour Code abused his rights within the meaning of Section 8 of the Civil Code if he did so in a situation where he himself violated the employee's obligations arising from the employment relationship', or the Supreme Court judgment of 16 December 2013, Case No. 21 Cdo 298/2013, the Supreme Court judgment of 12 October 2010, Case No. 21 Cdo 2242/2009, or the Constitutional Court judgment of 16 June 2015, Case No. II ÚS 3399/14. Authors' note: the decision can be found on the websites www.nsoud.cz and www.usoud.cz.

²⁹ Section 279(2) of the Labour Code.

formance, claiming the amount of wages owed, including the aforementioned accessories, i.e., default interest, or in proceedings addressing discrimination, initiated by an anti-discrimination action. The trade union may also avail itself of its assistance in **insolvency proceedings** and in **incidental disputes** (Section 20(2) of the Insolvency Act). For the sake of comprehensiveness, it may be noted that the trade union is also entitled to participate in the **meeting of creditors** and **the meeting of the creditors' committee** (See Section 47(2) and Section 67 of the Insolvency Act).

The procedural law instrument that can quickly help the employee to protect his income or to deal with the loss of income is the instrument contained in Article 76 of the Code of Civil Procedure. Under this provision, the court may order an **interim measure** requiring the employer to provide at least part of the remuneration.

4.2. POLAND

4.2.1. POLAND – IN GENERAL

Similarly to Czech legislation, Polish legislation is not concentrated in one legal regulation, but the regulation can be found in both private (*Kodeks pracy*) and public law regulations. After the analysis of the regulation, we present here only an overview of the most important instruments that can protect the employees' income or at least prompt the employer to fulfil its remuneration obligations in a timely manner.

4.2.2. PUBLIC LAW INSTRUMENTS

Polish legislation also relies on the control of employers through **inspection bodies**. The employee has the possibility to turn to them in the case of non-fulfilment of obligations by the employer (either in full or in case of delayed fulfilment of obligations) and the labour inspectorate can issue an order on the basis of which the employer is obliged to pay the unpaid wages to the employee. These orders are characterised by their immediate enforceability.³⁰

³⁰ M. Stachowska, 1) *Niewypłacone wynagrodzenie za pracę, czyli jak odzyskać należną wypłatę*. 4 April 2023, <https://poradnikpracownika.pl/-niewypłacone-wynagrodzenie-za-prace-czyli-jak-odzyskac-należna-wypłata#:~:text=Jednym%20z%20podstawowych%20obowiaz%C4%85zk%C3%B3w%20pracodawcy,jest%20wykroczeniem%20przeciwko%20prawom%20pracownika> (accessed: 18 April 2023); 2) *Uchybienia w zakresie wypłaty wynagrodzeń – skutki prawne*. 21 November 2022, <https://poradnikprzedsiebiorcy.pl/-uchybienia-w-zakresie-wypłaty-wynagrodzen-sutki-prawne> (accessed: 18 April 2023). For unpaid wages, the Polish Labour Inspectorate can fine employers between PLN 1,000 and PLN 30,000. See also: A. Walczyńska, *Niewypłacenie pensji w terminie – konsekwencje prawne*. 24 July 2022, <https://poradnikpracownika.pl/-niewypłacenie-pensji-w-terminie-konsekwencje-prawne> (accessed: 18 April 2023). Art.11 point 7 of the Act of 13 April 2007 on the National Labour Inspectorate – If the employer fails to

What is specific about the Polish regulation is that, in contrast to the Czech regulation, employers are also subject to **criminal sanctions** for the breach of remuneration obligations. According to the norms of the Criminal Code, an employer may be subject not only to a fine but also to imprisonment if the employer does so intentionally and consistently.³¹ The issue is regulated in Section 218 *et seq.* of the Criminal Code (*Kodeks karny*). There are also other offences against the rights of persons engaged in gainful employment.³²

Polish legislation also regulates the situation when an employer becomes insolvent, i.e., when he no longer has sufficient funds to cover his costs. Here, employees are protected through the Guaranteed Employee Benefits Fund (*Fundusz Gwarantowanych Świadczeń Pracowniczych*) and, similarly to the Czech regulation, the possibility of drawing on it for employees is limited (claims can be made for unpaid wages but also for other claims, such as ‘reimbursement’ of holidays).³³

4.2.3. PRIVATE LAW INSTRUMENTS

In contrast to Czech legislation, Polish legislation requires that **the remuneration for work should be included in the employment contract**. However, doctrine and case law are divided on the plain wording of the text of the law. The latter emphasise that remuneration cannot be included among the obligatory elements and that even in the absence of this element the contract is valid.³⁴ The remuneration may be agreed upon in other sources, such as a collective agreement, or set out, for example, in an internal regulation. If the amount of the employee’s remuneration is completely absent and cannot be ascertained, the remuneration is based on the normal wage, appropriate for the type, quality, and quantity of work performed. If, on the other hand, the contract expressly provides that the work is to be performed without remuneration that would be an invalid act.³⁵ It can be

pay the wages, the labour inspectorate can order the employer to pay the wages. *Uchybienia w zakresie wypłaty wynagrodzeń – skutki prawne*. 21 November 2022. <https://poradnikprzedsiebiorcy.pl/-uchybienia-w-zakresie-wypłaty-wynagrodzeń-skutki-prawne> (accessed: 18 April 2023).

³¹ I. Stefaniak, *Nieprawidłowa wypłata wynagrodzenia – sankcje*. 18 August 2014, <https://ksiegowosc.infor.pl/zus-kadry/wynagrodzenia/697091,Nieprawidlowa-wypłata-wynagrodzenia-sankcje.html> (accessed: 18 April 2023).

³² For more information see e.g., A. Grześkowiak (ed.), *Kodeks karny: komentarz*, Warszawa 2021; or R.A. Stefański (ed.), *Kodeks karny: komentarz*, Warszawa 2020.

³³ M. Stachowska, *Niewypłacone wynagrodzenie za pracę, czyli jak odzyskać należną wypłatę*. 4 April 2023, <https://poradnikpracownika.pl/-niewypłacone-wynagrodzenie-za-pracę-czyli-jak-odzyskać-należną-wypłatę#:~:text=Jednym%20z%20podstawowych%20obowiązków%20pracodawcy, jest%20wykroczeniem%20przeciwko%20prawom%20pracownika> (accessed: 18 April 2023).

³⁴ M. Tomaszewska, *Artykuł 29*, (in:) K.W. Baran (ed.), *Kodeks pracy: komentarz: projekty nowelizacji Kodeksu pracy z komentarzem. Vol. I, Art. 1-93*, Warszawa 2022, p. 361.

³⁵ M. Tomaszewska, *Artykuł 29*, (in:) K.W. Baran (ed.), *Kodeks pracy: komentarz: projekty nowelizacji Kodeksu pracy z komentarzem. Vol. I, Art. 1-93*, Warszawa 2022, p. 361.

stated here that Polish law corresponds to Czech law, since even in the Czech legal environment, a statement about the unpaid performance of dependent work would lead to the (absolute) nullity of the contract, since such an arrangement would not only be contrary to the regulation but also to the basic principles of labour relations and therefore to public policy.

The employer is obliged to **inform** the employee in writing, no later than 7 days from the date of conclusion of the employment contract, about the frequency of payment of wages and, unless otherwise stated (through an internal regulation), also about the place, date and time of payment (date of payment) of wages.³⁶ Polish legislation also reflects the provisions of Directive 91/533/EEC. The obligation to inform is not surprisingly applicable here not only to relationships established by an employment contract but also by appointment.³⁷

Failure to comply with the rules of remuneration laid down by the law, internal normative acts or by contract, including the rules on the due date of payment of wages, is punishable by the employer's obligation to pay the employee **interest for late payment**. According to Article 94(5) of *Kodeks pracy*, the employer is obliged to pay the employee's wages duly and on time,³⁸ according to a predetermined deadline. The fact that the employee may also claim damages does not affect the right to claim interest for late payment. At the same time, the employee may claim interest for late payment even if the employee has not suffered any damage.³⁹

As already indicated, similarly to the Czech regulation, failure to pay wages properly and on time may lead to consequences in the form of the employee's right to **compensation**, which may occur, for example, in connection with the inability to pay the rent to the employer or to another creditor.⁴⁰

³⁶ See: Art. 104 § 1 point 5 of the Labour Code. M. Stachowska, *Niewypłacone wynagrodzenie za pracę, czyli jak odzyskać należną wypłatę*. 4 April 2023, <https://poradnikpracownika.pl/-niewypłacone-wynagrodzenie-za-prace-czyli-jak-odzyskac-nalezna-wyplate#:~:text=Jednym%20z%20podstawowych%20obowi%C4%85zk%C3%B3w%20pracodawcy,jest%20wykroczeniem%20przeciwko%20prawom%20pracownika> (accessed: 18 April 2023). See also: A. Walczyńska, *Niewypłacenie pensji w terminie – konsekwencje prawne*. 24 July 2022, <https://poradnikpracownika.pl/-niewypłacenie-pensji-w-terminie-konsekwencje-prawne> (accessed: 18 April 2023).

³⁷ M. Tomaszewska, *Artykuł 29*, (in:) K.W. Baran (ed.), *Kodeks pracy: komentarz: projekty nowelizacji Kodeksu pracy z komentarzem. Tom I, Art. 1-93*, Warszawa 2022, p. 362.

³⁸ M. Stachowska, *Ibid*; A. Walczyńska, *Ibid*.

³⁹ *Uchybienia w zakresie wypłaty wynagrodzeń – skutki prawne*. 21 November 2022, <https://poradnikprzedsiębiorcy.pl/-uchybienia-w-zakresie-wypłaty-wynagrodzen-skutki-prawne> (accessed: 18 April 2023).

⁴⁰ Default is the failure to perform an obligation in time or immediately after the request for performance, unless a time limit has been set for which the debtor is liable (Section 476 of the Civil Code). It therefore does not apply to situations where the delay is caused by circumstances for which the employer is not liable, such as a fire at a cash desk in the workplace, failure of the banking system, failure of postal clerks. In the case of an employee who is in arrears in receiving

If the employer pays the employee more than the employee is entitled to, the employer has the right to claim back the amounts paid. At a general level, the standard states that a person who has received a monetary benefit without legal justification is obliged to return the benefit. If the employee does not agree to repay the overpayment and does not hand it over, the employer has the option of going to court to claim back the sums paid. Similarly to Czech legislation, there is a rule which states that the employee is not obliged to repay the amounts received if he believes that he is entitled to them and has already spent the amount of the overpayment.⁴¹

In the context of the institution of termination of employment without notice period, it may be noted that the employment relationship is terminated without notice, but the employer is entitled to the remuneration corresponding to the length of the notice period. The employee is obliged to state the reason for such termination. The employee may deliver it to the employer even during the expiry of the notice period which was started by a notice given earlier.⁴² The doctrine, following the example of case law, points out that an employee may terminate the employment relationship without a notice, *inter alia*, in a situation where the employer breaches fundamental obligations in the employment relationship. These mainly involve the obligations contained in the employment regulations which additionally violate existing legal principles. Such obligations include obligations relating to remuneration, e.g., failure to implement a previously agreed salary adjustment.⁴³ They can also include failure to pay wages in general, unless it is a partial payment not representing a high-value amount, delay in the payment of wages, and payment of wages to the wrong bank account, etc.⁴⁴

Thus, the employer should not forget about this possible instrument when it violates one of its elementary obligations in the field of remuneration. For example, late payment of wages can also mean the loss of an employee whom the employer must pay during the notice period. In addition, the employer incurs

wages owed, the employer may discharge the debt by depositing the amount of wages with the court. See, i.e., I. Stefaniak, *Ibid.*

⁴¹ It is rare that an employee continues to be enriched at the time of claiming the benefit and does not use the surplus to cover the cost of living. The salary is primarily a maintenance payment and is most often distributed on a pay-as-you-go basis. It is the employer who calculates its amount and is liable for any miscalculation. The employee may assume that the relevant payroll and personnel departments have correctly calculated the amount of remuneration due to him and thus may not take into account the possibility of overvaluation and any obligation to repay the amount of unjust enrichment. The employee bears the burden of proof of the loss or consumption of surplus so that he is no longer enriched. The employer bears the burden of proving that the employee is obliged to repay the overpayment, i.e., the employer must prove that the employee knew that he or she was not entitled to the overpayment. *Ibid.*

⁴² K.W. Baran, *Artykuł 55*, (in:) K.W. Baran (ed.), *Kodeks pracy: komentarz: projekty nowelizacji Kodeksu pracy z komentarzem. Vol. I, Art. 1-93*, Warszawa 2022, p. 744.

⁴³ *Ibid.*, p. 747.

⁴⁴ *Ibid.*, p. 750.

further increased (financial) costs in finding a new employee to take the place of the employee who was no longer satisfied with the employer (because of the delay in the payment of wages).

4.2.4. PROCEDURAL INSTRUMENTS

As far as procedural tools are concerned, the employee may apply to the court to exercise his/her right, and in contrast to the general regulation of civil procedure, the **fee obligation** is regulated in favour of the employee as a specific party to the proceedings.⁴⁵ Polish law, similarly to Czech civil procedure, modifies the general rules in relation to the employee. In this context, one may also point out the possibility – if the statutory conditions are met – for the court to hear the case expeditiously, without ordering a hearing.⁴⁶ Here, too, the employee may be assisted in exercising his/her rights by the trade union, which may represent him/her in the proceedings.⁴⁷

5. CONCLUSION

A well-drafted **employment contract** with the employer protects the employee's income at the basic level. Here, it is advisable to specify the employee's specific rights to wages and other individual wage benefits beyond the law, unless this is done, for example, in general to several employees of the employer, through an **internal regulation** or a concluded and effective **collective agreement**.⁴⁸

Employees can also protect their income in a preventive way by **actively informing** themselves about the employer's payment situation in advance, finding out about the employer's history (its market position), researching the situation in the industry, the number of competitors of the employer, etc. For this

⁴⁵ M. Stachowska, *Ibid.*; A. Walczyńska, *Ibid.*

⁴⁶ N. Zięba, *Co powinien zrobić pracownika, gdy pracodawca nie wypłaca wynagrodzenia?* 16 May 2017, <https://kadry.infor.pl/kodeks-pracy/spory-ze-stosunku-pracy/756729,Co-powinien-zrobic-pracownik-gdy-pracodawca-nie-wypłaca-wynagrodzenia.html#:~:text=Z%20punktu%20wiznienia,wniosku%20w%20pozwie> (accessed: 18 April 2023).

⁴⁷ Not only the representation of an employee before an employment tribunal., See the following article: J. Tęczka, *Postępowanie przed sądem pracy - ogólna charakterystyka*. 25 July 2022, <https://poradnikpracownika.pl/-postepowanie-przed-sadem-pracy-ogolna-charakterystyka> (accessed: 18 April 2023).

⁴⁸ Pursuant to Section 37(1) of the Labour Code, if the employment contract does not contain information on the rights and obligations arising from the employment relationship – including, *inter alia*, information on wages and the method of remuneration, the due date of wages, the date of payment of wages, the place and method of payment of wages or salary, the employer is obliged to inform the employee in writing of such information no later than one month after the employment relationship has been established.

purpose, **public registers**, such as the commercial and insolvency registers, can be used. The employee can also enquire about the employer's general **financial situation**, its future plans, and intended investments. Employees can also **diversify their income** by not relying (in the current climate where the media inform us daily about various crises) on a single income from a single employer. Whether as individuals or even as a family, they will not rely on a single income from a single employer. The loss of income will then not have such an impact on the employee's financial situation.

However, these tools are more important on the preventive side of the matter. Still, the regulation also offers tools that act in the case of situations where employees do not receive payment for their work.

For this reason, after defining the necessary terms and drawing attention to the broader context of the topic, this article focuses its attention, in particular, on the tools that help employees to obtain remuneration for the performance of dependent work in cases where employers violate the legal norms of the Labour Code and do not pay their employees remuneration for their work. The structure of various instruments that can facilitate the employee's path to remuneration across the legal system is shown and the Polish and Czech instruments are presented.

On the basis of the analysis of relevant Czech and Polish legislation (of a substantive and procedural nature, public and private law), it was found that the **adoption of criminal liability** of employers for breaches of regulations concerning the remuneration of employees seems to be an appropriate *de lege ferenda* inspiration for the Czech regulation. Both legal regulations contain less invasive instruments that have a punitive effect on employers (the possibility to demand interest for late payment, immediate termination of the employment relationship, demanding compensation for damages). However, as is well known, the threat of criminal liability can **compel compliance** more effectively. Of course, the facts of a possible criminal offence should be regulated in the Czech environment so that only truly (intensely) illegal (and primarily intentional) conduct of the employer is punished.

However, in addition to the adoption of the instrument of force, the state power should not give up on educating responsible individuals with respect for the rule of law. As already mentioned, the common leitmotif of future changes should be a greater fulfilment of the public interest in terms of greater realisation of employees' rights in the area of legal regulation of remuneration.

Furthermore, the competences of the labour inspection bodies would not necessarily be developed as such a modification would automatically be associated with an increase in the costs for the budget of such a branch of power, i.e., the state budget. A much more financially advantageous option would be to support trade unions, which could provide more (better) assistance to employees in exercising their rights. There would be no increase in governance costs.

In conclusion, legal scholarship must not neglect this topic, since the transparent (in the sense of not obscuring the basic employment relationship), timely and complete receipt of remuneration for the performance of dependent work has an impact not only on the life of the individual and his or her immediate family but also ultimately on society as a whole because (as already mentioned) the issue is related to the question of public finances and the economy as a whole. Inadequate income (unpaid expected income) can push workers into a poor living (economic) situation to the extreme of committing criminal activities in order to secure money as a source of livelihood. It is therefore in the public interest that the legislator should not stop monitoring the topic discussed in the article and continuously evaluate the effective legislation, both in terms of its effectiveness measured by the degree of realisation of employees' rights and from an economic (fiscal) perspective, i.e., the criterion of whether the funds issued by the Treasury for the existing instruments (in particular funding for inspection bodies overseeing compliance with legislation) satisfactorily correspond to the results achieved, or whether it is not appropriate to look for other, more effective and ideally less costly legal instruments, as already mentioned.

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