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## On the Issues of Social Law in Poland: A State of Research on the History of Social Insurance Law

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### 1 Introduction

Contemporary Polish legal theorists generally agree on the factors distinguishing the various branches of law, pointing mainly to historical, objective, and subjective criteria, as well as the method of legal regulation. None of them have distinguished social law, either as a primary, derivative, or a comprehensive branch of law.<sup>1</sup> On the margins of his considerations on the genesis of labour law, Kolasiński mentioned that it is sometimes equated with social law.<sup>2</sup> The divisions are often reflected and deepened by the creation of corresponding academic units. The Department of Labour and Social Laws at the Faculty of Law and Administration at Adam Mickiewicz University is the only academic unit in Poland to have used the term »social law«.<sup>3</sup>

Additionally, the only conference treating the scope and concept of social legislation took place in Poznań. As a result of the congress, Piotrowski (1931–2014) prepared a valuable, but unpublished, article. The author stated that the norms of social regulation are on the margins of various branches of law. In his opinion, distinguishing the norms of social law requires their independent codification, some involvement of legal science in the studies of their specificity, some general principles of social law, as well as a clearer regulation of the subject within the framework of emerging branches.<sup>4</sup> Referring to Piotrowski's theory, Lach recognised the concept of social law in the broad sense, including not only social security law, but also taking into account some benefits of social indemnity.<sup>5</sup>

In view of the indeterminate status of the concept of social law in Polish jurisprudence, searching for its elements in legal historical publications brings several methodological difficulties. Relating

the German perspective, for instance, to Polish legal reality is unjustified, because it would introduce an artificial concept, ignore any native practices, achievements of legal science, and finally the differentiation of law into its various branches.

In Poland, social insurance law is considered one of the most saturated with norms regulating the social position of individuals. Its genesis dates back to the period of the Second Polish Republic (1918–1939), when the first works on the history of social insurance law appeared. Due to the necessity of a synthetic approach, this overview of legal historical publications ranges from the interwar period to contemporary times.

### 2 Overview of Publications on the History of Social Insurance Law in Poland

#### 2.1 *The Second Polish Republic Period (1918–1939)*

At least five monographs and two academic textbooks containing legal historical information on social insurance appeared in the interwar period.

Compared to the other publications, the elaboration by Krzeczowski was particularly interesting.<sup>6</sup> The uniqueness of his work is due to his comprehensive grasp of the historical development of legal, social and political thought relating to social insurance. The author indicated the aims and methodology of his research. He distinguished historical periods of intellectual development, and he characterized them broadly while also referring to some foreign solutions.

Krieger was the author of another valuable monograph from 1932, including analyses of the

\* This essay is dedicated to my parents.

1 NOWACKI/TOBOR (2002) 100–107;  
REDELBACH (2002) 199–220;  
WRONKOWSKA (2003) 104–112;  
STAWECKI/WINCZOREK (2003)  
120–124; SALAMONOWICZ (2008)  
161–168.

2 KOLASIŃSKI (2003) 38.

3 NIEDBAŁA (2009) 6.

4 PIOTROWSKI (1990) 1–2, 12–14,  
21–22, 25.

5 LACH (2009) 122–123.

6 KRZECZKOWSKI (1936).

official draft laws concerning health insurance from 1917 and 1918 as well as some communal projects.<sup>7</sup> In that book, he revisited the issue of health insurance, on which he had published an article in 1930 in the »Review of Social Insurance« (*Przegląd Ubezpieczeń Społecznych*).<sup>8</sup>

Another monograph worth pointing out that contained a historical legal chapter is by Władysław Babel de Fronsberg from 1935.<sup>9</sup> The exceptional quality of the study stemmed from the historical analysis of foreign (English) regulations. Further, the jubilee publication of the Ministry of Social Welfare included a chapter containing information on the history of the codification of the social legislation since Poland's revival, and it described the particularities of Upper Silesia.<sup>10</sup> Concluding the overview of the monographs, a monumental publication by Gąsiorowska included references to the insurance of the miners and steelworkers in Congress Poland (1815–1918).<sup>11</sup>

Some information on the history of social insurance appeared in the first Polish academic textbook in this field.<sup>12</sup> It was a summary of lectures given by Biskupski. The next textbook by Gliksman also remarked on this history.<sup>13</sup> The author treated the problem comprehensively from the sociological, political and legal points of view.

In addition to the aforementioned article by Krieger, there were at least nine articles published in scientific journals during the interwar period that specialised in social insurance law or economics. These articles essentially raised three problems: the rescinded Polish social insurance legislation; the development of miners' and steelworkers' insurance in Upper Silesia, in Dąbrowa, and Kraków Basins; and the draft laws from the era of Poland's partitions. They treated further ancillary issues, including studies on the history of social insurance organisations, encompassing the genesis and development of the competences of the Social Insurance Chamber (*Izba Ubezpieczeń Społecznych*).<sup>14</sup>

Gliksman and Buber raised the subject of the repealed native social insurance legislation.<sup>15</sup> In 1936 Gliksman presented the Polish social insurance law amendments and reforms from the re-birth of the Polish state. Buber compared the assumptions of the Decree of the Chief of the State on the obligatory health insurance from 1919 with the legal provisions on this matter from the act adopted in 1920, and Łazowski's 1927 article partly alluded to these problems as well.<sup>16</sup>

The particularities in the social insurance of the miners and steelworkers aroused particular interest among legal historians. Their organisational layer became an especially rewarding field of scientific research. In the interwar period, the social insurance legislation of Poland's partitioners from the creation of Congress Poland were analysed.<sup>17</sup> Moreover, the functioning of the so-called »provident funds« in Dąbrowa Basin<sup>18</sup> and the Miners' Partnership in Tarnowskie Góry were described.<sup>19</sup>

Krzczkowski researched the forgotten draft laws, and in doing so he doubtlessly contributed to popularising the history of social insurance. He brought two abortive legislative initiatives closer to the readership of »The Economist«. The draft regulation on social insurance submitted in 1808 to the Prince of the Duchy of Warsaw was the first of them.<sup>20</sup> In 1930, he presented the results of his research on the project from the years 1833–1834.<sup>21</sup>

## 2.2 The Communist Period (1944–1989)

The Polish political and economic system was aligned to the ideological assumptions of communism in the post-war period. Social legislation was developed, and the concept of social security was vigorously implemented. Therefore, some researchers were engaged in the subject of social law, but generally it was associated with the analyses of the current legal norms of social insurance.

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| 7 KRIEGER (1932).                            | 17 GĄSIOROWSKA (1928).  |
| 8 KRIEGER (1930) 99–106.                     | 18 PINDELSKI (1924).    |
| 9 BABEL DE FRONSBURG (1935) 2–49.            | 19 JONDA (1930).        |
| 10 BORNSTEIN-ŁYCHOWSKA (ed.) (1935) 221–288. | 20 KRZECZKOWSKI (1929). |
| 11 GĄSIOROWSKA (1922) <i>passim</i> .        | 21 KRZECZKOWSKI (1930). |
| 12 BISKUPSKI (1925) 13–47.                   |                         |
| 13 GLIKSMAN (1933) <i>passim</i> .           |                         |
| 14 BALCERSKI (1934).                         |                         |
| 15 BUBER (1930); GLIKSMAN (1936).            |                         |
| 16 ŁAZOWSKI (1927).                          |                         |

The legal historical threads were marginal. In the 1980s the yearbook titled »Studies and Materials on History of Social Insurance in Poland« (*Studia i materiały z historii ubezpieczeń społecznych w Polsce*) was published (hereinafter the »Studies«).

The sections with the introductory descriptions of the history of social insurance law appeared in some labour and social insurance legal textbooks. The outlines were brief and rather derivative.<sup>22</sup>

Aside from the textbooks, a number of monographs and essay collections containing legal historical remarks on social insurance law were published between 1945 and 1989. They were mainly focused on the interwar period. Jonca and Wanatowicz developed the research on mining insurance initiated in the interwar period.<sup>23</sup> Ciechocińska addressed unemployment insurance, pointing also to some foreign solutions.<sup>24</sup> Ajnenkiel undertook the elaboration of farmers' insurance in the interwar period.<sup>25</sup> Brol and Szymanek considered the procedural rules of the social insurances and the regulations on social insurance judiciary.<sup>26</sup> Leszczyński and Piotrowski depicted the genesis of social insurance institutions in Poland and in some European countries.<sup>27</sup> Against this background, the contribution by Zieliński containing reflections on the methodology of research on the history of labour law and its comparative aspects seems unique.<sup>28</sup> To a certain extent, they could be referred to as historical legal analyses of social insurance law.

In monographs by Świącicki published in 1960 and by Wratny from 1988, especially interesting legal historical fragments emerged.<sup>29</sup> Results on the draft laws from the period of the Great War and the »unification act« of 1929 (adopted in 1933), as well as the regulations issued shortly after the Poland's revival (mostly relating to white-collar workers), among other things, were included in the former. The author described the attacks on the insurance's self-governance between 1929 and 1931 and the legal basis for the social insurance

judiciary. The second work included, among others, an analysis of Polish insurance regulations since the act of 1933, regional particularities, a description of particular acts relating to the military, mining and rail, and a synthesis of the codification of the Polish People's Republic. The legal solutions of the real socialism era were collated with those from the pre-war age, which made the work more comparative.

The »Studies«, a journal devoted to the history of social insurance law, was initiated during the Communist Period. The project was carried out under the aegis of the Commission on History of Social Insurance in Poland, established at the Social Insurance Institution (*Zakład Ubezpieczeń Społecznych*; hereinafter the »ZUS«), thanks to Waclaw Szubert's (1912–1994) efforts. Ten volumes of the yearbook were published between 1983 and 1994. The articles contained source studies, memoirs, as well as biographies of people associated with the development of social insurance in Poland. These texts ranged chronologically from the mid-nineteenth century to the late twentieth century. The articles were restricted to Polish affairs. The research on social insurance law during the Second World War published in »Studies« eliminated the most severe omissions in the literature. Among the most valuable articles were texts by Barra on the insurance judiciary, Szubert on the history of legal thought in the field of social insurance between 1941 and 1944, and Krygier on legislative works from before the reinstatement of independence.<sup>30</sup> The articles were high quality and included valuable back matter. The size of a single journal issue ranged from a little more than one hundred pages (the tenth issue) to nearly two hundred pages (the third yearbook).

### 2.3 The Third Polish Republic Period (1989–)

Rejecting the ideological assumptions of communism did not affect the abolishment of the

22 JAŚKIEWICZ/JACKOWIAK et al. (1970) 354–361; SANGOWSKI (ed.) (1974) 1–8; SALWA (1977) 328–334; JĘDRASIK-JANKOWSKA (1989) 112–120.  
23 JONCA (1960) 223–240; WANATOWICZ (1973) 17–59.  
24 CIECHOCIŃSKA (1965) 76–98.  
25 AJNENKIEL (1962) 128–137, 284–297, 358–369.  
26 BROL/SZYMANEK (1989) 37–46.

27 LESZCZYŃSKI (1983) 200–210; PIOTROWSKI (1950) 8–10.  
28 ZIELIŃSKI (1988) 395–407.  
29 ŚWIECICKI (1960) 52–58, 107–111, 275–310; WRATNY (1977) 26–32.  
30 BARRA (1987) 75–82; SZUBERT (1991) 73–94; KRYGIER (1985) 7–24.

coercively financed state system of social insurance nor the privatisation of public health care. The continuation of the social policy was carried out under the new »social market economy« and motivated by European Union acts or Council of Europe conventions, among others. The development of the social legislation contributes to continued interest in the area of social insurance law and to increase its history.

A series of monographs and edited volumes entirely devoted to matters of the history of social insurance law have appeared in Poland since 1989, of which five are especially innovative. In the first from 1990, Jackowiak analysed the trends in both material and formal laws, the organization of the social insurance organisations and their financing since the Second Polish Republic (excepting the Soviet occupation).<sup>31</sup>

Kolasiński published a monograph also in 1990 explaining the origins of social insurance, beginning with the prehistory.<sup>32</sup> The findings included not only Polish acts, but also the regulations of the international assemblies and other countries.

The third exceptional work was the monograph by Muszalski from 2004, which is the only one with a comprehensive grasp of the problems of the social insurance law and to treat them broadly from the legal historical perspective.<sup>33</sup> The author focused on the development of the insurance system in Poland, presenting his own periodisation of its history. The threads of foreign and international legislation were extended. Muszalski also analysed the factors motivating the recent reforms of the insurance models. He presented a catalogue of the amendments proposed worldwide, and he characterised them in detail using domestic examples. The elaboration included an extensive bibliography.

Jakubiec provided another valuable synthesis in 2007.<sup>34</sup> The author described legal institutions, including health, disability, accident, and unem-

ployment insurance, as well as the development of their organizational structure in Polish regions and within various professional groups (e.g. miners, labourers and white-collar workers). The work ranged chronologically from the period of Poland's partition to the outbreak of World War II.

The last work was the monograph by Stanisiz from 2001.<sup>35</sup> It analysed the changes to the legal status of only one group of beneficiaries: the clergy. The author considered the evolution of social insurance, and he indicated its instrumental nature and set the spectrum of the non-social goals that were achieved with the help of social insurance programmes. He described this legal institution after 1989 exhaustively. The work was based on a wide range of legislation, case law and other sources. Stanisiz debunked the myth of universal social insurance in the Polish People's Republic and demonstrated the relationship between state social and religious policies.

The other recently published studies and academic textbooks contained some modest, generally introductory, legal historical remarks. They appeared in the later editions of labour law, social security and social insurance textbooks by Jędrasik-Jankowska, Muszalski and Salwa; in the collective works edited by Kucka, Szpor, Wagner, Ciesielski; and in the publications by Kolasiński and Wantoch-Rekowski, among other outlets.<sup>36</sup> Some interesting references to the insurance of Jewish workers and associated practices in the interwar period were concluded in Bina Garncarska-Kadary's publication.<sup>37</sup>

The ZUS has expanded its publishing activity in the range of commemorative volumes and conference proceedings since 2009. These include collections of studies marking the institution's 75<sup>th</sup> and 80<sup>th</sup> anniversaries and the 80<sup>th</sup> anniversary of the adoption of the Social Insurance Act.<sup>38</sup> They included articles on, among others things, formerly

31 JACKOWIAK et al. (eds.) (1990).

32 KOLASIŃSKI (1990).

33 MUSZAŁSKI (2004).

34 JAKUBIEC (2007).

35 STANISZ (2001).

36 JĘDRASIK-JANKOWSKA (2013) 30–31, 189–193, 259–261, 383–386;

MUSZAŁSKI (2006) 98–101; SALWA

(2007) 327–331; KUCKA (ed.) (2009)

349–352, 355–362; SZPOR (ed.)

(2013) 16–18, 25–28, 220–221;

WAGNER (1996) 9–42; BOROWCZYK

(1996) 209–220; PRASZNIC (1996)

221–242; PIEKARSKI (1997);

KOLASIŃSKI (2003) 116–129;

WANTOCH-REKOWSKI (2005) 29–48,

95–98.

37 GARNCARSKA-KADARY (2001)

158–166.

38 TOLKO (2009); PRZYBYLSKI (2009);

SROKA (2009); GOLINOWSKA (2014);

DERDZIUK (2014); JĘDRASIK-

JANKOWSKA (2014a); ŻUKOWSKI

(2013); BIŃCZYCKA-MAJEWSKA (2013);

ZIELEŃIECKI (2013); OLSZEWSKA

(2013); MALAKA (2013).

binding legislation, models and reforms of foreign social insurances, the functioning and financing of insurance systems, the subjective and objective ranges of insurances policies in historical perspective, the ZUS's development, and the biographies of people associated with the institution. Some similar issues were addressed in proceedings of conferences on the risk of work disability (in 2013) and solidarity within social insurance system (in 2014).<sup>39</sup>

The overview of articles on the history of social insurance law published after the political transformation needed to begin with the »Studies«, an ambitious publishing project that ended in the mid-nineties. Three of the ten volumes were published after 1989.<sup>40</sup> Further, articles on the aspects described above were published occasionally in Polish legal journals. Among them were valuable texts by Bińczycka-Majewska, containing a comparative analysis of the evolution of employers' legal liability for damages caused by an accident at work or due to an occupational disease, and the article by Bach on the social insurance of nuns, monks and the clergy in the Polish People's Republic.<sup>41</sup> Further, between 2012 and 2013 Makarzec published a series of three texts on the history of social insurance in Poland, which together approximate a legal historical monograph.<sup>42</sup>

### 3 Summary

Research on the history of social insurance law in Poland began at least with the interwar period, although it intensified in the eighties and nineties. The scope of the publications generally covered issues of material law and insurance institutions. The procedures and the judiciary were described less often. The authors, with few exceptions, did not look beyond Polish regulations. They mostly dealt with the law of the Second Polish Republic and, to a lesser extent, with codifications adopted before the Great War and the communist era. They usually omitted laws imposed by the German and Soviet occupiers.

The first monographs, textbooks and articles on the history of social insurance law were published after Poland regained independence in 1918. A dispute over the question of autonomy of social insurance law carried on between the wars. Krzeczowski and Krieger were the most productive authors of this period.

The proliferation of textbooks on social insurance law during the communist period was associated with the development of state social policies. Their contents were supplemented with some modest legal historical remarks, which were not systematically or creatively developed. Relevant passages on the history of social insurance institutions were increasingly to be found in monographs. Szubert and Świącicki made especially noteworthy contributions.

The first of ten volumes of the specialist yearbook strictly devoted to the history of social insurance law was issued in 1983. The »Studies« and the collective work prepared in 1990 by the members of the editorial board were the first syntheses of the problem. The monograph by Kolasiński was published in the same year. Other holistic pieces appeared in 2004 and 2007.

The example of the »Studies« shows that the dynamic development of research on the history of social insurance law required not only proactive attitudes on the part of academics, but the organizational foundations as well. The ZUS brought together researchers interested in the issue. In 1994, after the death of Szubert, its initiator, the ephemerality of the project was revealed.

ZUS participants Kolasiński and Muszalski followed Szubert's ideas. Besides their studies, a series of the important works on the history of social insurance law were published after the political transformation of 1989. The ZUS's authorities decided to initiate and issue publications, as it used to do during the interwar and communist periods. Therefore, further activity in this area is probable and will likely lead to a significant growth of publications on the history of social insurance law.

39 ZIELENIECKI (2014); JĘDRASIK-JANKOWSKA (2014b); BIŃCZYCKA-MAJEWSKA (2014), MAKARZEC (2014), ZIELIŃSKI (2014).

40 A description of their contents can be found in the previous section.

41 BIŃCZYCKA-MAJEWSKA (1991); BACH (1998).

42 MAKARZEC (2012, 2013a, 2013b).



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