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The Bogus Obviousness of the Category of Women in Polish Employment Law: Contemporary Perspectives and the Need for Legislative Initiative*

Abstract

This article examines the category of women in Polish employment law. The author attempts to demonstrate that the obviousness of the said category does not necessarily mean that it is properly identified and understood, which is necessary for the development of effective employment law. The author also identifies the areas in which the context of woman is used in Polish employment law. She attempts to answer the question whether this contexts or use are sufficient to satisfy the constitutional principle of equality, as defined in Article 32 of the Constitution of the Republic of Poland.

Keywords: employment, employment law, labour, labour law, women, obviousness, obvious categories, women at work, legal status of women, individual characteristics

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1. Introduction

Work is one of those legal categories¹ where the substance – despite centuries of research – may not be determined once and for all.² The reason for that is its changeability and dynamics, related, *inter alia*, to the nature of work, its diverse types, the tools used to perform it, the place of work, but also economic and social development processes, and also considerations of which aspects of work should be covered by employment-law protection appropriate to performance of work.

The world of work is rapidly evolving with its vivid dynamics, and this does not only concern digitalization, as the latest challenge, but also other phenomena – changes in the structure of jobs accompanying the social, technological, and economic development. Nowadays, despite the pressing questions surrounding the use of artificial intelligence in the work environment or using digital tools at work, we still lack answers to the most fundamental questions concerning the nature of the employment relationship, in particular, who should be granted the status of an employee or an employer and what legal form would be the most appropriate to regulate such a relationship. These questions include not only new phenomena, but also redefinitions of phenomena and categories already existing in employment law, because with the development of knowledge we know more and more about the world, and the processes and properties/features/characteristics of phenomena and categories that we seemingly already have known well. Why is this happening? Well, the constantly expanding

¹ By “category” I mean a term (“predication” or “assertion”) given to certain general classes of terms, things, or notions; the application of this definition seems to differ between authors. I use it in the meaning used in: I. Florczak: “Zatrudnienie” jako kategoria prawna. “Gdańsko-Łódzkie Roczniki Prawa Pracy i Prawa Socjalnego” 2013, no. 3, p. 51; A. Sobczyk: *Podmiotowość pracy i towarowość usług*. Kraków 2017, pp. 19, 37. More on definition of categories and categorization, cf. G. Lakoff: *Women, Fire, and Dangerous Things: What Categories Reveal about the Mind*. Chicago–London 1987.

² For example: S. Grzybowski: *Wstęp do nauki prawa pracy*. Kraków 1947, pp. 12–22; T. Zieliński: *Prawo pracy. Zarys systemu*. Warszawa–Kraków 1986, pp. 2 ff.; J. Conaghan: *Feminism and Labour Law: Contesting the Terrain*. In: *Feminist Perspectives on Employment Law*. Eds. A. Morris, T. O'Donnell. London–Sydney 1999, pp. 13–41; M. Gersdorf: *Prawo zatrudnienia*. Warszawa 2013, pp. 14, 15–18; M. Mazzucato: *The Value of Everything: Making and Taking in the Global Economy*. London 2019, pp. 33–34; J. Suzman: *Praca. Historia tego, jak spędzamy swój czas*. Poznań 2021, pp. 16 ff., 33 ff.; M. Barret, M. McIntosh: *The Anti-Social Family*. London–New York 2025, pp. 58–65.

state of knowledge contributes to the state of art, and it would have been unacceptable if we did not include new knowledge into the legal system in order to improve it and adapt it to contemporary social expectations and acquired knowledge.

It is often said that the system of labour law could be traced back to approximately 200 years ago, when the capitalist system of work organization began to replace the then functioning feudal models of work,³ and subsequently developed and accelerated in the 1960s and 1970s. This, of course, does not mean that work on a paid basis was not performed before, because it is well recognized that work is an inherent and historical part of the human experience. Moreover, remunerated and even insured work has been known for centuries, however, the conditions of remuneration and other working conditions have been developing through ages to reach its present state. Although, given the scale of unregistered or substandard work, it should not be assumed that the remunerated and insured work as a model is a dominant one.⁴

The category of women in the employment is nothing new to the employment or labour law systems. Women have always worked throughout history; however, they have faced numerous obstacles to having their work recognized as one for which remuneration is due and to receiving independent remuneration for it.⁵ And those problems we see even today, for example, in the ongoing discussion on the transparency of wages and the reasons underlying the prevalent differentiation.⁶

This following article demonstrates that in labour law we deal with obvious categories, even in cases involving such basic categories as gender. We accept them without hesitation, adopting the categories

³ See e.g. S. Grzybowski: *Wstęp do nauki prawa pracy*. Kraków 1947, pp. 54 ff.; T. Zieliński: *Prawo pracy. Zarys system.* Warszawa–Kraków 1986, pp. 65 ff.; S. Williams: *Introducing Employment Relations. A Critical Approach*. Oxford 2014, p. 12.

⁴ According to ILO data, currently (2025) 57.7% of all global workers are in illegal employment. See <https://ilostat.ilo.org/topics/informality/> -> SDG indicator 8.3.1 – Proportion of informal employment in total employment by sex and sector (%) – Annual. This indicator conveys the share of informal employment in total employment.

⁵ See S. Atkins, B. Hale: *Women and the Law*. London 2018, p. 9.

⁶ K. M. Peña: *Pay Transparency: A Remedy for the Gender Pay Gap?* “Florida Bar Journal” 2024, vol. 98, no. 2; A. Świątkowski: *The EU Concept Of Equal Employment Pay*. “The Lawyer Quarterly” 2025, vol. 15, no. 2.

as we perceive them, without reflection. This makes it impossible to create a system of equality based on an equity approach.

This article is of theoretical character and in the process of preparing it, I used in particular the doctrinal and comparative as well as a socio-legal methodology.

2. Work, labour and employment law: A constantly changing perspective

Labour was identified as an important element of national wealth by A. Smith⁷ and, subsequently, by D. Ricardo and K. Marx and, in turn, by their political and scholarly successors. However, this approach is related only to so-called productive work.⁸ Following that notion, institutions concerned with job regulation and employment relationships (and other issues) were established, which resulted in the vast majority of employment relationships (in Europe) being regulated, creating labour/employment law.

So, focusing on the core issues, employment law is an exceptionally socially sensitive field, because it concerns one of the most important social processes,⁹ namely, the process of work, which often is perceived as constituting the central axis of human activity as one of the main elements in shaping social bonds. As I mentioned before, the process of work is constantly evolving, even though not always at the same pace, and also the amount of knowledge regarding this process is more and more considerable. So, the law has to be adjusted and rational, considering a long chain of facts and relations¹⁰ in the sphere of regulating labour. As J. Wróblewski mentioned, the legislative may be considered rational when it selects the right means to achieve the assumed, specific goal due to the knowledge it has and the approach it adopts,¹¹ which is one of the main factors to take into account when considering amendments

⁷ A. Smith: *Badania nad naturą i przyczynami bogactwa narodów*. T. 1. Warszawa 1927, pp. 11–12.

⁸ M. Mazzucato: *The Value of Everything. Making and Taking in the Global Economy*, London 2019, p. 33–34.

⁹ J. Sztumski: *Socjologia pracy w zarysie*. Warszawa 1981, p. 16.

¹⁰ B. Zdziennicki: *Skuteczność prawa gospodarczego*. "Studia Prawnicze" 1987, vol. 91, no. 1, p. 104.

¹¹ J. Wróblewski: *Teoria racjonalnego tworzenia prawa*. Wrocław 1985, p. 60.

to the law. This is particularly needed in the case of categories under constant revision and whose new meanings and social functioning are being discovered. So, a new reading of the concept of “woman” in the context of obvious categories is of key importance for understanding the contemporary legal system,¹² in particular employment law.

In this way, we reached the meaning of obvious categories. They may seem familiar, but the knowledge on them changes over time, which means the corresponding legal norms, if they refer to such categories, should also be amended. Obvious categories, such as the legal status of women, subordination, the physicality of the body or the work environment, including the natural environment, are categories used in legal sciences, but their origin and significance in the said field are rarely examined. However, I interpret these categories as a key element for understanding the contemporary labour law system and its application through their re-identification, as well as necessary for a rational approach to labour law that reflects social relations.

As I mentioned, the creation of law should be based, among other things, on expert knowledge and observed social phenomena, and therefore it is impossible not to explore research fields to which the dynamically changing world of work poses ever new challenges. This dynamic is crucial not only to the way work performance is perceived, but also to the formulating of *de lege ferenda*.

3. The category of women in Polish and European employment law

Neither Polish nor EU employment legislation directly defines the terms “woman” or “female” worker. Those regulations usually assume these terms as obvious categories, even though research conducted in the field of employment law also demonstrates that gender may have significant implications for the creation and application of law, as well as for their effectiveness. Interestingly, there are studies which demonstrate that when referring to the category “gender,” researchers

¹² L. M. Finley: *Breaking Women’s Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning*. “Notre Dame Law Review” 1989, vol. 64, p. 886.

are actually referring to the category “woman,”¹³ even though this category is not explicitly defined¹⁴ in international employment law.

Initially, before analyzing national legislation, we must look into ILO sources of law. ILO conventions cover a wide range of social and labour issues related to performing work by women, however, conventions (and recommendations) often apply to men and women equally. However, a number of those documents concern women (or female) workers. ILO standards cover the following areas in relation to women’s work: equality of remuneration, discrimination in employment and occupation, maternity protection, workers with family responsibilities, special measures relating to night work, underground work, and part-time work, violence at work, and some health-related issues. Designating these areas may *de facto* mean that, to some extent, they are different and characterize women’s work specifically rather than being common or relating to all workers. At its beginning, the ILO standards pertaining women aimed mainly at protecting them from exceedingly arduous working conditions and at safeguarding their reproductive function, but later on they began to encompass other spheres, up until recent developments related to gender-based violence.

The ILO’s particular approach to the term “woman” may be found in Article 2 of the International Labour Organization Convention C003 entitled Maternity Protection Convention (1919), which simply states that “the term woman signifies any female person, irrespective of age

¹³ J. W. Scott: *Gender: A Useful Category of Historical Analysis*. “The American Historical Review” vol. 91, no. 5, p. 1056.

¹⁴ As J. J. Cameron and D. A. Stinson wrote: “Many people raised in Western cultures assume that gender is a binary social identity consisting of two discrete categories: women and men. Yet many cultures around the world include more than two genders. Two-spirit individuals of the Indigenous North American peoples (e.g., Wilson, 1996), Hijras of India (e.g., Nanda, 2015), and bissu of the Bugis in Indonesia (e.g., Graham, 2004) are just a few of the gender identities that exist outside of the woman–man dichotomy. In countries like India, Pakistan, and Nepal, these nonbinary cultural understandings of gender are also institutionalized in government policies and practices (Busby, 2017). [...] Australia, Denmark, Canada, and Germany now allow their citizens to choose a gender-neutral ‘X’ as a gender marker on their passport (Busby, 2017).” J. J. Cameron, D. A. Stinson: *Gender (Mis)measurement: Guidelines for Respecting Gender Diversity in Psychological Research*. “Social and Personality Psychology Compass” 2019, vol. 13, no. 11, p. 2, <https://doi.org/10.1111/spc3.12506>.

or nationality, whether married or unmarried.”¹⁵ The concept was developed in the Article 2 of the revised Convention C103 of the International Labour Organization entitled Maternity Protection Convention (Revised) (1952), and states that “the term woman means any female person, irrespective of age, nationality, race or creed, whether married or unmarried.”¹⁶ Thus, the previous definition has been expanded to include two objective characteristics: race and creed, while still not constituting any actual distinguishing feature. The latest revision of this convention was made in 2000 and as a result it changes definition and broadens the scope of application. So, the Article 1 of the Convention C183 of the International Labour Organization entitled Maternity Protection Convention (2000) states that “the term woman applies to any female person without discrimination whatsoever.”¹⁷ The question that remains concerns the identification or self-identification as a “female person” and whether it is sufficient for legal reasons? The abovementioned development of ILO standards shows that the scope of application of the principle of equality between women and men has continued to broaden, however, without actually providing a definition, we can only infer from these provisions what characteristics may cause women’s differentiated situations.

The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) does not provide a direct definition of “woman” either, however, as E. Mayer states: “The term ‘woman’ in CEDAW is ambiguous and undefined. Although the Vienna Convention mandates a treaty term be interpreted in its ordinary meaning, with no definition, the term ‘woman’ could have a myriad of ‘ordinary meanings’.”¹⁸ E. Mayer in the following part of her research article proposes three meanings of the term “woman,” based on: sex approach, gender approach, and hybrid.¹⁹

¹⁵ https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312148:NO.

¹⁶ https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312148:NO, ratified by Poland on 10 Mar 1976, in force.

¹⁷ https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312328:NO.

¹⁸ E. Meyer: *Designing Women: The Definition of “Woman” in the Convention on the Elimination of All Forms of Discrimination Against Women*. “Chicago Journal of International Law” 2016, vol. 16, no. 2, Article 7, p. 572.

¹⁹ Ibidem, pp. 573 ff.

Although European labour law refers to the category “woman” and uses it in many documents, we do not find an explicit definition of “woman” in any of them. In the social law of today’s European Union, we find documents dating back to 1957 at the earliest. This is, of course, Article 119 of the Treaty establishing the European Economic Community, which stated that each Member State shall, during the first stage, ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work. These instruments have been gradually developed, starting with the directives on health and safety at work (1959)²⁰ and reaching the stage of the recently adopted directive on violence against women, including in employment (2023),²¹ which indicates particular distinctiveness of women’s work (as it was alike in ILO legislation).²²

In Polish employment law, the term “woman” is usually considered through the prism of the roles that tradition assigns to women. The search for a definition of the term “woman” in the Polish legal system concerning employment has not yielded any results, and this search can be summed up by the phrase known from the first Polish encyclopedia: “everyone sees a horse as it is,”²³ that is, by stating that this definition refers to a person with obvious characteristics. Although, on the other hand, in this notion I find also an encouragement to look at this proverbial horse differently, not being guided by the image we see, but treating it as a research field and exploring the meanings and contexts.

As already mentioned above, neither Polish legal system in general nor employment law specifically actually provide or use the direct definition of “woman” or “female.” However, we may notice some differentiation due to the gender. The question arises whether such

²⁰ Directives laying down the basic standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiations, *OJ* 11, 20.2.1959, pp. 221–239.

²¹ Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence, *OJ* L, 2024/1385, 24.5.2024.

²² It is worth noting that the recent CJEU case law (i.e. joined cases C-608/22 and C-609/22) regarding the recognition of women as a “special social group” is extremely promising. While the case law concerns refugee law, it is recognized that these rulings may be groundbreaking for the legal status of women in the EU.

²³ B. Chmielowski: *Nowe Ateny*. Vol. 1. Lwów 1745, p. 475, entry *Koń* [Horse].

a definition, or the establishment of definitional criteria, is necessary for the labour law system, if only to create labour protection instruments based on the principle of equality. The answer is yes – defining at least some criteria could allow for better adaptation of labour law instruments to women's work.

This is particularly evident in Article 33 of the Constitution, which directly addresses, among other things, economic and social rights. This provision states that women and men in the Republic of Poland have equal rights in family, political, social, and economic life. The following Article 33, Section 2 refers to employment, stating that women and men have, in particular, equal rights to education, employment, and promotion, to equal pay for work of equal value, to social security, and to hold positions, perform functions, and receive public honours and decorations.

Even if we do not find a definition of "woman," we find a definition of "protection of women's work,"²⁴ or even "protection of pregnant woman's work"²⁵ that by themselves indicate a certain distinctiveness of women's work (similarly as in ILO legislation provided). The Polish Supreme Court stated in one of its judgments that "the principle of protecting women's work is one of the fundamental, historically the first and currently unquestioned principles of labour law."²⁶ And repeated the formulation in several other of its judgments,²⁷ experiencing subsequent narrowing of the scope to pregnant women in later years.²⁸ Although the Supreme Court has never developed this thesis in any profound way, and however obvious and accepted thesis may seem, it implies quite serious consequences for the employment law.

First of all, it supplements the code catalogue of labour law principles with a abovementioned principle not indicated anywhere in the Polish Labour Code, the basic source of labour law in Poland. The

²⁴ Judgment SN of 19.03.2002, I PKN 156/01, OSNP 2004, No 5, item 78.

²⁵ Judgment SN of 18.05.2023, II PSKP 66/22, OSNP 2024, No 8, item 76.

²⁶ Judgment of the Supreme Court of 19.03.2002, I PKN 156/01, OSNP 2004, No. 5, item 78.

²⁷ Judgment of the Supreme Court of 16.06.2009, I PK 17/09, LEX No. 519275, Judgment of the Supreme Court of 11.06.2003, I PK 206/02, OSNP 2004/16/278, Judgment of the Supreme Court of 4.04.2013, II PK 237/12, M.P.Pr. 2013/8/431-434, Judgment of the Supreme Court of 9.04.2019, II PK 339/17, OSNP 2020/2/12.

²⁸ Judgment of the Supreme Court of 18.05.2023, II PSKP 66/22, OSNP 2024/8/76, Judgment of the Supreme Court of 7.10.2020, II PK 78/19, OSNP 2021/6/63.

Supreme Court formulated the principle only in 2001, and to a large extent seems to reduce it to the protection of female reproductive functions, but for other courts this principle becomes an important reference point when they issue decisions mainly in the field of maternity protection. However, it may not be forgotten that this principle was formulated by the Supreme Court extremely fuzzy and may serve as a starting point for considerations on the subject of women's work in general as well. To sum up, the most important implication indicated by the Supreme Court in the aforementioned ruling is the recognition that the protection of women's work is one of the earliest formulated basic principles of labour law, and thus indicates a certain distinctiveness of women's work.

This leads us to consider the application of special instruments to women's work, which, as it would seem, we should apply to all employed persons. The lawmaker has been using such instruments for the past twenty years, but they mainly refer to motherhood. Of course, we know more and more about the mechanisms of the labour market as we study women's participation in the labour market using statistical tools, but we often miss the most important element mentioned by J. Jończyk, that is, the protection of the ability to work as a personal good and economic value, reducing this protection solely to a type of special or increased protection.²⁹ This ability to work expressed by J. Jończyk may be partially related to the susceptibility mentioned by W. Szubert, who already sixty years ago demonstrated that women's work has different characteristics than men's and, if only because of different ability and susceptibility, they cannot be compared.³⁰ And perhaps this is a starting point for understanding the distinctiveness of women's work, although, to be honest, it may seem to contradict the principle of equality; in fact it does not contradict the development of legal instruments aimed at equality, but through equity instruments.

²⁹ J. Jończyk: *Prawo pracy*. Warszawa 1984, p. 530.

³⁰ W. Szubert: *Ochrona pracy*. Warszawa 1966, p. 28.

4. Obvious categories

Social sciences use the definition of obvious categories in particular when speaking on categorization³¹ or stereotyping. Social categorization is defined as a universal mechanism for making sense of a social world with roots in perceptual, conceptual, and social systems. The development of social categorization encompasses identifying which ways of classifying people are culturally meaningful, how these categories might be used to predict, explain, and evaluate human behaviours, and how one's own identity relates to these systems of categorization and representation. Social categorization may help in simplifying and understanding the social environment, but may have as well detrimental consequences in the forms of stereotyping, prejudice, and discrimination. Thus, understanding how social categorization develops is a central problem for the cognitive, social, and developmental sciences,³² including legal studies.

While social categorization in psychology refers to cognitive processes and may serve to build stereotypes, recognizing obvious categories may in fact contribute to de-stereotyping individual legal instruments and better adjusting the system of law, which is a prerequisite for creating good legal equity instruments. The obvious category also refers to the definition of stereotype. Research in social sciences has traditionally identified obvious categories such as race, gender, and age.

³¹ More on categorization: M. Kordela: *Aksjologia źródeł prawa*. "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2016, vol. 78, no. 2, pp. 15–26; E. Rosch: *Zasady kategoryzacji*. "Etnolingwistyka. Problemy Języka i Kultury" 2005, vol. 17, pp. 11–35; M. Zeifert: *Wyrok Trybunału Sprawiedliwości Unii Europejskiej z perspektywy kognitywnej teorii prototypu. Studium przypadku*. "Archiwum Filozofii Prawa i Filozofii Społecznej" 2020, vol. 23, no. 2, pp. 109–120; A. Brożek: *O kategoriach i kategoryzacjach*. "Roczniki filozoficzne" 2007, vol. 55, no. 1, pp. 5–22; M. Latacz, D. Wzorek: *Dyskryminacja przez stereotypowe ujęcie ról społecznych płci*. "Kwartalnik Prawo-Społeczeństwo-Ekonomia" 2019, no. 3, pp. 42–56.

³² M. Rhodes, A. Baron: *The Development of Social Categorization*. "Annual Review of Developmental Psychology" 2019, no. 1, p. 359. More on social categorization: Z. Liberman, A. L. Woodward, K. D. Kinzler: *The Origins of Social Categorization*. "Trends in Cognitive Sciences" 2017, vol. 21, no. 7, pp. 556–568; G. S. Harrits, M. Østergaard Møller: *Categories and Categorization: Towards a Comprehensive Sociological Framework*. "Distinktion: Scandinavian Journal of Social Theory" 2011, vol. 12, no. 2, pp. 229–247; R. Jenkins: *Categorization: Identity, Social Process and Epistemology*. "Current Sociology" 2000, vol. 48, no. 3, pp. 7–25.

Obvious categories in law, and especially in employment law, for various reasons are not accepted in a critical way, they are not subject to scientific or practical discussion – we often use definitions built over centuries ago, even though legal and social awareness, general knowledge and the knowledge of social processes, have significantly expanded, and we learn new meanings of long-coined concepts. Meanwhile, these phenomena are not accompanied by discussion within the legal system – yes, we do add new meanings or new instruments, but we do not revise the older ones, seemingly long-established, although in fact the progress of knowledge could encourage the revision of many concepts.

5. Category descriptors and distinguishing characteristics related to women

As mentioned before, because we actually concede the validity of the concepts used in legal sciences and do not question new meanings or definitions of obvious categories that would help us create better, more effective and adjusted law, more adapted to our times, we use certain characteristics or values to describe a given category of people (or a social group). In the case of women, we most often relate the definition to the characteristics of the body, reproductive function, sex and gender, and their definitions, as well as values, which were developed later as part of human rights law system, such as dignity, equality and privacy, in connection with the principles of non-discrimination. Below I will provide brief and fragmentary references to individual categories that typically refer to some of the characteristics associated with the definition of “woman,” however I do not carry out the analysis of these features, as this will be the subject of my further research work. I also would like to emphasize once again that these are only the most important categories relating to the definition of “woman,” however, it is not a complete or enumerative list.

5.1. The category of body

The category of the body as such is formally almost invisible in legislation, or perhaps unnoticed therein, which usually happens to obvious categories, although the said category is strongly related

to employment relations and their legal and social conditioning. Much too often do we forget that all work is embodied. Every type of work is performed using individual body parts, which have their own individual characteristics that allow for a particular mode or rhythm of work. All the work we perform, regardless of whether it is considered physical or intellectual, is performed with specific bodily characteristics in mind. It is worth mentioning, following B. Brandth, that all work is also gendered.³³ The category of the body in employment law is particularly important, for example, in restrictions on the performance of certain types of work by employees,³⁴ such as workers with disabilities,³⁵ and pregnant or breastfeeding women.³⁶ These latter features might also be considered together with, for example, health and safety regulations,³⁷ as regulations directly related to female (or male) biological functions.

5.2. The category of reproductive function

The most important and the most common approach to female in the employment relations we may find in the provisions related to female reproductive functions. Although the title of Chapter Eight

³³ D. Morgan, B. Brandth, E. Kvande: *Thinking About Gender, Bodies and Work*. In: *Gender, Bodies and Work*. Eds. D. Morgan, B. Brandth, E. Kvande. Aldershot 2005, p. 1.

³⁴ For example: Rozporządzenie Rady Ministrów z dnia 19 czerwca 2023 r. w sprawie wykazu prac wzbronionych młodocianym i warunków ich zatrudniania przy niektórych z tych prac (Dz. U. z 2023, poz. 1240) [Regulation of the Council of Ministers of June 19, 2023, on the list of prohibited work for minors and the conditions of their employment in some of these jobs (OJ 2023, item 1240)]; Rozporządzenie Ministra Pracy i Polityki Socjalnej z dnia 26 września 1997 r. w sprawie ogólnych przepisów bezpieczeństwa i higieny pracy (t.j. Dz. U. z 2003 r. Nr 169, poz. 1650 z późn. zm.) [Regulation of the Minister of Labour and Social Policy of 26 September 1997 on general occupational health and safety regulations (consolidated text: OJ 2003, No. 169, item 1650, as amended)].

³⁵ Ustawa z dnia 27 sierpnia 1997 r. o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych (t.j. Dz. U. z 2025 r. poz. 913 z późn. zm.) [Act of August 27, 1997, on vocational and social rehabilitation and employment of persons with disabilities (consolidated text: OJ 2025, item 913, as amended)].

³⁶ Article 176 of the Act of June 26, 1974, the Labour Code (consolidated text: OJ 2025, item 277, as amended).

³⁷ Regulation of the Council of Ministers of 3 April 2017 on the list of work that is arduous, dangerous or harmful to the health of pregnant and breastfeeding women (OJ 2017, item 796).

of the Polish Labour Code refers to the “protection of parenthood,” in the original version of the Labour Code (1974), this chapter was titled “Protection of Women’s Work.” This title, therefore, largely through the subject matter regulated, indicated the approach to women’s work, namely, through the reproductive function – motherhood. A permanent change in the abovementioned title occurred as a result of the implementation of European Union legislation only in 2002, and since 2003, this chapter has been titled “Employee Rights Related to Parenthood.” Despite the change in title and the introduction of new instruments for parenthood protection, the structure of the instruments remained essentially unchanged for a long time and corresponded to the structures adopted in the 1924 Female and Underage Labour Act (e.g., the structure of maternity leave dependent on the mother’s rights, protection against the termination of employment, and breastfeeding breaks). This only changed through an amendment that entered into force on January 2, 2016. In this amendment, the legislator changed the paradigm regarding the working parent and the location of his or her rights in the labour law system, regardless of gender. As we see in Polish legislation, a person’s sex determines the exercise of parental rights and a number of protective rights arising from pregnancy. Therefore, it primarily applies to individuals considered women and the possibility of being pregnant in general. However, in the case of fathers, it also determines the entitlement to paternity leave, as in the Polish legal system, only men are considered fathers (or second parent).

5.3. The category of motherhood

The category of reproductive function is also followed by the category of motherhood. The category of motherhood is primarily related to the rights of working mothers to care for their children after the birth. I am not arguing that fathers or those identifying as second parents or other caregivers do not have this right; I am merely pointing out that the category of woman is assigned primary caregiving rights towards children.³⁸

³⁸ However, there are views in the doctrine that require treating the rights of parents equally, even regardless of biological characteristics and, for example, postpartum period.

Article 180 of the Labour Code concerning maternity leave (which an employed woman is obliged to use after giving birth to a child) and some other provisions that follow use a Polish gendered term for 'female employee' (*pracownica* instead of generic or male *pracownik*), even if *pracownik* is usually considered the generic (general) term for an employee. The Labour Code also directly refers to pregnant female employee (Polish *pracownica w ciąży*), breastfeeding female employee (*pracownica karmiąca piersią*), and pregnant women (*kobieta w ciąży*) and more related to motherhood, not only in the Labour Code (e.g., in Articles 180, but also in the Sick and Maternity Benefit Act³⁹).

5.4. The category of dignity

In the literature, references to dignity in the context of gender are often used, especially when addressing discrimination based on gender. Dignity is at stake for everyone in the workplace. By providing employers the duty to enforce a discrimination-free workplace, the state is implicated in the workplace. Literature points out that the employment discrimination and the legal processes for litigating often further the destruction of workers' dignity.⁴⁰ It is often emphasized that gender is also a personal right, as it influences the scope of rights and obligations of natural persons. This is because gender is treated as "an element of the rights of the human condition, belonging to the category of personal rights protected by Articles 23 and 24 of the Civil Code."⁴¹

5.5. The category of gender:

Determination of sex or gender – *pracownik/pracownica*

As mentioned before, it is also worth noting that the terms "female employees" and "pregnant women" appear in Section 8 (Article 176

³⁹ Act of 25 June 1999 on cash benefits from social insurance in the event of sickness and maternity (consolidated text: OJ 2025, item 501, as amended).

⁴⁰ L. B. Nielsen, E. C. Berrey, R. L. Nelson: *Dignity and Discrimination: Employment Civil Rights in the Workplace and in Courts*. "The Chicago-Kent Law Review" 2017, no. 92, p. 1185.

⁴¹ A. Wojcieszak-John: *Plać człowieka jako dobro osobiste*. "Consilium Iuridicum" 2023, p. 46.

of the Labour Code), although they are not defined anywhere else in the Labour Code. Even Article 2 of the Labour Code, defining “employee,” uses the generic masculine form, without distinguishing the feminine form. Labour law does not contain any specific provisions on this. They rely on determining gender at birth, and here, labour law draws on the findings of other branches of law and legal acts performed outside the field of labour law.

5.6. The category of equality

Equality is provided for in the Constitution of the Republic of Poland. Article 32 of the Constitution of the Republic of Poland states that everyone is equal before the law and has the right to equal treatment by public authorities (paragraph 1). This is a fundamental principle of any democratic state. The legislator further stipulates that no one may be discriminated against in political, social, or economic life for any reason (Article 32 par. 2 of the Constitution of the Republic of Poland). It complements, or perhaps better, details, the provision of Article 33 paragraph 1 of the Constitution of the Republic of Poland, which states that women and men in the Republic of Poland have equal rights in family, political, social, and economic life. This provision therefore designates the relevant spheres, broad enough to encompass virtually all spheres of social and political life. In turn, Article 33 paragraph 2 of the Constitution of the Republic of Poland, which states that women and men have, in particular, equal rights to education, employment and promotion, to equal remuneration for work of equal value, to social security and to occupy positions, perform functions and receive public honours and decorations, indicates the most important, although not the only, areas in which the principle of equality should be implemented.

5.7. Provisions of antidiscrimination laws

References to women’s gender can also be found in Polish and European antidiscrimination laws. Polish Labour Code provisions refer more generally to gender. Meanwhile, European legislators, in their

most important recent equality acts, have identified women as one of the main subjects covered by antidiscrimination protection.

5.8. The category of privacy

Privacy is usually defined as the ability or right of an individual (or group) to control the extent of information about themselves (private life, health status, personal data, physical characteristics and more) disclosed to other entities, including employers. The concept also encompasses decisional autonomy and the regulation of the boundaries of the relationships in which an individual is involved (also employment relationship). The right to privacy in the workplace generally refers to an employee's right to the protection of personal data and the confidentiality of correspondence, as well as protection against violations of their rights into their personal sphere.

At this point, however, I would like to focus on a fundamental aspect of privacy: attitudes toward a body. This category, as such, often eludes labour law analysis, even though it is present in many regulations. General occupational health and safety regulations⁴² provide for a range of workplace amenities related to the privacy of individuals (whether men or women), including: locker rooms, washrooms, toilets, shower rooms, women's personal hygiene rooms, dining rooms (excluding canteens), rooms used for shelter from the cold, and rooms for washing, disinfecting, drying, and dusting workwear or protective clothing and personal protective equipment.

The type and size of hygiene and sanitary rooms in a workplace, as well as the requirements for these rooms, are specified in the regulation on general occupational health and safety regulations. This regulation states, for example, that washrooms, shower rooms, and toilets should be separate for women and men, unless the workplace employs up to 10 people per shift. In such cases, the room may be shared, provided that separate use is ensured. Changing rooms should also be separate, unless fewer than five people are employed per shift. In such cases, a shared changing room may be used, provided it includes changing

⁴² Rozporządzenie Ministra Pracy i Polityki Socjalnej z dnia 26 września 1997 r. w sprawie ogólnych przepisów bezpieczeństwa i higieny pracy (t.j. Dz. U. z 2003 r. Nr 169, poz. 1650 z późn. zm.).

cubicles. For every 20 women simultaneously employed in office work or similar settings, there should be at least one washbasin and one toilet, but no fewer than one for smaller staff.

6. Conclusions

I will conclude this brief review of the contexts of women's employment here, although further divisions could be drawn. However, my goal here was merely to identify certain areas of regulation pertaining to women, to highlight a certain distinctions apparent across different regulations, even if not always properly recognized or employed by the lawmakers, and most often not emphasized. The statement that the category of woman is "obvious" may mean that labour law in Poland assumes the existence of a distinct group of women (although in reality there is no uniform profile of working women), even though labour law does not acknowledge it. This "obvious" distinction is based on stereotypes (e.g., women as caregivers, mothers, etc.) and fails to take into account the diversity of their life and professional situations. It also perpetuates the perception of women as less capable of fully participating in the labour market. This construction can lead to discrimination, for example, by limiting women's access to promotion, training, or high-paying positions. Consequently, treating the category of woman as "obvious" hinders the achievement of equality. This article aims to participate in the contemporary discourse on the category of woman as a subject of the law and contributes to the discussion on the creation of rational law. To achieve the constitutional principle of equality, we need to create instruments based on an equity approach within the legal system, and this is impossible without understanding the characteristics of gender. This article is precisely about this: drawing attention to regulatory distinctions, which – instead of differentiating – should rather approximate the final legal status.

I am not focusing on the proposal to develop a definition of "woman," as I am not sure such a definition is necessary. Rather, I review the regulatory contexts, which may help us formulate employment law more aligned with the principle of equality, especially since Poland ratified CEDAW many years ago.

This article also brings an interdisciplinary perspective to the development of the social sciences incorporated into labour law, because only then can we understand the complexity and importance of the problem. The practical outcome of the article is to provide the lawmakers with a research field for a more perfect development of the modern employment legal system.

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Pozorna oczywistość kategorii kobiety w polskim prawie pracy: współczesne perspektywy i potrzeba inicjatywy ustawodawczej

Streszczenie

Artykuł dotyczy kategorii „kobiety” w polskim prawie zatrudnienia. Autorka stara się pokazać, że oczywistość rzeczonyj kategorii nie oznacza, że jest ona właściwie zidentyfikowana i poznana, co jest niezbędne do tworzenia skutecznego prawa zatrudnienia. Autorka identyfikuje obszary, w których używa się kontekstu kobiety w polskim

prawie zatrudnienia, a także stara się znaleźć odpowiedź na pytanie, czy tak identyfikowane obszary są wystarczające do stwierdzenia spełnienia postulatu równości określonego w art. 32 Konstytucji RP.

Słowa kluczowe: zatrudnienie, prawo zatrudnienia, praca, prawo pracy, kobiety, oczywistość, kobiety w pracy, status prawny kobiet, cechy indywidualne, oczywiste kategorie