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Labour law in the era of climate transformation

Prawo pracy w dobie transformacji klimatycznej

Abstract
Progressing unfavourable climate change — rising temperatures, changing precipitation patterns, melting glaciers and snow, rising average global sea level, is a reality. To mitigate climate change, emissions must be reduced or prevented. Certain workplaces and industries will undergo changes or disappear altogether as a result of climate change, while others will come into being as we move towards 'greener' economies. Labour law, although not a natural ally in the fight against global warming, can become a very strong partner for environmental law. The Authors point to the obligations of the parties to the employment relationship, which should be reinterpreted to become an effective instrument in this fight. Thus, they start a discussion on the role of labour law in combating climate change.

Keywords
environmental protection, climate change, employment, duties of parties to an employment relationship

Streszczenie
Postępujące niekorzystne zmiany klimatu — wzrost temperatury, zmiany w strukturze opadów, topnienie lodowców i śniegu, podnoszenie się średniego poziomu mórz na świecie — są faktem. Aby złagodzić zmiany klimatu, należy ograniczyć te emisje lub im zapobiegać. Niektóre miejsca pracy i gałęzie przemysłu ulegną zmianom lub całkowicie znikną w wyniku zmian klimatu, podczas gdy inne powstaną w miarę przechodzenia do bardziej ekologicznych gospodarek. Prawo pracy, mimo że nie jest naturalnym sprzymierzeńcem walki z ociepleniem klimatu, może stać się bardzo silnym partnerem dla prawa ochrony środowiska. Autorzy wskazują na obowiązki stron stosunku pracy, które powinny ulec reinterpretacji, aby stały się skutecznym instrumentem w tej walce. Tym samym rozpoczynają dyskusję o roli prawa pracy w przeciwdziałaniu zmianom klimatycznym.

Słowa kluczowe
ochrona środowiska, zmiany klimatyczne, zatrudnienie, obowiązki stron stosunku pracy

JEL: K31

Introduction

Climate change and the contribution of mankind to this process is an indisputable, global fact. The first World Climate Conference, which drew attention to the threat of climate change resulting from human activity, was held in 1979. This led to the establishment of the World Climate Programme, managed by the World Meteorological Organisation

(WMO), the United Nations Environment Programme (UNEP) and the International Council for Science (ICSU). Less than 10 years later, the WMO and UNEP appointed the Intergovernmental Panel on Climate Change (IPCC) to assess the scientific evidence of climate change as well as its causes and to develop scenarios for future climate processes. According to the IPCC report presented in August 2021, climate change is expected to accelerate across all regions in the coming decades. With the global warming rate of 1.5°C, heat waves will intensify and warm seasons will become longer, while with the increase of 2°C, extreme temperatures will tend to reach critical tolerance thresholds for agriculture and human health. The report also makes the case for prompt, deep and sustained reduction in greenhouse gas emissions (IPCC, 2021). António Gutteres, UN Secretary-General, described the report as "code red for humanity". The World Bank's 2021 report suggests that climate change has the potential to force as many as 216 million people to migrate internally by 2050, a phenomenon that could begin to become apparent in less than 10 years, and that effective measures to halt further temperature increases, while unable to eliminate the scale of migration entirely, could reduce it by 80% (Clement, Rigaud, de Sherbinin, Jones, Adamo, Schewe, Sadiq & Shabahat, 2021).

The current climate situation justifies taking all measures that can contribute to reversing the worrying trends. Appropriate measures should be sought wherever possible, and therefore without restricting ourselves to any scientific fields. The occurrence of serious climate change justifies research into the effects of transformations on the labour market, as well as into new working conditions or modification of the obligations of hiring entities. On the other hand, there is the question of the role of labour law in efforts to mitigate climate change. With the proper shaping of labour laws and the simultaneous reinterpretation of existing regulations, this role can be invaluable.

Climate change — current state of research

The subject of impact and consequences of climate change has so far been addressed primarily in non-legal sciences, with prevailing contributions from earth sciences (Primack, Ellwood, Gallinat & Miller-Rushing, 2021), environmental protection (Nakièenoviè & Swart, 2000; Schröter, Cramer, Leemans et al., 2005), economics (Stern, 2007; Kundzewicz, Hov & Okruszko, 2017; Tol, 2009). As far as the legal sciences are concerned, the impact of climate change is analysed primarily by researchers in environmental law (Zębek, 2020; Ciechanowicz-McLean, 2011).

The social issues related to climate change are addressed only selectively and only in foreign publications. In doing so, they represent a high level of generality (Conaghan, Fischl & Klare, 2004; Hepple & Veneziani, 2009). In particular, the literature draws attention to the social consequences of climate change (Aminzadeh, 2007; Meza, 2010; Brown, 2008; Markkanen & Anger-Kraavi, 2019), its impact on employment (van den Berge, 2007; Esteban, Leary, Zhang, Utama, Tezuka & Ishihara, 2011), the need for social protection of employees affected by climate change (Huq & Hugé, 2010), and the change in working conditions induced by climate change (Working on a warmer planet, ILO 2019). Relevant literature identifies a number of challenges stemming from global warming that the world of work is likely to face in both the short and long perspective, yet it fails to propose tangible labour law solutions to reverse the alarming trends.

Labour law is not a natural "ally" of environmental law due to their different objectives. Labour law cares about striking a balance between the interests of employees and employers, which is often facilitated by increasing employee participation in profit and increasing production. Economic expansion and consumerism, on the other hand, do not coincide with environmental objectives, in the same way that slowing down productivity and imposing new costs on employers to reduce environmental emissions may go against the objectives of labour law, at least in the short term. Although the contradiction is rather apparent, it is in the interest of both employees and employers to prevention climate change. This may explain the lack of comprehensive research on the adaptation of labour law to emerging needs arising from climate change. Researchers specialising in environmental law are not well qualified to address the issue of climate impacts on labour law, and labour law scholars do not address environmental issues in their writings, due to traditionally perceived labour law objectives. On the other hand there is the parallels between the two branches of law, which essentially boil down to the pursuit of a state of equilibrium (Dorrey, 2016). In addition in some respects, labour law provisions are simultaneously environmental laws, with the most obvious example being occupational health and safety provisions.

International climate action

The United Nations Framework Convention on Climate Change (UNFCCC), signed in June 1992 in Rio de Janeiro by representatives of 154 countries (currently 197 countries are parties to the Convention) constituted a milestone on the way to global agreement on climate change. The Convention requires the Parties to cooperate towards reducing greenhouse gas emissions, adapting to climate change, conducting scientific research and systematic climate observation, developing and disseminating technologies,

practices and processes to reduce anthropogenic greenhouse gas emissions. Other notable initiatives include international treaties complementary to the UNFCCC: The Kyoto Protocol of 1997 and the Paris Agreement of 2015. Between 31 October and 12 November 2021, The UK hosted the 26th UN Climate Change Conference of the Parties (COP26). World leaders convened at COP26 to accelerate action towards the implementation of the Paris Agreement and UNFCCC goals.

The advancing climate change has an undeniable impact on human rights (European Parliament resolution of 19 May 2021 on the effects of climate change on human rights and the role of environmental defenders on this matter (2020/2134(INI)). Apart from the previously mentioned international legal acts, special consideration should be given to the Universal Declaration of Human Rights, or the Charter of Fundamental Rights of the European Union, Article 37 of which commits the EU to incorporating a high level of environmental protection and improvement of its quality into Union policies. Pursuant to UN Human Rights Council Resolution 41/21 of 12 July 2019 on Human Rights and Climate, the effects the climate change and continued environmental degradation have on freshwater resources, ecosystems and community livelihoods have already adversely affected the effective enjoyment of human rights, including the right to life, food security rights, safe drinking water and sanitation services, along with the rights to health, housing, self-determination, work and development. Identical conclusion emerges from a recent report by the European Environment Agency (EEA, 2019).

Issues related to climate change find themselves under increased scrutiny as part of institutional reflections on the future of human work. In this context, the International Labour Organization (ILO) specifically mentions environmental and climate change among current trends, alongside technological change, demographic change and persistent inequalities (ILO, 2019). In September 2008 ILO, the United Nations Environment Programme (UNEP), the International Trade Union Confederation (ITUC) and the International Organisation of Employers (IOE) published the report "Green Jobs: Towards Decent work in a Sustainable, Low Carbon World" (ILO, UNEP, ITUC, IOE, 2008). This document contributes significantly to the understanding of the challenges associated with the transition to so-called green jobs worldwide. It illustrates the vast potential for creating and transforming existing jobs as well as eliminating jobs in virtually all sectors of the economy in low- and high-income countries. It outlines a policy framework for tapping this potential. During the latest sessions at the Conference of the Parties to the United Nations Framework Convention on Climate Change (it should be pointed out that COP24 was held in Katowice, Poland, from 2 to 14 December 2018), ILO sought to contribute to global negotiations and national efforts to combat climate change, while promoting opportunities to create decent work and ensure Just Transition for everyone. At COP25, ILO highlighted the value of social and political factors in the successful and swift transition to economies based on greater respect and presented the "Climate Action for Jobs Initiative".

ILO observes that in trying to understand the relationship between the world of work and climate change, there are at least three key aspects to bear in mind:

- jobs depend both directly and indirectly on the services each ecosystem provides (e.g. jobs in agriculture, fisheries, forestry and tourism); climate change threatens the performance of many of these vital services, negatively affecting economic activity and the jobs connected to them; these negative effects also include declining labour productivity
- jobs and healthy working conditions depend on the absence of environmental hazards and on maintaining environmental stability; climate change, to the extent that it affects temperature and precipitation, can render entire regions unproductive and workplaces excessively hot, thus resulting in migration triggered by climate change, the spread of job insecurity, informal work and increased unemployment
- the risks and hazards arising from environmental degradation tend to affect vulnerable workers the most, including people living in poverty, indigenous and tribal communities, persons with disabilities and other disadvantaged groups, depending on the country or region, thus creating and perpetuating inequalities (ILO, 2018).

A number of G20 countries have begun to incorporate decent work into their environmental policies, more specifically into their National Strategy Documents (NDCs) under the Paris Agreement. Brazil, India and South Africa have included a direct reference to decent work in their NDCs. In turn, indirect reference can be found in the National Strategy Documents of Australia, Canada, France, Germany, Japan and the United Kingdom. ILO indicates that international labour standards can serve as a legal framework for regulations that not only enforce greater sensitivity of workers and employers in the face of climate change, but also enhance the adaptive capacity of communities from this perspective (ILO, 2018).

The impact of environmental issues on labour law constructions — cases in point

Recently, some EU member states have recognized the need to broaden the list of informational obligations imposed on the employer with respect to not only the employee, but also the employees'

representatives. The French bodies representing employees, the Socio-Economic Committees, have been assigned a new statutory role consisting in monitoring the environmental impact of employers' activities. This means that these days in France, in all matters on which the Committee must be consulted, the employer needs to inform the Committee of the environmental consequences of its operations, among other things. The information provided to the Committee as part of the consultation process must now include an assessment of the environmental impact of the employer's projects. One can even speak of employee participation in environmental matters. Rule 10 of the above-mentioned Rio Declaration of 1992 specifies that at the state level, every citizen should be guaranteed proper access to environmental information held by public authorities. This includes information on hazardous substances and hazardous activities in the community's area of residence, as well as opportunities for public participation in the decision-making process. States should facilitate this, as well as raise public awareness by developing broad access to information. Efficient and practical access to legal and administrative measures in this regard, including compensatory and remedial measures, should be ensured.

It should also not be overlooked that, in times of a dynamically changing climate, so-called corporate social responsibility (CSR) plays an even more important role than under normal circumstances. CSR can be an effective tool for mitigating climate change. Corporations have to address climate change through environmentally friendly production techniques, adoption of green, transparent policies and disclosure of environmental information.

From an environmental perspective, it is also possible to point to the existence of certain information obligations incumbent on the employee, not only as a party to the employment relationship but also as a citizen concerned with the welfare of the workplace. According to recital 10 of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of whistleblowers in the field of environmental protection, the collection of evidence concerning, prevention, detection and combating of environmental offences and instances of unlawful activities against the environment poses a challenge and the activities carried out in this area need to be reinforced. The introduction of whistleblower protection is essential to ensure the effective enforcement of the environmental acquis of the Union, the violation of which can cause harm to the public interest and has the potential to produce adverse effects well beyond national borders. Introducing such protection is also significant in cases where hazardous substances can cause environmental damage. Individuals who work for a public or private organization, or who interact with such an organization in connection with their professional activities (very often employees), are frequently the first to become aware of threats or damage to the public interest that occurs in this context.

Environmental concerns also have a significant impact on other employment law constructs, such as employment equality legislation. The UK Employment Appeal Tribunal (EAT) ruled in Grainger v Nicholson (2010) that a belief in climate change is potentially protected under UK equality legislation, which prohibits discrimination on the grounds of religion or belief (in the facts of the case, the employee was singled out for dismissal on the grounds of such beliefs). In order for these beliefs to be considered protected, the EAT held that: (i) the belief must be a genuine one; (ii) it must be a belief and not an opinion or viewpoint based on the current state of available information; (iii) it must be a belief concerning an important and relevant aspect of human life and behaviour; (iv) it must attain a certain level of intelligibility, seriousness, coherence and significance; and (v) it must be worthy of respect in a democratic society, must not be incompatible with human dignity and must not conflict with the fundamental rights of others. The EAT agreed that an employee's beliefs about climate change can satisfy these conditions. The ruling gives important protection to employees who claim to have been disadvantaged at work because of their commitment to combating climate change.

The Polish perspective

It needs to be considered whether there are solutions that could respond to the progressing climate change under current provisions of the Polish labour law. Focusing on the current regulations is justified by the Polish socio-political specificity. There is no political will to introduce solutions for greening in a broad sense, including greening of workplaces. Admittedly on 16 July 2019, the Council of Ministers adopted the "The 2030 National Environmental Policy — the Development Strategy in the Area of the Environment and Water Management", and COP24 was held in Katowice, Poland, from 2 to 14 December 2018. However, this activity does not lead to concrete solutions, and the case of the Turów lignite mine near the Czech border has shown the state policy in the climate sphere (decision of the EU Court of Justice, C-121/21 R). Social dialogue and collective bargaining cannot be an effective solution either. The state does not support social dialogue (or at least one can doubt whether it supports it). A good example of such an approach constitutes recent works on the regulation of remote work in Poland. Collective bargaining is also not an option due to the low unionisation — according to the Statistics Poland (GUS), people

affiliated with trade unions represent 4.9% in relation to the adult population of Poland.[1] The opportunity, therefore, lies in action by individual employers and individual employees. Moreover, employees are usually the first to become aware of environmental risks or damage to the public interest caused by their employer's actions.

The lack of regulations relating directly to the sphere of environmental protection from the perspective of the workplace and those mentioned above Polish socio-political specifics force the search for appropriate legislative solutions at the level of individual labour law. Although the Polish labour law is mainly outdated and repeatedly fails to keep up with the dynamic socio-economic changes, certain regulations of a fundamental nature can already be applied in shaping correct attitudes aimed at environmental protection in the workplace. Among the many responsibilities, the legislator formulates the obligation of the employee to take care of "the good of the workplace" — it is a common value, "good" not only of the employer but also of the hired employees. This means that the employee must also look after the welfare of his co-workers. On this basis, the employer can expect the employee to comply with the pro-climate solutions introduced by the employer in the course of work. And the employee's failure to comply with the employer's new guidelines could be treated as a breach of fundamental employee duties. Which in extreme cases could even lead to termination of the employment contract. Another obligation which may be an ally in shaping the pro-environmental attitudes in the workplace is the employee's obligation to observe the rules of social coexistence. On the part of the employer, it takes the form of an obligation to shape the principles of social coexistence at work. Usually, this obligation comes down to correct relations between co-workers. However, this duty may also include refraining, both during working time and in one's free time, from such behaviour that may have a destructive influence on the environment. From a labour law perspective, when writing about rules of social coexistence, it is essential to consider both general rules and specific rules found in the workplace. An employee's compliance with the rules of social coexistence may be treated as the fulfilment of a pro-environmental obligation, e.g. with a view to environmental safety.[2] A new dimension can also be given to the obligation to respect the personal goods of the employee. One of the most important legally protected personal goods of every human being, not only the employee, is health. Undoubtedly, the employee's health is influenced by living in a clean and unpolluted environment. Consequently, the employer's duty should be to stop damaging the environment and the air, if such is the effect of the employer's activity. In such a view, this obligation will refer to the duty to provide employees with safe and hygienic working conditions using the achievements of science and technology. In particular, the obligation to inform employees about threats to health and life, which occur at the workplace, including those related to the destructive impact of the employer's activities on the natural environment, may acquire a new meaning. Such information obligations can, among other things, force specific technological (environmental) changes in employers and help build environmental awareness.

Summary — contribution to the further discussion

In view of the considerations made so far, it is necessary to give labor law the status of an instrument in the fight against climate change. In this connection, it is necessary, first of all analysis of legislative acts (national and foreign — i.a. ILO, Council of Europe, European Union), case law (national and foreign) taking into account the views of doctrine, in order to determine the rights and obligations of the employer and an employee in the context of climate change. This research can be very inspiring. Although the current Polish law was written almost 50 years ago, it may become an instrument to respond to climate change. In the long run, however, labour law should become an instrument that prepares society for a just transition. It is important to note, there is a growing need to restructure (or even liquidate) workplaces following the transition to a green economy, the problem of work involving exposure to extreme climatic conditions is escalating, and migration is intensifying. However, such economic changes cannot be left to their own devices, according to the concept of the so-called "Just Transition". The process of change should be carefully calculated, planned and carried out, taking into account such issues as decent work or high quality jobs, among others. The above translates to the necessity of developing new legal norms or adjusting current solutions to the evolving world of work, setting new goals and searching for new labour law institutions that will respond to the dramatically changing climate. But these actions are necessary if we are to have a chance of stopping climate change.

Notes/Przypisy

[1] https://stat.gov.pl/obszary-tematyczne/gospodarka-spoleczna-wolontariat/gospodarka-spoleczna-trzeci-sektor/partnerzy-dialogu-spolecznego-zwiazki-zawodowe-i-organizacje-pracodawcow-wyniki-wstepne,16,1.html (accessed: 10.02.2022).

[2] Ecological safety is sometimes defined as a permanent and continuous process aimed at achieving a desired ecological state, securing the peaceful and healthy existence of all ecosystem elements, and using various means compatible with the principles of internal state and international community co-existence (Haber, 1996).

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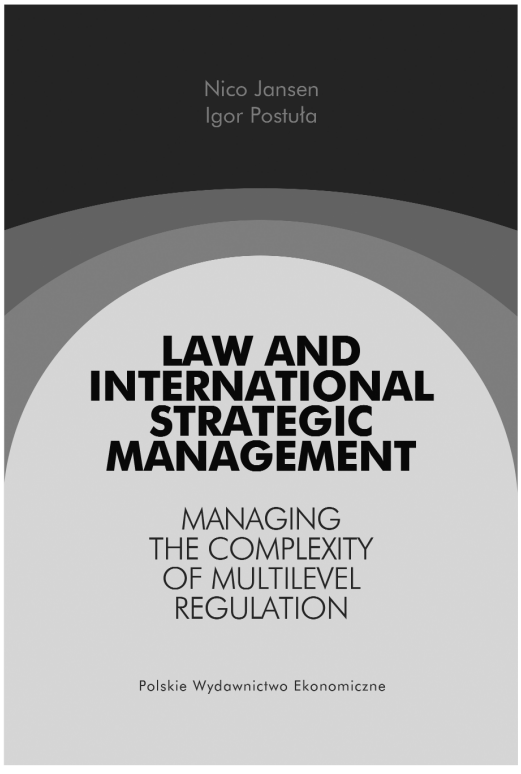
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