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Collective Labour Agreements for Persons Performing Paid Work on a Basis Other Than an Employment Relationship under the Polish Act on Collective Labour Agreements

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1. *Introductory Remarks*

The possibility of extending collective labour agreements to persons performing work on a basis other than an employment relationship has existed in Polish labour law for many years. Such a possibility was provided for in Article 239 § 2 of the Polish Labour Code as early as 1994. However, these persons could be covered by collective labour agreements only where the parties to the agreement expressly so provided, and only alongside employees, who constituted the principal category covered by collective labour agreements. Consequently, under the previous legal framework it was not possible to conclude a collective labour agreement exclusively for persons performing work on a basis other than an employment relationship. Furthermore, due to the highly restricted scope of trade union freedom enjoyed by persons performing work on a basis other than an employment

relationship, such persons were deprived of their own representation. The legal framework applicable at the time raised doubts as to the legal nature of provisions of collective agreements addressed to persons performing work on a basis other than an employment relationship. One view expressed in the legal literature was that such provisions should be construed as contracts for the benefit of third parties[1].

A breakthrough in this respect was brought about by the judgment of the Constitutional Tribunal of 25 June 2015 (K 1/13), which held that depriving persons performing paid work on a basis other than an employment relationship of the right to establish and join trade unions was incompatible with Article 32 in conjunction with Article 59(1) of the Constitution of the Republic of Poland. A direct consequence of the Constitutional Tribunal's judgment was the amendment of the Act on Trade Unions[2], as a result of which the right to join trade unions was granted to persons performing paid work for an employer. A further consequence of granting the persons referred to in Article 11^1(1) of the Act on Trade Unions the status of persons performing paid work on a basis other than an employment relationship was the extension of their rights in the field of collective bargaining. This was confirmed by Article 21(1) of the Act on Trade Unions, which expressly ordered the application of the provisions of Chapter XI of the Labour Code[3] to persons performing paid work on a basis other than an employment relationship. Consequently, it became possible to conclude collective labour agreements exclusively for persons performing work on a basis other than an employment relationship and through trade unions specialising in representing this category of workers. However, the regulation did not contain provisions specifically governing collective labour agreements for persons performing work on a basis other than an employment relationship; the legislature merely required the appropriate application of Chapter XI of the Labour Code. This gave rise to numerous interpretative problems, particularly with regard to the mechanism of application.

[1] Raczkowski, *Oddziaływanie układu zbiorowego pracy na osoby niebędące pracownikami*, in *PIZS*, 2018, no 2.

[2] Act of 5 July 2018 amending the Act on Trade Unions and certain other acts (Journal of Laws 2018, item 1608).

[3] At that time, Chapter XI of the Labour Code contained a comprehensive regulation of collective labour agreements.

It was therefore argued that the legislature should resolve this issue expressly and unequivocally[4].

The process of shaping the regulation concerning the conclusion of collective labour agreements for persons engaged on a basis other than an employment relationship was completed by the adoption and entry into force of the Act of 5 November 2025 on Collective Labour Agreements[5]. The Act comprehensively regulates collective labour agreements, including agreements applicable to persons performing work on a basis other than an employment relationship. Some provisions of the Act are common to all persons covered by collective labour agreements. Certain issues, however, have been regulated specifically in relation to persons performing work on a basis other than an employment relationship.

The purpose of this article is to analyse the key issues concerning collective labour agreements for persons performing work on a basis other than an employment relationship: their personal scope, mechanism of application, the principle of favourability, and their legal nature. The selection of the issues analysed results from the fact that, in these areas, significant differences emerge in comparison with collective labour agreements covering employees, thereby giving rise to new legal problems that have not yet been examined in Polish labour law scholarship.

2. *The Concept of Persons Performing Paid Work on a Basis Other Than an Employment Relationship*

The Act on Collective Labour Agreements does not contain its own definition of persons performing paid work on a basis other than an employment relationship, but instead refers to Article $1^1(1)$ of the Act on Trade Unions, which defines "persons performing paid work". Under this provision, persons performing paid work are understood as employees or persons performing remunerated work on a basis other than an employment relationship, provided that they do not employ other persons to perform such

[4] Pisarczyk, *Reforma zbiorowego prawa pracy. Próba kodyfikacji a nowelizacja przepisów zbiorowego prawa pracy*, Wolters Kluwer Polska, 2019, p. 424.

[5] Ustawa z dnia 5 listopada 2025 r. o układach zbiorowych pracy i porozumieniach zbiorowych Dz.U. 2025, poz. 1661. https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20250001661.

work, regardless of the legal basis of employment, and provided that they possess rights and interests connected with the performance of work that may be represented and defended by a trade union. Accordingly, the possibility of concluding collective labour agreements for persons performing work on a basis other than an employment relationship has been strictly correlated, in personal terms, with their right to join trade unions.

The general formula of "persons performing paid work" encompasses numerous categories of persons performing such work on a basis other than an employment relationship within the Polish labour market: self-employed persons, platform workers, persons working under contracts of mandate and contracts for specific work, homeworkers, persons performing work under managerial contracts, and members of production cooperatives. Moreover, due to the general character of the formula adopted, collective agreements may also be concluded for any future forms of non-standard work that may emerge, provided that they satisfy the criteria laid down in Article $1^1(1)$ of the Act on Trade Unions[6].

The legislator introduced two additional conditions that determine whether persons performing paid work on a basis other than an employment relationship may join trade unions and, consequently, whether collective labour agreements may be concluded for them. The first, relatively obvious condition is that they must not employ other persons to perform such work. Employing other persons places an individual within the category of an employing entity. Indirectly, this requirement also indicates that collective agreements may cover only persons who personally perform paid work for an employing entity[7]. The second condition, more ambiguous in character, is that such persons must possess rights and interests capable of being represented and defended by a trade union. However, the mere fact of performing paid work for another entity indicates the existence of such interests, at least with regard to working conditions and remuneration. At the same time, the legislator did not introduce any income-related criterion, although such a criterion appears to have been expected by the Constitutional Tribunal[8]. Consequently, persons performing paid work on a basis

[6] Latos-Miłkowska, *The right to unionise in Poland after the amendment of the Law on Trade Unions*, in *ELLJ*, 2023, no. 1.

[7] Czarnecki, Grzebyk, Reda-Ciszewska, Surdykowska, *Ustawa o związkach zawodowych. Komentarz praktyczny z orzecznictwem*, C. H. Beck, 2022, p. 14.

[8] See the reasoning of the Constitutional Tribunal judgment of 25 June 2015 (K 1/13).

other than an employment relationship may join trade unions and may be covered by collective labour agreements irrespective of the proportion of their income derived from a given legal relationship.

The broad concept of persons performing paid work established under the Act on Collective Labour Agreements gives rise to a potential risk of infringement of competition law, both under Article 101 TFEU and Article 6(1)(1) of the Polish Act on Competition and Consumer Protection[9]. There can be no doubt that, in light of Article 2 of the Act on Collective Agreements, read in conjunction with Article 1^1(1) of the Trade Unions Act, collective agreements may cover both economically dependent self-employed persons and self-employed persons who are genuine undertakings and do not employ any other persons.

Under Article 101 TFEU, this issue has been addressed by the CJEU, most notably in *FNV Kunsten*[10]. In its case law, the CJEU has emphasised that collective agreements involving undertakings may be exempt from the prohibition of restrictive agreements where they pursue a legitimate social objective[11].

In September 2022, the European Commission published its Communication entitled *Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons* (2022/C 374/02). The Commission proposes that collective agreements aimed at improving working conditions and concluded between solo self-employed persons and their counterparty on whom they are economically dependent, or with whom they perform the same or similar tasks as workers, should fall outside the scope of Article 101 TFEU. For the purposes of the Guidelines, the Commission considers a solo self-employed person to be economically dependent where at least 50% of that person's total annual work-related income is derived from a single counterparty.

A similar position has been adopted by the Polish Office of Competition and Consumer Protection (UOKiK) with regard to Article 6(1)(1) of the Act on Competition and Consumer Protection, which prohibits

[9] Ustawa z dnia 16 lutego 2007 r. o ochronie konkurencji i konsumentów, Dz.U. 2025, issue 1714.

[10] FNV Kunsten Informatie en Media v Staat der Nederlanden, Case C-413/13, ECLI:EU:C:2014:2411.

[11] Giedrewicz-Niewińska, Kurzynoga, *Zakres podmiotowy prawa do rokowań zbiorowych w Konstytucji RP a prawo międzynarodowe i unijne,* in *PIZS,* 2023, no. 3.

agreements consisting, inter alia, in the direct or indirect fixing of prices or other terms and conditions of purchase or sale. Referring to the Commission's Guidelines, UOKiK likewise considers that a collective agreement concluded on behalf of economically dependent self-employed persons, or persons performing the same or similar tasks as workers, does not infringe competition law, and has declared its intention to apply the principles set out in the Commission's Guidelines[12].

The Polish Act on Collective Agreements does not, however, distinguish between economically dependent self-employed persons and self-employed persons who qualify as genuine undertakings. Instead, it grants all self-employed persons who do not employ other persons the capacity to conclude collective agreements. Consequently, the Polish regulatory framework may, at least hypothetically, permit the conclusion of a collective agreement that infringes Article 101 TFEU and Article 6 of the Act on Competition and Consumer Protection[13].

3. *The Personal Scope of Application of Collective Labour Agreements*

Pursuant to Articles 4 and 5 of the Act on Collective Labour Agreements, both enterprise-level and supra-enterprise collective labour agreements are concluded for all persons performing paid work for employers covered by the agreement, unless the agreement provides otherwise.

It follows from the above that all provisions of a collective labour agreement will apply to persons performing paid work on a basis other than an employment relationship, and not merely those provisions expressly addressed to this category of persons, unless the collective agreement itself excludes the application of a particular provision to them. This constitutes a fundamental difference between the previous and the current legal framework. Under the former provisions, the agreement covered all employees employed by employers bound by the agreement, whereas persons employed on a basis other than an employment relationship were covered only where the parties expressly so provided. Consequently, there had to

[12] Urząd Ochrony Konkurencji i Konsumentów, *Zmowy i nadużycia na rynku pracy a sprawy pracownicze*, 2024, p. 23.

[13] Giedrewicz-Niewińska, Kurzynoga, *cit.*

be an explicit basis within the collective labour agreement for applying its individual provisions to persons performing work on a basis other than an employment relationship. Under the current provisions, by contrast, the agreement covers, "on an equal footing", all persons performing paid work for an employer, irrespective of the legal basis of employment, unless the parties to the agreement decide otherwise.

The provisions of a collective labour agreement apply to all persons performing paid work on a basis other than an employment relationship for an employer covered by the agreement within the meaning of Article $1^1(1)$ of the Act on Trade Unions, regardless of their trade union membership. This demonstrates the extended personal effectiveness of collective labour agreements with respect to persons performing work on a basis other than an employment relationship, which in turn constitutes one of the hallmarks of their normative character[14]. In particular, this means that collective labour agreements concluded for persons performing work on a basis other than an employment relationship do not possess a purely contractual nature, insofar as their application is not dependent upon membership in the trade union constituting a party to the agreement and extends also to persons who are not members of that trade union.

4. *The Impact of Collective Labour Agreements on the Content of Acts Constituting the Basis for Performing Work on a Basis Other Than an Employment Relationship*

One of the most important issues arising in connection with the new regulation concerns the manner in which the provisions of collective labour agreements affect the content of legal relationships constituting the basis for performing paid work on a basis other than an employment relationship.

With regard to the provisions of collective labour agreements regulating the rights and obligations of the parties to an employment relationship, this follows expressly from Article 9 § 1 of the Labour Code, which classifies collective labour agreements as sources of labour law and thereby indicates

[14] Florek, *Ustawa i umowa w prawie pracy*, Wolters Kluwer Business, 2010, pp. 284 and 286; Pisarczyk, *Autonomous Sources of Labour Law in the Light of Constitutional Numerus Clausus. Problems with Qualifying Autonomous Acts under Polish Law*, in *ILLEJ*, 2024, no. 17, p. 248.

their power to directly shape the content of employment relationships[15]. As L. Florek observes, "the statute confers legal force upon the collective agreement by recognising it as a source of law occupying a specific place within the hierarchy of legal acts. Consequently, the rights and obligations of employees and employers laid down in the agreement directly shape the content of the employment relationship" (Article 18 § 1 in conjunction with Article 9 § 1 of the Labour Code)[16]. Article 9 of the Labour Code determined the direct applicability of collective labour agreements and, to a certain extent, rendered this issue independent from the ongoing scholarly debate concerning the legal nature of collective labour agreements in the light of the Constitution of the Republic of Poland[17].

No analogous regulation exists with regard to collective labour agreements governing the rights and obligations of persons performing paid work on a basis other than an employment relationship. Consequently, it is necessary to determine, by way of interpretation, how collective labour agreements affect the content of legal relationships constituting the basis for performing such work.

The basis for the direct application of collective labour agreement provisions may be found in Article 3 of the Act on Collective Labour Agreements, according to which a collective labour agreement determines the conditions to which the content of employment relationships or other legal relationships constituting the basis for performing paid work should conform. However, the question arises whether, in the absence of a regulation analogous to Article 9 § 1 of the Labour Code, this provision constitutes a sufficient basis for recognising that collective labour agreements directly shape the content of legal relationships constituting the basis for performing work on a basis other than an employment relationship.

An argument supporting such a conclusion may also be derived from the mechanism regulating the impact of the entry into force of a collective

[15] Pursuant to Article 9 of the Labour Code, whenever the Labour Code refers to labour law, this shall be understood as meaning the provisions of the Labour Code and provisions of other statutes and implementing acts determining the rights and obligations of employees and employers, as well as the provisions of collective labour agreements and other collective arrangements based on statute, regulations and statutes determining the rights and obligations of the parties to an employment relationship.

[16] Florek, *cit.*, p. 146.

[17] Pisarczyk, *Autonomous Sources of Labour Law*, cit.

labour agreement (or its amendment) on the content of legal relationships under which paid work is performed by persons covered by the agreement. This issue is regulated uniformly for all persons covered by the agreement in Article 16(4) of the Act on Collective Labour Agreements, pursuant to which provisions of a collective labour agreement that are more favourable to the persons covered by it replace, by operation of law and as from the date of its entry into force, the existing terms of the employment contract or other act constituting the basis for establishing an employment relationship, or the existing terms of the act constituting the basis for performing paid work.

This provision establishes the automatic application, by operation of law, of provisions of a collective labour agreement that are more favourable to persons performing paid work than the existing terms of the act constituting the basis for performing paid work. Such provisions therefore directly affect the content of acts constituting the basis for performing paid work, which constitutes one of the indicators of the normative character of collective labour agreements[18]. This mechanism of application is, however, linked to a specific legal event, namely the entry into force of the collective labour agreement (or its amendment). It therefore applies to acts constituting the basis for performing paid work on a basis other than an employment relationship that are in force on the date the collective labour agreement (or its amendment) enters into force. It does not regulate situations in which the legal relationship constituting the basis for performing paid work is established after the collective agreement has entered into force.

The mechanism for introducing less favourable provisions into the act constituting the basis for performing work other than within an employment relationship remains unclear. This issue is governed by Article 16(6) of the Act on Collective Labour Agreements, according to which provisions of a collective labour agreement covering persons performing paid work other than employees, which are less favourable to those persons than the previous provisions of the collective labour agreement, are introduced in the manner adopted in the agreement constituting the basis for performing paid work. In the absence of provisions regulating the relevant procedure in the agreement, or in the absence of agreement between the parties, the

[18] Florek, *cit.*, p. 286; Pisarczyk, *Autonomiczne źródła prawa pracy*, Wolters Kluwer Polska, 2022, p. 226.

provisions of the collective labour agreement do not produce legal effects with respect to those persons.

It should be noted that the very necessity of contractually introducing changes less favourable than those resulting from the previous collective agreement indicates that the previous agreement directly affected the content of the legal relationship, thereby confirming the thesis that collective labour agreement provisions directly shape the content of legal relationships constituting the basis for performing work other than within an employment relationship.

It remains unclear, however, how less favourable amendments to collective agreements are to be introduced where the previous terms of the act constituting the basis for employment had not previously been shaped by a collective labour agreement. Neither Article 16(6) nor any other provision of the Act regulates this issue. It appears, however, that despite the absence of express regulation, the mechanism should be similar. Such a conclusion is supported by the principle of contractual freedom expressed in Article 353^1 of the Civil Code.

The direct impact of collective labour agreements on the content of legal relationships constituting the basis for performing paid work on a basis other than an employment relationship is also indicated by Article 22(9) of the Act on Collective Labour Agreements. Under this provision, working conditions resulting from a collective labour agreement in respect of which a court has declared the agreement wholly or partially non-binding continue to apply, in the case of employees, until the expiry of the notice period applicable to those conditions, and in the case of persons performing paid work other than employees, until those conditions are amended in the act constituting the basis for performing paid work. This provision clearly demonstrates that the provisions of a collective labour agreement – even a defective one – become incorporated into the content of legal relationships constituting the basis for the performance of work, both in employment and non-employment relationships.

In light of the foregoing, despite the absence of an explicit normative basis for recognising that collective labour agreement provisions shape, by operation of law, the content of acts constituting the basis for performing work on a basis other than an employment relationship, such a conclusion should nevertheless be accepted. It would be difficult to accept a situation in which collective labour agreement provisions affect only those contracts

constituting the basis for performing work on a basis other than an employment relationship that are in force on the date the agreement enters into force, while producing no such effect in relation to contracts concluded thereafter. The legal nature of collective labour agreement provisions should not depend on a temporal factor, namely the moment at which the contract was concluded. Such a conclusion would also be difficult to reconcile with the constitutional principle of equal treatment and would deprive Article 3 of the Act on Collective Labour Agreements of any practical significance.

5. *The Problem of Applying the Principle of Favourability*

An important issue raising doubts under the new regulation concerns the relationship between collective labour agreements and contracts constituting the basis for performing work on a basis other than an employment relationship.

The Act on Collective Labour Agreements contains no express provision clarifying the relationship between collective labour agreement provisions and contracts constituting the basis for performing work outside an employment relationship. In relation to the relationship between collective labour agreements and the terms of employment relationships, this issue is governed by Article 18 of the Labour Code, according to which the provisions of employment contracts may not be less favourable to employees than labour law provisions, and any contractual provisions less favourable than labour law provisions are null and void by operation of law and are automatically replaced by the appropriate labour law provisions. It has also long been accepted in legal scholarship that the term "labour law provisions" includes the provisions of collective labour agreements covering employees, as follows from Article 9 of the Labour Code, which defines the sources of labour law[19].

Article 18 of the Labour Code expressly concerns employment relationships and labour law provisions; consequently, there is no basis for applying it to contracts constituting the basis for performing paid work

[19] Florek, *cit.*, p. 286; Miętek, *Swoboda umów i jej ograniczenia przy kształtowaniu treści stosunku pracy*, C. H. Beck, 2019, p. 126; Góral, *O kodeksowym katalogu zasad indywidualnego prawa pracy*, Wolters Kluwer Polska, 2011, p. 205.

on a basis other than an employment relationship. Nor does the Act on Collective Labour Agreements contain any reference providing for the corresponding application of Article 18 of the Labour Code to contracts constituting the basis for performing paid work on a basis other than an employment relationship. There is therefore no explicit legal basis for asserting that the provisions of contracts under which paid work is performed on a basis other than an employment relationship may not contain provisions less favourable to persons performing paid work than those provided for in the collective labour agreement[20]. Consequently, there is no legal basis conferring a semi-imperative character upon collective labour agreement provisions regulating the rights and obligations of persons performing work on a basis other than an employment relationship.

Given the civil-law nature of acts constituting the basis for performing work outside an employment relationship, it is necessary to analyse the possibility of applying Article 58 of the Civil Code in cases of inconsistency between the provisions of such contracts and the collective labour agreement. Pursuant to this provision, a legal act contrary to statute or intended to circumvent the law is null and void, unless the relevant provision provides for a different effect, in particular that the invalid provisions of the legal act are replaced by the relevant statutory provisions.

The question nevertheless arises whether a collective labour agreement falls within the concept of "statute" within the meaning of Article 58 of the Civil Code. Legal scholarship indicates that the notion of "statute" under Article 58 of the Civil Code encompasses the sources of law referred to in Article 87 of the Constitution of the Republic of Poland, namely the Constitution itself insofar as it contains directly applicable norms, statutes, ratified international agreements, and, within the limits of statutory authorisation, regulations and acts of local law[21]. Article 58 of the Civil Code could therefore apply if collective labour agreements were recognised as sources of law in the constitutional sense. However, according to the prevailing scholarly view – with which the present author agrees – collective labour agreements do not constitute sources of law within the meaning of Article 87 of the Constitution of the Republic of Poland[22]. Consequently, Article 58 of

[20] Hajn, *Układ zbiorowy pracy jako instrument ustalania treści umów cywilnoprawnych o wykonywanie pracy*, in *SPPiS*, 2026, no. 2.

[21] Fras, Habdas (eds.), *Kodeks cywilny. Komentarz*, vol. I, Wolters Kluwer Polska, 2018.

[22] Pisarczyk, *Autonomiczne źródła prawa*, cit., p. 229; Chmaj, *Status układów zbiorowych*

the Civil Code cannot be used to resolve conflicts between the content of a legal act constituting the basis for performing work outside an employment relationship and the provisions of a collective labour agreement.

De lege lata, therefore, there is no provision prohibiting the content of legal relationships constituting the basis for performing work outside an employment relationship from being shaped in a manner less favourable than the provisions of collective labour agreements. It should nevertheless be noted that acceptance of such a conclusion may significantly weaken the practical importance of collective labour agreements with regard to persons performing work on a basis other than an employment relationship and may largely deprive such agreements of their function as instruments for improving the standards of employment of these persons, who, precisely because they are engaged outside an employment relationship, generally occupy a less favourable position than employees.

6. *The Relationship between Collective Labour Agreements for Non-Employees and Generally Applicable Provisions of Law*

Achieving the research objective of this article also requires an analysis of the relationship between collective labour agreements, insofar as they concern persons performing paid work on a basis other than an employment relationship, and generally binding legal provisions. With regard to employees, this issue is resolved by Article 9 § 2 of the Labour Code, according to which the provisions of collective labour agreements and other collective arrangements, as well as regulations and statutes, may not be less favourable than generally applicable legal provisions.

The regulation governing the relationship between collective labour agreement provisions and generally binding law is contained in Article 16(7) of the Act on Collective Labour Agreements, according to which provisions of collective labour agreements that are less favourable to the persons covered by them than the provisions of the Labour Code and the provisions of

pracy według systemowej wykładni Konstytucji RP, in *PIZS*, 2025, no. 7.; Krzywoń, *Konstytucyjna ochrona pracy i praw pracowniczych*, Wolters Kluwer Polska, 2017; Piekarczyk, *Układy zbiorowe pracy. Od charakteru prawnego do wykładni*, Difin, 2021, p. 69.

other statutes and implementing acts determining the rights and obligations of employees and employers are null and void by operation of law.

An analysis of this provision leads, however, to the conclusion that it does not determine the relationship between collective labour agreements and generally applicable provisions governing non-employment forms of work. The provision requires the terms of collective labour agreements to be assessed only in relation to sources of labour law expressly indicated in Article 16(7), namely the Labour Code and other statutes and implementing acts determining the rights and obligations of employees. The reference point is therefore the sources of labour law within the meaning of Article 9 of the Labour Code. Consequently, statutes and implementing acts regulating the legal basis of non-employment work fall outside the scope of this provision.

Prima facie, this leads to the conclusion that, with regard to non-employees, there is no hierarchy of sources based on the principle of favourability, and consequently that collective labour agreements may alter the position of such persons *vis-à-vis* generally applicable acts also *in peius*. However, it would be difficult to accept the conclusion that collective labour agreements for non-employees not only need not improve the position of this category of persons, but may even worsen it, for example by depriving contractors of the guarantee of a minimum hourly rate.

In this situation, it appears necessary to refer to the general hierarchy of sources of law and to recognise that the provisions of collective labour agreements may not conflict with mandatory provisions of higher-ranking law. As A. Krzywoń observes, "unlike legal acts issued by public authorities, collective labour agreements should not interfere with rights and freedoms connected with the performance of work or reduce the level of protection resulting from generally applicable law"[23]. Similarly, S. Piekarczyk argues that the principle of favourability in the relationship between collective labour agreements and generally applicable law is in fact a constitutional principle[24].

[23] Krzywoń, *cit.*, p. 483.
[24] Piekarczyk, *cit.*, p. 161.

7. *The Legal Nature of Collective Labour Agreements for Persons Performing Paid Work on a Basis Other Than an Employment Relationship*

In contemporary Polish labour law scholarship, the normative character of collective labour agreements is generally no longer questioned, although individual authors differ somewhat as to the sources of the normative character of collective labour agreements. This body of literature, however, predates the entry into force of the Act on Collective Labour Agreements and focuses primarily on collective labour agreements concerning employees.

The question therefore arises to what extent these findings remain valid with regard to collective labour agreements covering persons performing paid work on a basis other than an employment relationship.

Legal scholarship indicates[25] that the normative character of collective labour agreements is demonstrated primarily by the following features:

1. their general and abstract character;
2. their extended personal scope;
3. the fact that the relationship between the provisions of contracts and collective labour agreements is based on the principle of favourability;
4. the enforceability of rights arising from collective labour agreements.
5. When analysing these features in relation to collective labour agreements for persons performing paid work on a basis other than an employment relationship, it should be noted that most of these features are also present with regard to collective labour agreements covering such persons. Collective labour agreements, also in relation to persons performing work on a basis other than an employment relationship, contain provisions of a general and abstract character, as follows directly from Article 3 of the Act on Collective Labour Agreements. Furthermore, pursuant to Articles 4 and 5 of the Act, collective labour agreements are concluded for all persons performing paid work for an employer, regardless of their trade union membership. This demonstrates the extended personal scope of collective labour agreements also with respect to persons performing paid work on a basis other than an employment relationship.

The direct application of collective labour agreements to persons performing work on a basis other than an employment relationship is expressly

[25] Florek, *cit.*, pp. 286-287; Piekarczyk, *cit.*, pp. 60-62; see also the judgement of Constitutional Tribunal of 18 November 2002 (K 37/01).

provided for in Article 16(4) with regard to agreements entering into force. In addition, Article 3(1) of the Act on Collective Labour Agreements, which provides that collective labour agreements determine the content of legal relationships under which work is performed, as well as Article 22(9), support such a conclusion. In light of the foregoing, it should be recognised that collective labour agreements directly affect the content of legal acts constituting the basis for performing work outside an employment relationship.

There is, however, no regulation precluding derogation from collective labour agreements, to the detriment of the person performing work, in the act constituting the basis for performing work on a basis other than an employment relationship, nor is there any reference to Article 18 of the Labour Code. This raises doubts as to the applicability of the principle of favourability. Consequently, there is no legal basis for recognising that, with regard to non-employees, collective labour agreement provisions possess a semi-imperative character.

Taking into account all the foregoing observations, it should also be recognised that collective labour agreement provisions which directly affect the content of legal relationships constituting the basis for employment possess an enforceable character, provided that such a character follows from their content and provided that their application has not been excluded by the will of the parties to the legal relationship constituting the basis for performing paid work.

8. *Conclusions*

The entry into force of the Act on Collective Labour Agreements has, to a certain extent, completed the process of establishing the possibility of concluding collective labour agreements for persons performing paid work on a basis other than an employment relationship.

In many respects, the situation of such persons has been shaped in a manner similar to that of employees: collective labour agreements cover all persons performing paid work on a basis other than an employment relationship regardless of their trade union membership, and collective labour agreements directly affect the content of legal relationships constituting the basis for performing work by these persons, which indicates their normative character. The provisions of collective labour agreements shaping the rights

of persons performing paid work on a basis other than an employment relationship are, in principle, enforceable.

The fundamental and highly significant difference between employees and persons performing paid work on a basis other than an employment relationship lies in the absence of a relationship based on the principle of favourability between collective labour agreements and the contracts constituting the basis for performing work outside an employment relationship. In the case of employees, this issue is regulated by Article 18 of the Labour Code, which provides that employment contracts and other acts constituting the basis for establishing employment relationships may not be less favourable to employees than the provisions of collective labour agreements. This provision confers a semi-imperative character upon collective labour agreement provisions.

No analogous regulation exists with regard to persons performing paid work on a basis other than an employment relationship. This leads to the conclusion that the parties to such legal relationships may shape their content in a manner less favourable than the collective labour agreement. Consequently, the provisions of collective labour agreements applicable to such persons possess a relatively binding character[26].

The adoption of such a solution may, however, significantly weaken the practical significance of collective labour agreements with regard to this category of persons and substantially limit the protective and promotional functions of collective labour agreements in relation to them. In this respect, collective labour agreements would become similar in character to default provisions typical of civil law.

[26] Hajn, *cit.*

Abstract

The Act of 5 November 2025 on Collective Labour Agreements and Other Collective Agreements introduced, for the first time in the Polish legal system, regulations specifically concerning collective labour agreements concluded for persons performing paid work on a basis other than an employment relationship. The Act regulates, inter alia, the mechanism of application and the scope of application of collective labour agreements to non-employees. Nevertheless, the new provisions do not resolve all interpretative doubts relating to these issues. This article analyses the principal problems concerning collective labour agreements concluded for persons performing paid work on a basis other than an employment relationship, including their personal and material scope, the mechanism of application, the relationship between such agreements and generally binding provisions of law, as well as the relationship between the agreement and the legal acts constituting the basis for performing work. On the basis of this analysis, the author attempts to determine the legal nature of collective labour agreements applicable to these persons.

Keywords

Collective labour agreements, Persons performing work on a basis other than an employment relationship, Principle of favourability, Personal scope, Legal nature.