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LABOUR LAW IN THE 20TH CENTURY AS A RESPONSE TO THE CLIMATE CRISIS IN POLAND. PRO-CLIMATE ATTITUDES VERSUS THE OBLIGATIONS OF THE PARTIES TO THE EMPLOYMENT RELATIONSHIP

Abstract

The starting point for further consideration is that climate change and humanity's contribution to this process is an indisputable global fact. The article puts forward the thesis that certain provisions of the Labour Code—either existing since its enactment (i.e. since 1974) or introduced later but before 2000 (the title labour law of the 20th century)—show a visible “pro-climate potential”. This potential should be understood in that they can become an effective instrument in the fight against climate change.

The analysis examines: 1) the employer's obligation to respect the dignity and personal rights of employees, 2) the employee's duty to respect the interest of the work establishment and 3) the employer's obligation to contribute to shaping the principles of social coexistence in the workplace and the related employee's obligation to respect these principles. The option to use multiple legal constructions and protective mechanisms in parallel when determining the responsibility of the employee or the employer reinforces the importance of pro-climate behaviour in the workplace. Nevertheless, not all of the mentioned legal instruments will always be able to be applied when categorising a specific event.

Słowa kluczowe: zmiany klimatu, obowiązki pracownika i pracodawcy, zasady współzycia społecznego, dobra osobiste pracownika, dobro zakładu pracy

Keywords: climate change, obligations of the employee and the employer, rules of social coexistence, personal rights of the employee, good of the workplace

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Introduction

The climate crisis and global pollution constitute both threats to humanity and the main challenges of modern times. As humans, we make the biggest impact on nature and the climate, which is why we should speak up for change. All the more so since the future of generations to come depends on our joint response. According to the IPCC report presented in August 2021, climate change is expected to accelerate in all regions in the coming decades (IPCC 2021). The World Bank's report of 2021 suggests that it could force as many as 216 million people to migrate internally by 2050, a phenomenon that is likely to start manifesting itself within a decade or sooner, and effective measures to stop further increase in temperature, although not able to completely eliminate the volume of migration, have the potential to reduce it by 80% (Clement 2021, p. 9). We consider this issue to be no less relevant nowadays, despite the war in Ukraine, and the lowering of environmental and climate requirements we are witnessing in Poland due to the armed conflict right behind our border to be a step in the wrong direction. Climate goals and those related to state security (including energy security) have never been so aligned as they are today. In our view, labour law can also play a role in efforts to slow down climate change (Barański, Jaworska, Piszczek 2022, pp. 15–21).

It is possible to look at labour law in the context of climate change either from the short-term perspective (understood by us as the “here and now”) or from the long-term perspective (perceived as the adaptation of labour law to the new conditions of work provision resulting from climate change). Our paper addresses the first of these aspects.

Within the framework of the title labour law of the 20th century, we have selected a number of legal regulations which, in our opinion, show visible “pro-climate potential” and which have existed in the Labour Code either since its enactment (i.e. since 1974) or have been in place for a somewhat shorter period of time, but were introduced before 2000. Our attention is focused on: 1) the employer's duty to respect the dignity and personal rights of employees, 2) the employee's duty to respect the interest of the work establishment and 3) the employer's obligation to contribute to shaping the principles of social coexistence in the workplace and the related employee's duty to respect these principles—given the possibility of resorting to the provisions governing these duties when shaping pro-climate attitudes in the workplace.

For the purposes of this paper, climate crisis is understood as a turning point in time that calls for urgent action to address the threat to civilisation, and which is the result of particularly negatively assessed human activities that are causing an increase in the Earth's average annual temperature, the extinction of species of flora and fauna, the melting of glaciers, the sinking of islands, agricultural crop failures, a shortage of drinking water and an energy impasse. The climate crisis is therefore the situation that poses the risk of serious consequences if no action is taken to mitigate it.

We also believe that every environmental pollutant has an impact on climate change. Even assuming that labour law does not have a direct impact on climate change, we believe that it can have an indirect impact—through efforts to reduce said pollution.

1. Duty to respect the dignity and other personal rights of the employee

The obligation to protect the employee's dignity and other personal rights under Polish labour law has been elevated to the status of a fundamental principle of labour law, which means that this obligation is of vital importance for the proper relationship between the employee and the employer.

Pursuant to Art. 11(1) of the Polish Labour Code the employer is obliged to respect the dignity and other personal rights of employees. Undoubtedly, the purpose of introducing this regulation into Polish labour law was to shape within the framework of the employment relationship behaviours and attitudes that would eliminate instrumental treatment of employees (Sanetra 2013, p. 56). Furthermore, this article is intended to ensure the empowerment of the employee in the work process, "allowing a sense of self-esteem to be created in the employee, thereby increasing his or her personal commitment to work" (Szewczyk 2007, p. 271). In addition, the aforementioned duty of the employer is not only limited to refraining from violating the dignity and other personal rights of employees, but it is an order to take measures to ensure that the employee can freely exercise his or her personal rights (Dörre-Nowak 2005, p. 42). Also, this obligation is not limited in terms of location to the workplace. Therefore, it seems reasonable to state that the employer cannot violate the dignity and other personal rights of employees with its conduct (action, omission) even after work, during the employee's free time.

Employee dignity, within the meaning of Art. 11(1) of the Labour Code does not constitute a value separate from human dignity in general (Jackowiak 1965, p. 26), seen as a person's idea of self-worth and their "good name" (Sanetra 1997, p. 3; Szewczyk 2001, p. 48). Nor are employee's personal rights a special, separate right existing only within the employment relationship. General personal rights receive protection on this ground (Zieliński, Goździewicz 2009, p. 81), as defined in Art. 23 of the Polish Civil Code. This provision states that a person's personal rights, such as, in particular, health, freedom, honour, freedom of conscience, surname or alias, image, secrecy of correspondence, inviolability of the dwelling, scientific, artistic, inventive and innovative creativity, remain protected under civil law irrespective of the protection envisaged by other legislation. This catalogue is inclusive and subject to constant evolution. Meanwhile, the direction of this evolution depends on the changing perception of the intangibles subject to protection and is usually the result of *interpretatio extensiva* on the part of the judiciary¹ and doctrine (Herbet 2012, pp. 9–10). For example, an employee's right to privacy is a universally recognised personal right (Wujczyk 2012, p. 58), understood as the separation of work-related matters from the employee's private affairs (Liszczyk 2007, p. 11).

It is important to note that all personal rights share a common denominator, as they derive from the inherent dignity of a human being. Consequently, they are closely linked to humans, their nature, both in the physical and psychological sphere. At the same time, they

¹ E.g. the Court of Appeal in Kraków, in its judgment of 13 November 2012 (I Aca 1019/12, LEX 1264344) held that life and bodily integrity of a human being are personal rights which are subject to increased protection.

are objectified, specific and independent of a person's will (judgment of the Supreme Court of 6 May 2010, II CSK 640/09, LEX 598758).

It is necessary to examine whether the employees' right to clean air, to live in an unpolluted environment, constitute their personal rights which are subject to protection under Art. 11(1) of the Polish Labour Code. Accordingly, does an employer carrying out business activity characterised by negative environmental impact, high emissions of greenhouse gases into the atmosphere or otherwise influencing the acceleration of adverse climate change, violate the employee's personal rights?

First of all, it should be noted that legal protection of personal rights derives from the model of personal subjective rights, so that a personal right is a certain intangible and individualised interest (value deriving from human needs and inalienable dignity), which protects a personal subjective right (Hejbudzki 2019, p. 15, Grzeszak 2018, p. 15). The right of employee (human being) to clean air, to live in clean environment is an asset intended not only for individuals, but for society as a whole and even for humanity. Undoubtedly, the quality of air, soil, water, fauna and flora is a decisive determinant of human survival. If they become contaminated or eradicated, considering both the short and long perspective, we will face a threat to the life and health not only of affected individuals, but of the entire population (judgment of the Supreme Court of 28 May 2021, III CZP 27/20, LEX 3180102). And it is this very approach, in line with the concept of personal rights in general, that makes it impossible in the opinion of the Polish Supreme Court to qualify the right to clean air and the right to live in an unpolluted environment as an employee's personal rights. However, environmental pollution will contribute to the violation of other personal rights, which are basically the right to life and health (judgment of the Supreme Court of 28 May 2021, III CZP 27/20, LEX 3180102). In yet another decision, the Supreme Court held that the human right to an unpolluted biological environment and to the satisfaction of aesthetic feelings with the beauty of the landscape can only be protected by means provided for in civil law if the violation of this right constitutes at the same time a violation or threat to personal rights, the subject of which are personal rights within the meaning of Art. 23 of the Civil Code (judgment of the Supreme Court of 10 July 1975, I CR 356/75, LEX 344145).

In the context of the employee's personal rights, the rulings cited refer to the concept of a "pyramid of employee personal rights" (Wyka 2015, pp. 304–306). According to it, personal rights arising from Art. 23 of the Polish Civil Code and based on personal subjective rights constitute primary personal rights. In turn, employees' secondary personal rights derive from primary personal rights. To provide an example, the primary personal good is the right to life and health, and the resulting secondary personal goods of an employee are: the right to safe and hygienic working conditions (Jankowiak 2009, p. 95) and the right to rest. However, there is no consensus among the authors as to the ways or methods of distinguishing primary employee moral rights. The common ground, however, is that every personal right must be supported by a certain employment right (Szewczyk 2007, p. 217). It would therefore appear that *de lege ferenda* employee's right to safe and hygienic working conditions includes the right to work in a natural environment uncontaminated by the employer. It may, however, be questionable to extend this obligation of the employer

to include time off work, the employee's own right to enjoy and benefit from a clean natural environment. In our opinion, viewing this duty in a wider perspective is necessary due to the climate crisis, which threatens the employee's health in the short run and finally his or her life. The protection of an employee's personal rights should, therefore, be developed towards full protection of the employee as the weaker party in the employment relationship, especially when it comes to the right to life and health (Szewczyk 2007, p. 178). In addition, if one looks at the issue from the point of view of social market economy referred to in Art. 20 of the Polish Constitution, it should be evident that the standard of protection of employees' interests should be raised, also in terms of climate protection. However, it is essential to emphasise that the personal right in the form of the right to work in an unpolluted environment as well as the prospective extension of this right to employee's private sphere, does not mean the right to a crystal-clear, unpolluted environment. This right is limited by a legally defined standard of quality of air, water, soil or the environment in general.

2. The employee's duty to respect the interest of the work establishment

The duty to respect the interest of the work establishment is placed in the Polish Labour Code in Art. 100 § 2(4) amidst other principal duties of the employee. We consider the legislator's use of the term "workplace" as not accidental. The 1996 amendment to the Labour Code, aimed at adapting this piece of legislation to the needs of market economy, introduced a uniform notion of "employer" in all other provisions of the Act, replacing the previously used notions of "workplace" (to denote a state organisational unit) and "natural person employing employees" (to denote a private entity).² The fact that the term "workplace" has been left out of the provision that is central to the employee's duties is interpreted unanimously in the jurisprudence as giving it a subject-matter sense. The employee therefore has a duty to respect the welfare of the organisational unit, which is the workplace and thus a shared value, a "good" belonging not only to the employer but also to the employees (judgment of the Supreme Court of 9 February 2006, II PK 160/05, OSNP 2007, No. 1–2, item 4).

The provision of Art. 100 § 2(4) of the Labour Code imposing the duty to respect the interest of the work establishment is in the form of a general clause. This means that it is semantically non-specific. It refers the addressees of the legal norm to generally oriented evaluative extra-legal criteria (Leszczyński 1991, p. 159). Due to the use of general clauses, the decoding of the meaning of a specific legal norm is tainted with relativism. On the other hand, it reinforces discretion, guarantees that the totality of the facts of the case is taken into account, and thus contributes to making the law and the process of its application somewhat more flexible.

² For more on the changes to the Labour Code after 1989 that aligned it with the market economy by reducing state rationing of labour relations, see Florek 2015, pp. 31 ff.

Respecting the interests of the work establishment manifests itself in two types of behaviour: 1) the due performance of the duties under the employment contract and 2) the efforts, not included in the above duties, necessary to avert the damage threatening the establishment, to reduce its extent or remedy the effects of the damage that has occurred, as well as the efforts aimed at increasing the assets of the establishment (Zieliński 1986, p. 188). This duty boils down to refraining from actions that may cause property or non-property damage to the work establishment, as well as actively working for and in its interest (Piotrowski 1980, p. 241). This is not only about seeing to the purely pecuniary interests of the employer, but also about its good name and market reputation.

The duty to protect the good interests of the company, like all other employee duties listed in Art. 100 of the Labour Code, is universal in the sense that it constitutes an element of the content of any employment agreement (judgment of the Supreme Court of 10 October 2002, I PKN 588/01, LEX 1169955). However, it does not mean that the interpretation of the provision in question is going to be identical in every case. Where the employment contract itself already imposes specific tasks on the employee that are justified by the climate crisis, the duty of care for the interests of the workplace will *de facto* manifest itself in the proper performance of these tasks. However, despite the continuous increase in public awareness of climate change and the impact of environmental pollution on it, it cannot be assumed that the parties, within the framework of the autonomy of will and contractual freedom available to them, will universally decide to introduce the regulations indicated above. It should therefore be considered first and foremost whether, in a situation of the employer's passive attitude (lack of a superior's order, lack of internal regulations, e.g. work regulations or codified ethical principles), the obligation of the employee to undertake certain pro-climate actions or omissions arises from the general duty of respect for the interests of the workplace itself. In our opinion, this issue should be assessed from the point of view of the employee's due diligence. Clearly, there is no one-size-fits-all measure of diligence. Different diligence may be required of an employee holding a managerial position, different of a person performing highly qualified work with a high degree of autonomy, and another of an employee performing simple technical work (Góral 2020, p. 849). Since the duty of care discussed above manifests itself also in proactive efforts for and in the interest of the workplace, the employee can also be required to engage in pro-climate conduct even if it is not preceded by explicit action on the part of the employer.

Of course, climate and environmental issues must not cripple the employer's business operations. The obligation to respect the interests of the work establishment does not exclude the employee's right to constructively criticise the employer's actions and relations within the workplace. As a rule, an employee may openly and critically express his or her opinion on matters concerning the organisation of work (judgment of the Supreme Court of 7 September 2000, I PKN 11/00, OSNAPiUS 2002, No. 6, item 139), as it is not just the employee's right, but also duty to counteract the shortcomings observed in the workplace (judgment of the Supreme Court of 29 January 1975, III PRN 69/74, OSNCP 1975, No. 7–8, item 124). However, the employee should do so using appropriate form, as even legitimate criticism of the relations existing in the workplace must fall within the limits of the legal order (judgment

of the Supreme Court of 28 July 1976, I PRN 54/76, LEX 14319). “Permitted criticism” needs to display factuality, fairness, relevance to specific factual circumstances (Ciupa 2002, p. 925). The behaviour of an employee refusing to carry out the employer’s instructions and creating a conflict with the employer is particularly unacceptable. Such conduct is considered intolerable, even if it is an expression of the employee’s dissatisfaction with irregularities occurring in the workplace—the case concerned allegations made by the employee against the employer which were not confirmed in court proceedings (judgment of the Supreme Court of 19 March 2014, I PK 187/13, OSNP 2015, No. 9, item 120). On the other hand, however, the Supreme Court accepted in its judgment of 2 June 2010 that unconditional execution of an unlawful order, compliance with which at least potentially threatens the interests of the employer and whose harmfulness to those interests the employee was or should have been aware of, may be qualified as a breach of the employee’s obligation to respect the interests of the work establishment set out in Art. 100 § 2(4) of the Labour Code (judgment of the Supreme Court of 2 June 2010, II PK 364/09, M.P.Pr. 2010, No. 12, item 648–653; decision of the Supreme Court of 25 June 2019, II PK 175/18, LEX 2685417).

In our opinion, the greatest controversy relates to the possibility of inferring the obligation on the part of the employee to undertake pro-climate behaviour in terms of his or her activities outside working hours from respect for the interests of the workplace. The Supreme Court has consistently accepted that, since the object of the employee’s obligation is to respect the interests of the work establishment in its entirety, both tangible and intangible, it should be acknowledged that this obligation concerns the concretisation of the enjoyment of all rights if the exercise of one’s right may impinge on the interests of the work establishment. The object of the indicated obligation may be both the order to make proper use of the entitlements that directly define the position of the employee as a party to the employment relationship and the order to make proper use of entitlements other than the employee’s (judgment of the Supreme Court of 2 October 2012, II PK 56/12, LEX 1243024; decision of the Supreme Court of 23 May 2014, II PK 32/14, LEX 2026395; decision of the Supreme Court of 16 March 2022, II PSK 275/21, LEX 3411660). Likewise, Supreme Court decisions concerning the employee’s refraining from engaging in activities that compete with those carried out by the employer indicate that the obligation to respect the interests of the workplace may extend to the employee’s conduct also outside of work hours and place of work (judgment of the Supreme Court of 6 March 2006, II PK 211/05, OSNP 2007, No. 1–2, item 10; judgment of the Supreme Court of 2 April 2008, II PK 268/07, OSNP 2009, No. 15–16, item 201; judgment of the Supreme Court of 6 November 2009, III PK 43/09, OSNP 2011, No. 11–12, item 149; judgment of the Supreme Court of 15 March 2011, I PK 224/10, LEX 896455). The doctrine further points out that employee loyalty is understood as an employee’s conduct that is not detrimental to the interests of the workplace (employer), including outside his or her workplace, and refraining from any actions that could adversely affect those interests (Czerniak-Swędziół 2007, p. 106).

We believe that when looking at employees’ behaviour concerning environmental issues outside working hours, it is reasonable to look at the interests of the workplace regarded as its good name, market reputation and corporate image. The assessment of whether an

employee's environmentally harmful action violates the interests of the work establishment thus depends to a large extent on the type of activity carried out by the employer and on its image regarding climate and environmental issues (corporate social responsibility). The Supreme Court held that conviction by a final judgment of a civil police employee who had been driving under the influence could be considered a legitimate reason for termination of the employment contract, even though driving such vehicles was not the main object of his or her employment obligation (judgment of the Supreme Court of 16 April 2003, I PK 172/02, OSNP 2004, No. 15, item 262). It seems, the Supreme Court could similarly treat a final judgment against an employee for an environmental offence if justified by the type of activity carried out by the employer or by the employer's image.

On the other hand, behaviour of an employee that is destructive to the environment and which would only have an adverse effect on another [individual] employee or several employees from a larger group of employees falls outside the concern for the interests of the workplace. Indeed, the workplace under Art. 100 § 2(4) of the Labour Code should be viewed objectively, and therefore it is not to be equated with the employer, yet for the same reasons—it is not synonymous with an employee or several employees. The workplace is an organisational unit, which is the place of work and thus the common good of the crew or the good of the jointly conducted activity.

3. Duty to form and observe principles of social interaction

The concept of principles of social interaction is unknown in most European Union Member States' legislation and is therefore often misunderstood (Wypych-Żywicka 2017, p. 1371). In Polish labour law theory, it is usually assumed that principles of social interaction refer to "ethical and moral standards recognised in society within the framework of its dominant value system" (Baran 2022, p. 80; Dykas 2021, p. 179). Notwithstanding the significant divergence of views on the semantic scope of the principles indicated, it is, however, undisputed that moral norms constitute an essential element of their content (sometimes principles of social interaction are actually equated with moral norms) (Wypych-Żywicka 2017, p. 1371).

When systematising moral norms for the purposes of the labour law study, the catalogue of such norms created by Maria Ossowska—a prominent Polish ethicist, theoretician, sociologist and psychologist of morality—is sometimes used (Ossowska 1970; Wypych-Żywicka 2017, p. 1371). Given the perspective of the main subject of consideration, special attention should be paid to the "moral norms in defence of our biological existence" mentioned by this author (Ossowska 1970, pp. 30–48). Maria Ossowska indicates that the norm "thou shalt not kill" can be interpreted as prohibition to kill any creature, while there is no need to give up a principle just because its application cannot be carried out successfully to the end, for this is a situation which applies to quite a number of our moral principles, and the fact that all that lives in the world lives at the expense of another's death "does not speak in favour of submitting to general practice where it can be avoided" (Ossowska 1970,

p. 32). Having considered this perspective, we are of the opinion that there should be no doubt that the principles of social interaction should be closely linked to moral norms prohibiting environmentally destructive actions, including those that adversely affect climate change.

A breach of the principles of social interaction may occur in labour relations, both at the individual and collective level (Baran 2022, p. 80). According to Art. 94(10) of the Polish Labour Code, the employer is obliged to influence the establishment of principles of social coexistence in the employing establishment. This obligation applies not only to relations between the employer and employees, but also to mutual relations between employees (judgment of the Supreme Court of 23 October 2019, II PK 69/18, LEX 3009717). This obligation is closely correlated with the employee's obligation under Art. 100 § 2(6) of the Labour Code, according to which the employee is obliged to observe the rules of social interaction in the workplace. The jurisprudence emphasises that "these are general rules as well as specific principles found in a given workplace. However, they must be objectively shaped and not result from the employer's will (be imposed by it). On the other hand, there is no obstacle to the employer registering these objectively formed ethical principles and thus compiling them into a catalogue (ethical principles). Nor is there any obstacle for the employer to make the rules of ethics created in this way known to the employees, even with the proviso that, in the employer's opinion, failure to observe them shall be qualified as a breach of the employee's obligation under Art. 100 § 2(6) of the Labour Code" (judgment of the Supreme Court of 5 March 2007, I PK 228/06, LEX 376145). An employee's refusal to sign a document containing such principles does not constitute a breach of an employee's duty—only an employee's specific behaviour can be deemed a breach of obligation under Art. 100 § 2(6) of the Labour Code (judgment of the Supreme Court of 5 March 2007, I PK 228/06, LEX 376145).

Our view is that the employer may shape the pro-climate behaviour of employees in the workplace using the aforementioned mechanism of registration of principles of social interaction. Thus, the introduced pro-climate solutions may *de facto* become obligations of the employee, by virtue of the contemplated principles of social coexistence, not as the consequence of an order issued by the employer falling within the type of work performed by the employee, nor as a result of the intra-company regulations (e.g. work regulations) entering into force, but bearing in mind the objectively shaped moral norms "in defence of our biological existence" (from the perspective of the given workplace). Indeed, the fact that it is practically impossible to establish a closed list of such principles at the stage of their registration by the employer can, surprisingly, only contribute to the development of appropriate attitudes in the workplace (uncertainty on the part of the employee in this respect should increase caution and pro-climate behaviour).

Meanwhile, the issue of imposing penalties on an employee for behaviours, which should admittedly be treated as a breach of the principles of social interaction (also pro-climate), but which were observed outside the place or time of work, should be regarded as highly controversial. Nevertheless, in its judgment of 9 July 2008 (I PK 2/08, LEX 531844) the Supreme Court expressed the view that the obligation to observe the principles of social

interaction in the workplace extends also to refraining outside the place and time of work from behaviours which provoke or intensify the mutually negative attitude of co-workers and create conflicts in the work environment (the case concerned the beating of an employee after working hours)³. In other words, following the opinion of the Supreme Court, “Article 100 § 2(6) of the Labour Code should be interpreted in such a way that the obligation specified therein regarding the observance of the principles of social interaction is incumbent on the employee not only during the performance of work and at the workplace, but also at other times and places, when the employee’s behaviour remains within the sphere of the employment relationship or when it is closely related to this sphere (...) and relates to co-workers.”

This means that it is not always necessary to link such conduct to the type of work performed by an employee. Since it is possible to assume that it would be a breach of the principles of social interaction in the workplace if an employee violates the prohibition on smoking in the workplace—irrespective of the prohibitions arising from the law (Stępień, Paruch 2015), then, in our opinion, it may also constitute a breach of principles of social coexistence if an employee pollutes the environment after working hours in a way that has a direct negative impact on the health of colleagues.

Conclusions

The analysed statutory obligations placed on the parties to the employment relationship are universal in nature (they are present in every employment relationship). At the same time, the Polish legislator does not stipulate any hierarchy of these obligations (one obligation is as important as any other). Violation of any of them entails, in turn, serious consequences—in extreme cases even the possibility to terminate the employment relationship without notice.

As far as the obligations of the employee are concerned, it has already been recognised in the science of labour law that there is a close connection between the duty to observe the principles of social interaction and the obligation to respect the interests of the work establishment (Ziółkowska 2015, p. 242). Such a conjunction is likely to occur, for example, when an employee, in the course of his or her work, fails to comply with the rules in force at the workplace regarding the disposal of harmful waste (breach of the obligation to respect the interests of the work establishment) and contaminates the soil (breach of the obligation to respect the principles of social interaction).

Having regard to the issues addressed in this study, we also observe similarly strong correlations in the case of the employer’s obligations to contribute to the shaping of the principles of social interaction at work and to respect the dignity and other personal rights of employees.

Furthermore, reaching beyond the scope of the present study, it seems appropriate to mention, among the duties of pro-climate importance mutually influencing each other, the

³ See also the judgment of the Supreme Court of 12 January 2015, I PK 145/04, LEX 153615.

employee's obligation to observe the rules and principles of occupational health and safety (Art. 100 § 2(3) of the Labour Code), as well as the employer's obligations to ensure safe and hygienic working conditions and to provide employees with regular training in the field of occupational health and safety (Art. 94(4) of the Labour Code).

The above observation is of great practical significance. For it would have to be assumed that a specific event (e.g. the one indicated above) can be classified as a violation of both pro-climate principles of social interaction, as well as personal rights and the interests of the workplace at the same time.

The normative link between the employee's obligations to respect the interests of the work establishment and to comply with the principles of social interaction, and the employer's obligation to respect the employee's dignity and other personal rights, is extremely strong.

Unquestionably, the employer may introduce a number of duties of a pro-climate nature, and the performance of these duties in a diligent and conscientious manner will result from respecting the interests of the workplace, among other things. Not only is such an action on the part of the employer in accordance with the law, but it is also consistent with the principles of social interaction and will therefore not violate either the dignity or other personal rights of the employee.

Furthermore, the duty to respect the dignity and other personal rights of the employee remains in substantial correlation with the employer's obligation to shape the principles of social interaction. An employer's violation of the pro-climate principles of social interaction in the work establishment will always render such action unlawful (Pązik 2010, p. 111). Consequently, this unlawfulness of the employer's action constitutes a positive premise qualifying the event in question as a violation of the employee's personal rights, both primary and secondary—employment-related. Therefore, with one action, the employer can both violate its duty to respect the dignity and other personal rights of the employee and its duty to shape the principles of social interaction in the workplace.

It is also worth drawing attention to the fact that the employer will not infringe the dignity and other personal rights of the employee if it acts in defence of the social interest. Defending the social interest lacks statutory formulation, but is nevertheless treated as a general clause (Pązik 2010, p. 111). One can therefore associate this concept with the functions it is intended to perform. In times of climate crisis, one of these is to minimise the negative, destructive impact on the environment and thus to carry out pro-climate measures. Meanwhile, it must be acknowledged that sometimes the defence of public interest will have to be assessed taking into account the balancing of conflicting and mutually exclusive interests. From the point of view of pro-climate efforts, in the employee-employer relationship, the employee's personal interest, the employer's interest and the social interest are mutually exclusive only in the short run. The employer's interest is to make as much profit as possible, so additional pro-climate obligations (even those voluntarily assumed) will generate more expenses and thus reduce profit. Due to economic exigency, it may be in the employee's interest to continue their existing employment even if the work degrades the environment. And it will be in society's best interest to reduce the negative impact of a given employer's activities on the environment as much as possible.

Against this background, the relationship and interdependence that exist between the employee's obligation to respect the interests of the workplace and the employer's obligation to respect the dignity and other personal rights of the employee present themselves in a different light. As already mentioned, showing concern for the good of the workplace means, among other things, caring for the common good, caring for the well-being of the workers' collective. And the employer does not violate the employee's personal rights if it acts in the best interest of the collective. Therefore, there will be no violation of the employee's personal rights if the employer expects the employee to have a pro-climate attitude that positively affects both the social good and the welfare of the employee collective within the framework of the obligation to respect the interests of the workplace.

Another relevant point is that both the obligation to respect the interests of the workplace, the obligation to respect the dignity and other personal rights of the employee and the obligation to observe the principles of social interaction may encompass behaviour not only at work, but to some extent also outside working hours and place. The biggest controversy arises from the recourse to the principles of social interaction in this case. A literal interpretation of the provision points to the formation of these principles and their observance "at the workplace". However, the jurisprudence seems to extend the scope of influence of the aforementioned regulation by binding the employee to observe the principles of social interaction not only during the performance of work in the workplace, but also at other times and in other locations, when the employee's behaviour is related to the sphere of the employment relationship.

The option to use multiple legal constructions and protective mechanisms in parallel when determining the responsibility of the employee or the employer reinforces the importance of pro-climate behaviour in the workplace. Nevertheless, not all of the mentioned legal instruments will always be able to be applied when categorising a specific event. As mentioned previously, the environmentally destructive behaviour of an employee that would only have an adverse effect on another (individual) employee eludes the concern for the best interests of the workplace. However, this type of event does not preclude the assumption that, given the facts of the case, there has been a violation of the principles of social interaction in the workplace or a violation of the employee's personal rights.

What is more, the obligation to respect the dignity and other personal rights of the employee faces certain limitations, too. Any type of activity carried out by an employer will have a negative impact on the environment. However, the severity of this impact is of significance. As long as it falls within the limits permissible by the law, the employer's action cannot be deemed unlawful. Thus, if the emission of harmful substances stays within the standard set by the law, e.g. in the Regulation of the Minister of the Environment of 24 August 2012 on the levels of certain substances in the air (Dz.U. 2021, item 845 consolidated text), then it cannot be concluded that the employer is acting unlawfully and, as a consequence, there will be no violation of the employee's dignity and other personal rights. However, this does not automatically mean that the employer's conduct is in line with the pro-climate principles of social interaction as formed in the workplace.

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