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On the Beginnings of the Axiology in Employment Using the Example of the Act on Juveniles and Women Work of 1924

O początkach aksjologii w zatrudnieniu na przykładzie ustawy w przedmiocie pracy młodocianych i kobiet z 1924 r.

ABSTRACT

The article analyses the first Polish regulations concerning the employment of juveniles and women. In the original version, both entities were protected by a common, collective legal act. In addition to the normative analysis, the paper aims to indicate the emerging protective regulations and to highlight the threads considered today as the axiology of employment in relation to these particularly protected entities. The study was enriched with views expressed in the then literature on the subject and references to practice, as well as an assessment of the solutions used from the perspective of almost a hundred years from the enactment of the law. Due to the proposed temporal scope, the article is innovative, allowing at the same time to highlight the most important changes in the scope of the discussed matter. In perspective, this study will be used to evaluate the regulations currently in force, which are addressed separately to working women and juveniles.

Keywords: labour law; protective function of labour law; axiology; employment; protection of women's work; protection of juveniles' work

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INTRODUCTION

The essence of this study revolves around the part of the matter allowing us to highlight the first national solutions adopted by the legislator which contributed to the formation of certain norms having as their primary object the world of values and the consequent need to provide protection to specific groups of employees. At that time, these norms were a kind of transposition of pre-existing norms, and the provisions proposed in the study were an attempt to transfer and systematise them from the non-legal normative system precisely into the system of national legal norms. Such solutions even today constitute a significant part of contemporary legal order, though detailing them, which seems to be a natural process, is actually determined by other factors. Nevertheless, what need to be emphasised the principal reason for their creation and successive implementation of changes has been and still remains unchanged and that is the human being.[1] Therefore, already at this stage it is impossible to disregard the threads from the field of axiology which were formed in the period when the Act of 2 July 1924 on juveniles and women work[2] came into being, although due to the temporal scope proposed in the study, they should be treated only as a contribution to contemporary studies aiming at the broadly understood world of values, as well as the resulting detailed theses.

BACKGROUND TO THE ORIGINAL CONTENT OF THE 1924 ACT

Due to the fact that labour law is a relatively new discipline and the proposed topic was developed during times of change in economical, political, and social conditions, it is not possible to analyse it from the perspective of analogous solutions as those developed in contemporary times. In principle, however, as rightly emphasised by the doctrine of labour law it should be remembered that labour law is connected with law in action, and so already in its original idea taking of certain actions, through which norms marked individual and concrete were created, was inscribed. That is why this branch of law is particularly concerned with the consideration of the system of norms of labour law, i.e., not only the normative approach,

[1] For example, see A. Sobczyk, *Prawo pracy w świetle Konstytucji RP. Teoria publicznego i prywatnego indywidualnego prawa pracy*, vol. 1, Warszawa 2013, p. 161 and the literature cited therein; T. Liszcz, *Aksjologiczne podstawy prawa pracy. Zarys problematyki*, Lublin 2018, pp. 19–38; A. Musiała, *Polskie prawo pracy a społeczna nauka Kościoła. Studium prawno-społeczne*, Poznań 2019, pp. 33–40; M. Wieczorek, *Some Aspects of Labour Law's Protective Function at the Time of COVID-19*, "Studia Iuridica Lublinensia" 2021, vol. 30(1), pp. 340–341.

[2] Journal of Laws 1924, no. 65, item 636, as amended, hereinafter: the 1924 Act.

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but also the practice of their application based on the theory of legal realism.[3] Nevertheless, one cannot overlook the idea of correlating the human employment practices of the time with the work ethic rooted in Catholic social teaching, which will be also taken note of in this study. In the encyclical *Rerum Novarum* of 1891, Pope Leo XIII highlighted that, according to Christian assumptions, paid labour must not have the effect of humiliating a person; on the contrary, its purpose should be to bring them honour. According to one of the key theses of the encyclical, a person can maintain their life on the appropriate level, i.a., thanks to work. This thesis, from its very foundation, excluded seeing the working man only in terms of a tool for profit. The foundations of *Rerum Novarum* were based on the postulate of prohibiting the working man from being treated as an object, thus emphasising his value as a human being. Pope Leo XIII emphasised that when a worker lends his strength or ability to someone, he does so for a strictly defined purpose, namely, to obtain the means necessary to live and to maintain oneself at a level worthy of a human being. Moreover, man, through work and by work, wishes to acquire the true and perfect right not only to be paid, but also to use that payment at his will.[4]

The aforementioned assumption, which is an object-based perception of a working person, will be taken into account in the proposed in the title of this article characteristics of one of the first standardized Polish acts in the field of labour law. Before it happens, here only a brief indication will be given of the supranational regulations created at that time, which had a significant contribution both to the shape and to the content of the analyzed act, and finally, also prospectively, to the contemporary wording of the regulations referring to the proposed matter. Therefore, it is impossible to omit the extensive output contained in the documents of the International Labour Organization (ILO)[5] dating back to the beginning of the 20th century, although, as it has been mentioned, it will not be the main point of the considerations carried out. Namely, already in the preamble to the Constitution of the ILO, there is an order to protect child labour, thus recognizing it as one of the key objectives of this organization.[6] In consequence, this ban has been confirmed and made more specific in the content of several other conventions, e.g.,

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[3] W. Sanetra, *Ogólnie o aksjologicznych podstawach prawa pracy*, [in:] *Aksjologiczne podstawy prawa pracy i ubezpieczeń społecznych*, eds. M. Skąpski, K. Ślebzak, Poznań 2014, pp. 13–14.

[4] Leo XIII, *Rerum Novarum*, 1891, https://www.mop.pl/doc/html/encykliki/Rerum%20novarum.htm (access: 10.5.2021). See more T. Liszcz, *op. cit.*, p. 12, 26; J. Majka, *Nauka społeczna Kościoła, jej charakter i miejsce w orędziu ewangelicznym*, [in:] *Dokumenty nauki społecznej Kościoła*, eds. M. Radwan, L. Dyczewski, A. Stanowski, vol. 1, Rzym–Lublin 1987, pp. 27–28.

[5] See A.M. Świątkowski, *Międzynarodowe Prawo Pracy. 1. Międzynarodowe publiczne prawo pracy – standardy międzynarodowe*, vol. 2, Warszawa 2008; M. Bosak, *Zarys ewolucji ochrony młodych pracowników w wybranych dokumentach Międzynarodowej Organizacji Pracy*, [in:] *Państwo i prawo w dobie globalizacji*, ed. S. Sagan, Rzeszów 2011, pp. 55–67.

[6] See L. Florek, M. Seweryński, *Międzynarodowe prawo pracy*, Warszawa 1988, p. 241.

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Convention No. 5 fixing the minimum age for admission of children to industrial employment (1919), which, in principle, introduced a ban on the employment of children under 14 years of age.[7] However, the content of this Convention was amended by the provisions of Convention No. 59, by raising the minimum age for the employment of children in industry above the age of 15. It is worth noting that subsequent ILO conventions issued at the beginning of the 20th century were also aimed at developing a minimum age for allowing the employment of children in other industries. Examples of this are ILO Convention No. 7 on the minimum age for for admission of child labour in the navy (1920) and Convention No. 10 on the age of child labour in agriculture (1921).[8] These documents aimed to set the minimum age for work at 14 years of age or more.[9] It is therefore impossible to ignore Convention No. 15 (1921), which also had the primary aim of setting the minimum age for the admission of juveniles to work in sub-deck spaces and boiler rooms. These were the documents in which, together with Conventions Nos. 6 and 13,[10] the concept of juveniles was used for the first time.[11] They also established that a person between the ages of 16 and 18 was considered to be a juvenile. The last of the ILO conventions which had been issued by the time of the entry into force of the Polish Act which is crucial for the present study was Convention No. 16 on compulsory medical inspection of children and young persons at work on ships (1921).[12] As far as the protection of women's labour is concerned, ILO Conventions Nos. 3 and 4, both dated 29 October 1919, are worth mentioning, which dealt respectively with the employment of women before and after confinement and with night work. Convention No. 3 on the employment of women before and after childbirth was adopted by the General Assembly of the ILO. It has to be emphasised, that both Conventions have not been ratified by Poland. The main assumption resulting from Convention No. 3 was the right of women employed in industrial enterprises to two, 6-week leaves granted before and immediately after

[7] *Konwencje i zalecenia Międzynarodowej Organizacji Pracy 1919–1994*, vol. 1: *(1919–1966)*, Warszawa 1996, pp. 16–17. Convention No. 5 came into force on 13 June 1921. It was ratified by Poland on 21 June 1924 and terminated following the ratification of Convention No. 139 on 22 March 1973.

[8] Convention entered into force on 20 November 1922. It was ratified by Poland on 21 June 1924 and denounced on 22 March 1978.

[9] Convention entered into force on 27 September 1921. It was ratified by Poland on 21 June 1924 and denounced on 22 March 1978 due to the ratification of Convention No. 138.

[10] ILO Convention No. 6 on the night work of young persons in industry, 1919; ILO Convention No. 13 on the use of white lead in painting, 19 November 1921.

[11] See M. Bosak, *op. cit.*, pp. 57–58.

[12] Convention entered into force on 20 November 1922. See International Convention the compulsory medical examination of children and young persons employed at sea, adopted as a draft on 11 November 1921 in Geneva at the General Conference of the International Labor Organization of the League of Nations (ratified pursuant to the Act of 19 December 1923) (Journal of Laws 1925, no. 54, item 388).

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childbirth. Convention No. 4, on the other hand, contained a ban on the employment of women at night, regardless of their age. This prohibition was not absolute, however, as it was clear from the wording of the provisions that an exception was made for enterprises where only members of the same family were employed. Nevertheless, the above-mentioned initial ILO acquis was not the only source influencing the content and shape of the first Polish law which is the subject of this study.[13] In a detailed analysis of the problem, it is also worth paying attention to the provisions of Community law, which undoubtedly include the European acquis of that time. Nonetheless, it will not be presented in detail in the proposed content, as the studies devoted to this issue have for years occupied an important place in the output of the Polish doctrine of labour law.[14]

The 1924 Act introduced in its content some of the first national harmonized norms of protective character.[15] Their analysis, carried out precisely in this term will enable to formulate an answer to the question of existence at that time of content defined by contemporaries as the axiology. Admittedly, the axiology of labour law in the broad sense, especially considered from the perspective of the law of nature, was not distinguished until the late 1980s. Therefore, in the pre-WWII as well as the post-WWII period, it was essentially ignored.[16] In view of the above, questions about the axiology contained in the initial national legal norms will oscillate not so much around ethical-moral issues, but questions of values, which on their basis were consecutively introduced into the Polish legal order. This study shall not merely consider the classification of the indicated normative area as a value in its own right, but will aim to consider it as an important contribution leading to the development

[13] See A. Dral, *Rys historyczny rozwoju prawa pracy i ubezpieczeń społecznych w Polsce w okresie dwudziestolecia międzywojennego*, [in:] *Ochrona pracy w okresie międzywojennym w Polsce. Studium historyczno-prawne*, eds. K. Dąbrowski, S. Kwiecień, Lublin 2015, pp. 24–25.

[14] See Z. Góral, *Dopuszczalność pracy dzieci w polskim prawie pracy w świetle prawa międzynarodowego i europejskiego*, "Monitor Prawa Pracy" 2004, no. 6; A.M. Świątkowski, *Prawo socjalne Rady Europy*, Kraków 2006, pp. 50–51; K. Łasak, *Dopuszczenie dziecka do zatrudnienia w systemie Europejskiej Karty Społecznej*, "Bezpieczeństwo Pracy" 2008, no. 3, p. 20; L. Florek, *Europejskie prawo pracy*, Warszawa 2007, p. 185; B. Godlewska-Bujok, R. Babińska-Górecka, *Ochrona pracy kobiet i rodzicielstwa we współczesnym prawie pracy*, [in:] *System Prawa Pracy*, vol. 3: *Indywidualne prawo pracy. Część szczegółowa*, eds. M. Gersdorf, K. Rączka, Warszawa 2021, pp. 975–1043; M. Derlacz-Wawrowska, *Zatrudnienie i ochrona młodocianych oraz dzieci*, [in:] *System Prawa Pracy*, vol. 3: *Indywidualne prawo pracy…*, pp. 1044–1065; R. Babińska-Górecka, *Ochrona pracy kobiet i uprawnienia związane z rodzicielstwem*, [in:] *System Prawa Pracy*, vol. 14: *Historia polskiego prawa pracy*, ed. K.W. Baran, Warszawa 2021, pp. 1043–1076; M. Włodarczyk, *Ochrona pracy młodocianych i dzieci*, [in:] *System Prawa Pracy*, vol. 14, pp. 1077–1098; M. Bosak, *Status prawny młodych pracowników na tle wybranych regulacji prawa europejskiego*, "Studia z Zakresu Prawa Pracy i Polityki Społecznej" 2012, pp. 223–228.

[15] See more B. Godlewska-Bujok, R. Babińska-Górecka, *op. cit.*, p. 975 ff.

[16] A. Dral, *op. cit.*, p. 17 and the literature cited therein, especially *Aktualne zagadnienia prawa pracy i polityki społecznej*, ed. B. Ćwiertniak, Sosnowiec 2012.

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of the subject matter in question, which is still valid today. Nevertheless, the norms of the time were to be treated as necessary tools for the realization of particular values as well as the obligations of parties resulting from undertaking the labour.

KEY PRINCIPLES OF THE 1924 ACT AND REFORM TRENDS – OUTLINE OF ISSUES

Before describing in detail some of the solutions contained in the indicated law, attention should be drawn to several fundamental areas on which they will focus. The most relevant provision of the proposed act concerning juveniles was the prohibition of their unpaid employment, indication the age of 15 below of which gainful employment was prohibited and, as a general rule, prohibition on working at night.

The outlined fields have undergone successive changes; thus, the Decree of 20 September 1945 amending the Act of 2 July 1924 on juveniles and women work[17] modified issues related to working time in the broad sense with regard to the juveniles. Even as soon as back then shorter work time norms were introduced, on condition that the juvenile's work time was used for the educational development purposes (vocational or further education). Initially, this entitlement included no more than 6 hours per week for educational development included in their overall working hours. The amendment resulting from the Decree, however, increased these educational hours to as many as 18 hours per week. The amendment also introduced an essential clarification that ensured that 18 hours of study were counted as working time for the juvenile, regardless of whether it was during the juvenile's working hours or at other times. Due to this amendment, the summarized weekly working time of a juvenile was limited to 28 hours a week, provided that they spent 18 hours on education in school. In that case, the fact of having received education had to be certified by the school.

In women's case however, the first national regulations covered areas related to prohibition of night work, as well as the introduction of pregnancy-related leave. Already at this stage it is worth noting that the legislator at the time introduced the obligation to maintain infant nurseries, which was imposed on workplaces employing more than a hundred women. More modifications on this matter have been introduced by a Resolution of the Polish Parliament of 29 April 1948. In women's case the amendments brought crucial solutions of protective character, such as the prohibition on dismissal, which covered the entire period of pregnancy and the interval after returning to work. Said modifications also concerned the 12-week leave, which was granted after childbirth in the original version of the Act. The leave was divided in two periods: one before childbirth (two weeks), and one after childbirth (here the period

[17] Journal of Laws 1945, no. 43, item 236, hereinafter: the 1945 Decree. It entered into force on 13 October 1945.

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was eight weeks, thus the remaining two weeks subject to the woman's discretion). At this point, the clear prohibition of the employment of women during this period, which was included in the text of the regulations under discussion is also worth noting. This was an absolute prohibition, and so it could not be lifted even with the consent of the woman. This provision should also be regarded as crucial in terms of protecting life and health of both the woman and the newborn child.

The literature has explicitly drawn attention to the need for absolute application of the provisions arising from this law,[18] while pointing out the multi-faceted nature of the issues covered by it. Currently, from the perspective of almost a hundred years since the enactment of the Act, the necessity of its absolute application and successive modifications should be considered precisely from the point of view of not only order, which seems obvious, but also from the axiological perspective. In fact, this axiology has consisted of the protection of many social aspects, of which the human being was the subject even then. The circumstances connected with the temporal application of the solutions proposed by the legislator should also not be overlooked. This was the period following the war, which caused numerous population losses and high mortality rates resulting from the poor health of the population and poverty.

THE ESSENCE OF WOMEN'S WORK ON THE BASIS OF THE 1924 ACT

The proposed observations should begin with the fact that the legislator, in Chapter 1 of the 1924 Act titled "General provisions", points out that the regulations arising from the content of this Act apply, within a strictly defined scope, to all industrial, mining, metallurgical, commercial, office, communication and transport establishments, regardless of whether they are privately owned or owned by the State or local government. However, the subject scope of the 1924 Act did not include agricultural workers, which was contrary to the recommendations of the ILO International Labour Conference of 25 October 1921 on the protection of female workers in agriculture before and after childbirth.[19] Therefore, the above regulations also applied to those entities whose activities were not aimed at making profit. The provisions referred to were also complementary, namely as regards to work time in industry and commerce.[20]

In one of the initial provisions in Chapter 1 of the 1924 Act, the legislator stipulates that women must not be employed in conditions where the work is par-

[18] See W. Szczepański, *Kodeks pracy. Teksty, objaśnienia, orzecznictwo*, Łódź 1949, p. 306.

[19] See more A. Dral, *op. cit.*, p. 24.

[20] Act of 18 December 1919 on working time in industry and trade (Journal of Law 1920, no. 2, item 7).

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ticularly dangerous or harmful to their health. It is also forbidden, on the basis of Article 4 of the 1924 Act, to employ women for the so-called heavy work or work dangerous to their health, morals or social well-being.[21] At this point it is worth noting that the above prohibition translated into the right of women at that time to work in which both their lives and health, in the broad sense of the term, were protected. When analyzing the criteria of permissible working conditions, it is worth noting that the inclusion in the statutory catalogue of factors that threaten it, such as good manners or morality, suggests an emphasis on the perceived need to introduce a multifaceted need for protection, translating not only into the physical sphere (e.g., prohibition of work on transmissions, harmful chemical processes, lifting loads, etc.) but also into the psycho-emotional sphere.[22]

Further amendments changed the wording of this provision and thus, from 1951 onwards, the wording of Article 4 contained a general prohibition of employing juveniles and women in particularly onerous or harmful work.[23] On the other hand, a more detailed list of prohibited work for juveniles and women, as well as conditions for the employment of pregnant women, was included in the Regulation of the Council of Ministers of 17 November 1924 on the implementation of the Act of 2 July 1924 on juveniles and women work,[24] issued after consultation with the Central Council of Trade Unions.

Additional, detailed provisions regarding protection of the women's labour have been described in the separate section of the 1924 Act – Chapter 3. In this part of the document, the legislator included regulations ordering the basic aspects related to women's work in general and the so-called active maternity period. The first group undoubtedly included an absolute prohibition on the employment of women in underground mines, which, however, did not exclude a total prohibition

[21] A more detailed specification of this provision was included in the Regulation of the Minister of Labour and Social Welfare of 29 July 1925 in agreement with the Ministers: Industry and Trade, Internal Affairs, Military Affairs, Public Works, Railways and Treasury on the list of prohibited work for juveniles and women (Journal of Laws 1925, no. 81, item 558), Annex No. 2 "List of prohibited work for women".

[22] See more C. Jackowiak, [in:] W. Jaśkiewicz, C. Jackowiak, W. Piotrowski, *Prawo pracy. Zarys wykładu*, Warszawa 1967, pp. 366–3369; W. Szubert, *Zarys prawa pracy*, Warszawa 1976, pp. 271–272.

[23] Act of 26 February 1951 amending the Act on juveniles and women work (Journal of Laws 1951, no. 12, item 94). The Act came into effect on 1 March 1951.

[24] Journal of Laws 1924, no. 105, item 954. This Regulation has been issued twice. See Regulation of the Minister of Labour and Social Welfare of 29 July 1925 in agreement with the Ministers: Industry and Trade, Internal Affairs, Military Affairs, Public Works, Railways and Treasury on the list of prohibited work for juveniles and women (Journal of Laws 1925, no. 81, item 558); Regulation of the Minister of Social Welfare of 3 October 1935 in agreement with the Ministers of: Industry and Trade, Internal Affairs, Military Affairs, Treasury, Agriculture and Agrarian Reforms, Communications, and Posts and Telegraphs on work forbidden to juveniles and women (Journal of Laws 1935, no. 78, item 484).

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on the employment of women in mines, as this was possible on their surface, in office spaces. However, among these regulations, which should be regarded as a significant shortcoming, there were no provisions introducing the principle of equal pay for equal work and allowing for the broadly understood development of vocational training for women, which would constitute the basis for the realisation of such remuneration.[25]

A crucial factor influencing both human life and health, as well as translating into the effectiveness of the performed work was and still is the work time. Therefore, the legislator decided to make this matter more specific by introducing at least 11 hours of uninterrupted night rest. The period of this break depended on the daily working shifts in force in the given company and, as a rule, covered the period from 8 pm to 8 am (in the two-shift system it was 10 pm to 5 am). However, this provision was not absolutely binding, as the legislator himself allowed for its liberalisation. The liberalisation was tied to the specifics and conditions of the performer's work, which were regulated by some of the provisions of the aforementioned Act of 18 December 1919 on working time in industry and trade, and to processing of perishable raw materials or semi-finished products. The legislator, bearing in mind the special protective function of women's work, despite the introduction of partial liberalisation, stipulated that its introduction could take place with the consent of the competent district labour inspector, expressed in the form of a permit.

Another, separate case of a justified reduction of night rest was the circumstance of employment of women in such industries which were subject to the influence of the seasons. Thus, both in the case of seasonal industries and in the circumstances of proven necessities of the workplace, the legislator allowed the reduction of such a break to 10 hours per day. Nevertheless, this permission was limited on an hour basis, due to the fact that the legislator has emphasised that the permission cannot exceed 60 hours per a calendar year. Similarly to the above-mentioned cases, the procedure of exercising this right was subject to obtaining the prior consent from the competent district labour inspector who, after examining the factual circumstances, granted the consent in the form of a permit.

A separate provision in its category was the one that obliged the entrepreneur to provide special sanitary facilities for women in the workplace. This obligation applied to all entrepreneurs who employed at least five women. An additional obligation of the entrepreneur, also dependent on the number of women employed, was the necessity to establish a nursery for their infants. This obligation covered entities employing more than a hundred women and also extended to the obligation to set up the so-called bathing facilities. This solution, however, has been negatively evaluated by employers as well as the literature, rightly accused of being

[25] For more, see M. Święcicki, *Instytucje polskiego prawa pracy w latach 1918–1939*, Warszawa 1960, p. 86.

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fragmentary, socially, and economically irrational.[26] In practice, it also resulted in a reduction of female employees.[27] Subsequent changes in this area have resulted in the establishment and successive expansion of the number of child care stations.[28]

It is necessary to point out that both of the above-mentioned provisions concerning the need to create nurseries and provide separate sanitary facilities for working women were one of the reasons which at that time triggered significant opposition to the introduction of the 1924 Act. In the objections raised, it was stressed, i.a, that the entry into force of the 1924 Act in such a wording would *de facto* result in disadvantaging the group of women who are not employed.[29]

The last group of provisions applied to women in the so-called active maternity period so they covered a period determined by both the biology and physiology of the woman's body.[30] This period and the privileges enjoyed in connection with it are related to the pregnancy and breastfeeding time of the child. Due to the fact that pregnancy is a special and demanding in many aspects time for each woman, already at the beginning of the 20th century, the legislator, through the introduction of specific legislation, created a specific system aimed at providing this special group of subjects with increased protection and stability. The protection under Article 16 of the 1924 Act therefore covered several important spheres. From the original wording of the provision, a pregnant woman had the right to interrupt her work as soon as she submitted a medical certificate of the expected date of delivery, but no later than within 6 weeks. The legislator introduced a contemporarily unknown alternative consisting of the right for pregnant women to take daily work breaks, which was to some extent consistent with the requirements of the Washington Convention. However, these breaks were limited and could not exceed 6 days per month. The provision prohibiting the employer from both terminating and dissolving the employment relationship during the indicated breaks should be considered extremely progressive and close not only to the protection of the employee, but also to the assessment of the provision in its axiological aspect. Moreover, a woman could not be employed within 6 weeks from the date of childbirth. The wording of the provision was subject to further amendments, and thus since 1948, the regulations have been significantly broadened and made more specific.[31] In the following, the

[26] *Ibidem*, pp. 90–91.

[27] For more, see B. Godlewska-Bujok, *Ochrona pracy kobiet*, [in:] *Ochrona pracy w okresie międzywojennym w Polsce…*, pp. 98–99 and the literature cited therein.

[28] For more, see I. Zawodowska, *Ochrona macierzyństwa robotnicy w Polsce*, "Statystyka Pracy" 1937, no. 4, p. 296.

[29] See B. Godlewska-Bujok, *op. cit.*, p. 98.

[30] See R. Babińska-Górecka, *op. cit.*, p. 1046.

[31] Article 16 in the wording of the Act of 28 April 1948 amending the Act of 2 July 1924 on juveniles and women work (Journal of Laws 1948, no. 27, item 182), which entered into force on 21 May 1948.

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main directions of changes that should be considered important for the thread of the forming axiology in domestic labour law will be indicated. First of all, the period of pregnancy, which was then the basis for the application of protective provisions due to the function of so-called active maternity, should have been confirmed by a doctor by means of an appropriate medical certificate.

The legislator already indicated at the beginning of the amended wording of Article 16 that a pregnant woman employed in onerous work, starting from the 6 month of pregnancy, should – to the best of the employer's ability – be transferred to work suitable for her.

Although the legislator did not choose to clarify what was to be regarded as onerous work, nevertheless it is worth referring to the contents of a ministerial circular of 1948,[32] which stated that these included: work performed continuously in a standing position, no possibility of changing position and short rests, carrying loads, work on certain machines, work in high temperatures, work in high humidity or work involving shocks. This document did, however, contain an illustrative list, but it was already a reference point for assessing whether the work in question fell into the category of onerous.

Change of job to a more comfortable one must not have a negative effect on the pregnant worker's income, which, under no circumstances, should be less than the average income she has received over the previous 3 months. The legislator used in this context the term "comfortable job", so that in the event of a dispute about a change in the type of work, the decision was taken by the regional labour inspector authorised to visit the establishment concerned.[33] Given the object of protection, which in this case was the principal and only reason for changing the type of work, the initiative to change the type of work could also have come directly from the labour inspector. Regardless of the method adopted resulting in a periodic modification of the content of the employment relationship, the decision of the labour inspector in each of the cases taken was a final one. Nevertheless, the inspector's decision was preceded by a written opinion from a doctor, the content of which indicated the necessity of transferring a pregnant woman to another job. This document was necessary in such a case, and the doctor who decided to issue it should be an official doctor, i.e. a company doctor, inspector doctor, social insurance office doctor, district doctor, health centre, etc.[34] In view of the reason for changing the type of work, however, the literature at the time pointed out that the initiative

[32] Circular letter of the M.P. and O.S. of 30 June 1948 on the amendment of Article 16 of the Act of 2 July 1924 (Official Journal of the M.P. and O.S., 15.7.1948, no. 11/31).

[33] It is noteworthy that in the case of the need for an urgent decision to change the type of work, it could also be issued by the labour inspection authority, which acted in place of the regional labour inspector. See W. Szczepański, *op. cit.*, p. 314.

[34] See W. Szczepański, *op. cit.*, p. 314.

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for this could also come from the person concerned, as well as from the company doctor, the works council representative or the trade union.[35] Similarly, in the text of the same provision, the legislator included a prohibition on the employment overtime and outside the regular place of work women from the fourth month of pregnancy and women with children aged up to 18 months.

Another solution, modified in comparison to the original version contained in the 1924 Act, was the possibility for a woman to exercise the so-called right to interrupt labour before and after childbirth. Namely, a pregnant woman was entitled to such a right for 12 weeks, with the restriction that no less than 2 weeks of leave should precede childbirth and no less than 8 weeks after childbirth. In the event that the two-week pre-puerperal break was not used, according to the ministerial guidelines of the time, the missing days had to be added to the full two-week compulsory break, so that in total the woman would be entitled to the full 12 weeks of break she was entitled to.[36]

For a period of 12 weeks, the woman was entitled to a so-called puerperal allowance.[37] As for the remainder, the woman could regulate on her own when she wanted to use her entitlement. Moreover, this meant that 10 of the 12 weeks due, in accordance with the legislator's intention, should be qualified as a mandatory break from work. The legislator stipulated that due to the purpose of the indicated break, the woman could not be employed for work even if she agreed to it. Such employment, according to Article 17 of the 1924 Act, then resulted in criminal liability.

Bearing in mind the emerging system of values in the context of employment, it is impossible to ignore the provision which clearly began the process of creating protective regulations taking into account the role and position of women. Already at that time, the legislator, thanks to the provisions introduced, made it possible to ensure practically unlimited stability of employment during the so-called active maternity function. Namely, an employment contract with a woman employed in a given workplace for at least 3 months could not be either terminated or dissolved. The prohibition of termination of the employment contract was then in force during the entire period of pregnancy and during the above-mentioned break due to childbirth. Nevertheless, the ministerial guidelines implied that a termination notice given before the start of the pregnancy period was itself valid as long as it did not result in termination during the pregnancy period and during the post-pregnancy break. On the other hand, a termination notice which was given during the period of pregnancy was already invalid at that time.[38] Similarly, it was considered that

[35] *Ibidem*.

[36] See Circular Letter of the M.P. and O.S. of 30 June 1948.

[37] See Article 16 (1) of the Act of 28 April 1948 amending the Act of 28 March 1933 on social insurance (Journal of Laws 1948, no. 27, item 183).

[38] See Circular Letter of the M.P. and O.S. of 30 June 1948.

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a fixed-term employment contract (for a fixed period or for the period of performance of a specific job) that would expire within 4 months before the birth was extended until the day of delivery. This legal construction resulted in the necessity to extend the concluded contract and payment of remuneration until the woman started to benefit from the obligatory break from work connected with childbirth.

The provisions aimed at ensuring special stability and protection for pregnant employees were not – as indicated – of an absolute nature. Already at that time, the legislator had derived a provision according to which, for important reasons or due to the fault of the employee, the termination of an employment contract with a pregnant woman was allowed. Again, however, the legislator did not explain how the prerequisites whose occurrence allowed the termination of the employment contract during the protection period were to be interpreted.[39] This therefore meant that it was necessary to refer to Articles 32–33 of the Regulation of the President of the Republic of Poland of 16 March 1928 on the contract of employment of intellectual workers,[40] and to Articles 13 and 33 of the Regulation of the President of the Republic of Poland of 16 March 1928 on the contract employment of workers.[41] Nevertheless, in any case, a legal act resulting in the termination of an employment contract with a pregnant woman required for its validity the consent of the works council or delegate. In the event of a dispute between the employer and the works council or delegate, the parties could apply to a conciliation and arbitration committee at the competent regional labour inspectorate. On the other hand, in workplaces where no works council or delegate had been established, the termination of the agreement required the approval of the regional labour inspector. The decisions made by the inspector were then considered final, which meant that they could not be appealed in the course of the instance. However, pursuant to Article 101 of the Regulation of the President of the Republic of Poland of 22 March 1928 on administrative proceedings,[42] the decision referred to in the provision under consideration could be challenged by way of supervision. The indicated circumstances under which a pregnant woman's employment contract could be terminated were no longer the only ones at the time. The employer also had the right to terminate such a contract for important reasons, but this could not take place within 4 months before the birth. An exception to this rule was the complete liquidation of the workplace.

[39] See W. Szczepański, *op. cit.*, p. 317.
[40] Journal of Laws 1928, no. 35, item 323.
[41] Journal of Laws 1928, no. 35, item 324.
[42] Journal of Laws 1928, no. 36, item 341.

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LEGAL ADMISSIBILITY OF JUVENILE'S WORK UNDER THE 1924 ACT

Juveniles, due to the forming personality, developing body, and the need to attain education, should not work. In view of the above, the legislator stipulated that it was forbidden to accept children under the age of 15 for gainful employment. At that time, this prohibition was already of a mandatory nature, so its introduction should be considered an important manifestation of the forming process of axiology in employment in the broad sense.

According to Article 2 of the 1924 Act, an juvenile was defined as a person of either sex between the age of 15 and the age of 18. When analysing the content of the 1924 Act, it can be noted that in Article 5 the legislator also indirectly included an additional definition of an juvenile worker, indicating that all persons under the age of 15 were defined as children. Thus, it was only the attainment of 15 years of age that at that time gave a real possibility of being allowed to perform work with the provisions of the 1924 Act under analysis. Reaching the indicated age was not, however, the only condition for being admitted to work, as in further provisions the selection criteria were made much more detailed. Above all, juveniles could be allowed to work if they collectively presented a certificate confirming that they had reached the age of 15, a permit from a representative of the parental or guardianship authority, proof of fulfilment of their schooling obligation, and a certificate from a doctor indicated by the labour inspectorate that the work in question did not exceed their strength. The certificates required by the legislator were exempt from payment, which should also be evaluated positively, since such relief did not limit the possibility of applying for the employment of juveniles affected by difficult material situation.

Bearing in mind the axiological issues, it is important to emphasise the special concern of the legislator of the time for both the health and the multi-faceted development of the juvenile worker, which continues today. This was confirmed by the obligation incumbent on the management of the enterprise to order their free medical examination at any time at the request of the labour inspector. The doctor was in such a case indicated by the labour inspector, while the examination he carried out was aimed at verifying that the work of the juvenile did not exceed his physical strength and did not harm his development. This meant that, on the basis of the doctor's certificate, the labour inspector had the right to prohibit the employment of a particular juvenile at a particular work and at the same time to indicate at which work, if any, he could be employed.

Another important sign of the legislator's special care for juveniles and their working conditions were the regulations concerning working time in the broad sense. The legislator pointed out that juveniles were already at that time entitled to an uninterrupted night's rest of at least 11 hours (in companies working one shift, the time between 8 pm and 6 am, and in companies with a two-shift system, the time between 10 pm and 5 am).

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There was also a partial ban on night work, which did not, however, apply to male juveniles over the age of 16. Nevertheless, the legislator in this case included certain exceptions which overruled this ban on night work. These were situations related to force majeure, which were not periodic in nature, but constituting an obstacle to normal operation of the industrial plant. The second group of circumstances derogating from this prohibition concerned industrial employment in categories of work which, by their nature, had to be carried out without interruption. The last group concerned work in coal mines (Article 8 (A) to (C) of the 1924 Act).

Education was a separate obligation of the juvenile, taking priority over employment. It was therefore evident from the premises expressed in the text of the 1924 Act that the intention of the legislator was that school attendance was not an act of the student's free will, but a statutory obligation.[43] In the original wording of Article 9 of the 1924 Act, the legislature had already indicated that juveniles were obliged to attend further schooling or education for illiterates. The 1945 Decree changed the wording of the provision, indicating that the educational obligation included vocational training or further schooling. Working hours even then included vocational and further training in schools for young apprentices, apprenticeships and trainees, up to a maximum of 6 hours per week. The 1945 Decree increased the number of hours included in working time to a maximum of 18 hours per week, regardless of whether the training took place at school during the young person's working hours or outside them. Regular education had to be documented by a certificate issued by the company. The above right resulting from the wording of the indicated provision applied only during actual school attendance, which means that it did not apply during the summer holiday period. Moreover, it should be emphasised that juveniles who reached the age of 18 in the course of a school year, due to the need to maintain continuity in their education, enjoyed the indicated entitlement until the end of the given school year.[44] At this point, however, it is also necessary to draw attention to a significant shortcoming of the 1924 Act analysed in this regard. Namely, its content indicated the lack of correlation between the provisions on compulsory education, which at that time lasted until the age of 14, and the provision of the 1924 Act specifying the age of 15 as the lower limit of employment. The indicated regulations were conducive to violation of the analysed provisions in practice.[45] The second legislative shortcoming concerned the failure to regulate vocational training for juveniles.[46]

[43] See W. Szczepański, *op. cit.*, p. 312.

[44] See Circular letter no. 106/48 of the Ministry of Labour and Social Welfare of 3 September 1948 on the performance of compulsory education by juveniles (Official Journal of the Ministry of Labour and Social Welfare, 20.9.1948, no. 14/34).

[45] See M. Święcicki, *Instytucje…*, pp. 80–81.

[46] See W. Szubert, *op. cit.*, p. 25.

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In order to ensure increased protection of this special group of subjects and to ensure the course of employment taking into account the regulations under analysis, employers who decided to employ juveniles were obliged to maintain records of them.[47] The compiled list was to be made available at the request of the labour inspection authorities. In addition, in workplaces employing juveniles, the list was to be displayed in a conspicuous place, indicating the beginning and end of work, breaks and type of work. On the other hand, from 1931 onwards, the employment of juveniles in all workplaces was permitted in a number which did not exceed a fixed percentage in relation to the total number of adult workers employed.[48]

The axiology of the employment of this special group of workers was also manifested in the safeguarding of the obligation to pay wages for work performed,[49] which will be at least adequate.[50] The amount of remuneration was determined in accordance with the principles pursuant to Article 41 of the Regulation of the President of the Republic of Poland of 16 March 1928 on the contract employment of workers.[51] The legislator, admittedly not in the original wording of the 1924 Act, because the provision was added to this Act in 1931, stipulated that the unpaid employment of juveniles was prohibited. At that time, it was also prohibited for the employer to accept remuneration for the training of a juvenile. The amount of the remuneration of juveniles had to be included in the content of the contract and disclosed in the list referred to above. An agreement concluded with a juvenile in violation of the indicated provisions, in accordance with the legislator's intention, is terminated through the fault of the employer. In addition, in the event of employing a juvenile in violation of the obligation to pay due remuneration resulted in the juvenile's claim for its payment for the entire period of employment.

CONCLUSIONS

The considerations contained in the individual parts of the study allow us to state that the issues included in the stream of employment axiology in the contemporary understanding were already present in the first Polish legal act concerning

[47] In detail, this matter is contained in the Regulation of the Minister of Labour and Social Welfare of 24 December 1931 on lists and inventories of juveniles (Journal of Laws 1931, no. 8, item 49).

[48] Article 5a of the Act was added by the Act of 7 November 1931 amendments and supplements to certain provisions of the Act of 2 July 1924 on juveniles and women work (Journal of Laws 1931, no. 101, item 773), which entered into force on 25 November 1931.

[49] See A. Raczyński, *Polskie prawo pracy*, Warszawa 1930, p. 35; M. Derlacz-Wawrowska, *op. cit.*, p. 1046.

[50] See I. Rosenblüth, *Prawo pracy. Ustawy, rozporządzenia, orzecznictwo, wyjaśnienia*, Kraków 1935, p. 266.

[51] Journal of Laws 1928, no. 35, item 324.

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the employment of women and juveniles, although these regulations in the world constituted a much earlier point of consideration, from which the development of labour law began.[52]

The conducted analysis, which is descriptive as well as theoretical and doctrinal in character, allowed also to naturally highlight several shortcomings, which undoubtedly include the combined regulation of the principles of employment of two different employee entities and the related, naturally forming needs. The noticed lack of differentiation in the analysed regulations, understood as differentiation of norms within particular parts of the main systematic,[53] did not make it possible to fully safeguard the resulting employment relationships. The separation of both matters, and thus the possibility for them to develop independently, did not occur until 1951 with the Decree on work and vocational training of juveniles in workplaces,[54] which revoked the provisions of the 1924 Act under analysis. Furthermore, the literature rightly points out that, in the content of the first national legal acts, the introduction of differentiation of employees based both on the criterion of the nature of work (i.e., manual work, white-collar work) and the related division into white-collar and blue-collar workers played an infamous role. A further division of workers based on the criterion of the economic sector (industry, agriculture) also proved to be important from a prospective point of view.[55] The result of such division was, among others, the fact that the provisions of the 1924 Act did not cover female agricultural workers, which was additionally incompatible with the ILO regulations.

Nevertheless, due to the fact that the labour law is a law in action, it is important from an axiological point of view to introduce provisions regulating the issues related to permissible working time as well as to define categories of prohibited work precisely because of the characteristics of particular groups of employees. It is therefore worth emphasising the content of one common provision (Article 4 of the 1924 Act), which concerned both women and juveniles, according to which, already then, it was prohibited to employ them in conditions where work was particularly dangerous or harmful to health, as well as in heavy work or work dangerous to health, morality and good manners. The introduction of a provision with such a general wording allowed for perspective, but also individual shaping of the content of employment relations of this group of employees, so that their life and health were protected from the very beginning. In the literature, also for this very

[52] See M. Święcicki, *Instytucje…*, p. 78.

[53] See idem, [in:] Z. Salwa, W. Szubert, M. Święcicki, *Podstawowe problemy prawa pracy*, Warszawa 1957, p. 35.

[54] Decree of 2 August 1951 on work and vocational training of juveniles in workplaces (Journal of Laws 1951, no. 41, item 311).

[55] See A. Dral, *op. cit.*, pp. 27–28.

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reason, it was pointed out that the norms contained in the 1924 Act were to a large extent consistent with the ILO conventions, and sometimes the Polish solutions were more favourable, therefore its content can be regarded as the achievement of the Polish labour world,[56] which has contributed to the development of the contemporarily understood axiology of employment. The 1924 Act was thus the first Polish comprehensive law establishing institutions to protect not only the health but also the maternity of women, as well as the health and life of young workers.

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ABSTRAKT

W artykule poddano analizie pierwsze polskie regulacje dotyczące zatrudnienia młodocianych i kobiet. W pierwotnej wersji oba podmioty były chronione wspólnym, zbiorczym aktem prawnym. Oprócz analizy normatywnej, celem jest wskazanie kształtujących się regulacji ochronnych oraz uwypuklenie wątków uznanych współcześnie za aksjologię zatrudnienia właśnie w stosunku do tych szczególnie chronionych podmiotów. Opracowanie wzbogacono poglądami wyrażonymi w ówczesnej literaturze przedmiotu i odwołaniem do praktyki, a także oceną powołanych rozwiązań przeprowadzoną z perspektywy prawie stu lat od uchwalenia ustawy. Z uwagi na zaproponowany zakres temporalny artykuł ma charakter nowatorski, pozwalający na podkreślenie najistotniejszych zmian w zakresie omawianej materii. Perspektywicznie opracowanie to posłuży do dokonania oceny współcześnie obowiązujących przepisów skierowanych już oddzielnie do pracujących kobiet oraz pracowników młodocianych.

Słowa kluczowe: prawo pracy; ochronna funkcja prawa pracy; aksjologia; zatrudnienie; ochrona pracy kobiet; ochrona pracy młodocianych