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RESPONSIBILITY IN LABOUR LAW – BASIC NOTIONAL ISSUES

1. Penalty and reward and the notion of responsibility

Responsibility is a notional category that occurs in multiple domains of knowledge, and it has been a subject of research for many centuries, especially by philosophers, ethicists, sociologists, management specialists and lawyers. Obviously, all discussions concerning the notion of responsibility within various fields of science revolve around a certain common core and common problems, however, apart from that the specific approaches and manners of posing questions differ, as a result of different objectives, assumptions and needs determined by the specifics of the subject and of the research methods characteristic of particular areas of knowledge. In the science of law the notion of responsibility is a fundamental notional category, which is expressed, among others, by the common usage of this term in the texts of normative acts. Thus, one should not wonder that this category constitutes a subject for consideration from the point of view of general legal theory,¹ yet first of all, it is analysed within the scope of specific branches of law, in particular such as criminal law, civil law, administrative law and labour law.

Both legal regulations and the science of law connect the notion of responsibility mainly with the punishment, with the commitment to repair the damage done and with the invalidity of the performed legal act (legal action), thus, in other words, with a sanction that is a consequence of the violation of a legal norm. Generally, the essence of the sanction is seen as

¹ An example here can be the works of W. Lang, *Prawo i moralność* [Law and morality], Warszawa 1989; *Spór o pojęcie odpowiedzialności prawnej* [The debate on the notion of legal responsibility], *Acta Universitatis Nicolai Copernici, Prawo [Law]* 9 (1969); *Struktura odpowiedzialności prawnej* [Structure of Legal Responsibility], *Acta Universitatis Nicolai Copernici, Prawo [Law]* 8 (1968).

a burden of a factual nature, or consisting in the limitation of specific rights, as well as – in a wider perspective – in a resulting disadvantageous legal situation of the specific entity (the entity that is subject to responsibility). The complexity of this issue is realized, among others, by the fact that in notional categories the sanction can be identified with the actual stay in a penal institution (the actual serving of the sentence of confinement), or with the legal obligation to serve such sentence, and with both these states at the same time. At the same time, it remains disputable, and yet highly dependant on the adopted convention, how widely the category of burden is understood, and thus, what scope of meaning is assigned to the term sanction. In this scope, among others, the question arises whether the term sanction, and in consequence also the term responsibility, can and should also encompass situations that consist in the exclusion of a possibility of receiving the reward (whose receipt depends on the discretion of a specific entity). Another question arises whether the term sanction can be extended to the possibility of granting a reward, which is related to the division of sanctions often discussed in literature (including literature on labour law) into negative and positive sanctions. In particular in the literature on labour law, in the context of discussing rewards from the enterprise reward fund (the so-called thirteenth salary), it was once suggested that, apart from the legal norms of the structures: hypothesis, disposition, sanction (negative), norms consisting of hypothesis, disposition and reward (positive sanction, sanction in a wider understanding of the term)² should be distinguished as well.

2. Responsibility and the division of legal norms into sanctioned norms and sanctioning norms

The theory of law knows the approach to legal norm as a structure consisting of three elements, i.e. hypothesis, disposition and sanction, and the division of legal norms into sanctioned norms (norms that assign specific behaviour to specific entities in specific conditions) and sanctioning norms (norms that foresee the imposition of a burden in case of failure to fulfil the duty specified in the sanctioned norm), with the assumption that these two types of norms are inter-connected. In case of adopting the second understanding of legal norms (their structure), it can be generally stated that the

² H. Szurgacz, *Nagrody z zakładowego funduszu nagród* [Rewards from the enterprise reward fund], Wrocław 1979.

legal responsibility is expressed in the regulation contained in the sanctioning norm. However, it sometimes occurs that the notion of responsibility is extended not only to the results of the sanctioning norms, but also to the burdens (inconveniences and limitations) that result from the binding sanctioning norms, in particular of the duties of certain entities to behave in a specific manner, which are not the legal consequence of the violation of any sanctioned norms, and in this sense they are inconveniences (burdens) of a primary nature, in which they are different from the burdens of secondary nature, resulting from the violation of the sanctioned norms. As far as labour law is concerned, it is common practice to use the expression “being responsible for a certain status” simply in reference to duties of employees (especially in executive positions), resulting from specific legal regulations, regardless of the fact whether the employees violate the law. Responsibility in such cases can also sometimes mean both the duty to behave in a specific manner (pursuant to the sanctioned norm) as well as the consequences of the violation of this duty (as specified in the sanctioning norm).

However, most often, both in legal texts and in the science of law, the term responsibility is used in order to mark the state or a rule expressed in the sanctioning norm, so the burden foreseen as a consequence of the violation of the law (of another legal norm, i.e. the sanctioned norm). Thus, one can state that this is the basic usage of this notion. Furthermore, in my opinion, in order to increase the efficiency and the accuracy of the terminology of the language of legal texts and the legal language (the language of the science, teaching and practice of law), the so-called positive sanctions and the “regular” (primary) duties (inconveniences, burdens) imposed on entities by the binding law should not be placed together among the designates of the notion “responsibility”. However, at the same time it should be taken into consideration that – due to the complexity of the legal norms and the related doctrinal disputes – it is not always possible to place a fully convincing, unambiguous border line between those situations which could be referred to as encompassed by the disposition of the sanctioned norm, and those which are encompassed by the sanctioning norm, as well as between the so-called negative and positive sanctions.

3. Types of responsibility in labour law and the grounds for their differentiation

When considering the subject of notional aspects of responsibility in labour law, one must face issues that exist in other branches of law as well,

and in this sense they are common for the whole legal system, however apart from them also specific matters arise, as the consequence of the specificity of the labour law as a separate area of law, of the separateness of its rules and axiology, and at the same time they also are a consequence of the difficulties in setting a precise border line between this law and other areas of law, in particular such as civil law, administrative law and criminal law. Legal responsibility has its structure, defined in particular by the answers to the following questions: 1. on what grounds, 2. to whom, 3. for what, 4. by whom, 5. in what manner and 6. what burdens (sanctions) can be used. The answers to these questions are contained in specific legal regulations (sanctioning norms), which are very complex and varied. This is a consequence of the legislator's constant search for instruments of obligatory nature, whose aim is to make the recipients obey the duties (orders, prohibitions, actions and omissions) and abstain from violating the limitations of their rights and freedoms, which are determined by the sanctioned norms. This should not be surprising, considering that the law cannot exist or act without responsibility or sanctions, and so the development and multiplication of regulations setting still more numerous and varied duties is accompanied by the development and complication of the forms of legal responsibility for the violation of such norms and the broadening of the catalogue of applied sanctions. This process applies to the whole legal system, but also to the particular sub-systems (branches of law), including labour law.

The responsibility in labour law is particularly varied, as this law is of a complex nature, which leads to the fact that within its area different methods of regulating social relations are applied, including – first of all – the commitment-related method (civil law), the administrative law method and the penal method. As a consequence, in the area of social relations constituting the subject of labour law, commitment-based forms of responsibility are applied (originating from the civil law), forms of the administrative legal nature (originating from the administrative law), penal methods (originating from the criminal law), as well as other forms of responsibility, which do not have clear origins in either civil, administrative, or criminal law. Such variety of forms of responsibility is particularly visible in the case of sanctions imposed on employees, as this responsibility, in its general outline, is divided into compensative responsibility (for damage done by the employee – Art. 114–127 of the Labour Code), and non-compensative responsibility. The latter is the responsibility for keeping to order in the broad understanding of the term, and it is again divided into the code based employee responsibility (Art. 108–113 of the Labour Code) and responsibility for acts

committed when on duty, which is regulated by the so-called employee labour regulations, and is applicable to those appointed public servants who, in the view of Polish labour law, belong to the category of employees (this group does not include professional soldiers, police, and the three other so-called uniform services, armed). The type of non-compensative employee responsibility (of a repressive-preventive and educational nature) is also the responsibility of penal nature, which is regulated by the Labour Code as responsibility for violations against the rights of employees (Art. 281–283). This category also encompasses responsibility for specific offences, including offences against the rights of employees (committed by other employees – Art. 218–221 of the Penal Code) and by public servants who are employees. The Labour Code establishes the compensative responsibility of employees, responsibility for keeping to order and responsibility for the violation of rights of employees, however, in the applicable specific regulations, the notion “responsibility” is used by the legislator. However, the legislators are inconsequent in this aspect, as they foresee a series of further charges for the violation of duties by the employee, yet they do not use the term “responsibility” in this context. This refers, in particular, to the case of termination of the employment contract without notice, without the fault of the employee (Art. 52 of the Labour Code), which has not been included in the catalogue of penalties for breach of order (within the framework of responsibility for keeping to order), and which is generally referred to as a sanction (responsibility) of a disciplinary nature. The series of burdens imposed for the violations of the duties of employees is also foreseen by regulations external to the code, including the regulations of the so-called autonomous labour law (branch and office law). They include, among others, the so-called disciplinary bonus regulators, whose essence consists in the fact that, in spite of meeting the positive conditions for the acquisition of the right to a bonus, the employee is deprived of the whole or of a part of the bonus, due to the breach of a specific duty or duties of the employee. Thus, specific forms (cases) of employee responsibility are distinguished. They are foreseen in the Labour Code and in external acts, including, to a large extent, the acts of the so-called autonomous labour law. They are mainly connected to the human resources and remuneration policies of the employers, so they are often referred to as instruments related to remuneration and human resources, which is accompanied by the – in my opinion untrue – statement, that they do not fit into the notion of employee responsibility. The situation where the employer does not use the term “responsibility” in reference to these instruments, still does not justify their exclusion from the scope of the notion, as they are specific types of burdens established as

a consequence of the breach of duties, and as such – of the violation of the sanctioned norm by the employee. Furthermore, it should be stated that among the specific cases (forms) of employee responsibility, it is precisely the sanctions (responsibility) that arise from the execution of human resources policy (employee responsibility related to human resources) and the policy related to remuneration (employee remuneration responsibility) that take a distinguished place.

4. Plurality of subjects of labour law and the differentiation of responsibility

As it has been already mentioned, responsibility in labour law is particularly varied. This variety is expressed especially in the existence of particular types (kinds) of responsibility, which are, in particular, the compensative responsibility, penal responsibility (responsibility for petty offences and offences), responsibility for acts committed when on duty (disciplinary) and the narrowly understood responsibility of employees for keeping to order. Responsibility for acts committed when on duty is, however, sometimes considered as a type of penal responsibility, whereas responsibility for keeping to order (Art. 108–113 of the Labour Code) was, in its origins, connected with the regulations of civil law, yet at present – in the interpretation of the Labour Code – it has more common features with the responsibility for acts committed when on duty (disciplinary) than with the commitment-based (civil) responsibility. Moreover, a separate category is constituted by specific forms of responsibility, in particular such as the human resources-related responsibility of employee (within the sphere of human resources policy maintained by the employer) and employee responsibility related to remuneration (within the sphere of remuneration policy of the employer).

The differentiation of responsibility in labour law can and should be discussed also due to the plurality of the subjects encompassed by the regulations of this law. The main subjects of this law are employees, employers, trade unions, organisations of employers as well as the staff of workplaces. Respective categories are distinguished: employee responsibility, responsibility of employers, responsibility of trade unions, responsibility of employer organisations and responsibility of staff of workplaces. At the same time, a separate problem consists in considering the specific organisational structures or human teams, as subjects of the labour law. This results, among others, from the fact that responsibility and subjectivity are interconnected

and mutually dependant. It is, in particular, difficult to assume that an individual is fully subject to a law, if such individual does not bear responsibility. This, among others, leads to the questioning of the subjectivity of staff of workplaces (the whole staff of employees of a workplace), as it is doubtful whether, and to what extent, such staff bear legal responsibility and who, and in what manner, enforces the responsibility. In the regulations of the labour law, the responsibility of employees is the most developed part. Numerous regulations of the labour law, including in particular the Labour Code, also regulate the responsibility of the employer being a party of the employment relationship. On the other hand, the regulations of labour law are much less specific in reference to the responsibility of trade unions, organisations of employers and of the staff of workplaces (assuming that in the case of staff one can discuss legal responsibility at all). At the same time, this responsibility is of a specific nature, which is expressed, among others, by the fact that within its framework organisational and political responsibility are distinguished.

The extension and development of legal regulations lead in consequence to the broadening of the scope of norms of the labour law, and this results in the emergence of new subjects. Within the orbit of this law, besides employment relationships (the relationships between the employee and the employer) and collective employment relationships, i.e. the relationships between the employer and organisations of employers, associations of employers and staff of workplaces, there also exist – in particular – relationships of non-employee employment (such relationships encompass the performance of work based on conditions similar to the conditions resulting from the employment contract), and relationships preceding the start of the relationship of employment (preparatory relationships for the employment relationships), in particular those which concern individuals searching for work and the unemployed. Within the scope of non-employee employment relationships, one can distinguish relationships based on civil law (relationships on the grounds of contracts for rendering a service, not employment contracts), relationships based on administrative law (concerning uniform services), relationships of penal nature (connected mainly with work performed by individuals who undergo the penalty of confinement) and relationships of a constitutional nature (which emerge in connection with the execution of functions by members of parliament, senators and aldermen).³

³ Cf. W. Sanetra, *Prawo pracy. Zarys wykładu. T. 1* [Labour law. Outline of a lecture. Vol. 1], Białystok 1994, p. 54–69.

As such legal relationships are encompassed by the subject of labour law, also the responsibility borne by the subjects of such relationships belongs to the scope of responsibility of labour law. At the same time, these subjects cannot be identified with the subjects mentioned earlier (employees, employers, trade unions, organisations of employers, staff), and the responsibility that they bear has a series of distinctive features, which have not been subject to a deeper analysis in the science of labour law up to the present moment. The responsibility for acts committed when on duty (disciplinary) of members of public uniform services constitutes an exception from this rule, to a certain extent. They are not included in the category of employees, yet they bear responsibility for acts committed when on duty (disciplinary) basing on similar rules as those public servants whose legal status is established as that of employees.

5. The grounds for responsibility

The question about the grounds for responsibility is the question about what rules imply the possibility to apply the charge (sanction) to a specific subject. In case of legal responsibility the possibility results from the binding legal norm. In case of responsibility pursuant to the labour law, this legal norm is considered that belongs to this law as a separate branch of the law. As the boundaries of labour law are floating, the boundaries of the responsibility of the law are floating, doubtful and disputable in a respective manner. In a general sense, the grounds for such responsibility are the legal norms contained in normative acts that are included in the labour law, in particular such as the Labour Code and other acts, as well as acts of autonomous labour law (collective agreements of employment, other collective agreements, workplace regulations). However, a separate question remains on whether and to what extent the grounds for responsibility pursuant to labour law can constitute and constitute rules and norms external to the law, as practice knows the problem of social responsibility of employees, the use of educational sanctions, e.g. by worker courts, as well as of the reference of legal regulations to rules from outside the legal system (external to the system of law), such as the rules of social existence (e.g. pursuant to Art. 100 §2 of the Labour Code the employee is obliged to follow the rules of social existence in the workplace), or the ethical regulations of the given service. The grounds for the responsibility in labour law in such meaning take into account, apart from legal norms, also external regulations, however, their practical significance is relatively small.

6. Who bears responsibility

The question who, according to labour law, bears the responsibility, resolves in its essence to the determination of the subjects of this law. The circle of such subjects – as it has been previously mentioned – is wide and at the same time it leads to doubts and doctrinal disputes, which, in their turn, are a consequence of the liquidity of the boundaries between labour law, and in particular such branches of law as the civil law, administrative law and criminal law. As the main subject of labour law and at the same time the core of its norms are the relationships of employment, both the attention of the employer and of the doctrine of labour law focus mainly on the responsibility of parties of these relationships, i.e. of employees and employers. Employees are natural persons, whereas employers are both natural persons and legal entities, as well as other organisational units as long as they employ employees (Art. 3 of the Labour Code). This is significant, as not all sanctions (kinds of responsibility) can be applied to subjects other than natural persons. In particular, it is generally excluded to apply penal responsibility (for petty offences and offences) to employers being legal entities and other organisational units.⁴ In other words, if the employer is a natural person, then it is possible to apply penal responsibility to it (in particular for petty offences and offences against the rights of employees), although it is not possible in case if the employer is a collective entity (collective employer), and then, as a rule, the responsibility for the offences and violations of the rights of employees is borne by another employee, whose duties include those tasks that are assigned by the labour law to the employer. This means that the responsibility of employers – and, as a consequence, also of employees – differs, depending on whether the employer is a natural person or a collective entity.

However, the differentiation of responsibility of employees and employers is also visible in other areas, and it originates from various reasons and conditions. From this point of view, the division into employees employed by the state (public) structures and those employed outside these structures is essential, as the former are subject to responsibility for acts committed

⁴ Divergences from the rule that only natural persons are subject to criminal responsibility (in reference to specific offences and fiscal offences) were introduced in particular by *Ustawa z dnia 28 października 2002 r. o odpowiedzialności podmiotów zbiorowych za czyny zabronione pod groźbą kary* [The Act of 28 October 2002, on the responsibility of collective entities for acts prohibited under penalty], *Dziennik Ustaw* [Journal of Laws], No. 197, item 1661 amended.

when on duty (disciplinary), whereas to the latter – instead of this responsibility – responsibility for keeping to order as specified in the regulations of Art. 108–113 of the Labour Code is applied. Additionally, the grounds for establishing the relationship of employment are significant in this case, as in the labour regulations – apart from few exceptions – responsibility for acts committed when on duty (disciplinary) is only foreseen for appointed employees, which means that the so-called contract employees employed in public structures are subject to responsibility for keeping to order pursuant to the Labour Code. The differences in the shape of responsibility are also a consequence of the fact that specific employees are employed on the basis of appointment or election for a position (pursuant to the Labour Code the relationship of employment can be established on the grounds of employment contract, co-operative contract of employment, nomination, appointment and election – Art. 3), which is connected with the distinction of executive positions. In general, in the aspect of the problem of responsibility, particularly the differences in the shaping of its rules in reference to the so-called individuals (employees) from the circle of the employer, and – in a broader aspect – to the so-called executive staff are particularly clearly visible.⁵ As it was mentioned earlier, there are clear differences in the manner of shaping the responsibility of employees and employers, even in spite of the equality of both parties of the relationship of employment adopted as a general assumption. In a general approach the responsibility of employees is more developed and varied than the responsibility of employers in the regulations of labour law. Employers, obviously, are particularly not subject to responsibility for keeping to order and responsibility for acts committed when on duty, and sanctions related to employment and remuneration are not applicable to them. Even larger differences can be noticed between the responsibility of employees and that of collective entities (trade unions, organisations of employers, staff of workplaces) and other entities included into the category of subjects of labour law. However, performing comparisons and evaluations in this scope is not simple, as numerous different types of responsibility can be applied not to just one but to all these subjects, in different configurations.

⁵ On the issue of specific features of the responsibility of executive staff, cf., e.g. *Pracownicza odpowiedzialność kadry kierowniczej. Materiały XII Zimowej Szkoły Prawa Pracy* [Employee responsibility of the executive staff. Materials of the XIIth Winter School of Labour Law], Wrocław 1985.

7. Prerequisites for responsibility

The question on what the responsibility is borne for, resolves in the determination of the prerequisites for responsibility. In the most general sense, it is assumed that responsibility is a consequence of the violation of a legal norm, i.e. of a behaviour non-compliant with such norm. The violation can consist in action or negligence. It can be constituted by a behaviour non-compliant with an order or prohibition established by a legal norm, as well as the transgression by a subject of the rights to which it is entitled. In this context it is an extremely significant and complex question, how the “violation” of a legal norm is understood, and in particular whether – and if so – how significant for its understanding are the so-called subjective elements of behaviour of the given subject. In human behaviour two aspects can be distinguished: objective (external, behavioural) and subjective (internal, psychological). Due to this distinction, the characteristics of the violation of a legal norm (sanctioned norm) separate the issue of unlawfulness (the violation of the legal norm in the “objective” behavioural aspect) from the issue of fault of the perpetrator (the violation of the legal norm in the “subjective” psychological sense), assuming that in order to apply responsibility it is not sufficient to state that a given behaviour is objectively reprehensible (unlawful), as it also has to be caused by fault (subjectively). So, unlawfulness is not sufficient, although one cannot speak of fault, if there is no objective reprehensibility (the contradiction to a specific legal norm) of the specific behaviour of the given subject. The responsibility, for the application of which the necessary prerequisite is not only the unlawfulness but also the fault, is sometimes called subjective responsibility (responsibility for culpable behaviour), while at the same time it is opposed to the so-called objective responsibility, whose essence consists in the fact that it is not dependant on the specific attitude of the perpetrator towards the act (the reprehensible decision of will), and thus on the fault.⁶ The adoption of the rule that responsibility is borne only for culpable behaviours is considered as an expression of progress of civilisation. However, some exceptions from this rule are established, in particular

⁶ I analysed the fault of employee in the work: *Wina w odpowiedzialności pracowniczej* [Fault in Employee Responsibility], Warszawa–Wrocław 1975, expressing – among others – the view that fault as a prerequisite for different kinds of employee responsibility should be understood in a uniform manner, however, it cannot be fully identified with fault as understood in the criminal law and fault in the civil law, and in this sense it occupies the position between “penal fault” and “civil fault” (p. 190–193).

in the area of compensative responsibility, expressed in particular in establishing responsibility basing on the rule of risk, which corresponds to the belief that in case of damage it is more just for the perpetrator to bear the consequences, even if he does not act in fault, than for the injured party.⁷ However, the problem arises here whether one can speak at all about the existence of a general, legal obligation not to cause damage. The existence of such obligation is difficult to accept, which means that the damage can be a consequence of legal actions (clearly accepted by the law), and in spite of that, in specific cases, the legal regulations foresee an obligation to repair it, calling such obligation “responsibility”. As a consequence of this fact, responsibility can be a result of unlawful and culpable behaviour, unlawful behaviour (contradictory to a specific, clear legal norm), however, not caused by fault, but also of states, in which it is difficult to find elements of fault or of unlawfulness. This confirms the statement formulated earlier that there are and there can exist doubts when establishing the boundaries, or when distinguishing sanctioned norms from sanctioning norms. The hypothesis of the sanctioning norm, i.e. the set of conditions on which the application of sanction depends, includes the violation of the sanctioned norm, so, a behaviour, which can be assigned at least the feature of unlawfulness, thus, if the given sanction is not dependant on such condition, it does not constitute an element of the sanctioning norm and it belongs to the sanctioned norm, establishing specific burdens (duties), even if they are called “compensative responsibility” by the employer. As the legislator uses the term “responsibility” (compensative) in the context of responsibility based on risk, this terminology has to be adopted and accepted, at the same time taking into account the fact that at least in the aspect of the theoretical distinction between sanctioned and sanctioning norms it can lead to justified doubts.

In the labour law the necessity to base responsibility on the prerequisite of unlawfulness and fault is particularly visible in the case of responsibility of employee (its main forms regulated by the Labour Code and other acts) and the penal responsibility for petty offences and offences against the rights of employees. It is, however, different in the case of the employer (apart from their responsibility of penal nature) and other subjects of labour law, as it relatively often occurs that their responsibility is based on

⁷ On the subject of understanding risk as a legal category, including the understanding of risk in labour law, cf.: W. Sanetra, *Ryzyko osobowe zakładu pracy* [Personal risk of work establishment], Warszawa 1971.

the rule of risk. One can also sometimes witness the tendency to impose the risk of responsibility also on the employee (this happens, e.g., in the case of the so-called common responsibility of employees for damage, or in case of remuneration or human resources-related sanctions), although this tendency should be contradicted. As for compensative responsibility, its necessary prerequisites are the damage and the relation of cause, and in case of compensative responsibility of the employee also the unlawfulness and fault of the employee (with the reservation related to – as it has been mentioned – common responsibility of employees for damage). The requirement of existence of damage distinguishes the compensative responsibility, whose basic aim is to repair the damage, from other types of responsibility, whose task is not to lead to the repair of the damage (a separate issue here is the issue of compensation for a damage treated as immaterial damage – Art. 445, 448 of the Civil Code, Art. 94³ §3 of the Labour Code) and which are thus sometimes referred to by a common name of non-compensative responsibility. The application of the second type of responsibility is also connected with the belief that a specific reprehensible behaviour is also connected with the existence of a certain damage, however, this does not necessarily have to be material damage (or harm), as it happens in the case of compensative responsibility. The damage, and more precisely, the harmfulness of the action, in case of non-compensative responsibility, is only exceptionally included in legal regulations as a prerequisite for the application of responsibility. It is expressed in the regulations of criminal law, which defines petty offence and offence as actions harmful to society.

It should be stated in general that the prerequisites for responsibility, while they are numerous, are phrased and expressed in different ways in the regulations of labour law. Those ways depend, in particular, on the types of responsibility. Generally – if one omits compensative responsibility, where the additional prerequisite of damage and relation of cause appear – the prerequisites for responsibility are unlawfulness and fault, although unlawfulness is also expressed in various manners in the legal regulations, and so are the conditions for the exclusion thereof (the so-called countertypes of unlawfulness). There also exist differences in the description of fault and of circumstances excluding it. Moreover, the responsibility and its burden are sometimes made dependant on the degree of culpability, as it happens, e.g., in the case of termination of the employment contract without notice due to gross breach of basic duties of the employee, which is conditioned by the statement of existence of not any fault on the part of the employee but only of “gross” fault.

8. Who applies responsibility

The question about who applies the responsibility (sanctions) concerns the determination of the subject (organ) competent for its application. In the relationships which constitute the subject of labour law, and in particular in the relationship of employment, there is a possibility to apply responsibility by the subjects of these relationships (this is true particularly in case of application by the employer of administrative, human resources – or remuneration related sanctions to the employee), and even to apply it to some extent to each other, by parties of such relationships (e.g. the employer can dismiss the employee in disciplinary mode, but also the employee can terminate the contract of employment with the employer due to a gross violation of its basic obligations to the employee by the employer, which additionally results in the obligation on the part of the employer to pay compensation to the employee – Art. 55 §1¹ of the Labour Code). However, a typical situation is considered the application of responsibility by organs which are external to the parties of labour law relationships, including particularly labour courts (which are appointed, among others, to judge the compensative responsibility of employees and employers) and criminal courts (which are appropriate for cases of petty offences and offences against the rights of employee). In other words, the responsibility in labour law is applied by courts and other organs (entities). Particular problems arise in connection with the application of responsibility for acts committed when on duty (disciplinary) by disciplinary committees, as it can be assumed that they act on behalf and in favour of the employer, applying sanctions to appointed employees, and so they can be deemed as organs acting in substitution of the employer, thus, that disciplinary sanctions are indeed imposed by the employer, who uses these committees to achieve this objective. However, a different approach prevails, stating that the legal status of disciplinary committees is separate from that of the employer and that they judge in a more general (public) interest. Thus, they are external organs (in relation to the employer) although they impose penalties for the violation of duties of employee encompassed by the relationship of employment, and the penalties consist in the limitation of these rights of employee, whose aim and justification is to influence the given individuals as employees to force them to respect their duties as employees rather than, e.g. their duties as citizens. At the same time, responsibility for acts committed when on duty (disciplinary) does not generally realize the function of just retaliation (which is characteristic of penal responsibility), and the main reason for its existence is to guarantee order in the relationships of employment and to

effectively achieve the objectives for which these relationships are brought to life.

In the legislative activity the aspiration to create the so-called sanctions applied by force of law is becoming clearly noticeable. In such case the sanction is not imposed by a specific organ (subject), e.g. the court, but it is, to some extent, an automatic consequence of a specific behaviour, e.g. of the employee. In case of a possible dispute, the task of the court is only to state that the specific result (sanction) has taken place, not to impose a specific burden. In such case the court is deprived of the possibility of performing evaluation and of selection of a specific burden. Examples in this aspect can be found in these regulations of the labour law that foresee the expiration of the relationship of employment by force of the law itself, with the additional assumption that the cause for such expiration is reprehensible behaviour of the employee. Thus, a type of “sanction by force of law” can be deemed (Art. 66 of the Labour Code) the expiration of the employment contract after three months of absence of the employee at the place of work due to provisional detention (assuming that the detention results from some reprehensible behaviour of the employee), as well as the expiration of this contract due to abandonment of employment by employee, as it was foreseen by the repealed Art. 64 of the Labour Code. Pursuant to the already invalid Art. 65 of the Labour Code, abandonment of employment was also deemed as lawless abstaining by the employee from the performance of work as well as absence from the place of work without prior notice to the place of work about the cause for absence, which are reprehensible behaviours of employees consisting in culpable breach of specific duties of employee. Regulations of this type are sometimes a proof of distrust of the legislator in the proper functioning of the organs (subjects) appointed for the application of law, including courts, which should be condemned. They lead, in fact, to the legislator taking over the role to perform, which the courts (as well as other entities applying the law) are appointed, they often mean the exclusion of the desired evaluation and valuation, and, finally result in excessive schematism leading to the imbalance of the necessary proportions between the significance of the violation and the burden of the sanction “applied” in an automatic manner, or “by force of the law itself”.⁸ However, in this

⁸ This is stated clearly, among others, in the judgment of the Constitutional Tribunal of 13 March, 2007 (K 8/07 Orzecznictwo Trybunału Konstytucyjnego Zbiór Urzędowy Seria A 2007, No. 3, item 26), in which it deemed Art. 190 (1) point 1a of the Act of 16 July, 1998 – *Ordynacja wyborcza do rad gmin, rad powiatów i sejmików województw* [Electoral law for councils of communities, counties and voivodship parliaments] (uniform text: Dziennik Ustaw [Journal of Laws] 2003, No. 159, item 1547 amended.), Art. 26 (1) point 1a of the *Ustawa o bezpośrednim wyborze wójta, burmistrza i prezydenta miasta* [Act

context it should be stressed that a separate problem is constituted by the (absolute) invalidity of legal actions and of other legal acts (in particular of administrative decisions), which is the so-called sanction of invalidity, which is assumed to be independent from the evaluations of the organ judging the case (the court), in the sense that its judgement is of a declarative nature (the statement that the legal action has a specific defect is in this case equivalent to the statement of its invalidity, so the sanction of invalidity is of an automatic nature), not constitutive.

9. Mode of application of responsibility

The question about the mode in which responsibility is applied pursuant to labour law refers to the various manners of proceedings, which have to be followed so that it is possible to state that responsibility has been applied appropriately. These modes are as varied as is the responsibility in labour law. Obviously, the most developed ones are the modes of proceedings, in which the responsibility is applied by courts (labour courts, criminal courts judging cases of petty offences and offences included in the so-called penal labour law). Elaborate procedures are also foreseen by the regulations establishing responsibility for acts committed when on duty (disciplinary), whereas the specific solutions adopted within this scope in the practice of labour regulations are very different and often rather random. The procedure foreseen in the case of imposition of administrative penalties by the employer pursuant to the regulations of the Labour Code (Art. 114–127) is less detailed. Both cases foresee the possibility to appeal to court. As far as responsibility for keeping to order is concerned, the regulations imply clearly that this type of responsibility cannot be applied by labour courts. They can only reverse the penalty imposed by the employer or refuse to reverse it (dismiss the claim of the employee). Thus, in such case, the court performs a strictly controlling function, although as far as responsibility for

of 20 June, 2002 on the direct election of village and town mayors and presidents of cities], *Dziennik Ustaw* [Journal of Laws], No. 113, item 984 amended) and Art. 24j par. 3 of *Ustawa z dnia 8 marca 1990 o samorządzie gminnym* [the Act of 8 March, 1990 on communal self-government] (uniform text: *Dziennik Ustaw* [Journal of Laws] 2001, No. 142, item 1591 amended) as incompatible with specific regulations of the Constitution of the Republic of Poland, pointing to the excessive schematism of the respective regulations concerning territorial self-government (expiration of mandate due to failure to deliver property declaration within term) and the lack of necessary proportion between the importance of offence and the charge resulting automatically from the act (if the overrun of the set deadline is justified or is not excessive).

acts committed when on duty (disciplinary) is concerned, the implemented solutions are sometimes different and varied in particular judgments, granting the court a wider range of possibilities to supervise the judgment of the disciplinary committee than in the case of responsibility for keeping to order pursuant to Labour Code. In this context, in connection with the question about the mode of application of responsibility, it is justified to introduce an additional differentiation, expressed by the question about who and in what mode applies responsibility (sanction) in labour law, and the question to whom one can appeal (in case of application of responsibility, but also, in some cases, in case of non-application thereof), and, in what mode the appeal is handled.

10. Burden (sanction) and its types

The question about what burdens (sanctions) are imposed for the violation of a sanctioned norm assumes the existence of sufficient knowledge about the designates included in the notion “burden” (sanction). This knowledge is provided to us, first of all, by the legislators themselves, as while regulating particular types of responsibility within their scope they enumerate the types of penalties and points to other legal instruments (e.g. compensation, contractual penalty). The types of these burdens are extremely varied, while at the same time it is not always possible to state explicitly that the instrument foreseen by labour law in fact constitutes a burden and that, as such, it should be referred to by the term sanction. In general, the sanctions that one encounters in labour law can be divided into sanctions of a property-related nature (e.g. compensation, fine, lowering of remuneration, withholding of a salary promotion, deprivation of bonus) and those of non-property-related nature, including, in particular, sanctions directed against the personal rights of the employee, creating a detriment to the dignity of the employee (e.g. admonition, reprimand, warning). A special category is constituted by sanctions directed against the permanence of relationship of employment (e.g. termination of the employment contract without notice due to the fault of a party of the employment relationship, termination of the employment contract without notice due to a fault of the employee, a changing notice due to a fault of the employee, transfer to a lower position, disciplinary transfer to another site, recall from a position) and those limiting the possibility of new employment opportunities (e.g. the prohibition to perform a specific job, the prohibition to occupy a specific position). Also, sanctions that can be treated as typical penal sanctions or

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sanctions similar to penal sanctions can be distinguished (e.g. penalty of confinement, fine, penalty of restriction of liberty, the prohibition to leave the military unit as disciplinary punishment). A separate group is constituted by sanctions consisting in the invalidity of legal actions (acts) and similar sanctions (e.g. evasion from legal effects of a defective statement of will). At the same time, the process of constant development of the catalogue of burdens applied to subjects of labour law is characteristic of the legislator and the practice.