

# UBEZPIECZENIA SPOŁECZNE

## Teoria i praktyka

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The evolution of social insurance in Poland –  
the Second Polish Republic

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The Social Insurance Institution (ZUS) during  
World War II

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Social insurance courts in the Polish People's Republic

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 ZAKŁAD  
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## Dear Reader,

the search for a Polish national identity, one lost for 123 years, and the building of the foundations of the new state were both obvious and ambiguous challenges for the new authorities – creating a single state apparatus out of three administrations with their respective achievements, cultures and habits. The creation of the idea and the implementation of social insurance systems was to bypass the now free Poland, and so it was to rely precisely on the experiences of those who had only recently partitioned it. Along with the consolidation of these structures, legislation and the dissemination of individual insurance areas moved in the direction of unification. In the early 1930s, the world economic crisis had a significant impact on social security globally. The necessity to reorganize the existing insurance model and the organizational simplification of hitherto excessively developed insurance institutions accelerated. This pressure found its expression in the so-called Consolidation Act of 1933 [*ustawa scaleniowa*].

For the new Poland, the final years before the subsequent global military crisis was to see a boom in social insurance and the gradual inclusion of new groups of workers within the insurance system itself. The attempt to save the structures of the integrated Social Insurance Institution [Zakład Ubezpieczeń Społecznych, ZUS] and insurance finances during World War II shows how valuable and important this institution was for the country.

We present you with the volume “Ubezpieczenia Społeczne. Teoria i praktyka” edited by Anna Jarosz-Nojszewska devoted entirely to the beginnings of social insurance in Poland.

The opening article by Karol Chylak attempts to synthetically present the evolution of social insurance management in the three dimensions of social risks, the institutional system and financial issues. Piotr Makarzec deals with the role and significance of the Consolidation Act for social insurance. The volume’s editor presents a piece on the interwar retirement rights of Polish emigrants and re-emigrants within Polish social policy. In turn Mirosław Klusek writes about the aforementioned struggle with the Nazi totalitarian system to maintain the structures and finances of the Social Insurance Institution, and in general about ZUS’s wartime situation during the German occupation. Michał Nowakowski examines the functioning of post-war social insurance from the point of view of the activity of the courts in the Polish People’s Republic.

We wish you an interesting read.

*The Editorial Team*



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# Evolution of social insurance management in the Polish lands up until the outbreak of World War II

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Social insurance is most often discussed in the relevant literature as a social or political rather than an economic issue. Its managerial aspects are even less frequently addressed. This paper attempts to present synthetically the evolution of social insurance management in three dimensions: social risks, the institutional system and financial issues.

Ideas implemented in the 19th and in the first half of the 20th century in the field of insurance system management were of a centralised nature, concentrating the basic instruments in the hands of public authorities. This phenomenon was to intensify especially after World War I. The focus shifted from setting the rules, principles and forms of operation of bottom-up insurance initiatives to direct control of either the institutional system or the funds. As a result, forms of risk hedging and financing became increasingly less flexible.

**Key words:** insurance funds, insurance institutions, insurance management, social insurance, social policy

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# Introduction

Social insurance is no stranger to the relevant subject literature. However, it is most often discussed from a social or political perspective, with economic issues being less frequently addressed. Even less often is social insurance considered from the perspective of management issues. This paper attempts to present synthetically the evolution of social insurance management until the outbreak of World War II in three dimensions: social risks, the institutional system and financial issues. It brings closer the types of risks related to work that were gradually becoming the elements of social insurance, the adopted solutions for institutional structures and the way of managing the capital collected by these institutions. This issue, by its very nature, exceeds the scope of an academic paper, hence this publication aims to merely highlight the problem. Achievement of the assumed goal requires a wide range of research methods, as applied in the humanities and social sciences. In particular, the comparative method was used. It should be emphasised that to date no such similar academic research has been undertaken, with few exceptions. However, there are numerous publications fragmentary in nature which can provide the basis for a thorough and extensive analysis.

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## Social insurance in the Polish lands. Evolution of the system

The origins of social insurance on Polish lands date back even to the Middle Ages. Various forms of aid funds existed in the mining industry.<sup>1</sup> However, the actual history of social insurance in these areas began in the 19th century. Social insurance was born out of a real-life practice resulting from the new and rapidly changing social and economic conditions. This relates, in particular, to the industrial revolution, which resulted in great changes on a European scale in the system of goods production and forms of social existence. Industrialisation and urbanisation processes were in progress. In the Polish lands, divided by the partitioning powers, these processes had a different intensity and took place in different periods, however, they also had their social and economic consequences.

It is said that social insurance was born out of utopia: out of a human fantasy seeking the best ways to satisfy the needs of large population masses.<sup>2</sup> It seems, however, that the emphasis should be placed rather on the aforementioned real-life practice, on a number of different initiatives, ways of dealing with changing living conditions. The path of development of insurance institutions justifies such a conclusion. It is certainly

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<sup>1</sup> A. Wójcicki, *Instytucje fabryczne i społeczne w przemyśle Królestwa Polskiego*, "Ekonomista" 1914, Vol. 4, p. 33.

<sup>2</sup> K. Krzeczkowski, *Idee przewodnie ubezpieczeń społecznych*, Warszawa 1936, p. 9.

no coincidence that these institutions appeared first of all in economic ventures involving the mining and metallurgical sector, where the risk of damage to an employee's health was always very high. This practice had been known there for a long time. This time it took on a new form, corresponding to the new political and social conditions, new ways of organising human activities, of managing organisations.

For obvious reasons, insurance institutions and various insurance facilities operating in the Polish lands developed within three, or rather four political systems, and at least in as many societies and economic structures (the Kingdom of Poland [Congress Poland], the so-called Western Krai [*ziemie zabrane*, the westernmost parts of the Imperial Russia, excluding the territory of the Kingdom of Poland], the Austrian partition, the Prussian partition). Insurance was developing most dynamically in those areas that were a part of the German state. Initially, in the first decades of the 19th century, these issues were regulated under the principles of general civil law. However, the regulations that began to appear contributed to the construction of the insurance organisation system. In 1838, in Prussia, entrepreneurs were made responsible for accidents. The law was applicable to railway companies. A system for mining was also being constructed. In 1854, compulsory insurance for miners was introduced, and after a little more than ten years the Mining Code was issued. Legal regulations also covered risks related to workers' sickness. The relevant regulation appeared in 1845 (the Industrial Act). The mentioned Mining Code was also important for sickness insurance. The possibility of developing invalidity insurance was added by the Act of 1867. These laws were amended and supplemented on several occasions. In the second half of the 19th century, the basic German social insurance legislation appeared. It consisted mainly of the Act on sickness insurance of 1883, insurance against accidents at work of 1884, invalidity insurance of 1889 and the Act on the insurance of white-collar workers, adopted at the beginning of the 20th century (1911). At that time, the system was coordinated and organised by means of the Reich Insurance Ordinance.<sup>3</sup>

In those lands under the control of the Habsburg dynasty, social insurance was to appear slightly later than in the neighbouring German states. Similarly, in the first decades, these issues were regulated by a general civil law. However, it is worth noting that new legal regulations had appeared systematically for this sphere of life. In 1869, the regulations on accidents of persons travelling by rail also covered railway employees. The Industrial Act published in 1859 and the Mining Act of 1854 were also important in this respect. In addition, there were a number of exceptions that allowed for the establishment of so-called free insurance funds [*kasy wolne*] or mutual-type insurance associations. The basic legislation making it possible to construct a social insurance system was to appear, as in neighbouring Germany, in the second half of the 19th century. It consisted of the Act of 1887 on insurance against accidents at work, the Act on sickness insurance of 1888,

<sup>3</sup> K. Chylak, *Ubezpieczenia społeczne i zaopatrzenia emerytalne w II Rzeczypospolitej*, Warszawa 2017, pp. 23–51; E. Grabowski, *Ubezpieczenia społeczne w państwach współczesnych*, Warszawa 1923, pp. 19–20, 35–37, 122, 189; *Ordynacja Ubezpieczeniowa Rzeszy z dnia 19 lipca 1911 r. i ustawa o ubezpieczeniu pracowników umysłowych z dnia 20 grudnia 1911 r.*, compiled by J. Baumgarten, S. Sasorski, Poznań 1934, *passim*.

the Act of 1889 on arranging the relations of mining brotherhoods [*bractwa górnicze*] and the subsequent Act on the insurance of white-collar workers of 1906.<sup>4</sup>

In those lands belonging to the Russian state, social insurance appeared the latest. Its development followed very similar paths. In the first decades of the 19th century these issues were regulated by general legislation, on the territory of the Kingdom of Poland by the Napoleonic Code [Kodeks Napoleona], and later by the Civil Code of the Kingdom of Poland [Kodeks cywilny Królestwa Polskiego]. The Industrial Act also had its significance. However, in general, insurance issues were not viewed as being of significant importance, especially as the development of industry on the territory of the Russian state was one-off in nature. The first legal regulations concerning insurance appeared in the mining and steel industry, and then in the railway sector.<sup>5</sup> These were accident, sickness and old-age pension insurance. At the same time, employing Western European models, mainly German and French, bottom-up initiatives began to emerge aimed at creating appropriate institutions. They involved a number of organisations based on the principles of association and mutuality. Their development, however, was hampered by the administrative policies of the state.<sup>6</sup> The actual construction of the system started at the beginning of the 20th century. Its prelude was the Act on responsibility of entrepreneurs for accidents at work of 1903. Just before the outbreak of World War I (in 1912), two Acts were published: on insurance against accidents at work and on sickness insurance.<sup>7</sup> Their implementation was not completed until the outbreak of war. It should be noted, however, that a number of insurance institutions were organised in the Kingdom of Poland.

The political changes brought about by World War I, the disintegration of the old and the emergence of a number of new political organisms led to significant changes in the structure of social insurance. In the first few years of the independent Republic of Poland at least three overlapping processes could be observed. The first was the movement for the reconstruction of the institutional insurance infrastructure. This movement was most often of a bottom-up, local and regional nature. Efforts were made mainly by the local employees of these institutions or by decision-making centres as such. This was an attempt to maintain a certain state of social infrastructure and to take control over it from the hands of the partitioning powers. In each of the regions, and generally in each of the institutions, these activities were carried

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4 K. Chylak, *Ubezpieczenia...*, *op. cit.*, pp. 45–64; E. Grabowski, *op. cit.*, p. 24; J. Pasternak, *Organizacja nadzoru i orzecznictwa w dziedzinie ubezpieczeń społecznych w Polsce*, “Przegląd Ubezpieczeń Społecznych” 1926, Issue 2, p. 31; M. Moskwa, *Zarys powstania i rozwój Zakładu U.P.U. we Lwowie*, “Przegląd Ubezpieczeń Społecznych” 1931, Vol. 9, pp. 262–266.

5 N. Gąsiorowska, *Organizacja Kas Brackich górniczych w Królestwie Polskiem (1815–1830)*, “Kwartalnik Historyczny” 1928, Vol. XLXX, Issue 2, pp. 297–301; D. Marzec, *Ubezpieczenie brackie górników na terenie Zagłębia Dąbrowskiego – zarys rozwoju*, “Materiały i Studia z Historii Ubezpieczeń Społecznych w Polsce” 1997, Vol. 5, pp. 13–15; K. Chylak, *Ubezpieczenia...*, *op. cit.*, pp. 85–87, 90.

6 K. Chylak, *Ubezpieczenia...*, *op. cit.*, pp. 78–84, 92–93.

7 M. Lewy, *Nowa ustawa o ubezpieczeniu od wypadków przy pracy*, Warszawa 1913, *passim*; B. Wasiutyński, *Ubezpieczenia robotnicze w państwie rosyjskim*, “*Ekonomista*” 1913, XIII, Vol. 1, pp. 163–164.



out in a different way. While in the territory of the former Austrian partition they were mainly aimed at maintaining the existence or re-launching individual insurance companies and institutions,<sup>8</sup> in Greater Poland and Pomerania political factors were already more important.<sup>9</sup> In the lands of the former Kingdom of Poland, local, often enterprise forms of insurance were being rebuilt, and at the same time activities were being carried out at the level of central authorities, here initiated by the Provisional Council of State [Tymczasowa Rada Stanu] and the Regency Council [Rada Regencyjna].<sup>10</sup> The path paved in Greater Poland was followed to a degree in Upper Silesia, and here taking into account the specific legal status of this territory.<sup>11</sup> In the Western Krai, one could say that practically nothing at all happened in these initial years.

In parallel to the process of reconstructing the social insurance institutional infrastructure, a heated debate on the developmental directions of the existing system began. The decision-making centres in the field of social policy, controlled by circles connected with the Polish Socialist Party [Polska Partia Socjalistyczna], formulated far-reaching proposals of reform. The concept of so-called uniform social insurance [*jednolite ubezpieczenia społeczne*] was promoted. The idea formulated in the form of draft legislation was not subject to legislative procedure.<sup>12</sup> On the one hand, due to the impossibility of introducing such a costly project, and on the other hand, due to changes in the composition of the Ministry of Labour and Social Welfare, the idea of unified insurance was to gain in importance over time. It assumed, first of all, actions aimed at combining the inherited systems and to unify rules. The unification of insurance was to become a kind of minimum programme in the above-mentioned *milieux*. During the first years, voices promoting the decentralisation of the insurance system and the construction of local organisations connected with specific social circles carried less force. These voices were numerous, but due to the poor legal capacity, they focused on defending the *status quo* and on actions aimed at stopping propagators of the idea of uniform or consolidated insurance policies.

Unresolved fundamental issues did not prevent decision-makers from carrying out activities to modernise the existing status. In a way, they were an attempt to implement, outside of the statutory regulations, the ideas of the above mentioned political environment, initially dominant in the Ministry of Labour and Social Welfare. The activities

8 *Sprawozdanie Zakładu Ubezpieczenia Robotników od Wypadków we Lwowie z czynności za rok 1919*, Lwów, p. 4; *Sprawozdanie Zarządu Okręgowego Związku Kas Chorych w Krakowie za rok 1924*, Kraków 1925, pp. 1, 45.

9 K. Barański, *Organizacja i rozwój kas chorych w województwach Poznańskim i Pomorskim*, "Przegląd Ubezpieczeń Społecznych" 1930, Vol. 5, pp. 108–109; *Sprawozdanie Ubezpieczalni Krajowej w Poznaniu z 10-letniej działalności*, Poznań 1929, pp. 4–5.

10 K. Chylak, *Ubezpieczenia...*, *op. cit.*, pp. 1158–1163.

11 *1. Sprawozdanie Zakładu Ubezpieczeń Społecznych Województwa Śląskiego za rok 1922 i 1923*, Królewska Huta 1925, p. 8.

12 State Archive in Poznań, Social Insurance Institution [Archiwum Państwowe w Poznaniu, Zakład Ubezpieczeń Społecznych], file No. 2, ff. 120–151, *Ustawa o ubezpieczeniu społecznym. Zarys projektu*; T. Sznuk, *Zadanie polskiej polityki państwowej w dziedzinie ubezpieczeń społecznych*, "Biuletyn Ministerstwa Pracy i Opieki Społecznej" 1919, No. 3, pp. 172–177.

undertaken were wide in scope. These included both the necessary organising activities, adjustment of the system to the new political conditions and steps aimed at expanding the system. At that time, a number of regulations were prepared to enable the operation of the existing, reconstructed insurance institutions. System expansion was carried out, among others, through the implementation of the Act on sickness insurance adopted in 1920, the Act on the introduction of solutions derived from Austrian accident insurance to the territories of the former Russian partition (1921).<sup>13</sup>

In 1923, the emphasis in social insurance policy was finally shifted to the regulation of specific issues. Adoption of the Act on unemployment insurance (1924) being the first result of this approach. Although this adoption had a broad political and economic context, it was nevertheless a novelty, a breakthrough in the previous doctrine. This was because a new, separate system was built, and not based, as originally planned, on sickness insurance funds.<sup>14</sup> It was unified, but organised against the idea of uniform insurance. The introduction of white-collar workers' insurance in 1927 was a symbolic departure from the path of uniform insurance. In a way, the idea of unification (of pension systems existing in individual partitions) was implemented, but at the same time the division of society according to the class criterion was consolidated.<sup>15</sup>

The unification idea had not been abandoned. Almost in parallel, preparations were made for the introduction of old-age pension insurance for blue-collar workers and for the reform of the sickness and accident insurance. The experience gained during the implementation of white-collar workers' insurance and the infrastructure built were to play a significant role in this work.<sup>16</sup> The prepared concept, supported by the government and submitted for adoption by the Sejm [the lower house of the Polish parliament], was withdrawn by the new Minister of Labour and Social Welfare, Aleksander Prystor. This was to constitute the actual end of the remnants of the notion of uniform social insurance, the end of the system of sickness insurance funds.<sup>17</sup>

The legislative work on the new Social Insurance Act lasted for almost the next two years. Commonly referred to as the Unification Act [*umowa scalenkowa*], it reflected, to a small extent, the original goals formulated at the beginning of independent Poland. In fact, the insurance law was unified and consolidated throughout the country. Some departures from the system were left, such as in Upper Silesia or for the mining industry, railwaymen and other minor professional groups. Although these differences were

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13 *Sprawozdanie z działalności Ministerstwa Pracy i Opieki Społecznej w r. 1921*, "Praca i Opieka Społeczna" 1922, No. 2, pp. 116–123.

14 K. Chylak, *Systemy ubezpieczeń na wypadek bezrobocia w Polsce międzywojennej* [in:] *Metamorfozy społeczne. 7. Państwo i społeczeństwo Drugiej Rzeczypospolitej*, ed. J. Żarnowski, Warszawa 2014, pp. 221–240.

15 J. Pasternak, *Ubezpieczenie pracowników umysłowych*, "Praca i Opieka Społeczna" 1927, No. 1, p. 57.

16 Central Archives of Modern Records, Ministry of the Interior [Archiwum Akt Nowych, Ministerstwo Spraw Wewnętrznych], file No. 522, bp., *Protokół konferencji międzyministerialnej odbytej w Departamencie Ubezpieczeń Społecznych w dn. 21 V 1926 r. w sprawie projektu ustawy o ubezpieczeniu pracowników umysłowych*; K. Chylak, *Ubezpieczenia...*, *op. cit.*, pp. 270–271.

17 *Ibid.*, pp. 283–290.

temporary, they *de facto* became permanent and remained until the end of the Second Polish Republic.<sup>18</sup> The aforementioned Act was passed in March 1933, only to be altered in the autumn of 1934. On 1 January 1935, the Social Insurance Institution [Zakład Ubezpieczeń Społecznych, ZUS] was established, which took over the management of sickness, accident, old-age pension and white-collar workers' insurance. This new era in Polish insurance was to last just over four years; to be ended by the outbreak of World War II.

## Social risk management

Social risks, broadly defined, include various social threats, whether natural or resulting from human activities. In slightly narrowing the scope of the analysis, it should be pointed out that in the context of social insurance, social risk was most often interpreted in terms of cost, the lack or reduction of income (source of subsistence), concerning the economic entity, *i.e.*, the family, the household.<sup>19</sup> During the first decades of the 19th century, a catalogue of social risks was developed. This included the risk of sickness, death of the breadwinner, maternity, invalidity, accidents at work, unemployment, old age or sudden unforeseen outgoings.<sup>20</sup> The significance of particular risks changed over the years, depending on many economic, social and political factors. Nevertheless, during this time, the process of distinguishing particular risks took place in each part of the Polish lands.

In the first social insurance institutions, the main risks were associated with the use of specific technologies in the production process, *i.e.*, primarily, the loss of income resulting from an accident at work and, consequently, from the degree of incapacity for work (invalidity). Already then, the risk of sickness and loss of breadwinner was gaining in importance. This phenomenon was visible in insurance in the mining industry or rail transport. The system of benefits in the mining brotherhoods covered assistance to miners in the event of invalidity, death or sickness. There were already other types of benefits at that time, including even aid for the unemployed, but this was not a common phenomenon. Attention should be given to the complexity and diversity of the first

18 M. Wanatowicz, *Ubezpieczenie brackie na Górnym Śląsku w latach 1922–1939*, Warszawa–Kraków 1973, pp. 172–175; M. Mamrotowa, *Reforma ubezpieczenia górnicze w Zagłębiu Dąbrowskiem*, "Praca i Opieka Społeczna" 1935, No. 3, pp. 378–386; M. M[amrotowa], *Likwidacja Kasy Emerytalnej Robotników P.K.P.*, "Przegląd Ubezpieczeń Społecznych" 1939, Vol. 6, p. 347; J. Piotrowski, *Zwiększenie uprawnień ubezpieczonych na Górnym Śląsku*, "Przegląd Ubezpieczeń Społecznych" 1939, Vol. 8, pp. 459–462; State Archive in Lodz [Archiwum Państwowe w Łodzi], Kasa Emerytalno-Pożyczkowa Pracowników Łódzkich Wąskotorowych Kolei Dojazdowych, file No. 6, pp. 20–21, *Memorial w sprawie projektowanej Ustawy o pracowniczych kasach ubezpieczeń i funduszach emerytalnych, 11 III 1939 r.*

19 K. Duch, *Ubezpieczenia społeczne*, Warszawa 1934, p. 11; Z. Daszyńska-Golińska, *Polityka społeczna*, Warszawa 1933, p. 347.

20 T. Szumlicz, *Świadomość ryzyka społecznego jako podstawa wiedzy o systemie ubezpieczeń społecznych*, "Ubezpieczenia Społeczne. Teoria i praktyka" 2017, No. 1, p. 6.

systems of benefits, which would be extremely difficult to clearly qualify for the above mentioned catalogue of social risks.<sup>21</sup>

Along with the development of industry and the employment of women on a mass scale in factories, apart from the risk of accidents at work, death and invalidity, the risk of loss of income due to sickness and, above all, the maternity risk was to become more important. Laws that were originally issued to organise the operations of industrial plants did not meet the growing needs. Over time, so-called factory sickness insurance funds [*fabryczne kasy chorych*] appeared, which were later replaced by or incorporated into specific systems of insurance against these risks, *i.e.*, sickness insurance systems. Later, the risk of loss of income due to age gained in importance. This threat has already been noted earlier, for example, in the so-called brotherhood insurance [*ubezpieczenie brackie*], but it was usually combined with a form of incapacity for work. In the context of obtaining a benefit, it was of little importance whether this incapacity for work resulted from an accident, a sickness, or was a consequence of the employed person's age. Only the source of benefit financing was changing, and very different solutions were applied. The increased importance of the risk of loss of income due to age was obviously connected with changes in health care and changes in the family as a form of social existence.

The last of the risks to become a part of social insurance was the risk of losing one's job. In fact, this was done only in the interwar period. From the very beginning, this issue was characterised by its distinctiveness, hence the specificity of this risk was maintained, which was a consequence of phenomena of a different type existing in manufacturing.

During the 19th century various forms of insurance risk management were developed in the Polish lands. This was obviously a consequence of the division of Poland between three different economic and political structures. At that time the process of evolution of forms of insurance risk management was also noticeable in terms of those entities managing the risk itself.

Originally, social risks were managed at community, local, industry and enterprise level. It was the participants of the undertaking (employers and employees), or possibly specific professional groups, who took actions to reduce the probability of a potential event or – what seemed more important at the time – to limit the financial effects of that event.

The first forms of insurance involved less formalised actions, limiting mainly the effects of the risk of a loss of income. The costs were distributed either among the employer and the employees – which was the standard in the brotherhood, fraternal or like-minded insurance funds – or among the participants of a given organisation – in mutual funds. Mention should be made of the importance of the so-called subjective risk category [*kategoria ryzyka subiektywnego*] for the description of this process – *i.e.*, uncertainty based on personal experience, which is undoubtedly linked to the social characteristics of an individual. Taking into account the differences in education, professional structure and other social and demographic characteristics of the Polish population in the individual areas of partition, the variety of forms of risk management as well as the speed of their evolution seem understandable.

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<sup>21</sup> N. Gašiorowska, *op. cit.*, p. 295; B. Wasiutyński, *op. cit.*, pp. 155–157.

From the territorial point of view, as mentioned, the ways of social risk management developed in different ways in each part of the Polish lands. In the lands of the Prussian partition and in Upper Silesia, the process of the institutionalisation of existing enterprise forms and those based on mutuality began quite quickly. Step by step, the state assumed the role of the system organiser. The freedom left in the initial period was gradually limited over time. These trends found their expression in the organisation of institutional forms for insurance covering mining, railways, industrial enterprises, companies employing white-collar workers, farmers, *etc.* As has been pointed out, the personal scope of the system was wide, and as a result the state managed almost entirely the risks resulting from accidents at work, sickness, maternity, age, invalidity insurance and the death of the breadwinner.<sup>22</sup>

The process of the taking over by the state of the role of system organiser also took place in the lands previously under Habsburg control. In this case, the process was somewhat slower, and more space was left for those directly concerned (employers and employees) to take their own initiatives. The state had become the organiser of the mining, railway and industrial system (not for all risks), employing white-collar workers. The resulting risk management system was not uniform. Some risks, such as an accident at work or sickness, were managed by the state to a large extent, while others, such as pensions, only to a residual extent.<sup>23</sup>

Throughout the 19th century, various attempts were made within the area of Russian partition to organise an institutional system of social risk management. Some steps were taken in the mining and steel industry. The state had become the organiser of the system, which, however, did not prove to be sustainable. Importantly, the lack of interest in these problems on the part of the central authorities also did not open the field for those concerned. Indeed, in the second half of the 19th century, a number of mutual-type insurance organisations were set up, and there were also enterprise forms of sickness insurance funds [*kasy chorych*] and brotherhood funds [*kasy brackie*], but there were no legal solutions implemented for their development. It was only at the beginning of the 20th century that the state authorities started to take over the role of system organiser. Just before the outbreak of World War I, regulations of insurance against accidents at work and sickness were published. However, these solutions were quite limited in their personal scope.<sup>24</sup>

After Poland regained its independence, the speed of insurance system organisation increased, and the state became the manager of the system. This trend was clear throughout the entire period of the Second Polish Republic with each year seeing the system covering subsequent professional groups. This process resulted in the elimination of other forms of social risk management. In the course of many legislative initiatives, the state became the organiser of the system covering the risk of sickness, maternity, accidents at work, invalidity, age and unemployment. Entities organised by employers and employees or based on mutuality actually lost their possibility to act.

<sup>22</sup> K. Chylak, *Ubezpieczenia...*, *op. cit.*, pp. 23–43.

<sup>23</sup> *Ibid*, pp. 44–64.

<sup>24</sup> *Ibid*, pp. 65–94.

# Management of insurance institutions

Already in the first decades of the 19th century, and somewhat earlier in Silesia, insurance institutions started to be integrated into systems. At first small ones, covering specific industries or professional groups, though over time they started to form a nationwide structure of insurance institutions. This constituted a universal course of action by particular authorities from amongst the partitioning powers, and later also the authorities of the Second Polish Republic.

The first step towards system organisation was to create specific forms of insurance institutions. It is difficult to suppose that these activities were part of a long-term plan, of a specific idea that was to lead to the creation of a specific institutional system. These were rather actions aimed to organise a system as such, bottom-up initiatives that were already appearing and actions aimed to meet the demands of specific professional groups. By organising the existing reality, providing it with specific bureaucratic forms, public institutions acquired control competences and the right to at least co-decide on their functioning.

As early as in the 17th century, had the Prussian authorities introduced legal solutions leading to the transformation of the insurance funds existing in Silesia and Klodzko County into compact institutions of a public-private nature. These were merged into the Central Institute of the Brotherhood Funds [Główny Instytut Kas Brackich]; and were administered through the Higher Mining Authority in Wrocław [Wyższy Urząd Górniczy we Wrocławiu]. In 1854 the Act on mining brotherhoods was published, the provisions of which were used to distinguish three insurance institutions (Oberschlesischer Knappschaftsverein, Niederschlesischer Knappschaftsverein, Plessischer Knappschaftsverein). To some extent, the management of the insurance system was decentralised, as the Higher Mining Authority had entrusted the statutory bodies of the brotherhoods with the right to govern themselves by means of their own statutes. The state authorities were left with supervisory and control powers and formulated general political rules and guidelines concerning the risks to be covered, types of benefits and the scope of those persons to be insured. The brotherhoods were entrusted with the creation of detailed solutions, while the main direction of institutional development was shaped by the Authority.<sup>25</sup> These solutions turned out to be most sustainable despite the introduction of many changes in social insurance at a later stage.<sup>26</sup>

A similar policy was pursued by the authorities in the two remaining areas of partition. Here it seems that the experience of the Prussian state was taken into account. In the Kingdom of Poland, as a consequence of the Decree on the Mining Corps, a general

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25 K. Jońca, *Polityka socjalna Niemiec w przemyśle ciężkim Górnego Śląska 1871–1914*, Katowice 1966, p. 191; B. Danowska-Prokop, *Sytuacja gospodarcza i społeczna na Górnym Śląsku w okresie międzywojennym i jej wpływ na ubezpieczenia brackie*, Katowice 2012, pp. 131–136.

26 A. Jarosz-Nojszewska, *Ubezpieczenia społeczne na Górnym Śląsku w latach 1922–1939* [in:] *Od kwestii robotniczej do nowoczesnej kwestii socjalnej. Studia z polskiej polityki społecznej XX i XXI wieku*, ed. P. Grata, Rzeszów 2016, pp. 34–46.

framework for the functioning of the individual brotherhood funds was established. Unlike in Prussia, however, no larger organisms were built and the system was based on funds created for and at each mining and steel supervisory authority. While formulating general rules for the functioning of funds (contributions, benefits, insurance coverage, reporting rules), no insurance system was separated. The so-called main brotherhood fund [*główna kasa braterska*], established at the Central Mining Directorate [Główna Dyrekcja Górnicza], was to play a linking role of sorts.<sup>27</sup> In view of the impending political changes, these actions were not to prove permanent.

In Galicia, the solution in force was given a specific form in 1854. At that time, every entrepreneur from the mining industry was obliged to create their own brotherhood fund or in conjunction with other employers. A single central supervisory institution was established – the Mining Brotherhood in Cracow [Bractwo Górnicze w Krakowie]. The funds were independent, both organisationally and financially.<sup>28</sup> Later (1889), a uniform organisational structure was imposed on these brotherhood institutions.

The solutions introduced for the mining and steel industries proved for years to be sustainable and maintained their autonomy with respect to subsequent activities by the authorities in the field of social insurance. Over time, further insurance systems were created for other professional or social groups: railwaymen, selected groups of white-collar workers, *etc.* With time, the institutional structure of social insurance was also to become more complicated, and an array of sickness funds emerged with a diverse scope of activities. For obvious reasons, the speed of this process was uneven across Poland as a whole. Apart from political factors, the main reason was the condition of the lands, the development of industry and the creation of urban structures, as well as the organisational culture of the enterprises themselves.

The German authorities were instrumental in a major qualitative change that took place at the beginning of the 1870s, in their undertaking to start to build a nationwide social insurance structure. These activities were no longer of a mere organisational nature but, above all, were implicit in creating a new reality. A uniform insurance law was introduced in turn to cover accidents at work, sickness and invalidity. At that time, a fundamental system was formed, based on regional, local and functional insurance institutions (insurance funds, insurance companies), created under the pre-established rules regarding territorial affiliation, material scope (the type of risk to be covered), personal scope (the social or professional group or class to be covered). They were functionally linked and subject to a uniform supervisory and control structure (insurance authorities). They retained management autonomy and financial independence. Uniform standards for products (benefits), rules of access to the system and specific benefits, as well as specified and uniform procedures were created.

The German solutions and the experience of implementation quickly became a resource upon which the authorities of neighbouring countries drew. The era of building

<sup>27</sup> N. Gąsiorowska, *op. cit.*, pp. 297–301.

<sup>28</sup> See J.M. Bocheński, *Krakowskie prawo górnicze*, Kraków 1898.

country-wide insurance systems had begun. In the Habsburg-ruled monarchy, the influence of central government remained to a greater extent. This was particularly true for long-term insurance. The institutional sickness insurance system generally followed the German model.

In Russia, it took longer to develop a uniform system. For years, the insurance institutions functioned independently and were bottom-up in nature. Their organisation and management were the responsibility of those who had initiated their establishment. It appears that these issues were outside the scope of interest of the tsarist authorities. The situation was to change at the beginning of the 20th century with the slow transformation of state management. Legal instruments were launched and a uniform structure of accident and sickness insurance was designed. As already mentioned, the outbreak of World War I prevented the law to be implemented. Nevertheless, it was apparent that the German model was being employed and as above-mentioned was based on local, regional and functional insurance institutions.

In the 19th century, the rules for insurance systems management were transformed. There was a transition from complete freedom in the organisation and management of insurance institutions to the takeover and regulation by public authorities (directly or indirectly) of legal and administrative, organisational, supervisory and control instruments.

The period of the Second Polish Republic can be defined as the time when the existing forms of insurance system management underwent development. There was a slow process of increasing the participation of public institutions in insurance management. In the first years of the Second Polish Republic, through greater use of legal and administrative instruments, both detailed regulation of access to the system and the number of insurance products occurred. Subsequent insurance Acts extended the range of insured persons and types of benefits. The state also undertook an organisational undertaking designed, on the one hand, to a process of liquidation, while, on the other, to building a new structure of sickness insurance funds and insurance companies. The development of the supervision system was suspended, with the remnants of those structures inherited from the partitioning powers employed for many years to come.<sup>29</sup>

Noted should be the clear fragmentation of actions taken by the state authorities in managing the system. This applies in particular to the first few years of independent Poland. Construction and adjustment activities were carried out in parallel, often being contrary to general assumptions. The lack of a political *consensus* on social insurance was here characteristic.

At the end of the 1920s, using legal and administrative as well as procedural instruments, the final process of insurance system centralisation was initiated. The introduction of the Social Insurance Act of 1933 and its complementing Regulation of 1934 constituted a kind of culmination for these activities. The new structure meant that public authorities gained direct influence over the organisation and management of the entire system at each organisational level. The governing bodies both at the level of central

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<sup>29</sup> J. Pasternak, *Organizacja...*, *op. cit.*, pp. 29–31.



institution as well as at regional insurance company level had become subjected to state authority. The structure of insurance products and the system access criteria had been unified. Work on the construction of a system of insurance supervision and control was also commenced.<sup>30</sup>

## Insurance capital management

The activities of social insurance institutions led, by their very nature, to the accumulation of significant capital. This phenomenon did not concern all types of insurance, while in the first years of the existence of insurance this aspect of operations was very clear etched. The first insurance funds operated under systems similar to the principles of pay-as-you-go. The capital was managed on an ongoing basis. In the brotherhood funds, in Prussia, the capital collected from premiums and other contributions was taken care of by a mining official and the so-called elders [*starsi*]. The capital was kept in a safe place, *i.e.*, in a church, town hall or mining office. It was spent as required. There was no specific investment policy as such.<sup>31</sup> Similar rules applied in the lands under Austrian and Russian partition.

With the emergence of regulations organising social insurance's institutional mosaic, the basic financing systems, *i.e.*, the pay-as-you-go system and funded system (based on capitalisation), began to develop. They were fundamentally different from each other and required different management methods.

As a rule, insurance institutions in financing their activities based on pay-as-you-go solutions did not accumulate larger sums of capital. The assembled capital was simultaneously spent on benefits and administration. Such an inflexible system, one which in practice prevented deeper-rooted future changes in insurance financing, was connected with a relatively small burden on the payers over the course of the first years of operation. Hence its popularity. It was generally used in sickness insurance. In this case, the disposal of funds' assets was the responsibility of the funds management boards. Detailed issues were regulated at the statute level of the given institution. As already mentioned, the organisational rules, the general principles for the allocation of competence between various funds' bodies were laid down by national legislation, with funds' activities being subjected to supervision by the relevant public supervisory bodies.<sup>32</sup>

The basic principles of the financial system were also maintained in the Second Polish Republic. Income was immediately spent on benefits and administration. In the first decade, the fund management boards had a greater influence on the management of funds' capital. In 1929, the process of taking control of the sickness insurance funds by

30 E. Sisslé, *Rozstrzyganie sporów w zakresie ubezpieczeń społecznych*, Warszawa 1934, pp. 1–20.

31 N. Gąsiorowska, *op. cit.*, p. 295.

32 Zob. *Ordynacja ubezpieczeniowa Rzeszy...*, *op. cit.*, pp. 23–40, 135–137.

the government (through the institution of a commissioner) began.<sup>33</sup> Given the amount of income and expenditure, there was little room for changes in the administration of the capital held.

The system of sickness insurance funds based on the 1920 Act provided for the so-called reserve fund [*fundusz zapasowy*]. Each year, the sickness insurance funds were obliged to save 10% of contributions paid. Although this item appeared in the financial statements of sickness insurance funds, in fact no monies as such were located there. This was due to the rate at which contributions were actually collected. The amount of contributions paid in clearly was at odds with the real income derived, while outgoings often exceeded incomes.<sup>34</sup> This resulted in a lack of specific action with regard to capital that existed in truth only on paper in financial reports.

Although the pay-as-you-go system was less widespread in other types of insurance it was used to finance the Prussian accident and invalidity insurance systems. As results diverged from expectations, significant adjustments were made to the invalidity insurance system in later years, by introducing elements of capitalisation.<sup>35</sup> It was the funded system that provided the institutions with significant capital. In this way, so-called long-term insurance [*ubezpieczenia długoterminowe*] was usually organised: old-age, invalidity and accident pensions. The mentioned systems held huge amounts of capital, especially in the first years of existence of a given insurance. Management of these funds, and in particular the preservation of their value, was a serious matter.

State authorities quickly became aware of the opportunities arising from the introduction of long-term social insurance systems. This was one of the key issues in the process of making decisions on the introduction of social insurance, in particular as regards invalidity or old-age pensions. At the statutory level, the authorities set down the principles of social insurance capital management. In the Second Polish Republic, there was a slow reorientation of the rules for insurance fund management. In the initial years, individual insurance companies were given relative freedom to decide on the management of their assets. In fact, this related to surplus funds left over from the sums spent on administration and benefits. There were, however, some limitations resulting from the statutes of individual institutions and successive regulations introduced from 1924 onwards, regarding the means of capital investment. In 1924 it was made known that short-term funds should be deposited with listed banks (Bank Gospodarstwa Krajowego, Państwowy Bank Rolny, Bank Polski, Polski Bank Komunalny and Pocztaowa Kasa Oszczędności). Long-term capital could be invested in real estate, mortgaged loans, state securities or state-guaranteed securities, as well as in bank depositaries.<sup>36</sup>

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33 W. Tarski, *Rozporządzenie ministra pracy i opieki społecznej w sprawie reorganizacji kas chorych z dnia 28.IX.1931*, "Wiadomości Kas Chorych" 1931, No. 21, pp. 2423–2431.

34 A.U., *Gospodarka finansowa kas chorych w 1931 r.*, Warszawa 1932, pp. 3–23; K. Chylak, *Ubezpieczenia...*, *op. cit.*, pp. 322–323, 413–414.

35 E. Grabowski, *op. cit.*, pp. 46–47.

36 L. Landau, *Działalność lokacyjna ubezpieczeń społecznych i jej rola w życiu gospodarczym Polski w latach 1924–1933*, Warszawa 1934, p. 5.

These state regulations initiated the process of transferring competence for the management of insurance funds from the management boards of respective institutions to the state authorities themselves. This solution was not new. Under the rules introduced by the partitioning powers (in principle, this applied to the German and Austro-Hungarian states), insurance institutions were obliged to invest their capital in state or state-guaranteed securities. However, there were also other options for investing social insurance capital, *e.g.*, it was a source of credit for entrepreneurs. It is a fact that during World War I, the partitioning powers clearly intensified their policies aimed at using the capital accumulated by social insurance institutions.<sup>37</sup> Insurance funds were quite an easy prey given the situation at the time.

In the Second Polish Republic such a policy was initiated by the government of Władysław Grabski and over time was to find favour with successive ruling blocs. With the launch of investment projects and a clear lack of free capital, insurance funds were a convenient source for investment funds. It is not surprising, therefore, that further measures were taken to limit the freedom in the managing of assets held by social insurance institutions and to transfer the management competences in this respect to the level of a central institution directly dependent on the authorities of the social welfare ministry.<sup>38</sup> This policy resulted in a specific structure of investments for social insurance funds, with more than half of the deposits in 1938 being in state securities (51.2%), while real estate accounted for 24.6%, mortgage loans – 12.8%, and fixed-term deposits – 11.4%.<sup>39</sup> This seemingly safe way of investing insurance funds was to have negative consequences as it increased public debt.

## Summary

Social insurance in the Polish lands in the 19th and first half of the 20th century underwent a metamorphosis from local, bottom-up initiatives to large national institutional structures. Despite many differences resulting from the existence of several political systems derived from different states, the direction taken by insurance initiatives may be considered relatively uniform. To put it simply: German ideas were implemented. These were politically attractive and in a way reflected at least the basic postulates of the socialist movement fashionable at that time.

Ideas of centralisation were implemented in the field of insurance system management, involving the concentration of basic instruments in the hands of public authorities. This phenomenon intensified especially after World War I. The focus shifted from setting the rules, principles and forms of operation of bottom-up insurance initiatives to direct

37 K. Chylak, *Główne kierunki polityki państwa wobec funduszy ubezpieczeń społecznych w II Rzeczypospolitej*, "UR Journal of Humanities and Social Sciences" 2017, No. 3 (4), pp. 25–27.

38 *Ibid.*, pp. 33–36.

39 *Ubezpieczenia społeczne w Polsce w latach 1934–1938*, Warszawa 1940, p. 22.

control of either the institutional system or the funds themselves. Forms of cover and the financing of risks were becoming less and less flexible.

These actions were motivated primarily by financial considerations. The political or socio-occupational issues have been emphasised to date in the subject literature. Nevertheless, in the analysis of the process of taking over the management of insurance institutions and funds by the state authorities, issues related to insurance funds come to the fore. The possibilities of drawing on the investment resources noted in long-term social insurance systems correlated with the increasing popularity of an active role being played by the state in the economy.

It is worth noting that the problems faced by social insurance institutions are still valid. The constant evolution of types of jobs and risks related to work and the need to adapt the institutional system and capital management to the new conditions is natural. Past experience shows that it is not possible to develop an ideal system of social insurance, which, by its very nature, has built-in defects. Therefore, the system and the legitimacy of its existence should be measured by the degree of utility for its participants.

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## Ewolucja zarządzania ubezpieczeniami społecznymi na ziemiach polskich do wybuchu II wojny światowej

Ubezpieczenia społeczne w literaturze występują najczęściej jako zagadnienie społeczne czy polityczne, rzadziej podejmuje się wątki o charakterze gospodarczym, a tym bardziej rozpatruje je przez pryzmat kwestii zarządzania. Celem niniejszego artykułu jest próba syntetycznego przedstawienia ewolucji zarządzania ubezpieczeniami społecznymi w trzech wymiarach: ryzyk społecznych, systemu instytucjonalnego i kwestii finansowych.

W XIX i pierwszej połowie XX w. w zakresie zarządzania systemem ubezpieczeń realizowano pomysły centralizujące, skupiające podstawowe instrumenty w ręku władz publicznych. Zjawisko to zyskało na sile zwłaszcza po I wojnie światowej. Przemierzono drogę od wyznaczania reguł, zasad i form funkcjonowania oddolnych inicjatyw ubezpieczeniowych do bezpośredniego sterowania czy to systemem instytucjonalnym, czy funduszami. W konsekwencji wytwarzano coraz mniej elastyczne formy zabezpieczania i finansowania ryzyk.

**Słowa kluczowe:** fundusze ubezpieczeń, instytucje ubezpieczeń, zarządzanie ubezpieczeniami, ubezpieczenia społeczne, polityka społeczna





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# The role and significance of the Act of 28 March 1933 on social insurance, the so-called Unification Act

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After regaining independence, the Second Polish Republic faced the problem of the legal systems inherited from the three partitioning powers. This situation was also reflected in social insurance and more broadly in social security. The most developed insurance system existed on the lands of the former Prussian partition. This was due to the fact that Germany was the birthplace of social insurance. A developed system operated in the former Austrian partition, while almost no such system existed in the former Russian partition. Centralised sickness insurance was the first to be introduced in the Second Polish Republic. In January 1919 the Decree on sickness insurance came into force, later replaced by the Act of 1920. The work on social insurance unification was carried out between 1917 and 1934. One of its results was the proposal of a uniform social insurance system for white-collar workers. In 1924, the post-Austrian accident insurance legislation was extended to the territory of the former Russian partition. The Act on social insurance, the so-called Unification Act [*ustawa scaleniowa*], was passed on 28 March 1933. Its biggest achievement was the introduction of workers' old-age pension insurance, although this was done at the expense of sickness insurance. The risk of three occupational diseases was introduced to the accident insurance. As regards invalidity pensions, the Act did not provide for a distinction between partial and total invalidity. Social insurance legislation in the Second Polish Republic had to be unified and sometimes created from scratch – before the Second World War over 100 legal acts were created for this purpose.

**Key words:** (old-age) pension insurance, social insurance, the Second Polish Republic, the Unification Act

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# First attempts to unify social insurance in Poland

The social insurance situation in the territory of the reborn Second Polish Republic was most diverse as a result of the merger of the three post-partition territories. The post-German legislation represented the highest level, followed by former Austrian legislation. In the lands under Russian partition there was almost no social insurance system.<sup>1</sup> Work on social insurance unification burdened the Ministry of Labour and Social Welfare.<sup>2</sup>

Work on the consolidation and unification of the social insurance system in independent Poland was ongoing from 1918 (and even since 1917, *i.e.*, from the activities of the Department of Labour of the Provisional Council of State, and the proposal – in the draft Act on sickness insurance – to merge all types of insurance). Edmund Lipiński proposed to include all types of social insurance in a uniform law. This would contribute to their transparency as well as to cheapness and accessibility of administration.<sup>3</sup>

At the earliest, two months after regaining independence, a Decree on compulsory sickness insurance<sup>4</sup> was adopted, later replaced by the Act of 19 May 1920.<sup>5</sup> The rapid introduction of this type of insurance was because the concept had been prepared already during the period of the Regency Council [Rada Regencyjna] by the Polish labour administration bodies then established.<sup>6</sup>

Sickness insurance was compulsory and covered also agricultural and forestry workers. The top earners were exempt from this insurance (persons whose regular annual income exceeded 30,000 marks, and after 6 November 1920 – 60,000 marks – a Regulation of the Minister of Labour and Social Welfare of 6 November 1920 on increasing

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1 S. Płaza, *Historia prawa w Polsce na tle porównawczym. Część 3. Okres międzywojenny*, Kraków 2001, pp. 301–304.

2 Many sources and studies refer to the establishment and development of social insurance in Poland: K. Chylak, *Organizacja systemu ubezpieczeń od wypadków przy pracy w Drugiej Rzeczypospolitej* [in:] *Od kwestii robotniczej do nowoczesnej kwestii socjalnej. Studia z polskiej polityki społecznej XX i XXI wieku*, Vol. 2, ed. P. Grata, Rzeszów 2014; P. Grata, *Polityka społeczna Drugiej Rzeczypospolitej. Uwarunkowania – instytucje – działania*, Rzeszów 2013; I. Jędrasik-Jankowska, *Ubezpieczenie społeczne*, Vol. 1, *Część ogólna*, Warszawa 2003; I. Jędrasik-Jankowska, *Ubezpieczenie społeczne*, Vol. 2, *Ubezpieczenie rentowe, ubezpieczenie emerytalne*, Warszawa 2003; P. Makarzec, *Ubezpieczenia Społeczne w II Rzeczypospolitej*, “Zeszyty Naukowe WSEI seria: Administracja” 2012, Vol. 2, No. 1; *Rozwój Ubezpieczeń Społecznych w Polsce*, ed. C. Jackowiak, Z. Landau, Warszawa 1991; *Studia i materiały z historii ubezpieczeń społecznych w Polsce*, Warszawa 1983–1993, 2017, as well as W. Szubert, *Ubezpieczenie społeczne. Zarys systemu*, Warszawa 1987.

3 Cf. K. Kąkol, *Ubezpieczenia społeczne w Polsce*, Łódź 1950, p. 101.

4 Decree of the Head of the State of 11 January 1919 on compulsory sickness insurance (Journal of Laws the Polish State of 1919 No. 9, item 122).

5 Act of 19 May 1920 on compulsory sickness insurance (Journal of Laws No. 44, item 272).

6 W. Muszalski, *Ubezpieczenia społeczne*, Warszawa 2004, p. 52; H. Szurgacz, *Uwagi na temat powstania i rozwoju ubezpieczeń w Polsce*, “Acta Universitatis Wratislaviensis” 2004, No. 2616, Prawo CCLXXXVIII, p. 209 *et seq.*, as well as M.E. Przystalski, E. Lis, *Ubezpieczenia chorobowe i macierzyńskie* [in:] *Rozwój ubezpieczeń społecznych w Polsce*, Wrocław 1991, p. 91 *et seq.*

the maximum statutory wage for persons insured with sickness insurance funds [*kasy chorych*]).<sup>7</sup> This was based on the principles of territoriality and self-government. This insurance was governed by sickness insurance funds. The funds were managed by councils composed in one third of employer representatives and in two thirds by the representatives of employees. The contribution amounted to 6.5% of earnings. It was paid in 3/5 by employers and in 2/5 by employees. Medical assistance was provided under the insurance, a cash allowance was payable for 26 weeks, and in the case of sickness caused by an occupational accident – until recovery. Other benefits under the insurance included free medicines and dressings (ordered by the doctor employed by the sickness insurance fund and issued in pharmacies or pharmacy depots with which the sickness insurance fund has concluded a relevant agreement) and so-called auxiliary means [*środki pomocnicze*], e.g., dentures, used to maintain earning capacity (Art. 15 of the above-mentioned Act). The sickness insurance funds also provided full dental assistance free of charge. Dentures were also free (decisions to grant them were made by medical boards).<sup>8</sup>

An hospitalised employee was entitled to so-called home allowance [*zasilek domowy*] amounting to 40% of his/her earnings. The normal sickness allowance was equal to 60% of earnings. And female employees were entitled to a sickness allowance equal to 100% of their earnings for eight weeks after the birth of a child. The patient had the right to choose their doctor, and in emergency situations it was of no matter whether the doctor had a contract with the sickness insurance fund or not. The family of the employee was also covered by medical assistance. A funeral grant was also introduced. By the end of 1922, the unified system covered as many as 135 sickness insurance funds (excluding Upper Silesia), with four funds in the central voivodships and yet still no funds in the eastern voivodships. The sickness insurance funds organised their own medical surgeries and outpatient clinics, functioning independently of local government hospitals. In 1928, as many as 243 sickness insurance funds operated in Poland.

The adopted solutions met with great criticism from right-wing parties. Their influence meant that sickness insurance was limited shortly after the Act was passed. Agricultural workers in the former Russian partition and workers of farms under 75 ha in the former Austrian partition were excluded from this insurance. Sickness insurance for forest workers was also limited.

In 1930, commenced was the process of sickness insurance funds reorganisation, including mainly the rules for their control by special commissioners.<sup>9</sup> As part of a more general trend to centralise the management and reduce the self-government of public institutions, the sickness insurance funds were merged into larger, and thus financially and organisationally

<sup>7</sup> Journal of Laws 1920 No. 109, item 724.

<sup>8</sup> Cf. a paper by Marian Stawiński, General Doctor of the Social Insurance Institution [Zakład Ubezpieczeń Społecznych, ZUS], delivered on 8 April 1946 at the first convention of temporary boards of mutual benefit societies, published in “*Studia i materiały z historii ubezpieczeń społecznych w Polsce*” 1987, Issue 5.

<sup>9</sup> W. Organiściak, *Prawo ubezpieczeń społecznych II Rzeczypospolitej (Szkielet dla celów dydaktycznych)*, „Z Dziejów Prawa” 2010, Vol. 3, p. 143.

stronger, institutions. 61 new sickness insurance funds were established, gathered within the Central Association of Sickness Insurance Funds [Centralny Związek Kas Chorych].<sup>10</sup>

Two changes introduced in 1924 by Władysław Grabski's cabinet should be also noted. Accident insurance was introduced in the former Russian partition on the example of the post-Austrian system in force in Galicia.<sup>11</sup> Insurance contributions were here paid by employers only. However, this insurance did not cover agricultural workers employed on farms below 30 ha. At the same time, unemployment insurance started to operate nationwide.<sup>12</sup> In 1925, this insurance, earlier covering only blue-collar workers, was extended to white-collar employees.<sup>13</sup>

The initial work on the consolidation of social insurance in the Second Polish Republic began in the Ministry of Labour and Social Welfare. A draft Act on uniform social insurance had been prepared already in 1920. This Act had intended to merge all risks relating to hazards arising from paid employment but, unfortunately, the Polish-Bolshevik war meant this draft Act was not implemented.

However, the problem of benefits for war invalids<sup>14</sup> and the families of fallen soldiers,<sup>15</sup> most important given the context of the end of World War I and the struggle against the Bolsheviks, was resolved. In May 1920, the Act on temporary military pensions<sup>16</sup> was adopted. In March 1921, the Act on pension provision for war invalids and their families and for the families of the fallen and dead, and whose death was causally linked to military service,<sup>17</sup> was passed. On 5 August 1922, the Act on pension provision for military personnel and their families<sup>18</sup> was adopted. As far as state employees were concerned, they were covered by the Pension Act of 28 July 1921,<sup>19</sup> while the Act of 11 December 1923 on pension provision for state officials and professional military personnel merged both pension schemes.<sup>20</sup> At the same time, work began on the introduction of a pension scheme for blue-collar workers in the former Austrian

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10 On the organisation of sickness insurance funds cf. P. Makarzec, *op. cit.*, p. 204.

11 Act of 30 January 1924 on the extension of the Acts on compulsory insurance of workers against accidents applicable in the following voivodships (provinces): Krakow, Lviv, Stanisławów, Tarnopol and Cieszyn to the following voivodships (provinces): Warsaw, Lodz, Kielce, Lublin, Białystok, Volhynia, Polesie and Nowogródek and the Vilnius Lands (Journal of Laws No. 16, item 148).

12 Act of 18 July 1924 on unemployment security (Journal of Laws No. 67, item 650).

13 Act of 28 October 1925 amending some provisions of the Act of 18 July 1924 on unemployment security (Journal of Laws No. 120, item 863).

14 Cf. A. Jarosz-Nojszewska, *Świadczenia rentowe dla inwalidów wojennych w II RP w latach 1918–1926* [in:] *Gospodarka i społeczeństwo a wojskowość na ziemiach polskich*, ed. T. Głowiński, K. Popiński, Wrocław 2010, pp. 203–214.

15 Cf. A. Jarosz-Nojszewska, *Emerytury zawodowych wojskowych w Drugiej Rzeczypospolitej* [in:] *W garnizonie i na kwaterze... Wojskowi i cywile – gospodarcza relacja na ziemiach polskich na przestrzeni wieków*, ed. R. Klementowski, M. Zawadka, Wrocław 2017.

16 Act of 29 May 1920 on temporary military pensions (Journal of Laws 1920 No. 47, item 286).

17 Act of 18 March 1921 on pension provision for war invalids and their families and for the families of the fallen and dead, whose death is causally linked with military service (Journal of Laws of 1921 No. 32, item 296).

18 Act of 5 August 1922 on pension provision for military personnel and their families (Journal of Laws 1922 No. 68, item 616).

19 Act of 28 July 1921 – the retirement act for state officials (Journal of Laws 1921 No. 70, item 466).

20 Act of 11 December 1923 on pension provision for state officials and professional military personnel (Journal of Laws 1924 No. 6, item 46).

and Russian partitions,<sup>21</sup> where such had not existed before. Further work on the unification of social insurance was carried out in the years 1922–1923.

In 1923, work began on the merger of sickness insurance with the invalidity, old age and death insurance. Work on the new Act lasted for three years. A new draft Act on insurance unification, which included insurance against accidents at work and occupational diseases, was published in 1927.<sup>22</sup> It was submitted to the Sejm [the lower house of the Polish parliament] in 1929, but Aleksander Prystor's cabinet decided to withdraw it. This draft Act was again submitted to the Sejm only in March 1932. The work in Sejm committees lasted almost a year – analyses, mathematical calculations were made, the draft Act was consulted with experts in insurance law. The resulting document was based on sound and solid foundations.

Work on the unification of the social insurance system, carried out in 1927, resulted in a proposal for a uniform social insurance scheme for white-collar workers.<sup>23</sup> This covered all white-collar workers (except those from Upper Silesia).<sup>24</sup> State officials were excluded from the insurance: their rights were regulated by the Act of 11 December 1923. The category of a white-collar worker itself was not yet defined.

However, the operations and activities to be carried out by someone to be qualified for this group were already stipulated. These employees were subject to a so-called waiting period [*okres wyczekiwania*] of 60 months. This concerned old-age pension benefits (except for one-off severance pay). The waiting period did not apply if the incapacity for work was the result of an accident at work – in such a situation it did not matter how long the contributions had been paid for. The regulation covered not only pension insurance but also insurance of other risks, such as loss of work, sickness or accidents at work. The waiting periods for these types of insurance were different, *e.g.*, in order to acquire the right to unemployment benefits, contributions had to be paid for at least six contributory months during the final year before loss of employment.

Compared to the old-age pension insurance for blue-collar workers, the so-called continuity of insurance [*ciągłość ubezpieczenia*] necessary to maintain the rights was regulated in a different way. The entitlement was maintained when the period from the cessation of insurance to the date of a random event giving rise to the entitlement to the insurance benefit was less than 18 months. The concept of so-called occupational invalidity [*inwalidztwo zawodowe*] was also adopted, recognising as an invalid an employee with a physical or mental disability, whose ability to perform their professional duties had fallen below 50% of the level of those deemed healthy and with similar skills and responsibilities.

21 D. Jakubiec, *Pierwsze polskie instytucje ubezpieczeń społecznych. Zarys historii i ustroju*, Warszawa 2007, p. 8.

22 Cf. J. Łazowski, *Zagadnienie scalenia ubezpieczeń społecznych a polskie projekty ustawodawcze*, "Praca i Opieka Społeczna" 1927, Issue 1, pp. 46–50.

23 Ordinance of the President of the Republic of 24 November 1927 on the insurance of white-collar workers (Journal of Laws No. 106, item 911).

24 Cf. A. Jarosz-Nojszewska, *Ubezpieczenie emerytalne pracowników umysłowych w Drugiej Rzeczypospolitej [in:] Od kwestii robotniczej do nowoczesnej kwestii socjalnej. Studia z polskiej polityki społecznej XX i XXI wieku*, Vol. 5, ed. P. Grata, Rzeszów 2017, pp. 34–50.

Other benefits (as defined in Art. 15) to which white-collar workers were entitled in certain cases were: an invalidity pension [*renta inwalidzka*], old age pension [*renta starcza*], a widow's or widower's pension [*renta wdowia* or *renta wdowca*], an orphan's pension [*renta sieroca*], allowances to pensions and one-off severance pay as well as benefits in kind (related to medical care). Benefits in the event of unemployment included unemployment benefit, payment of sickness insurance contributions for the unemployed and travel aid. The old-age pension was payable to white-collar workers after reaching the age of 65 (both to men and women). Full old-age pension rights could be also acquired by men who had reached the age of 60 years and had been paying contributions for 480 months (40 years) and by women who had reached the age of 55 years of age and had been paying contributions for 420 months (35 years). The invalidity pension was equal to 40–100% of earnings. The insurance was financed by contributions and it also covered the risk of unemployment. This benefit was available to insured persons who had completed the required waiting period and were unable to practise their profession. The invalidity pension was composed of the basic amount and the so-called increase [*kwota wzrostu*]. The basic amount was equal to 40% of the assessment basis. And the amount of the increase depended on the insurance period. After 40 years of insurance, it reached 60% of the assessment basis, which gave a total of up to 100% of the assessment basis. The allowance for one child was 10% of the basic amount. Reference should also be made to the so-called sickness pension [*renta chorobowa*] for persons insured who were still incapable of work and who did not meet the invalidity condition after 26 weeks of receiving sickness allowance.

The Regulation of 1927 also provided for the so-called allowance for vulnerable persons [*dodatek dla bezradnych*]. This amounted to 50% of the pension, although in total a maximum of 100% of the old-age pension could be paid. The right to the allowance was granted to those who were incapable of practising their profession and whose health condition required the constant care and assistance of others. The benefits also included a provision for old-age [the so-called *zaopatrzenie starcze*]. It was granted to persons with a completed employment period, who were, however, not able to acquire the right to a pension because they had not been covered by insurance before the entry into force of the pension legislation.

A one-off severance pay was granted to those who had not met the requirements for receiving an old-age pension and were permanently unable to practise their profession. Its amount was dependant on the number of monthly contribution. The system of benefits in kind was similar to that established for blue-collar workers.

The death of a white-collar worker or a former worker who was entitled to an old-age or invalidity pension, entitled the family to a widow's or widower's pension, an orphan's pension, survivor's aid and a one-off severance pay.<sup>25</sup>

The described scheme was serviced by three insurance institutions established during the period of existence of the German and Austrian states and by the newly established

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25 T. Dyboski, *Ubezpieczenie społeczne w Polsce w ostatnich latach. Podstawy ustawodawcze i organizacyjne*, Warszawa 1939, p. 29.

White-Collar Workers' Insurance Institution [Zakład Ubezpieczeń Pracowników Umysłowych] in Warsaw.

Despite these positive changes, there were still several types of insurance in operation, each with its own organisation and based on separate legal regulations. This posed problems in the orientation of insured persons, because different institutions provided benefits in respect of different risks. Competence disputes between insurance institutions were frequent. Institutions operating in one insurance section were in a different financial situation. The maintenance of such a large number of institutions brought about high administrative costs and hindered state supervision of insurance system operations.<sup>26</sup>

## Social insurance system unification under the Act of 28 March 1933

The prolonged stage of social insurance development in the Second Polish Republic ended with the adoption of the Act of 28 March 1933 on social insurance, the so-called Unification Act [*ustawa scaleniowa*].<sup>27</sup> Its adoption was preceded by years of work and discussion on the social insurance model to be adopted. The draft Act was submitted to the Sejm in March 1932. Work in parliamentary committees lasted one year. The Act, consisting of 320 articles, covered all types of insurance: sickness and maternity, accidents at work and occupational diseases, old-age pension insurance for blue-collar workers and old-age pension insurance for white-collar workers.

Social insurance companies and four social insurance institutions were established to properly “provide insurance”: the Sickness Insurance Institution [Zakład Ubezpieczenia na Wypadek Choroby], the Accident Insurance Institution [Zakład Ubezpieczenia od Wypadków], the Old-Age Pension Insurance Institution for Blue-Collar Workers [Zakład Ubezpieczenia Emerytalnego Robotników] and the White-Collar Workers' Insurance Institution [Zakład Ubezpieczeń Pracowników Umysłowych]. All these institutions were members of the Social Insurance Chamber [Izba Ubezpieczeń Społecznych], they had legal personality and were institutions of public law.<sup>28</sup> These institutions formed a three-level organisational structure within the social insurance system. The lowest level was made up of social insurance companies, the higher of the four social insurance institutions, with the Social Insurance Chamber being the coordinating institution. In addition to the supervision of social insurance companies, the Chamber also carried out therapeutic and preventive activities. It was overseen by the Ministry of Social Welfare.

26 A. Jarosz, *Ustawa scaleniowa 1933. Próba ujednoczenia systemu ubezpieczeń społecznych w II RP* [in:] *Między zacofaniem a modernizacją. Społeczno-gospodarcze problemy ziem polskich na przestrzeni wieków*, ed. E. Kościak, T. Głowiński, Wrocław 2009, p. 173.

27 Journal of Laws No. 51, item 396.

28 Cf. M. Lewandowska, *Rzeczpospolita ubezpieczonych. Historia ubezpieczeń społecznych w Polsce*, Warszawa 2017, p. 67.

The income of social insurance companies consisted of revenues from contributions, income from the company's assets and facilities, interest on invested capital, donations, bequests and subsidies and, if necessary, State Treasury [Skarb Państwa] subsidies. The appropriate level of contributions was to ensure a strong financial basis for insurance itself. The contributions were obligatorily paid in 2/3 by the employer and in 1/3 by employees.

The resolutions of the Act concerning accident insurance and the introduction of old-age pension insurance for blue-collar workers were advantageous for employees.<sup>29</sup> On the other hand, the insurance guaranteed modest benefits at a very high contribution rate. One contribution was introduced, there was one place to pay it and one place to register for insurance, which significantly simplified the administration. However, the introduction of this benefit was of crucial importance. The risk of occupational diseases was included in the accident insurance<sup>30</sup> and the amount of the accident pension depended on the percentage of health loss. It was assumed that the insurance would cover accidents in employment and occupational diseases.<sup>31</sup> The concept of "accidents in employment" [*wypadek w zatrudnieniu*] was broader than the existing concept of "accidents at work" [*wypadek przy pracy*]. Due to the fact that the term "employment" is broader than the term "work", the catalogue of events recognised as accident at work was considerably extended, for example by including accidents on the way to or from work. The insurance covered almost all employees with an employment relationship, *i.e.*, trainees, apprentices, volunteers, and even the relatives and in-laws of the employer. Separate regulations covered state employees, the Polish State Railways [Polskie Koleje Państwowe], the army and the clergy.

The Unification Act entrusted the Accident Insurance Institution with the management of insurance against accidents in employment and occupational diseases. It was a public-law person acting as self-governing. The Institution was subordinate to the Social Insurance Chamber, and overall supervision was exercised by the Minister of Labour and Social Welfare. Benefits in cash and in kind from accident insurance were granted to employees who had lost, completely or partly, their earning capacity or to the families of employees who had died as a result of an accident in employment or due to an occupational disease. The waiting period was not applied here. However, the causal link between the accident and employment and between the accident and the damage to health suffered by the employee was important when the benefit was being granted.

The monthly invalidity pension was the most important benefit under this insurance. In the case of a complete incapacity for work it amounted to 66% of the average earnings

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29 Cf. A. Jarosz-Nojszewska, *Ubezpieczenia robotnicze w Polsce w latach 1918–1939* [in:] *Od kwestii robotniczej do nowoczesnej kwestii socjalnej: studia z polskiej polityki społecznej XX i XXI wieku*, ed. P. Grata, Rzeszów 2013, pp. 26–40.

30 The definition of "occupational disease" [*choroba zawodowa*] was included in the Regulation of the President of the Republic of Poland of 23 August 1927 on the prevention and elimination of occupational diseases (Journal of Laws No. 78, item 676), which described occupational disease as an acute or chronic disease arising from practising a certain profession and the nature of a given work or from the conditions under which it is performed.

31 Three occupational diseases were distinguished: lead poisoning, mercury poisoning and anthrax infection in the case of contact with infected animals.



plus 10% for each child, but could not exceed the amount of any previous earnings. Partial incapacity for work above 10% gave the right to a proportional pension. The Unification Act provided for benefits in kind, *i.e.*, medical supplies and medical care provided as long as there was a possibility of effective treatment. Benefits from accident insurance included also a widow's or widower's pension paid in the amount of 30% and an orphan's pension paid in the amount of 20% of the deceased person's basis for pension assessment. The Unification Act also provided for the possibility of paying one-off survivor's aid in the amount of monthly remunerations.

Payment of compensation in respect of an accident in employment under the Unification Act did not preclude the claim for compensation on general principles, *i.e.*, in accordance with the provisions of the Code of Obligations [Kodeks zobowiązań] (Articles 153 and 154).<sup>32</sup> The Code of Obligations provided for the possibility to claim liability from the employer only on the basis of a wilful misconduct (intentional action or negligence of obligations to protect the life and health of employees) and only in the amount constituting the difference between the actual damage and the compensation paid under the insurance itself.<sup>33</sup>

On the other hand, changes introduced by the Act in sickness insurance were unfavourable. The resolutions adopted in the Act changed the provisions of the Act on compulsory sickness insurance of May 1920, amended in 1923. They were intended to provide resources from contributions to finance the old-age pension scheme for blue-collar workers. To accumulate these funds, employers' sickness insurance contributions were reduced and the contributions paid by insured persons were increased. This resulted in the reduction in the amount and duration of sickness allowances. The amount of sickness allowances was reduced from 60% to a maximum of 50% of earnings. Their payment period was reduced from 39 to 26 weeks. The contribution rate amounted to 4.6% of earnings of a white-collar employee and 5% for other employees. The newly applied rules for benefit calculation were unfavourable for employees (*e.g.*, the first four days of sickness were not paid for) and the waiting period for the benefit payment was as long as four weeks. All days of the week were included in allowance calculations. Taking into account not only working days resulted in the actual reduction of the allowance to 42% of earnings. The previous amount of sickness allowance was not to be restored until 1937.

Employers were obliged to register their employees for insurance with a territorially applicable insurance company within seven days. They were also required to report any changes in employment and earnings. Applications could be also submitted by the employees themselves.

It is important that even after the adoption of the Unification Act, the right of employees to remuneration during sickness was regulated differently for particular groups of employees. Persons employed under the conditions laid down in the Code of Obligations,

32 Ordinance of the President of the Republic of Poland of 27 October 1933 – the Code of Civil Procedure (Journal of Laws No. 82, item 582).

33 W. Organiściak, *op. cit.*, p. 152.

and who were not subject to compulsory social insurance under the Act of 28 March 1933 or the provisions of a collective agreement, and whose relationship was their main source of subsistence, retained their right to remuneration in the event of sickness, accident or for other important reasons, provided that the Act or a contract did not contain more favourable regulations – for a period of two weeks – and provided that the employment relationship had lasted for at least six months before their incapacity for work. In turn, employees who were subject to the legal regime of the Code of Obligations and were covered by compulsory social insurance, as well as being possibly covered by a collective agreement, were not entitled to remuneration for the period of non-performance of work in the case of sickness or incapacity for work due to accident. On the other hand, the remuneration for the period of sickness or incapacity for work as a result of an accident was due, as a rule, to white-collar workers employed under an employment contract for three months, unless the contract had expired earlier.<sup>34</sup>

Blue-collar workers employed on the basis of an employment contract could not expect similar entitlement. The sickness insurance for agricultural workers had been abolished in areas where this insurance was applicable under the laws of the partitioning powers. Landowners were obliged to provide care for their agricultural workers. The situation of this group of workers was therefore very unfavourable because they were deprived of insurance. The year 1936 may be mentioned as an example, when only 34% of agricultural employers entered into appropriate contracts with doctors aimed at providing their workers with medical assistance, however in this case, too, the assistance was merely illusory because workers were afraid to use it in fear of dismissal.<sup>35</sup>

The scope and level of medical services was also reduced. Surcharges paid by the insured persons for medical advice and for free medicines were introduced. Persons insured paid a surcharge of: 20 groszy for medical advice, 10 groszy for medical treatment, 10 groszy for each medicine prescribed and for medical supplies. The insured person had to pay an additional 30 groszy for each medicament bought at a pharmacy.<sup>36</sup> Pursuant to special legislation, a part of the medical services, especially for persons who had sustained accidents in employment, persons suffering from occupational and chronic or infectious diseases, children under three years of age, were either exempt from charge or were free of charge *ex officio*. Sera and vaccines as well as insulin for diabetics were also free of charge.

In addition, it should be noted that the family members of the insured person were entitled to assistance in the event of sickness to a very similar extent, but only for 13 weeks. As an exception, in the case of severe diseases, benefits could be extended for a maximum period of a further 13 weeks.

Cash allowances paid under this insurance included sickness allowance or home and hospital allowance. The sickness allowance amounted to 50% of the average weekly

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<sup>34</sup> *Ibid.*, p. 145.

<sup>35</sup> W. Muszalski, *op. cit.*, p. 55.

<sup>36</sup> Regulation of the Minister of Social Welfare of 28 December 1933 on surcharges for medical advice, medicines, medical supplies and medical treatment (Journal of Laws No. 103, item 815).

earnings for the last 13 weeks before sickness (for people with children, with the addition of 5% for the third and each subsequent child, subject to a maximum of 65%). A hospitalised employee was entitled to either home or hospital allowance. The former was due for the duration of hospital treatment when the insured person lived with at least one dependent. Its amount was half of the sickness allowance. The part of the allowance for children was paid in full. Persons who did not meet the requirements for receiving the home allowance were granted a hospital allowance equal to 10% of their average weekly earnings.<sup>37</sup>

Including the invalidity, old age and death insurance in the Act constituted a favourable solution. The Act on accidents at work also brought effective solutions. The amount of the accident pension was made dependent on the percentage of health loss. These solutions corresponded to the highest world standards of the day.

However, the childbirth allowance was reduced, because instead of 100%, only 50% of the insured woman's earnings were paid (the state stopped subsidising 50% of the benefit). In the case of this allowance, half of the contribution for sickness and maternity insurance was paid by the employer and half by the worker. This allowance was granted to insured female employees who gave birth to a child, for a period of eight weeks (including at least six weeks after delivery), but only when they refrained from work. Breastfeeding mothers were entitled to an allowance in kind, in the form of one litre of milk or cash equivalent, for 12 weeks.<sup>38</sup>

A new solution was the introduction of old-age pension insurance for blue-collar workers,<sup>39</sup> but the territory of Upper Silesia was excluded from the system. This was due to the fact that in this area, the post-German insurance system was much more favourable in its benefits to workers. For example, miners had fraternal pension funds, such as the Pension Fund of the Fraternal Company [Spółka Bracka] in Tarnowskie Góry and the Pszczyzna Mining Brotherhood [Pszczynskie Bractwo Górnicze], which were their additional form of security. Different social insurance and labour law regulations for the Upper Silesian part of the then Silesian Voivodship resulted from the Treaty of Versailles and subsequent international treaties imposed by the governments of the victorious powers. Social insurance was regulated by the Polish-German Upper Silesian Convention of 1922 concluded in Geneva. This held sway until 1937 and included, *inter alia*, insurance settlements resulting from the division of Upper Silesia. Paradoxically, the level of social insurance in the Silesia region belonging to Poland was higher than in Germany.<sup>40</sup>

Other groups of employees who also had more favourable insurance regulations, *e.g.*, military personnel, state and public employees, as well as miners, metallurgists and white-collar workers, were left on the same terms as before. Under the Act, the highest paid white-collar workers who opposed sickness insurance were exempt from this insurance.

37 W. Organiściak, *op. cit.*, pp. 145–146.

38 *Ibid.*, p. 146.

39 Cf. A. Jarosz-Nojszewska, *Ubezpieczenia robotników przemysłowych w II RP* [in:] *Z dziejów przemysłu przed 1945 rokiem*, ed. J. Chumiński, M. Zawadka, Wrocław 2012, pp. 271–279.

40 W. Muszalski, *op. cit.*, p. 56.

This reduced their income from this insurance. On the other hand, the Unification Act covered homeworkers.

Institutions administering social insurance did not have any influence on the newly established Unemployment Fund [Fundusz Bezrobocia] (later transformed into the Labour Fund [Fundusz Pracy]<sup>41</sup>), from which unemployment benefits were paid and public works were financed.<sup>42</sup>

The Act granted the right to:

- cash benefits, *i.e.*, the old-age pension, invalidity pension, pension supplements as well as one-off severance pay and a funeral grant;
- benefits in kind, *i.e.*, medical care, medicines and dressings, medical aids and aids against deformity and disability.

The invalidity pension was the main benefit from the old-age pension insurance for blue-collar workers. It was granted under the principle of the so-called presumption of permanent invalidity [*domniemanie powstania trwałego inwalidztwa*] after the age of 65. Invalids were described as workers, irrespective of gender, who were over 60 years of age and had been insured for 750 contributory weeks, *i.e.*, about 14.5 years. The Act did not provide for a distinction between partial and total invalidity. The invalidity pension consisted of two elements: a basic amount (determined annually by the Council of Ministers at the same level for all pensioners) and an individual amount which depended on the insurance period over which the contributions had been paid and on the earnings of the particular insured person. This pension was calculated as a progressive percentage of the average monthly earnings of the insured worker for the entire insurance period. It could not exceed 80% of the earnings constituting the basis for its calculation. The person entitled to the invalidity pension was also entitled to child allowance. He was also entitled to benefits in kind in the form of medical care and medical supplies. And his/her survivors were entitled to a cash benefit in the form of a post-invalidity widow's or widower's pension (50% of the invalidity pension) and a post-invalidity orphan's pension (20% for each child). The total amount of individual pensions could not exceed the invalidity pension to which the insured person was entitled.<sup>43</sup>

And the old-age pension was the basic benefit for white-collar workers. To obtain it, one had to complete a 60-month contribution period and reach the age of 60 years for women and 65 years for men. The provisions of the Regulation of the President of the Republic of Poland of 1934 allowed for the possibility of granting the above pension at an age lower by five years, on condition of completing an insurance period of: 35 years for women and 40 years for men. It is also worth noting that the amount of the pension

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41 Regulation of the President of the Republic of Poland of 24 October 1934 on the merger of the Unemployment Fund with the Labour Fund (Journal of Laws No. 94, item 849).

42 Cf. A. Jarosz-Nojszewska, *Ubezpieczenie od bezrobocia w Drugiej Rzeczypospolitej* [in:] *Ekonomia, społeczeństwo, polityka. Studia ofiarowane prof. dr. hab. Januszowi Kalińskiemu w 70. rocznicę urodzin*, ed. A. Zawistowski, Warszawa 2012, pp. 211–225.

43 L. Frankowska, E. Modliński, *Ustawa o ubezpieczeniu społecznym*, Kraków 1933, p. 149.

for white-collar employees was on average five times higher than the pension for blue-collar workers.

In the event of a worker's death, his/her family members (usually the spouse, children born in marriage, legitimate, adopted and illegitimate children, grandchildren up to the age of 16 years, in the case of students up to the age of 24 years) were entitled to a funeral grant in the amount of three-week earnings of the insured person. The grant could be also paid to another person from the family or even from outside the family circle, after the meeting of certain conditions.<sup>44</sup>

The benefits from the blue-collar workers' pension insurance were practically not paid until the outbreak of World War II (a small number of benefits started to be paid from 1938). This was due to the fact that the system was based on capitalisation, which required the prior accumulation of financial resources.

Shortly after the Act was adopted, work began on its amendment. The Regulation amending the Act of 28 March 1933 was signed by President Ignacy Mościcki on 24 October 1934 – this was the culmination of the insurance merger and centralisation process.<sup>45</sup> At the same time, a new insurance institution was established, *i.e.*, the Social Insurance Institution [Zakład Ubezpieczeń Społecznych, ZUS] with its headquarters in Warsaw.<sup>46</sup> It took over the powers of the liquidated four insurance institutions and the Social Insurance Chamber. Pursuant to Art. 17 of the amended Unification Act, the status of social insurance operators, beside ZUS, was left to the social insurance companies [*ubezpieczalnie społeczne*]. They had been equipped with legal personality under public law: these were a kind of compulsory corporation of insured persons and of employers. These persons, as parties to the insurance relationship, took part in their management.<sup>47</sup>

Thus, the Social Insurance Institution operated centrally. It had its headquarters in Warsaw and regional branches in Chorzow, Cracow, Lviv, Lodz and Poznan. The branches had no legal personality and their role was to maintain direct contacts with insured persons and employers. Pursuant to Art. 56 of the Unification Act, ZUS performed all activities except for those transferred to the social insurance companies. ZUS was also entrusted with the task of administering five insurance funds, each covering different risks. It was a public law entity, with separate assets and its own sources of finance.<sup>48</sup> The most important ZUS tasks also included: establishing entitlements to long-term benefits and their payment, administering pension and accident insurance assets, taking actions

44 W. Organiściak, *op. cit.*, p. 146.

45 M. Lewandowska, *op. cit.*, p. 69.

46 Cf. A. Krupski, *Proces scalania ubezpieczeń społecznych w okresie II Rzeczypospolitej – utworzenie Zakładu Ubezpieczeń Społecznych*, "Ubezpieczenia Społeczne. Teoria i praktyka" 2012, No. 10, p. 12.

47 Cf. P. Makarzec, *op. cit.*, p. 207.

48 They were the following: the General Insurance Fund for Sickness and Maternity [Ogólny Fundusz Ubezpieczenia na Wypadek Choroby i Macierzyństwa], the Fund for Insurance against Accidents and Occupational Diseases [Fundusz Ubezpieczenia od Wypadków i Chorób Zawodowych], the Blue-Collar Workers' Old-Age Pension Fund [Fundusz Ubezpieczenia Emerytalnego Robotników], the White-Collar Workers' Old-Age Pension Fund [Fundusz Ubezpieczenia Emerytalnego Pracowników Umysłowych] and the Fund for the White-Collar Workers' Insurance in the Event of Lack of Work [Fundusz Ubezpieczenia na Wypadek Braku Pracy Pracowników Umysłowych].

to prevent accidents in employment and occupational diseases and conducting medical and preventive activities, representing social insurance institutions at conventions and conferences and concluding agreements provided for in international conventions and agreements. Its tasks also included standardising, coordinating, improving and supplementing the activities of the social insurance companies. ZUS was to provide the social insurance companies with instructions, keep statistics of all types of insurance, prepare and publish reports, establish uniform rules for granting and paying benefits, define general rules and conditions for concluding agreements by the social insurance companies, regulate their investment activities, grant them subsidies or short-term loans, establish administration and office rules, as well as the rules for financial and material management, provide explanations and professional assistance, and carry out inspections and surveys of the organisation and activity of the social insurance companies (Art. 11[1] of the ZUS statute).<sup>49</sup>

In addition to fundamental changes in the organisation and structure of social insurance institutions, changes were also made in the technology of conducting insurance activity, including the system of settling insurance contributions by means of accounts.

The solutions adopted in the Unification Act and in the Regulation of the President of the Republic of Poland of 24 October 1934 amending the Act of 28 March 1933 on social insurance,<sup>50</sup> shaped a coherent, centralised system of social insurance organisation and management. In the newly established system, the functions and tasks of all institutions connected with these types of insurance were clearly divided. It should be stressed that the social insurance companies carried out operational tasks for all areas of insurance and managerial tasks in the field of sickness insurance, while the remaining tasks, of a managerial and decision-making nature, were concentrated on the central level, first in the four insurance institutions and the Chamber, and then in the Social Insurance Institution itself.

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## The problem of dispute resolution in social insurance cases

The Unification Act did not contain any detailed regulations concerning the settlement of disputes on social insurance benefits. These cases were decided by courts and other institutions specially designated for this purpose. These bodies were designated by regulations issued by different authorities and at different times. As many as five of them took decisions as the last resort. In the lands of the former Russian partition, disputes concerning social insurance were resolved by civil courts, in the former Austrian partition – by general administrative bodies and single-instance special courts, and in the lands of the former Prussian partition – by district and higher insurance authorities and two-instance social insurance courts.

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<sup>49</sup> Cf. P. Makarzec, *op. cit.*, p. 208.

<sup>50</sup> Journal of Laws No. 95, item 855.

In the lands of the former Austrian partition, disputes relating to compulsory insurance and contributions were first dealt with in administrative proceedings, with the possibility of a complaint to an administrative court. The jurisdiction of the single-instance special courts, which, however, operated within the common courts of law, and here applying the civil procedure, covered only cases concerning disputes over benefits.

Dispute resolution procedure in the lands of the former Prussian partition started before special insurance authorities, *i.e.*, conciliation or arbitration boards. These were a part of insurance institutions (for example, conciliation boards operated within their self-government bodies) and most often played the role of internal control or were part of the general administration (for example, insurance authorities operating within the district administration, as well as the Higher Insurance Authority [Wyższe Urzędy Ubezpieczeń] with headquarters in Katowice, Poznań and Toruń) and performed mainly so-called external control [*kontrola zewnętrzna*]. After the end of this administrative procedure, the parties could appeal against any final decisions to the administrative court.<sup>51</sup>

By virtue of the Unification Act, the conciliation boards were established at the social insurance companies. These boards resolved appeals against the decision of the director of the social insurance company regarding sickness insurance benefits. A six-member board consisted of three representatives of employees and employers, each appointed by the Insurance Company's Council. The chairman and the deputy of the arbitration board were appointed by the State Insurance Authority [Państwowy Urząd Ubezpieczeń]. Decisions in those one-instance proceedings were taken after the hearing. Initially, they were final, although it was stipulated that in the future, the decisions of the conciliation boards could be appealed against to the special bodies for social insurance jurisprudence. The conciliation boards did not deal with contributions and with disputes concerning the insurance obligation itself.<sup>52</sup> A host of institutions continued to rule on remaining cases.

The uniform system of dispute resolution in social insurance cases was not adopted until 1939,<sup>53</sup> this was to cover the whole country. Due to the outbreak of war, this Act did not come into force (the date of its entry into force was to have been 1 April 1940). It is only after the amendment of the above Act in 1946 that the social insurance judiciary was established.<sup>54</sup> At that time, the regional social insurance courts were established as the first instance. Initially, there were six of them. The second and last instance was the Social Insurance Tribunal [Trybunał Ubezpieczeń Społecznych], which became operational in 1947.<sup>55</sup>

51 K. Kolański, *Postępowanie w sprawach ubezpieczeniowych* [in:] *Rozwój ubezpieczeń społecznych w Polsce*, Wrocław 1991, pp. 159–162.

52 *Ibid.*, pp. 162–164.

53 Act of 28 July 1939 – the Law on Social Insurance Courts (Journal of Laws 1939 No. 71, item 476).

54 Decree of 1 March 1946 on the amendment of the Law on Social Insurance Courts (Journal of Laws No. 12, item 76).

55 The interwar solutions in the social insurance judiciary, as well as the construction of the insurance judiciary at the beginning of the People's Republic of Poland have been relatively extensively discussed in: M. Nowakowski, *Okręgowe sądy ubezpieczeń społecznych*, Kraków 2017.

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## Summary

The Social Insurance Act adopted on 28 March 1933 played a very important role and was of great significance for social insurance in the Second Polish Republic. That Act was called the Unification Act because it was supposed to unify, in legal, material and organisational terms, the post-partitioning social insurance systems functioning at that time. The Act was to lead, in terms of social insurance, to the integration of lands regained after 123 years of partition. A situation where employees in different regions of Poland were covered by social insurance on different terms or were deprived of insurance cover, was no longer acceptable. This hindered, for example, labour migration. The solutions adopted in the Act were also intended to level the contribution charges, which distorted the freedom of competition, due to the significant differences between, for example, the lands of the former Prussian and Russian partition.

The solutions adopted in the Act radically changed the organisation of insurance institutions, abolishing the model of their decentralised structure. The government sought to create an organisationally uniform insurance system, dependent on state authorities. Therefore, the sickness insurance funds were replaced by the social insurance companies, which were to calculate and collect contributions, keep records of the insured persons and accept claims from enterprises. The Social Insurance Chamber coordinated social insurance. It could audit the social insurance companies and other insurance institutions as well as examine and give opinions on the budgets of all insurance institutions. The swift amendment of the Act resulted in the establishment of a single, central and universal insurance institution – the Social Insurance Institution – by virtue of the Regulation of 24 October 1934. In this way a state insurance monopoly was created. A coherent and transparent system of social insurance organisation was developed, which was the basis for effective, and at the same time efficient, insurance management on a national scale.

It should not be forgotten that the draft Act was developed in a specific geopolitical situation. The adopted solutions were ultimately affected by Poland's economic situation, and this was a period of economic collapse after the great crisis on world markets. One of the assumptions for the Act was to seek savings. The government sought to reduce insurance costs in order to be able to invest in economic projects. It should be noted that the financial situation was becoming increasingly difficult as a result of numerous bankruptcies, rising unemployment and, consequently, a significant deterioration in insurance contributions collection. A profound reform of the entire insurance system, integrating insurance in organisational and financial terms, was considered an opportunity to maintain the financial capacity of the whole system.

When establishing the Social Insurance Institution, five insurance funds with legal personality were created, to be managed by ZUS.

The Act was aimed to consolidate social insurance throughout the country and to level the burden between different districts of the former partitions. Unfortunately, its



adoption and entry into force took place at the very peak of the economic crisis,<sup>56</sup> so it could not contradict the government's economic recovery programme. To some extent, it was a concession to industrialists and landowners. Apart from the changes adopted in the Act, a number of modifications were also introduced to the technique of conducting insurance business, *e.g.*, the common system of settling insurance contributions by means of accounts.

The assumptions of the Act provoked a lively discussion in the press.<sup>57</sup> The most frequent objections were the excess of social insurance and overly high charges for insurance itself. The solutions introduced by the Act also did not satisfy the worker milieu. There were protests by left-wing parties and trade unions.

The introduction of a uniform old-age pension insurance for blue-collar workers was certainly a great success. However, it was not fully favourable for them. A significant cost of old-age pension insurance was borne by the insured person. At the same time the sickness insurance contribution was reduced, and the insured person was deprived of influence on the management of insurance institutions. Besides, the benefits were provided at a low level, involving a long waiting period.<sup>58</sup>

Unfortunately, it proved not possible to merge the insurance system for blue- and white-collar workers. Sickness insurance benefits were also reduced.

The 1933 Act played a positive role in the process of unifying social insurance into a single system in terms of contributions and risks.<sup>59</sup> However, this did not fully integrate the entire insurance system and did not eliminate all the differences between the regulations in force in various districts of the former areas of partition.<sup>60</sup> Most of those differences were only to be eliminated following the Second World War. It should be noted, however, that considering the scale of the changes introduced, the Act herein described was an important stage in the development of social insurance in the Second Polish Republic.

It should also be stressed that this Act was in force throughout the entire period of People's Poland. The role of this document and its significance were enormous, in particular in the context of the expansion of the social insurance system, which was reflected, *inter alia*, in subsequent amendments to the Act. The social insurance doctrine also referred to its solutions and structures throughout this period.

56 Cf. Z. Landau, *Ubezpieczenia społeczne w Polsce w latach kryzysu gospodarczego 1930–1935*, "Praca i Zabezpieczenie Społeczne" 1968, No. 10–11, p. 43.

57 Cf. *Ubezpieczenia społeczne. Chwiejne i niepewne kroki B.B.W.R. na drogach "sanacyjnej" ustawy scaleniowej*, "Robotnik" 27 January 1933, No. 38; *Przeciwko sanacyjnemu projektowi organizacji ubezpieczeń*, "Robotnik" 2 February 1933, No. 45; L. Landau, *W sprawie reformy ubezpieczeń społecznych i nadmiernego obciążania składkami ubezpieczeniowymi*, "Przegląd Ubezpieczeń Społecznych" 1934, Issue 10, pp. 592–599, and A. Jarosz, *Dyskusja ubezpieczeniowa na łamach "Gospodarki Narodowej" w latach 1931–1939*, "Gospodarka Narodowa" 2001, No. 11–12, pp. 1–14.

58 Z. Landau, *op. cit.*, p. 43.

59 Cf. P. Makarzec, *op. cit.*, p. 207.

60 Cf. T. Zieliński, *Ubezpieczenia społeczne pracowników. Zarys systemu prawnego – część ogólna*, Warszawa–Kraków 1964, p. 43.

At the end of the 1940s and in the beginning of the 1950s, the provisions of the Act largely lost their normative value due to the shift in the model of employee social protection from an insurance system to a system socially protective in nature. This was reflected in the liquidation of insurance funds, contribution integration, the integration of insurance finances into the state budget, the integration of healthcare sector into the state administrative section and the granting of benefits based on social protection principles.

References to the legal and organisational structure of this Act, if only of an ideological nature, can be observed from the mid-1980s onwards. At that time, there was a return to insurance finances being separated from the state budget, and in 1986 the Social Insurance Fund [Fundusz Ubezpieczeń Społecznych] was established.

The impact of the solutions of the Unification Act can also be seen in the regulations/proposals of the social insurance reform of 1999, such as, for example, the division of insurance into sections, contribution division according to risks, and the division of the contribution charges between the employee and the employer, or differentiation of the contribution for accident insurance.<sup>61</sup>

The Unification Act was derogated only on 1 January 1999, under Art. 171(1) of the Act of 6 February 1997 on general health insurance.<sup>62</sup>

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61 I. Jędrasik-Jankowska, *Ubezpieczenie społeczne*, Vol. 2, *op. cit.*, pp. 105 and 144.

62 Journal of Laws No. 28, item 153, as amended.

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## Rola i znaczenie ustawy z 28 marca 1933 r. o ubezpieczeniu społecznym, tzw. ustawy scaleniowej

Po odzyskaniu niepodległości II Rzeczpospolita stanęła przed problemem istnienia na jej terytorium porządku prawnego odziedziczonego po trzech zaborcach. Sytuacja taka miała odzwierciedlenie również w ubezpieczeniach społecznych, a szerzej w zabezpieczeniu społecznym. Najbardziej rozwinięty system ubezpieczeń istniał na ziemiach byłego zaboru pruskiego. Wiązało się to z tym, że Niemcy były ojczyzną ubezpieczeń społecznych. Mniej rozwinięty system funkcjonował na ziemiach byłego zaboru austriackiego, a prawie wcale nie istniał na ziemiach byłego zaboru rosyjskiego. W II Rzeczypospolitej najwcześniej wprowadzono zcentralizowane ubezpieczenie chorobowe. W styczniu 1919 r. zaczął obowiązywać dekret o ubezpieczeniu chorobowym, zastąpiony następnie ustawą z 1920 r. Prace nad ujednoczeniem ubezpieczeń społecznych toczyły się w latach 1917–1934. Jednym z wyników tych prac było przygotowanie projektu jednolitego ubezpieczenia społecznego dla pracowników umysłowych. W 1924 r. ustawodawstwo poaustriackie dotyczące ubezpieczenia wypadkowego rozciągnięto na ziemie byłego zaboru rosyjskiego. Natomiast z 28 marca 1933 r. pochodzi ustawa o ubezpieczeniu społecznym, tzw. ustawa scaleniowa. Jej największym osiągnięciem było wprowadzenie ubezpieczenia emerytalnego robotników – wprowadzenie go odbyło się jednak kosztem ubezpieczenia chorobowego. Do ubezpieczenia wypadkowego zakwalifikowano ryzyko trzech chorób zawodowych. Ustawa nie przewidywała w stosunku do rent inwalidzkich rozróżnienia na inwalidztwo częściowe i całkowite. Przepisy dotyczące ubezpieczeń społecznych w II Rzeczypospolitej należało scalić, a niekiedy tworzyć na nowo – przed II wojną światową powstało w Polsce w tym celu ponad 100 aktów prawnych.

**Słowa kluczowe:** ubezpieczenie emerytalne, ubezpieczenia społeczne, II Rzeczpospolita, ustawa scaleniowa



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# Pension rights of Polish emigrants and re-emigrants in the Second Polish Republic

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The paper presents in a synthetic way the Polish policy of safeguarding pension rights for Polish emigrants who took up gainful employment in European countries during the interwar period. Poland's status as a country of emigration hindered the concluding of pension insurance agreements in spite of extensive undertakings by the Polish authorities in this area. The situation was further complicated by the fact that large Polish communities were located in countries (such as Germany, the Free City of Danzig [German: Freie Stadt Danzig, Polish: Wolne Miasto Gdańsk]), where Poland had considerable problems in settling social insurance liabilities from before 1918. Following years of efforts, it was possible to sign agreements with France, Germany, Belgium and the Free City of Danzig, which also covered old-age pension insurance. However, not all of them were ratified. The policy pursued on the forum of the International Labour Organisation (ILO) was partially successful. Although thanks to the involvement of the Polish delegation it was possible to draft and adopt in 1935 the Maintenance of Migrants' Pension Rights Convention, the Convention did not play a major role as a result of the small number of countries which actually ratified it.

**Key words:** social insurance, (old-age) pension insurance, social policy, emigration policy, Second Polish Republic

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## Introductory remarks

In the interwar period, the Polish authorities pursued a pro-emigration policy, considering emigration to be a means of relieving many social tensions. However, the directions of emigration from Poland were to change, when compared to the period of the Partitions. After World War I, France experienced a great demand for labour and this is where most Poles emigrated. Emigration to Germany was comparable, but it mainly involved departures for seasonal work in agriculture. Immediately after the war, large groups of emigrants settled in Belgium, Denmark, Switzerland and Romania.<sup>1</sup> Emigration to the USA, Brazil and Argentina was still an occurrence. The Free City of Danzig [German: Freie Stadt Danzig, Polish: Wolne Miasto Gdańsk] was also an attractive labour market for Polish workers. Over 2 million people left Poland in 1918–1938, of which 1.25 million were continental emigrants and 796 thousand migrated to non-European countries. Returns were less frequent, before 1939 about one million people had returned to Poland from continental emigration and about 48 thousand from across the ocean.<sup>2</sup> The majority of Polish emigrants left for work and had plans to settle permanently in the country of immigration. This was connected with the need to provide Polish citizens with appropriate working conditions in the immigration country, and to regulate their access to social insurance benefits. It was particularly important and at the same time very complicated to guarantee old-age pension rights to emigrants who had been employed in different countries over the course of their working life.

In the discussed period, the issue of safeguarding the old-age pension rights of emigrants was an extremely important social problem, which is why it was the subject of great interest in the press at the time, mainly the specialist press, as well as the subject of academic dissertations. The annuals of the monthly “Przegląd Ubezpieczeń Społecznych” and “Praca i Opieka Społeczna”, published by the Ministry of Labour and Social Welfare, provide particularly valuable materials for the subject under discussion. A classical monograph on this subject was published then by Stanisław Fischlowitz and Herman Horowitz.<sup>3</sup> Among the most important publications, it is also worth noting the works of S. Fischlowitz,<sup>4</sup> a frequent Polish representative at the conferences of the International Labour Organisation (ILO) as well as Zdzisław

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1 J. Tomaszewski, *Czynniki wpływające na migracje zewnętrzne ludności w Polsce 1918–1939* [in:] *Mechanizmy polskich migracji zarobkowych*, ed. C. Bobińska, Warszawa 1976, p. 147.

2 A. Kicingier, *Polityka emigracyjna Drugiej Rzeczypospolitej*, “CEFMR Working Paper” 2005, No. 4, p. 7.

3 H. Horowitz, S. Fischlowitz, *Ochrona emigrantów w zakresie ubezpieczeń społecznych*, Warszawa 1936.

4 Among others S. Fischlowitz, *Międzynarodowe zagadnienie ubezpieczeń społecznych*, “Praca i Opieka Społeczna” 1932, Issue 2, pp. 196–211; *idem*, *Praski Kongres Międzynarodowy ubezpieczeń społecznych*, “Praca i Opieka Społeczna” 1936, Issue 3, pp. 254–261; *idem*, *Sprawa międzynarodowego zachowania uprawnień ubezpieczenia emerytalnego*, “Praca i Opieka Społeczna” 1934, Issue 2, pp. 228–232; *idem*, *Ubezpieczenia społeczne za granicą*, “Praca i Opieka Społeczna” 1936, Issue 2, pp. 128–138.



Wyżnikiewicz,<sup>5</sup> a legal advisor at the Invalidity Insurance Institution [Zakład Ubezpieczenia na Wypadek Inwalidztwa] in Chorzow, who had participated in the insurance negotiations with Germany and with the Free City of Danzig and in Polish-German negotiations in the field of social insurance, and additionally Stanisław Sasorski,<sup>6</sup> a long-term head of the Accident Benefits Department of the Polish Social Insurance Institution [Zakład Ubezpieczeń Społecznych, ZUS], and later the director of the Social Insurance Institution in Warsaw. The very fact that these authors were directly involved in Poland's social insurance policy makes their works factually rich, but also ones requiring careful analysis because of the somewhat subjective interpretation of the events they participated in.

Following World War II, this issue was not to become a subject of broad academic research, appearing only as a background current to research into Polish emigration and re-emigration of 1918–1939.<sup>7</sup> It also did not constitute a subject of study in the 1980s and 1990s, when broader research into the history of Polish insurance started to be undertaken in the Polish People's Republic.<sup>8</sup> Only in recent years have studies into the matter been undertaken. These have resulted in several monographic papers on international agreements<sup>9</sup> concluded by Poland and settlements with Germany in respect of social insurance.<sup>10</sup> In 2017, the first monograph on the history of insurance in the Second Republic was published; a small part of which being devoted to a very general discussion of selected bilateral agreements signed by Poland.<sup>11</sup>

The present paper is based on legal acts from 1918–1939 and on archival documents from the Central Archives of Modern Records in Warsaw [Archiwum Akt Nowych], the National Archives [Archiwum Państwowe] in Gdańsk and the National Archives in Katowice. Due to the space limitations imposed on this article, archival footnotes have been reduced to the necessary minimum. The source analysis employed has allowed for the reconstruction of the most important achievements of Polish policy on safeguarding

5 Among others Z. Wyżnikiewicz, *Ubezpieczenia społeczne na Śląsku w świetle wykonania górnośląskiej Konwencji Genezyjskiej*, Katowice 1939; *idem*, *Okres wyczekiwania i utrzymanie praw do świadczeń w poszczególnych systemach emerytalnych w reglamentacji wewnętrzno-państwowej i międzypaństwowej*, Chorzów 1939.

6 Among others S. Sasorski, *Międzynarodowe związki w zakresie ubezpieczeń społecznych*, "Przegląd Ubezpieczeń Społecznych" 1936, No. 10, pp. 705–713; *idem*, *Międzypaństwowe związki w zakresie ubezpieczeń społecznych. Referat wygłoszony na drugim międzynarodowym kongresie rzeczoznawców ubezpieczeń społecznych, który odbył się w dniach od 4 do 8 września 1936 r. w Dreźnie*, Warszawa 1936.

7 E. Kołodziej, *Wychodźstwo zarobkowe z Polski 1918–1939. Studia nad polityką emigracyjną II Rzeczypospolitej*, Warszawa 1982; H. Janowska, *Polska emigracja zarobkowa we Francji 1919–1939*, Warszawa 1964; M. Piotrowski, *Reemigracja Polaków z Niemiec 1918–1939*, Lublin 2000.

8 *Rozwój ubezpieczeń społecznych w Polsce*, ed. C. Jackowiak, Wrocław 1991; "Studia i Materiały z Historii Ubezpieczeń Społecznych w Polsce" 1983–1994, Vol. 1–10.

9 A. Jarosz-Nojszewska, *Polsko-niemiecka umowa w sprawie ubezpieczeń społecznych* [in:] *Świat pracy: instytucje i wartości*, ed. J. Gardawski, R. Towalski, Warszawa 2017, pp. 147–161; *eadem*, *Problem ubezpieczeń emerytalnych "Westfalczyków" w okresie międzywojennym* [in:] *Kapitalizm a sprawiedliwość społeczna*, ed. J. Osiński, Warszawa 2016, pp. 409–422; *eadem*, *Polsko-francuskie umowy w sprawie ubezpieczeń społecznych w okresie międzywojennym*, "UR Journal of the Humanities and Social Sciences" 2017, No. 2, pp. 34–52.

10 *Eadem*, *Ubezpieczenia społeczne na Górnym Śląsku w latach 1922–1939* [in:] *Od kwestii robotniczej do nowoczesnej kwestii socjalnej. Studia z polskiej polityki społecznej XX i XXI wieku*, ed. P. Grata, Rzeszów 2016, pp. 29–50.

11 K. Chylak, *Ubezpieczenia społeczne i zaopatrzenia emerytalne w II Rzeczypospolitej*, Warszawa 2017, pp. 596–601.

the rights to old-age pension insurance benefits for Polish emigrants. The paper is an attempt at a synthetic presentation of the efforts of the Polish authorities to protect the legitimate expectatives of Polish emigrants and re-emigrants and to provide them with any benefits due from pension insurance.

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## Origin of bilateral agreements in the field of old-age pension insurance

In most European old-age pension insurance systems, the right to benefits depended on two basic statutory requirements: completing a certain period of contribution payment (the so-called qualifying period), on which the right to benefits depended, and continuity in contribution payment, a shortfall in which resulted in a loss of the rights acquired based on previously paid contributions. Such requirements were a real problem for emigrants who had been changing their country of residence and employment over the course of their working life.<sup>12</sup>

The first attempts to regulate these issues appeared even before World War I. It was then that the first bilateral agreements were signed regulating emigrants' rights to social insurance.<sup>13</sup> However, it was only during the interwar period that the system of bilateral agreements developed quickly. Social insurance agreements were signed in various forms – starting from social clauses in trade treaties,<sup>14</sup> through to general social agreements and concluding with special social insurance agreements. Most of the agreements concerned insurance against accidents at work. It was only later were old-age pension insurance, unemployment insurance and sickness insurance dealt with.<sup>15</sup> It should be, however, stressed that concluding such agreements was very difficult. The uneven migration balance of individual countries often made it difficult to sign an agreement based on reciprocity. The different legal solutions applied within social insurance organisations in various countries hindered the conclusion of bilateral agreements. Issues related to the duration of the qualifying period, acquisition of the right to benefits and the maintenance of rights were regulated in different way by various countries. It was a particular challenge to regulate the benefits from old-age pension insurance for persons who had worked and had been successively insured in different countries.<sup>16</sup> As a result, bilateral agreements on pension insurance were rarely concluded, only being ratified after lengthy

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12 H. Horowitz, S. Fischlowitz, *op. cit.*, pp. 20–21.

13 Agreements were signed between France and Italy, France and Luxembourg, France and England, Germany and Luxembourg, Italy and Germany.

14 Poland incorporated such social clauses to trade treaties concluded with Austria on 25 September 1922, Estonia on 19 February 1927, Finland on 10 November 1923, Greece on 10 April 1930, the Netherlands on 30 May 1924, Latvia on 12 February 1929, the United States on 15 June 1931 and Romania on 23 June 1930: H. Horowitz, S. Fischlowitz, *op. cit.*, p. 44.

15 S. Sasorski, *Międzypaństwowe...*, *op. cit.*, p. 15.

16 *Ibid.*, p. 17.

negotiations while often not providing employees with sufficient protection.<sup>17</sup> France and Germany in constituting the main countries for immigration concluded reciprocal social insurance agreements. Their counterparties were mainly Central and Eastern European countries (Poland, Czechoslovakia, Austria, Yugoslavia), as well as Spain, Belgium and Italy.<sup>18</sup> It is worth noting, however, that agreements based on reciprocity did not solve all migration-related problems and here because they could not regulate the situation of persons insured successively in different countries.

The issue of insurance for emigrants was not only present in international agreements and conventions, but also in the national regulations of individual countries. Three groups of issues required regulation – the adoption of laws on the obligation to insure, on access to benefits and on the payment of benefits to eligible persons residing outside the country.<sup>19</sup> In Poland, these issues were regulated by the Act of 16 July 1923 on the treatment of foreigners in relation to social insurance rights,<sup>20</sup> which introduced full equality of foreigners with Polish nationals, but subject to retaliation directed against the citizens of countries applying restrictions to Polish citizens.<sup>21</sup> In practice, such restrictions were never applied in Poland, although in 1939, in connection with preparations for war, a draft Act was developed to withhold the payment of benefits to German citizens residing outside the territory of Poland.<sup>22</sup> Throughout the whole interwar period, all social insurance pensions were paid by Polish institutions to eligible persons also when outside the country. However, such solutions were rare. Apart from a few exceptions, where foreigners were provided with rights equal to those of their own citizens, such equalisation most often depended on the formal adoption and application of the principle of reciprocity by a given state. Most countries, however, adopted restrictions on foreigners. The most frequent restrictions included: the requirement of a longer qualifying period for immigrants, limitations in the payment of benefits based on subsidies from public sources, suspension of benefits payment to foreigners in the case of going abroad or the suspension of benefits payment to both foreigners and one's own nationals who had left the country without the due permission of social insurance institutions.<sup>23</sup>

The policy of the Second Polish Republic to safeguard emigrants' rights to benefits derived from the old-age pension insurance was a consequence of the emigration policy pursued by Poland at that time. Poland, like other emigration countries, tried to improve the situation of its own citizens by concluding agreements on reciprocity in the field of social insurance with the countries of immigration. On many occasions, to obtain reciprocity in the field of social insurance, it was necessary to make concessions in other

17 H. Horowitz, S. Fischlowitz, *op. cit.*, p. 18.

18 Z. Wyżnikiewicz, *Ubezpieczenia...*, *op. cit.*, p. 109.

19 S. Sasorski, *Międzypaństwowe...*, *op. cit.*, p. 10.

20 Act of 6 July 1923 on the extension to foreign nationals of the legal provisions on compensation for accidents at work, incapacity for work, old age, death and lack of work (Journal of Laws No. 75, item 587).

21 Act on Social Welfare of 16 August 1923 (Journal of Laws No. 92, item 726).

22 Central Archives of Modern Records, Presidency of the Council of Ministers [Archiwum Akt Nowych, Prezydium Rady Ministrów], part VIII, Secret Files, file No. 70, ff. 1–8.

23 S. Sasorski, *Międzypaństwowe...*, *op. cit.*, pp. 11–12.

fields. At the same time, on the international forum, Poland was striving for the freedom to emigrate and for the abolition of emigration restrictions.<sup>24</sup> The main goal of Polish activities was to sign agreements with those countries to which Polish emigration was directed, or where Polish communities existed as a result of previous waves of migration.

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## Polish-German agreements

After World War I, Germany was a country with large Polish communities. A significant part of the Poles resident there were employees who had arrived before the war, looking for work in the dynamically developing German industry. Some of them decided to re-emigrate after Poland had regained its independence. However, some decided to stay. Regardless of permanent emigration, Germany was also a country of seasonal migration from Poland. This included agricultural workers who were looking for employment during the months of work in the fields. The need to safeguard old-age pension rights for Poles resident in Germany, as well as for those who had decided to re-emigrate, was one of the most important issues in Polish social policy, and at the same time an extremely difficult one to solve.

In the first period after regaining independence, the issue of reciprocity in the field of social insurance was inseparably related to the issue of social insurance succession after the partitioning powers. In the area of the former Prussian partition and in Upper Silesia there were many people to whom benefits should already have been paid or who had the right to claim pensions.<sup>25</sup> The regulation of these issues continued until the mid-1930s, seriously hindering the negotiation of any social insurance agreement as sought by the Polish side due to the large emigration to Germany.<sup>26</sup>

The Treaty of Versailles was the first to address issues related to the loss of these territories by Germany after the World War I and to benefit allocation in the field of social insurance. Art. 312 resolved these issues in such a way that Germany was ordered to transfer to those States that had been granted its former territories such a portion of the insurance reserves as was attributable for the effective realisation of social insurance obligations.<sup>27</sup> The implementation of Art. 312 required, as a matter of priority, the resolution of the issue of a division of liabilities between Germany and the States to which German territories have been ceded and the regulation of the issue of transfer to these States of financial reserves corresponding to the liabilities taken on. This was not easy, *inter alia* because in deciding on the fate of the insurance liabilities towards persons who

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<sup>24</sup> W. Śladkowski, *Wychodźstwa polskiego zarys dziejowy*, Lublin 1994, p. 58.

<sup>25</sup> H. Horowitz, S. Fischlowitz, *op. cit.*, p. 122.

<sup>26</sup> Cf. K. Chylak, *op. cit.*, pp. 516–530; A. Jarosz-Nojszewska, *Polsko-niemiecka...*, *op. cit.*, pp. 148–152.

<sup>27</sup> The Treaty of Peace between the Allied and Associated States and Germany signed at Versailles on 28 June 1919 (Journal of Laws No. 35, item 200), hereinafter the Treaty of Peace. It is worth noting that similar provisions were included in the Treaties of Peace with Austria (Article 275) signed in Saint-Germain and with Hungary (Article 258) signed in Trianon.

had stayed in German areas ceded to other States, it had to be anticipated what would happen with regard to the rights of insured persons arriving those areas subsequently, *e.g.*, as a result of re-emigration, and of persons who might decide to leave those areas for Germany itself.<sup>28</sup> It also had to be decided how to regulate further mutual relations between the insurance institutions of Germany and of the States which have taken over German liabilities in connection with the takeover of the said territories.

With regard to Upper Silesia, the issues of insurance settlements and of honouring the rights of persons insured and beneficiaries were regulated by the Polish-German convention on Upper Silesia, popularly known as the Geneva convention, concluded on 15 May 1922 for the period of 15 years (*i.e.*, until 15 July 1937).<sup>29</sup> It contained provisions which precisely defined the rights and obligations of insurance institutions, persons insured and the governments of both States following the division of Upper Silesia. The provisions of the convention, on the one hand, tried to create for a reciprocity of social insurance between Poland and Germany, while on the other hand, they introduced in Upper Silesia the division of pensioners, expectatives, persons insured and insurance institutions.<sup>30</sup> In the same year, the issue of fraternal insurance [*ubezpieczenia brackie*] was also resolved separately by the signing on 26 August 1922 of an agreement on the division of the Upper Silesian Fraternal Company [Spółka Bracka], which had been providing *inter alia* old-age pension insurance for miners in Upper Silesia since 1865.<sup>31</sup>

Implementation of the provisions of the Treaty of Versailles and of the Geneva convention turned out to be extremely difficult as a result of the German side's reluctance to transfer the financial reserves due to Poland in relation to social insurance and to pay pensions to Poland. German legislation contained numerous restrictions on foreigners. Particularly burdensome were the provisions on the so-called resting pensions [*spoczywanie rent*] in the event of a pensioner's voluntary stay outside of Germany while being a foreign citizen. In practice, this meant that German social insurance institutions did not pay any benefits to the entitled pensioners if they had left Germany itself. These provisions, when applied to Polish citizens, created a situation where the Polish State was forced to pay out the benefits from public funds.<sup>32</sup> The lack of a Polish-German agreement and cooperation on social insurance issues resulted in the need for this issue to be addressed by the Council of the League of Nations, which, on 17 July 1922, tried, *inter alia*, to regulate, based on Art. 312 of the Treaty of Versailles, the consequences of migration between Poland and Germany post 1920.<sup>33</sup>

28 H. Horowitz, S. Fischlowitz, *op. cit.*, p. 123.

29 The German-Polish convention on Upper Silesia, signed in Geneva on 15 May 1922 (Journal of Laws No. 44, item 371); Z. Wyżnikiewicz, *Ubezpieczenia społeczne...*, *op. cit.*, p. 9; Cf. A. Jarosz-Nojszewska, *Ubezpieczenia społeczne...*, *op. cit.*, p. 31.

30 Z. Wyżnikiewicz, *Ustawodawstwo śląskie o ubezpieczeniu społecznym*, Katowice 1938, p. 13.

31 The Polish-German agreement concerning the Upper Silesian Fraternal Company [Górnośląska Spółka Bracka, Oberschlesischer Knappschaftsverein] signed in Poznań on 26 August 1922 (Journal of Laws of 1923 No. 48, item 327).

32 H. Horowitz, S. Fischlowitz, *op. cit.*, p. 126.

33 The Government Declaration of 25 May 1923 on the decision of the Council of the League of Nations concerning the regulation of social insurance in the territories directly surrendered by Germany to Poland under the Tre-

New conflicts with regard to the execution of social insurance were to emerge in German-Polish relations as early as in the 1920s. Issues related to the implementation of the Treaty of Versailles were also accompanied by problems with the protection of the rights of Polish emigrants in Germany, who were not treated by the German authorities on an equal footing with their own citizens when granting and paying social insurance benefits. Prolonged negotiations resulted in the signing, in 1927, of the convention on Polish agricultural workers, which regulated insurance against all risks, including old age insurance, but only for Polish workers employed in German agriculture.<sup>34</sup> On 25 May 1928 another agreement was drawn up, one which, however, was never to be signed and implemented because of a lack of *consensus* regarding the Upper Silesian mining insurance reserves due from Germany to Poland. The problem of the transfer of reserves for the mining (fraternal) insurance in the Upper Silesia region was to be resolved by the League of Nations on 13 January 1930.<sup>35</sup>

Only after that were negotiations resumed, which led to the signing of the social insurance agreement on 11 June 1931.<sup>36</sup> It entered into force on 1 September 1933. The Polish-German social insurance agreement covered a raft of insurance issues. It regulated all social insurance sections except for unemployment insurance.<sup>37</sup> It partially replaced the provisions of the Geneva convention. Its implementation took place in stages and lasted until 1939.<sup>38</sup>

The most important provision of the agreement was to safeguard the equality of persons insured and pensioners of one country with those insured and being the pensioners of another country. From that moment on, it was not possible to withhold the payment of a pension to a Pole who had left Germany. Nor could the regulations on resting pensions be applied to Polish citizens, similarly as to German citizens. The decisions

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aty of Peace between the Allied and Associated States and Germany, signed at Versailles on 28 June 1919 (Journal of Laws of 1923 No. 70, item 550); the Act of 19 December 1923 implementing the decision of the Council of the League of Nations of 17 July 1922 on the regulation of social insurance in the former German territories surrendered to Poland directly on the basis of the Treaty of Versailles, and on the allowances granted pursuant to that decision (Journal of Laws of 1924 No. 7, item 63).

34 Convention on Polish agricultural workers, signed in Warsaw on 24 November 1927 (approved by the Resolution of the Council of Ministers of 24 February 1928) (Journal of Laws of 1929 No. 44, item 366); The Central Archives of Modern Records, Embassy of the Republic of Poland in Berlin [Archiwum Akt Nowych, Ambasada RP w Berlinie], file No. 1623, ff. 30–31.

35 Government Declaration of 1 April 1930 on the Decision of the Council of the League of Nations concerning reserves of mining insurance in the area of Upper Silesia as renounced by Germany to Poland under Article 312 of the Treaty of Peace between the Allied and Associated States and Germany signed at Versailles on 28 June 1919 (Journal of Laws of 1930 No. 35, item 293).

36 National Archives in Katowice, Spółka Bracka in Tarnowskie Góry [Archiwum Państwowe w Katowicach, Spółka Bracka w Tarnowskich Górach], file No. 60, ff. 1–15; Agreement between the Republic of Poland and the German Reich on social insurance, signed in Berlin on 11 June 1931 (Journal of Laws of 1933 No. 65, item 487), hereinafter referred to as the agreement between the Republic of Poland and the German Reich on social insurance; Act of 28 January 1932 on the ratification of the agreement between the Republic of Poland and the German Reich on social insurance, signed with final protocol in Berlin on 11 June 1931 (Journal of Laws of 1932 No. 16, item 94).

37 H. Horowitz, S. Fischlowitz, *op. cit.*, p. 127.

38 M. Wanatowicz, *Wpływ politycznego podziału Górnego Śląska na późniejsze losy tego obszaru i jego mieszkańców* [in:] *Górny Śląsk po podziale w 1922 roku. Co Polska, a co Niemcy dały mieszkańcom tej ziemi?*, Vol. 1, ed. Z. Kapała, W. Lesiuk, M. Wanatowicz, Bytom 1997, p. 14.

concerning old-age pensions, referred to as *renty starcze* in the Polish wording of the agreement, as well as provisions concerning benefits for persons who were successively subject to the insurance legislation of both countries, were extremely important. It was provided that the periods of contributions payment to Polish and German institutions would be reckoned both for the purposes of the qualifying period, the maintenance of the rights to benefits and the recovery of lost expectatives. An insured person who had acquired the rights to benefits in one country did not lose them when they moved to another.<sup>39</sup> The Polish-German agreement also contained a provision regarding the recovery of lost expectatives, something which had not been included in any of the international social insurance agreements signed earlier. Under this principle, if an insured person's expectatives for insurance benefits from one country expired during their residence in another country, such expectatives could be restored until the date of entry into force of the agreement at the request of the person concerned. The insured persons to whom German insurance companies had restored their rights deriving from past contributions were obliged to pay voluntary contributions for the period after 1 January 1924. That provision was advantageous for those who had not completed a qualifying period in Germany and who would soon be 65 years old, as they were able to obtain an old-age pension by paying contributions retroactively. The insured persons also obtained the right to continue their insurance voluntarily at their choice in Poland or Germany. This provision was very important because the costs of continued insurance in Poland were much lower.<sup>40</sup>

The amount of benefits was determined according to the principle that each country paid pensions in strict proportion to the contributions paid by the person insured in that particular country. The agreement provided, in a very general form, for the possibility of taking into account contribution periods in a third country when determining the right to benefits.<sup>41</sup> The agreement clarified the division of German pensions, which had been made in earlier agreements and decisions, by requiring that benefits should be paid to re-emigrants. It was agreed that the resting pensions would be paid retroactively, starting from 1 July or 1 October 1931.<sup>42</sup>

The agreement of 11 June 1931 was very advantageous to insured persons. In the first years after its entry into force, the German institutions resumed the payment of disability and old-age pensions to eligible persons residing in Poland.<sup>43</sup> All pensions established before the agreement's entry into force, and covered by its scope, were reviewed. The largest group of benefits were for those pensions where contributions paid in one of the countries had not been taken into account when determining the amount of the

39 *Ibid*; Agreement between the Republic of Poland and the German Reich on social insurance.

40 Agreement between the Republic of Poland and the German Reich on social insurance; A. Rzewski, Z. Wyżnikiewicz, *Systematyczny przegląd ubezpieczeń społecznych w Polsce*, Łódź 1936, pp. 149, 155; A. Jarosz-Nojszewska, *Polsko-niemiecka...*, *op. cit.*, p. 155.

41 Agreement between the Republic of Poland and the German Reich on social insurance; A. Rzewski, Z. Wyżnikiewicz, *op. cit.*, p. 138.

42 Agreement between the Republic of Poland and the German Reich on social insurance.

43 H. Horowitz, S. Fischlowitz, *op. cit.*, pp. 128–129.



benefit in another country. The second group of cases under review were the rejected claims which could be considered in favour of the insured person after the agreement had entered into force.<sup>44</sup>

The complexity of the social insurance systems in both countries and the need to clarify some of the provisions of the 1931 agreement made it necessary for supplementary agreements to be signed several times. Before the outbreak of World War II, five such agreements were concluded – in 1933, 1934, 1935, 1937 and 1938. The new regulations were implemented gradually until 1939.<sup>45</sup>

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## Agreements with the Free City of Danzig

The signing of an agreement with the authorities of the Free City of Danzig also encountered great problems. Initially, Polish-Danzig relations were regulated by Art. 104 of the Treaty of Versailles. It announced the principles of the convention that was to be signed between Poland and Danzig *via* the principal powers and which was to have come into force when the Free City was established.<sup>46</sup> However, from the beginning, the authorities of Danzig showed no willingness to establish proper relations with Poland, seeking to limit Poland's rights within the Free City. This was primarily the result of tense Polish-German relations, which affected developments in Danzig throughout the interwar period.<sup>47</sup> As a result, the implementation of Art. 104 of the Treaty of Versailles, and thus the equalisation of the citizens of Danzig and of Poland in their rights, was carried out to a very limited extent. The Paris convention signed on 9 November 1920 did not bring any new solutions, but only reiterated the provisions of Art. 104.<sup>48</sup> In turn, the Warsaw agreement concluded on 24 October 1921 to implement and supplement the Paris convention provided the citizens of both countries with a number of rights in economic matters, but completely ignored social issues.<sup>49</sup>

The dispute over the treatment of Polish citizens by the Free City of Danzig was protracted, and at the same time there was no settlement of social insurance issues in bilateral agreements. As a result, the social insurance institutions in Danzig treated Polish citizens as citizens of foreign countries, denying them equal rights in the field of

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44 A. Rzewski, Z. Wyżnikiewicz, *op. cit.*, p. 153.

45 Cf. A. Jarosz-Nojszewska, *Polsko-niemiecka...*, *op. cit.*, p. 158.

46 The Treaty of Peace.

47 *Historia Pomorza*, Vol. 5: (1918–1939), *Województwo pomorskie i Wolne Miasto Gdańsk*, part 2: *Polityka i kultura*, ed. S. Wierzchośłowski, P. Olstowski, Toruń 2018, p. 378.

48 A. Drzycimski, *Polacy w Wolnym Mieście Gdańsku w latach 1920–1933. Polityka Senatu Gdańskiego wobec ludności polskiej*, Wrocław–Warszawa–Kraków–Gdańsk 1978, p. 99.

49 Act of 17 December 1921 on the approval of the agreement signed in Warsaw on 24 October 1921, concluded between Poland and the Free City of Danzig to implement and supplement the Polish-Gdańsk convention of 9 November 1920 (Journal of Laws of 1922 No. 16, item 139); A. Drzycimski, *op. cit.*, pp. 102–104; M.Br., *Polsko-Gdańskie zagadnienie ubezpieczeniowe*, "Przegląd Ubezpieczeń Społecznych" 1931, No. 9, p. 285.



social insurance. This made it possible to apply to Poles all possible restrictions provided for by the German legislation applicable in this area. Particularly unfavourable were the regulations on resting pensions, preventing the receipt of benefits in the case of leaving the Free City of Danzig. This situation persisted even when relations in this matter had been already regulated by the agreement of June 1931 between Poland and Germany. It is worth noting here that according to the aforementioned Act of 6 July 1923, the citizens of the Free City of Danzig enjoyed the right to benefits from Polish social insurance institutions on an equal footing with Polish citizens. The relations between Poland and Danzig were therefore not compatible with the provisions of the Treaty of Versailles, since the citizens of Danzig were treated on an equal footing with Polish citizens in the field of social insurance, in Polish legislation and in Polish social insurance institutions, while the principle of reciprocity was not applied in the Free City of Danzig to Polish citizens, who could not count on the same treatment as the citizens of Danzig.<sup>50</sup>

The regulation of insurance relations was also hindered by the fact that Danzig was not a member of the International Labour Organisation. In this situation, it could not be a signatory of ILO conventions. Although Poland was seeking the possibility of Danzig's participation in the work of the ILO, the Permanent Court of International Justice stated in 1930 that "the special legal status of the Free City of Danzig is not such as to enable it to become a Member of the International Labour Organisation."<sup>51</sup> In this situation, bilateral Polish-Danzig agreements that would regulate social insurance relations were one of the foreign policy priorities for the Polish authorities. The first step was made by Poland's signing on 24 January 1927, on behalf of the Free City of Danzig, of an agreement with Germany on the implementation of Art. 312 of the Treaty of Versailles, which governed the issue of the settlement of accounts in the field of social insurance in the Free City of Danzig.<sup>52</sup>

On 13 January of that year the first Polish-Danzig agreement on social insurance was signed, concerning one professional group – railway workers. It covered, among others, old-age pension insurance for railway workers. The agreement was extremely important for the Polish side, because it concerned mainly persons employed by the Polish State Railways [Polskie Koleje Państwowe] in the Free City of Danzig.<sup>53</sup>

50 Central Archives of Modern Records, Ministry of Foreign Affairs [Archiwum Akt Nowych, Ministerstwo Spraw Zagranicznych], file No. 2647, ff. 22–23.

51 M.Br., *op. cit.*, p. 286.

52 National Archives in Gdańsk, Senate of the Free City of Danzig [Archiwum Państwowe w Gdańsku, Senat Wolnego Miasta Gdańska], file No. 172, pp. 1–13, file No. 173, ff. 1–24; The Polish-German agreement signed in Berlin on 24 January 1927 implementing Article 312 of the Treaty of Versailles of 28 June 1919 (Journal of Laws of 1928 No. 8, item 52).

53 National Archives in Gdańsk, Senate of the Free City of Danzig, file No. 2474, ff. 1–8, 13, 27; Central Archives of Modern Records, Ministry of Foreign Affairs, file No. 2647, ff. 13–15; Ordinance of the President of the Republic of Poland of 17 August 1927 on the approval of the agreement between the Republic of Poland and the Free City of Danzig on the social insurance of blue- and white-collar workers, employed on Polish State Railways within the territory of the Free City of Danzig, signed in Danzig on 19 January 1927 (Journal of Laws No. 74, item 645); Government Declaration of 8 May 1928 on the exchange of notes concerning the approval of the agreement between the Republic of Poland and the Free City of Danzig on the social insurance of blue- and white-collar workers employed by Polish State Railways on the territory of the Free City of Danzig, signed in Danzig on 13 January 1927 (Journal of Laws No. 69, item 638); Announcement by the President of the Republic of Poland of 20 October 1927 on the correction of an er-

In the early 1930s, work began on a general Polish-Danzig insurance agreement. It was successfully signed on 2 July 1934.<sup>54</sup> It followed the model of the Polish-German agreement of 1931. However, its entry into force encountered great difficulties. The Senate of Danzig delayed the ratification of the agreement, and finally rejected it in August 1935, motivating its decision by the fact that its implementation would be an excessive burden for Danzig social insurance institutions.<sup>55</sup> Efforts to regulate Polish-Danzig insurance relations had to in effect start from the beginning.

However, the signing of the Polish-Danzig agreement was a necessity for the Polish authorities, hence the pressure on the Free City to resume talks. This happened in the spring of 1936, when the Senate of Danzig took the position that the content of the 1934 agreement could only be introduced in stages, because only in such a situation could the Danzig insurance system be protected against any excessive financial burden.<sup>56</sup> The first stage on the way to regulate Polish-Danzig social insurance relations was to be the agreement concluded on 29 April 1937.<sup>57</sup> This was a temporary agreement that allowed the receipt of benefits in the case of leaving the territory of the Free City of Danzig if the departure was to take place after 1 January 1935, and in the case of paying additional contributions – after 1 January 1934. The signing of the agreement was an important step forward on the way to regulating Polish-Danzig insurance relations. However, further issues could not be resolved before the outbreak of World War II.

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## Polish-French agreements

The first regulation of Polish-French insurance relations appeared soon after Poland had regained its independence. On 3 September 1919, an emigration convention with France was signed by Poland.<sup>58</sup> This was the first international agreement that introduced the principle of equal protection of work in the country of emigration and immigration,

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ror in the Ordinance of the President of the Republic of Poland of 17 August 1927 on the approval of the agreement between the Republic of Poland and the Free City of Danzig on the social insurance of blue- and white-collar workers employed by Polish State Railways, signed in Danzig on 19 January 1927 (Journal of Laws No. 95, item 847).

54 National Archives in Gdańsk, Senate of the Free City of Danzig, file No. 189, ff. 1–24, 26–33; Ordinance of the President of the Republic of Poland of 24 October 1934 on the approval of certain Polish-Gdańsk agreements (Journal of Laws No. 96, item 870).

55 Archive of New Files, Ministry of Foreign Affairs, file No. 2647, ff. 17–19.

56 Archive of New Files, Ministry of Foreign Affairs, file No. 2648, ff. 15–16, 21–26.

57 S. Fischlowitz, *Układ z Wolnym Miastem Gdańskiem o ubezpieczeniu społecznym*, “Przegląd Ubezpieczeń Społecznych” 1937, Issue 7, p. 418; Agreement between the Republic of Poland and the Free City of Danzig on social insurance (Journal of Laws of 1938 No. 37, item 315); Government Declaration of 6 May 1938 on the approval of the agreement between the Republic of Poland and the Free City of Danzig on social insurance, signed in Warsaw on 29 April 1937 (Journal of Laws No. 37, item 314); Act of 16 March 1938 on the approval of the agreement of 29 April 1937 between the Republic of Poland and the Free City of Danzig on social insurance (Journal of Laws No. 18, item 135).

58 Act of 30 October 1919 on the ratification of the convention with France on emigration and immigration (Journal of Laws No. 88, item 481).

the most-favoured-nation clause for citizens of both countries, as well as freedom of migration limited only by the needs of the labour market. The convention announced the signing of a Polish-French agreement on the payment of pensions in Poland and in France.<sup>59</sup> The next stage of insurance regulations was the signing of the Polish-French convention on social assistance and welfare on 14 October 1920. It covered, *inter alia*, the issue of maintaining the pension rights of workers moving from the insurance system of one country to another. It adopted the principle that an emigrant or re-emigrant could receive old-age pension benefits from both countries in the event of a random event. The benefits were to be provided in appropriate proportions by the institutions concerned.<sup>60</sup> However, only those Polish workers who have worked a minimum of 15 years in France were entitled to old-age pensions.<sup>61</sup> As a result, emigrants who had been working and were insured successively in different countries were at a disadvantage because, in the absence of relevant inter-State agreements, they were at risk of losing all of their pension benefits.<sup>62</sup>

In the second half of the 1920s, the first French draft agreement for miners' insurance was drawn up. Negotiations in this regard were launched in November 1929.<sup>63</sup> The agreement was signed following brief negotiations on 21 December 1929.<sup>64</sup> According to its provisions, blue- and white-collar workers, both Polish and French citizens, employed in the mining industry were to be entitled, without any restrictions, to all benefits granted for the account of both countries, as well as insurance institutions and mining funds, as provided for in the legislation of both countries concerning old age, incapacity for work and death insurance. For employees who had worked successively in both countries for companies affiliated to a mining pension scheme, contribution periods completed in both countries, as well as assimilated periods were to be taken into account when determining the right to benefits. Provisions on aggregating contribution periods and on the amount of pensions were to apply only to Polish and French citizens. Benefits assessment, after aggregating the contribution periods, was based on the principle that each country pays a part of the old-age pension in proportion to the period of contributions paid by the insured person in that given country.<sup>65</sup>

59 E. Kołodziej, *Wychodźstwo zarobkowe z Polski 1918–1939. Studia nad polityką emigracyjną II Rzeczypospolitej*, Warszawa 1982, p. 78; see P. Kraszewski, *Polsko-francuska konwencja emigracyjna z 3 września 1919 roku*, "Przegląd Polonijny" 1975, Issue 2.

60 H. Horowitz, S. Fischlowitz, *op. cit.*, p. 108.

61 Convention on Social Assistance and Welfare, signed between Poland and France in Warsaw on 14 October 1920 (approved by the Act of 11 May 1922) (Journal of Laws of 1923 No. 48, item 329); E. Kołodziej, *op. cit.*, p. 77.

62 P. Kraszewski, *Polska emigracja zarobkowa w latach 1870–1939. Polityka i refleksja*, Poznań 1995, pp. 171–172; H. Janowska, *op. cit.*, pp. 65–66; A. Jarosz-Nojszewska, *Polsko-francuskie...*, *op. cit.*, p. 41.

63 National Archives in Katowice, Spółka Bracka in Tarnowskie Góry, Vol. 64, ff. 2–56, 116–117; Central Archives of Modern Records, Consulate of the Republic of Poland in Marseille [Archiwum Akt Nowych, Konsulat RP w Marsylii], file No. 285, f. 26.

64 Convention between Poland and France concerning old age insurance, incapacity for work and death of blue- and white-collar workers employed in mining, signed in Warsaw on 21 December 1929 (Journal of Laws of 1934 No. 72, item 690), hereinafter the convention between Poland and France.

65 National Archives in Katowice, Spółka Bracka in Tarnowskie Góry, file No. 69, ff. 1–24; Convention between Poland and France; see A. Rzewski, Z. Wyżnikiewicz, *op. cit.*, p. 114; A. Jarosz-Nojszewska, *Polsko-francuskie...*, *op. cit.*, pp. 41–45.

The delay was due to prolonged French Parliamentary procrastination in its ratification, and here despite several interventions on the part of Poland.<sup>66</sup> The issue of cooperation between the social insurance institutions of both countries was regulated the following year, on 29 June 1935, when a special agreement was signed between the Autonomous Pension Fund of Miners in Paris and ZUS in Warsaw. On its basis, the benefits for pensioners of the Autonomous Fund living in Poland were to be paid *via* ZUS.<sup>67</sup>

The 1929 convention did not solve all the pension-related problems of Polish emigrants in France and those of re-emigrants. The priority was to regulate insurance for Poles living in Alsace and Lorraine, who were not covered by the 1929 convention. In these areas, taken over by France from Germany, the provisions of German insurance law were still in force. It was also necessary for the convention to cover workers employed outside mining. The 1929 convention also needed to be supplemented because of amendments to French insurance law after the entry into force of the Act of 30 April 1930, and to Polish law after the entry into force of the Consolidation Act. The Polish authorities had been working intensively to conclude a general insurance agreement, *i.e.*, one covering not only miners, like the 1929 agreement, but all workers. The Polish Ministry of Labour and Social Welfare prepared a ready draft of the general convention on social insurance, and in 1936 a preliminary draft agreement on insurance in Alsace and Lorraine was drawn up. Negotiations were launched in July 1937 on the initiative of France. However, despite the efforts of both parties, the agreement was not to be concluded before the outbreak of World War II.<sup>68</sup>

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## The issue of old-age pensions for the so-called Westphalians

Not all matters concerning Polish emigrants could be regulated by Poland through bilateral agreements with countries of immigration. The case of the so-called Westphalians [Westfalczycy], *i.e.*, Polish miners who had emigrated from West Germany to France after the war, constitutes a case in point. According to approximate estimates, about 101,000 Poles came to France from Westphalia and 5,100 from the Rhineland in 1920–1924.<sup>69</sup>

The miners who came to France from Westphalia and Rhineland had been affiliated with German insurance institutions throughout their employment in Germany.

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66 Government Declaration of 30 July 1934 on the exchange of instruments of ratification of the convention between Poland and France concerning old age insurance, incapacity for work and death of blue- and white-collar workers employed in mining (Journal of Laws No. 72, item 691); National Archives in Katowice, Spółka Bracka in Tarnowskie Góry, file No. 70, ff. 1–39, 43.

67 St.F., *Sprawa ratyfikowania przez Francję nowej konwencji ubezpieczeniowej z Polską*, "Praca i Opieka Społeczna" 1931, Issue 4, p. 457; A. Rzewski, Z. Wyżnikiewicz, *op. cit.*, pp. 112, 120.

68 H. Janowska, *op. cit.*, p. 67; S., *Pertraktacje polsko-francuskie w sprawie ubezpieczeń społecznych*, "Przegląd Ubezpieczeń Społecznych" 1936, No. 3–4, pp. 365–369.

69 *Zjazdy i konferencje konsulów polskich we Francji. Protokoły i referaty 1931–1938*, compiled by H. Chałupczak, E. Kołodziej, Lublin 2009, p. 15.

Having left Germany, they stopped paying insurance contributions and lost their rights to benefits from German insurance schemes, while not acquiring any rights to French pensions as a result of having worked for too short a period in France.<sup>70</sup> The problem with the maintenance of their pension rights related to the fact that the cooperation of three countries was necessary: Poland, of which they were citizens, and Germany and France, where they have been working. It proved difficult to address the problem, mainly due to the reluctance of the German side to settle insurance claims.<sup>71</sup>

The Polish government was aware of the problem, but the Polish-German agreement of 1931 did not regulate the situation of the Westphalians. Therefore the Polish government sought to ensure that France's negotiations with Germany led to the recognition of the pension rights of Polish miners who had worked first in Germany and then in France, and that the pensions paid to these miners would be calculated on the basis of the aggregated insurance periods. If this could not be achieved, the rights acquired by miners in Germany would have to be taken over by the Polish government, which would have been a heavy burden on the Treasury.<sup>72</sup> The issue was raised on the occasion of the Polish insurance negotiations with France in 1929. Although the Polish-French convention signed in 1929 did not cover the Westphalians,<sup>73</sup> the Polish delegation managed to convince the French to raise the issue in their insurance negotiations with Germany.<sup>74</sup> However, this also did not help to solve the problem, as the French-German agreement, signed in 1932, had not yet entered into force.<sup>75</sup> Germany had not ratified it under the pretext of there being too many changes in its insurance regulations, ones introduced after the agreement had been signed. Thus, the insurance rights of the Westphalians was not regulated. The position of the Third Reich regarding the ratification of German-French agreements ultimately determined the loss of pension rights by these former Westphalians.<sup>76</sup>

## Agreement with Belgium on benefits for miners

Belgium was another country that held a great attraction among Polish emigrants in the interwar period. Under the Polish-Belgian arrangements, the recruitment of workers to Belgian mines and factories began from the early 1920s.<sup>77</sup> The number of Polish workers

70 H. Janowska, *op. cit.*, p. 143.

71 *Zjazdy...*, *op. cit.*, p. 15; Archive of New Files, Embassy of the Republic of Poland in Berlin, file No. 1194, ff. 8, 10.

72 *Zjazdy...*, *op. cit.*, pp. 105–106.

73 A. Jarosz-Nojszewska, *Problem ubezpieczeń...*, *op. cit.*, p. 417.

74 Central Archives of Modern Records, Ministry of Foreign Affairs, file No. 11574, f. 2.

75 H. Horowitz, S. Fischlowitz, *op. cit.*, p. 130.

76 *Zjazdy...*, *op. cit.*, pp. 297–298, 387.

77 A. Gucka, *Obraz emigracji polskiej na łamach "Dziennika Poznańskiego" (1859–1939) i "Kurierza Poznańskiego" (1872–1939)*, Warszawa 2005, p. 225.

in Belgium was growing rapidly. According to the Belgian census, there were 50,626 Polish citizens in Belgium in 1930.<sup>78</sup>

In order to provide Polish workers in Belgium with social insurance rights, the Polish side prepared a draft convention in the autumn of 1929. It proposed to introduce the most-favoured-nation clause, which would introduce full equality between the workers of both countries in terms of working conditions, pay, labour protection, care and social insurance.<sup>79</sup> However, the Belgian government decided to postpone negotiations on the social insurance convention. It only agreed to regulate with Poland the old-age pension insurance of miners. Negotiations on this matter began in May 1931. After two sessions of talks, the convention was signed on 7 November 1931.<sup>80</sup>

Similarly to the Polish-French convention of 1929, the convention with Belgium was based on two main assumptions: the equalisation of the rights of citizens from both countries in terms of mining insurance with regard to retirement and incapacity for work or death, and the aggregation of two insurance periods to assess the benefits accrued and to calculate the qualifying period if the persons concerned had been employed in mining in both countries.<sup>81</sup> As in the case of the Polish-French convention, ratification of the convention with Belgium was also postponed, and in 1937 it occurred that Belgium wanted to adapt it to its social insurance legislation as amended in the while.<sup>82</sup> In the same year, the Belgian side proposed to replace the convention signed in 1931, which had not yet entered into force, with a new agreement, which would follow the model of the agreements (the General Convention and the Mining Agreement) signed by Belgium with France.<sup>83</sup> At the request of the Belgian side, work was undertaken to prepare such an agreement,<sup>84</sup> however, it was not possible to finalise its signing before the outbreak of war.

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## The International Labour Organisation in view of the problem of migrants pension rights

The regulation of the most pressing issues in the field of labour law and social insurance in the international dimension was dealt with by the International Labour Organisation, established in 1919. Poland was one of the ILO founders, and at the same time one of its more active members, intensively striving to regulate matters concerning the

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78 W. Eder, *Polonia belgijska. Skład społeczno-zawodowy, jego przemiany i skutki przemian*, "Przegląd Polonijny" 1979, No. 3, pp. 58–59.

79 F.Go., *Projekt konwencji polsko-belgijskiej, dotyczącej emigracji i imigracji*, "Praca i Opieka Społeczna" 1929, No. 4, p. 395; St.F., *Pierwsza umowa społeczna między Polską a Belgią*, "Praca i Opieka Społeczna" 1931, No. 4, p. 457.

80 National Archives in Katowice, Spółka Bracka in Tarnowskie Góry, file No. 80, ff. 23, 37, 38; St.F., *Pierwsza umowa...*, *op. cit.*, p. 458.

81 H.S., *Polsko-belgijska umowa o ubezpieczeniu społecznem*, "Przegląd Ubezpieczeń Społecznych" 1931, No. 11, p. 345.

82 National Archives in Katowice, Spółka Bracka in Tarnowskie Góry, file No. 81, f. 2.

83 *Ibid*, file No. 81, f. 9.

84 *Ibid*, file No. 81, f. 60.

protection of migrants rights to social insurance, especially long-term pension insurance. During the first twenty International Labour Conferences, much attention was paid to the regulation of particular branches of social insurance. From its inception, the ILO also dealt with issues of the proper safeguarding the migrants rights.<sup>85</sup> In the field of pension insurance, the ILO initially planned to address three issues: firstly, the legal discrimination of foreign citizens compared to one's own citizens in determining rights to benefits and the paying out of the benefits, secondly, the non-payment of benefits abroad and thirdly, the disadvantaged situation when maintaining the already acquired rights of people moving from the old-age pension insurance system of one country to the old-age pension insurance of another.<sup>86</sup>

The most difficult issues in the field of invalidity, old age and death insurance were regulated by the 1933 ILO conventions,<sup>87</sup> which, on some points, fully equated all foreign nationals (not only those of the States ratifying the convention) with one's own nationals. States ratifying the convention were only allowed to impose restrictions on immigrants in the case of supplements to pensions paid out of public funds.

In 1932, after lengthy administrative preparations, the International Labour Conference addressed the issue of the maintenance of migrants' rights within old-age pension insurance. Thanks to the intensive efforts of the Polish delegation (the speaker on this issue was, among others S. Fischlowitz), the work was completed in 1935, during the 19th International Labour Conference, by adopting a draft convention on the maintenance of migrants pension rights.<sup>88</sup>

The 1935 convention resolved the issue of maintaining rights acquired in several countries, allowing for the aggregation of insurance periods completed in different countries. According to this convention, periods completed in one country were to be totalised for the purpose of the so-called qualifying periods, for the recovery of rights, for the right to enter into voluntary insurance. Assimilated periods could also be reckoned for the purpose of totalisation, which made it possible to maintain the rights to benefits within the letter of the legislation under which they have been completed. The calculation of benefits was to be carried out in accordance with the rules of the internal legislation of each State, but with the proviso that the benefits were to be reduced proportionately according to the duration of the insurance period completed in that State in relation to the whole insurance period. The convention provided that if all the benefit elements in

85 H. Horowitz, S. Fischlowitz, *op. cit.*, p. 46.

86 *Ibid.*, p. 54.

87 In 1933, the 17th session of the International Labour Conference adopted six conventions on insurance, two of which concerned old age pension insurance (Conventions 35 and 36), the International Labour Organisation/Bureau International Du Travail, Conference Sessions: 1919–1945, <http://www.indiana.edu/~league/iloconfsessions.htm> (online access: 6.8.2019).

88 Central Archives of Modern Records, Ministry of Social Welfare [Archiwum Akt Nowych, Ministerstwo Opieki Społecznej], file No. 63, f. 2.; Maintenance of Migrants Pension Rights Convention, adopted in Geneva on 22 June 1935 (Journal of Laws of 1939 No. 21, item 134); H. Horowitz, S. Fischlowitz, *op. cit.*, p. 2; W. Luchowski, *Prawa emigrantów w zakresie ubezpieczeń społecznych*, Warszawa 1951, p. 25; M. Jastrzębowski, *XIX sesja Międzynarodowej Konferencji Pracy*, "Przegląd Gospodarczy" 1935, Issue 14, pp. 469–470.



total were lower than the benefit which would be available to the relevant person solely on the basis of the insurance period completed in the State concerned, the institution in question should increase its share of the benefit by that very difference. The payment of benefits beyond national borders was provided for foreigners residing in those countries that have acceded to the convention. The citizens of those States were entitled to benefits regardless of whether they were residing in those States or in States which had not ratified the convention.<sup>89</sup>

Although the 1935 convention was a major step forward, its importance was weakened by the fact that few countries decided to ratify it. By the outbreak of World War II, it had only been ratified by five countries: Poland, Yugoslavia, the Netherlands, Hungary and Spain.<sup>90</sup> With the exception of the Netherlands, these were countries characterised by large emigration. The convention was not to gain the recognition of immigration countries. For Poland, the ratification of the convention by the Netherlands was of great importance because of the large emigration of Poles to this country.<sup>91</sup>

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## Summary

The pro-emigration policy pursued by the Second Polish Republic also determined the directions of Polish foreign policy concerning social issues. By supporting and organising the economic emigration of large numbers of its citizens, Poland had to take steps to provide them with adequate working conditions, including access to social benefits and social insurance benefits. The emergence and spread in European countries of pension insurance systems, in which participation was compulsory for employees, is one of the most important achievements of social policy of the interwar period. However, the lack of communication between the insurance systems of different countries meant that, in the event of any change in the country of residence and employment, migrants lost their rights to benefits. This being particularly true for long-term pension insurance.

Poland's efforts in this matter at the ILO forum brought concrete effects in the form of the adoption in 1935 of an international convention on the maintenance of migrants pension rights. However, the non-ratification of this document by the largest immigration countries caused that the convention did not reflect expectations. In this situation, especially important were the bilateral agreements signed with the countries to which

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89 S. Sasorski, *Międzypaństwowe...*, *op. cit.*, p. 22.

90 Government Declaration of 18 March 1939 on the registration by the Secretariat of the League of Nations of the instruments of ratification by Poland and other States of the draft Convention of 22 June 1935 on the Maintenance of Migrants Pension Rights (Journal of Laws No. 21, item 135); Act of 8 January 1938 on the ratification of the draft Convention of 22 June 1935 on the Maintenance of Migrants Pension Rights (Journal of Laws No. 3, item 14); Ratifications of C048 – Maintenance of Migrants Pension Rights Convention, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300\\_INSTRUMENT\\_ID:312193](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312193) (online access: 6.8.2019).

91 J. Leska-Ślęzak, *Polacy w Holandii. Przeszłość i terażniejszość*, Toruń 2003, pp. 101, 104–105.



Polish economic emigration was directed or where large Polish communities had earlier existed. As early as the beginning of the 1920s, Poland took appropriate actions to sign agreements with France, Germany, Belgium and the Free City of Danzig. Long-lasting negotiations usually ended with the signing of agreements satisfactory for Poland, but for various reasons (economic or political) it was not always possible to achieve their ratification. This text constitutes an introduction to further research. The issue of securing pension rights for emigrants in historical terms requires further, more detailed research, both from the point of view of social history and the history of law.

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## Uprawnienia emerytalne polskich emigrantów i reemigrantów w Drugiej Rzeczypospolitej

Artykuł w syntetyczny sposób przedstawia polską politykę w zakresie zabezpieczenia uprawnień emerytalnych polskim emigrantom, którzy w okresie międzywojennym podjęli pracę zarobkową w krajach europejskich. Status Polski jako kraju emigracyjnego utrudniał zawieranie umów w zakresie ubezpieczeń emerytalnych pomimo szeroko zakrojonych działań polskich władz w tym zakresie. Sytuację dodatkowo komplikował fakt, że duże skupiska polonijne znajdowały się na terenie państw (jak Niemcy, Wolne Miasto Gdańsk), z którymi Polska miała znaczne kłopoty dotyczące rozliczeń związanych z zobowiązaniami z zakresu ubezpieczeń społecznych sprzed 1918 r. W wyniku wieloletnich starań udało się podpisać umowy obejmujące także ubezpieczenia emerytalne z Francją, Niemcami, Belgią i Wolnym Miastem. Nie wszystkie jednak doczekały się ratyfikacji. Polityka prowadzona na arenie Międzynarodowej Organizacji Pracy [International Labour Organisation, ILO] zakończyła się połowicznym sukcesem. Choć dzięki zaangażowaniu polskiej delegacji udało się przygotować i uchwalić w 1935 r. konwencję o ochronie uprawnień emerytalnych emigrantów, to znikoma liczba państw ratyfikujących konwencję spowodowała, że nie odegrała ona większego znaczenia.

**Słowa kluczowe:** ubezpieczenia społeczne, ubezpieczenia emerytalne, polityka społeczna, polityka emigracyjna, Druga Rzeczpospolita

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# The situation of the Social Insurance Institution under German occupation during World War II

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The aim of this paper is to introduce the reader to the history of the Social Insurance Institution [Zakład Ubezpieczeń Społecznych, ZUS] during World War II. Archival materials found in the Historical Committee of the Social Insurance Institution's Provisional Council [Komisja Historyczna Tymczasowej Rady Zakładu Ubezpieczeń Społecznych], constituting one of the divisions of the Polish Central Archives of Modern Records [Archiwum Akt Nowych], proved to be a most valuable source of information. The available archival documents show that after the German army had invaded the territory of Poland, ZUS units from the areas incorporated into the Reich were in a particularly difficult situation. All their movable and immovable property was confiscated on behalf of German insurance institutions. ZUS units from the area of the General Government [Generalne Gubernatorstwo] were in a better situation – the Germans allowed them to continue their activities, of course, on the condition of full compliance with the occupier's regulations. Unfortunately, the credit and financial regulations introduced by the German administration within the territory of the General Government resulted in the freezing of the capital assets of social insurance institutions for the whole period of the occupation, which completely deprived them of the right to draw any income from their property.

**Key words:** General Government, social insurance, Social Insurance Institution (ZUS), World War II

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# Introduction

The history of the Social Insurance Institution [Zakład Ubezpieczeń Społecznych, ZUS] during World War II has yet to be studied in depth.<sup>1</sup> The aim of this paper is to partly fill this gap. It is largely possible thanks to the archival collection of the Historical Committee of the Social Insurance Institution's Provisional Council [Komisja Historyczna Tymczasowej Rady Zakładu Ubezpieczeń Społecznych], constituting one of the divisions of the Central Archives of Modern Records [Archiwum Akt Nowych]. The author's intention is to publish a series of texts acquainting the reader with this period in ZUS activities, with the present paper inaugurating the series.

Institutions responsible for social insurance at the outbreak of World War II included those which operated on the basis of the Act on social insurance and the Regulation on social insurance of white-collar workers and on the basis of acts regulating separately certain types of social insurance in the western parts of Poland.<sup>2</sup>

These were the following:

1. In the area of sickness and maternity insurance – social insurance companies [*ubezpieczalnie społeczne*] and sickness funds [*kasy chorych*] of Upper Silesia.
2. In the area of pension insurance (in the case of invalidity, old age and death) – the Social Insurance Institution, the Invalidity Insurance Institution [Zakład Ubezpieczenia na Wypadek Inwalidztwa] in Chorzów, the National Insurance Company [Ubezpieczalnia Krajowa] in Poznań – from 30 August 1938 in liquidation and subsequently taken over by ZUS, the Pension Fund for State Railway Workers

<sup>1</sup> Only a few publications deal with social insurance issues during World War II: T. Bober, *Sytuacja finansowo-majątkowa ubezpieczeń społecznych w okresie okupacji*, "Studia i Materiały z Historii Ubezpieczeń Społecznych w Polsce" 1986, Issue 4, pp. 111–156; P. Grata, *Czas przełomu. Polska polityka społeczna w latach 1944–1950*, Rzeszów 2018, pp. 255–256; K. Kąkol, *Ubezpieczenia społeczne w Polsce*, Warszawa 1950, pp. 111–128; *Sprawozdanie instytucji ubezpieczeń społecznych w okresie okupacji (przedstawione na pierwszym posiedzeniu Tymczasowej Rady Zakładu Ubezpieczeń Społecznych w dniu 5 lipca 1946 r.)*, "Studia i Materiały z Historii Ubezpieczeń Społecznych w Polsce" 1985, Issue 3, pp. 116–134; H. Szurgacz, *Ubezpieczenia społeczne w latach okupacji hitlerowskiej 1939–1945* [in:] *Rozwój ubezpieczeń w Polsce*, Warszawa 1991, pp. 175–209; T. Wasylecki, *Stan prawny i organizacyjny w dziedzinie ubezpieczeń społecznych w okresie okupacji*, "Studia i Materiały z Historii Ubezpieczeń Społecznych w Polsce" 1985, Issue 3, pp. 136–170.

<sup>2</sup> For more information on social insurance in the interwar period, see: K. Chylak, *Ubezpieczenia społeczne i zaopatrzenia emerytalne w II Rzeczypospolitej*, Warszawa 2017; Z. Daszyńska-Golińska, *Polityka społeczna*, Warszawa 1933; T. Dyboski, *Ubezpieczenia społeczne w Polsce w ostatnich latach. Podstawy ustawodawcze i organizacja*, Warszawa 1939; P. Grata, *Polityka społeczna Drugiej Rzeczypospolitej. Uwarunkowania – instytucje – działania*, Rzeszów 2013; *idem*, *Social privileges in the Second Polish Republic*, "Studia Historiae Oeconomicae" 2015, Vol. 33; *idem*, *Social security in the politics of the Polish state in the years 1918–1939*, "Visnyk of the Lviv University. Series International Relations" 2017, Issue 41; *idem*, *The system of social care in the Second Polish Republic*, "Charity, Philanthropy and Social Work" 2014, No. 1; A. Jarosz-Nojszewska, *Ubezpieczenia robotnicze w Polsce w latach 1918–1939* [in:] *Od kwestii robotniczej do nowoczesnej kwestii socjalnej. Studia z polskiej polityki społecznej XX i XXI wieku*, Vol. I, ed. P. Grata, Rzeszów 2013; *eadem*, *Ubezpieczenia społeczne na Górnym Śląsku w latach 1922–1939* [in:] *Od kwestii robotniczej do nowoczesnej kwestii socjalnej. Studia z polskiej polityki społecznej XX i XXI wieku*, Vol. IV, ed. P. Grata, Rzeszów 2016; *eadem*, *Ubezpieczenie od bezrobocia w Drugiej Rzeczypospolitej* [in:] *Ekonomia – społeczeństwo – polityka. Studia ofiarowane prof. dr. hab. Januszowi Kalińskiemu w 70. rocznicę urodzin*, ed. A. Zawistowski, Warszawa 2012; *eadem*, *Ustawa scaleniowa 1933. Próba ujednoczenia ubezpieczeń społecznych w II RP* [in:] *Między zacofaniem a modernizacją. Społeczno-gospodarcze problemy ziem polskich na przełomie wieków*, ed. E. Kościak, T. Głowiński, Wrocław 2009.

[Kasa Emerytalna dla Robotników Kolei Państwowych] of the former Prussian district in Poznan, Branch A.

3. As regards additional pension insurance for miners and railwaymen – the Pension Fund of the Fraternal Company [Kasa Pensyjna Spółki Brackiej] in Tarnowskie Góry, the Pension Fund of the Pszczyna Mining Brotherhood [Kasa Pensyjna Pszczyńskiego Bractwa Górniczego] in Katowice, the Old-Age Pension Fund for State Railways Workers [Kasa Emerytalna dla Robotników Kolei Państwowych] of the former Prussian district in Poznan Branch B, the Miners Fraternal Fund [Kasa Bratnia Górników] in Poznan.

Social insurance companies were responsible for the administration and collection of insurance contributions for all types of insurance: sickness, accident, pension and unemployment insurance. After the repartition of contributions, the social insurance companies kept the sickness insurance contributions, while the remaining ones were transferred to the Headquarters of the Social Insurance Institution. The award and payment of pensions and cash benefits was the responsibility of ZUS, which did this partly through the Headquarters and partly through its regional branches.

The flow of money within the activities described was directed through ZUS current accounts in state-owned banks, in Post Office Savings Bank [Pocztowa Kasa Oszczędności] and in municipal credit institutions. The Social Insurance Institution transferred any surplus liquid assets to fixed-term accounts in state banks [Bank Gospodarstwa Krajowego, BGK; Państwowy Bank Rolny, PBR], or made deposits of various types and to various extents. Only cash constituting a cash reserve was left in current accounts, which, in accordance with cash-flow policy, secured ZUS's on-going operations.

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## Preparations for the war

In the last weeks before World War II, neither the State authorities nor the Social Insurance Institution issued regulations providing for the organisation of insurance in the event of the outbreak of war, including proceedings in financial and property matters. Only in the last days of August 1939 did ZUS Headquarters send evacuation orders in the event of a “temporary occupation of the area by the enemy”. But it was too late. The orders did not reach many towns, especially those in the western part of Poland. They recommended that before any expected occupation by the enemy of an insurance facility, the administrative staff should be withdrawn. Only a few could remain on the premises under the direction of a senior employee, one not previously involved in anti-German agitation. All office valuables, sanitary and medical equipment were to be evacuated by the relevant military command. However, assets and documents were to be sent directly to ZUS Headquarters. The ZUS management incorrectly assumed that the occupier would respect its role as defined in international law. Therefore, the functions of the Headquarters in relation to the social insurance companies and local

ZUS facilities (sanatoriums, local administration and management of real estate and medical facilities) in terms of reporting and financial settlements for their regions were to be taken over by the ZUS branches in Poznan and Chorzow.<sup>3</sup>

In the event of a temporary occupation of the area by the enemy, ZUS Headquarters, like any other public institutions, bank or credit institution, weighed up the feasibility for the evacuation of movable assets, especially cash, securities and treasury bills. As far as securities are concerned, for which inventory books were kept, this involved the need to organise the transportation of hundreds of volumes. Consequently there was no sense for Headquarters to evacuate such assets. The State had a whole range of measures at its disposal to sufficiently safeguard the interests of institutions issuing securities<sup>4</sup> as well as holders of securities, including their destruction, without the need to engage such a large transport to evacuate them (which, after all, could be put to more important use at a time of invasion). Unfortunately, the decision was ultimately taken to transport these assets, something which only intensified the chaos on road and rail.<sup>5</sup>

A major obstacle for social insurance institutions in carrying out the evacuation in an efficient way was certainly the lack of prior preparation for such a situation. Besides, they did not have adequate means of transport. Moreover, in a way similar to other legal and public institutions, no action was taken to select from among employees teams responsible for evacuation. It was not difficult to predict that given war, a significant number of men would be mobilised and current tasks, including the evacuation of documentation, would have to be performed by those unfit for military service, mainly the elderly and women. Unfortunately, the rapid and deep advancement of German troops into Poland exposed the farcicality of evacuation procedures. Due to their fragmentary nature and the lack of coordination with other administration offices and authorities, they simply introduced more chaos than order into proceedings.<sup>6</sup>

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## Evacuation and the first days of the occupation

During the first days of the war, the new part of ZUS Headquarters at Czerniakowska street in Warsaw, commissioned in spring 1939, found itself requisitioned as a hospital, necessitating the transfer of documentation and office equipment to the old part on 1 September. Work to prepare the evacuation of the vault began on 3 September. For this purpose, convoy groups formed internally were armed and instructed; attempts followed to burn securities in the

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<sup>3</sup> T. Bober, *op. cit.*, pp. 118–120; Central Archives of Modern Records [Archiwum Akt Nowych, hereinafter – AAN], Historical Committee of the Social Insurance Institution's Provisional Council [Komisja Historyczna Tymczasowej Rady Zakładu Ubezpieczeń Społecznych, hereinafter – Komisja Historyczna], file No. 12, pp. 269–270.

<sup>4</sup> The following were the issuers of securities: the State Treasury [Skarb Państwa], financial institutions, enterprises and local government institutions.

<sup>5</sup> *Ibid.*

<sup>6</sup> T. Bober, *op. cit.*, pp. 118–120; AAN, Komisja Historyczna, file No. 12, pp. 270–271.



stoves of the central heating system. This was done in the presence of a notary public, who prepared the certified specifications including the type and numbering of securities. This did not bring the desired outcome for paper packets burned slowly and badly, so the undertaking was stopped. A trusted team of Finance and Property Department employees packed the securities into a total of 60 boxes, each weighing about 250 kg. The first shipment of these boxes took place already in the evening of 3 September. The transport of two trucks, one passenger car and one motorcycle went to Lublin. After a change in orders regarding the final destination, the convoy headed to the Social Insurance Company in Łuck. After the Soviet Union had invaded Poland, the transport was seized by the occupying Soviet authorities. The second transport, given the risk of capture by the Soviet army, was burnt on its way to Łuck. The third, and largest, was taken abroad. On the Polish-Hungarian border, the 8th Hungarian Army corps took the transport to be war spoils: the assets that made it out of Poland, accompanied by Hungarian military authorities, were deposited at the Hungarian National Bank in Budapest on 28 September 1939.<sup>7</sup>

In discussing the evacuation of ZUS securities, one should add that the securities issued by Bank Gospodarstwa Krajowego, to the amount of 1/3 of all the securities issued by the Bank, deposited by ZUS in the bank's vaults, were taken by BGK to Równe. Following the Soviet annexation of these areas, the assets were taken, post 17th September, by the Soviet authorities, while the securities issued by Państwowy Bank Rolny, deposited by ZUS in the PBR vault, were not moved and were to remain in Warsaw for the duration of the German occupation.<sup>8</sup>

The order to evacuate ZUS Headquarters was issued on the night of 4–5 September. On the morning of the fifth, ZUS staff left by train in the direction of Włodawa. As a result of the rapidly advancing German forces, plans were changed, and Headquarter staff headed for Lublin and from there to the village of Podchajce between Łuck and Dubno. After the ZUS chief director and commissioner had left Podchajce and gone abroad, other employees returned to Warsaw in late November and early December 1939. At ZUS headquarters installed was already a German commissioner and his deputy, who took over full power in ZUS at the end of October. Those ZUS employees who had remained in Warsaw, actively participated in the defence of Warsaw.<sup>9</sup>

## The beginning of the occupation

On the day of war broke out, social insurance institutions had the means to conduct their activities. The money was in their own cash registers and in current accounts in banks. The Social Insurance Institution, including its Headquarters and regional branches, had

7 M. Lewandowska, *Rzeczpospolita Ubezpieczonych. Historia ubezpieczeń społecznych w Polsce*, Warszawa 2017, p. 31; AAN, Komisja Historyczna, file No. 12, pp. 272–273.

8 M. Lewandowska, *Rzeczpospolita...*, *op. cit.*, p. 32; AAN, Komisja Historyczna, file No. 12, pp. 273–274.

9 T. Bober, *op. cit.*, pp. 120–121; AAN, Komisja Historyczna, file No. 12, pp. 264–275.

440,691 zloty in their own cash registers, 12,982,656 zloty in current accounts with credit institutions, and in capital in fixed term accounts: with a notice of up to 1 year – 9,068,714 zloty, with a notice of over 1 year – 146,188,902 zloty, in arrears and current interest on deposits – 1,576,995 zloty. Regarding social insurance companies, and here based on incomplete source materials, it was established that their liquid assets in their own cash registers and on accounts with credit institutions were estimated at around 12 million zloty.<sup>10</sup>

ZUS hoped that in the event of any problems with the inflow of national insurance contributions it would be able to realise fixed term security deposits through banks and pawnshops. In the case of financial problems, the social insurance companies could count on loans from the Social Insurance Institution. Settlements under the loan agreements were to be ensured by the Ordinance of the President of the Republic of Poland of 3 September 1939, suspending the Polish zloty's gold clause for the duration of martial law while settling liabilities whose payment dates fell during the war.<sup>11</sup>

The outbreak of World War II interrupted ZUS investment activities. At that time being built were: outpatient clinics in the Central Industrial District [Centralny Okręg Przemysłowy], tuberculosis sanatoriums in Bystra Śląska (the main pavilion), Nowojelnia near Nowogródek and Kruk near Gostyno; residential homes in Warsaw, Gdynia, Łuck, Starachowice, a hospital in Stalowa Wola. As of 1 September 1939, real estate to the value of 30 million zloty was under construction, which constituted 21% of the value of the finished premises owned by ZUS.<sup>12</sup>

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## ZUS situation in the General Government

Immediately after invading the territories of Poland, the Germans issued a number of orders concerning the administrative organisation of the occupied territories. Based on the *Erlass des Führers* of 25 September 1939, those territories passed under the military administration of a commander-in-chief of the eastern area. Then, as early as 12 October 1939, an order: *Der Führererlass über Verwaltung der besetzten polnischen Gebiete* was issued, coming into force two weeks later.<sup>13</sup> According to this document, the Free City of Danzig and the western areas of Poland were incorporated into the Reich as the Reichsgaue Danzig West Preussen, Wartheland and Ostoberschlesien, and the area of Suwałki and Ciechanów as the Ostpreussen. The remaining areas of Poland occupied by German military units were subordinated to the Governor-General for the occupied Polish territories. From August 1940, these areas were called Generalgouvernement, omitting the phrase “for the occupied Polish territories”, in terms of their legal status they were described by Hitler as “Vorplatz des Reiches” and by Hans Frank the Governor-General as “Nebenland des Reiches”.

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<sup>10</sup> AAN, Komisja Historyczna, file No. 12, p. 261.

<sup>11</sup> AAN, Komisja Historyczna, file No. 12, pp. 267–268.

<sup>12</sup> T. Bober, *op. cit.*, pp. 118–120; AAN, Komisja Historyczna, file No. 12, pp. 268–269.

<sup>13</sup> Reichsgesetzblatt 1939, part I, p. 2077.

In the first weeks of the German occupation, in the territory of the General Government [Generalne Gubernatorstwo, GG], the German administration's financial and property orders were of key importance for the liquidity of the ZUS's working assets and those of other social insurance companies. Their main purpose being the control of the money circulation and the credit market within the GG area, which aimed to subordinate the economic life of the occupied territories to the interests of the Reich as closely as possible. At the very beginning, the occupying authorities blocked bank accounts and divided the assets in banking and credit institutions into "old" and "new" business. The "old business" related to banking operations that had taken place up until the outbreak of World War II, *i.e.*, until 1 September 1939, while the "new business" – operations carried out already within the GG under the auspices of the German occupying authorities. The separateness of these assets meant that liabilities could only be covered through the realisation of the assets from "old business".<sup>14</sup> Initially, the issuing institution on the territory of the GG was played by the German Credit Bank [German: Reichskreditkasse, Polish: Niemiecka Kasa Kredytowa], which at the beginning of 1940s stamped Bank of Poland 100 zloty banknotes (in a limited quantity for a single supplier) in order to stop their inflow from outside the General Government. Because the occupation regulation of 15 November 1939, maintained the Polish zloty as a legal tender with its relation to the German mark (RM) set at – 0.5, it was not until 8 April 1940 that Governor-General Hans Frank established the Bank of Issue in Poland [German: Emissionsbank in Polen, Polish: Bank Emisyjny], which issued its own banknotes, popularly known as *młynarki*, from the name of the bank's director Feliks Młynarski. Only then the pre-war Polish banknotes were exchanged, and again only in limited amounts.<sup>15</sup>

The above mentioned orders of the German administration dating from the beginning of the occupation deprived ZUS and the social insurance companies of its realisable assets. At that time, these institutions only had cash at their disposal, and here in very modest amounts. Given that insurance contributions were gradually being paid (initially only slowly), social insurance companies slowly started to put into operation a medical and administrative apparatus and to resume their activities.<sup>16</sup>

ZUS was in a difficult financial situation. Its cash reserves in banks had been frozen. It also could not count on any quick inflow from the social insurance companies in respect of contribution distribution. This forced ZUS to take out a loan of 7 million zloty with the German Credit Bank. Getting such a loan was not easy. After several weeks of negotiations, the German Credit Bank agreed to a loan under certain conditions. It was necessary for ZUS to: secure the loan under a promissory note, an underwriting of the loan by a guarantee issued through a consortium of five pre-war

14 M. Lewandowska, *Rzeczpospolita...*, *op. cit.*, p. 35; for more information on banking and credit regulations in the General Government see: M. Klusek, *Państwowy Bank Rolny w latach 1919–1949. Studium historyczno-prawne*, Warszawa 2013, pp. 117–151.

15 For more information on the activity of the German Credit Bank and the Bank of Issue in Poland, see: F. Skalniak, *Bank Emisyjny w Polsce 1919–1945*, Warszawa 1966.

16 AAN, Komisja Historyczna, file No. 12, p. 277.

banks of Warsaw, as well as the mortgage-based security of ZUS real estate in Warsaw at each behest the German Credit Bank. Thanks to the loan, ZUS was able to start the disbursement of pensions in December 1939. Of course, this was immediately used by the Germans for propaganda purposes. Pension payments were preceded by public announcements on city walls, with the *Warschauer Machthaber* informing of the alleged “foot-dragging and wastage” of ZUS assets, of the enormous difficulties overcome by the German management of ZUS to acquire these 7 million zloty, and of the caring Reich in ensuring benefit payments for “citizens betrayed”. Of course this was not true. Furthermore, the payments made were in fact only allowances, not pension benefits – after several months and with encroaching inflation their value became merely symbolic.<sup>17</sup>

Regulations introduced by the Reich in the GG during the occupation and governing the pre-war obligations, were particularly unfavourable for social insurance institutions. At the outbreak of war, almost all their liquid assets were in fixed-term or current accounts at numerous credit institutions. As a result of these regulations, social insurance institutions were unable to realise assets of this type not only at the beginning of the occupation, but for its entire duration, with but one exception.<sup>18</sup>

Pursuant to the economic agreement concluded between Poland and Germany in 1938, Poland was to receive machinery for industry in return for grain exported to Germany. Due to the foreign exchange restrictions in both countries and different dates of mutual deliveries, settlements were to be made by the Polish Clearing Institute [Polski Instytut Rozrachunkowy, PIR] in Warsaw on the one hand, and by Deutsche Verrechnungskasse in Berlin on the other. The condition of the agreement was that the Polish side should credit the German side in due time, as the delivery of German machine tools was to occur only after the lapsing of a certain period of time of Polish grain exporting to Germany. BGK covered the receivables of Polish grain exporters against the debt on the German side. BGK received a deposit for this purpose from ZUS for the total amount of 20 million zloty. ZUS did not know officially the intended purpose of the deposit, and it was placed with BGK under its sole jurisdiction and risk as one of many special deposits destined “for economic purposes”.<sup>19</sup> After receipt of the grain, the German side was unable to deliver the machine tools to Poland as a result of the outbreak of war. As the Deutsche Verrechnungskasse had already credited Poland with 20 million zloty, paid in 1940 by German importers for the grain received, the German side decided to return the 20 million zloty instead of sending the machine tools themselves. Despite ZUS protests, BGK accepted such a solution, with the losses that had been incurred as a result of this transaction, relating to exchange rate difference and interest rates, were transferred to the holder of the deposit, *i.e.*, ZUS (despite the fact that the deposit was made by ZUS with

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17 K. Kąkol, *op. cit.*, p. 118; M. Lewandowska, *Rzeczpospolita...*, *op. cit.*, p. 36; T. Bober, *op. cit.*, pp. 120–123; AAN, Komisja Historyczna, file No. 12, p. 280.

18 T. Bober, *op. cit.*, p. 124; AAN, Komisja Historyczna, file No. 12, p. 280.

19 T. Bober, *op. cit.*, pp. 124–125; AAN, Komisja Historyczna, file No. 12, pp. 280–281.

full responsibility and risk falling to BGK for its capital and interest rate). According to ZUS calculations, for its 20 million zloty deposit, ZUS received frozen PIR accounts in Warsaw banks and 11 million zloty in a new (forced) deposit account with BGK.<sup>20</sup>

It is now difficult to determine what made the Germans decide to pay for the imported grain, given that according to them the Polish State had ceased to exist. However, one should agree with the opinion of Tomasz Bober,<sup>21</sup> an expert on the social insurance situation in GG, that:

In any case, the finalisation of this transaction in the then reality of Polish life under occupation gave the impression of a macabre grotesque when comparing on the one side the attitude and methods of the victor, and on the other the “good manners” of German merchants.<sup>22</sup>

The orders of the German occupier, regulating credit and financial issues in the General Government, resulted in a complete and continued freezing of the capital assets of social insurance institutions throughout the period of occupation. Particularly painful were the following: the limited exchange of Polish banknotes for the occupation zloty, division of assets in banks into “old” and “new” interests, the immobilisation of bank accounts, abolition of interest on frozen deposits, confiscation of a large number of loan assets by taking over the property from pre-war debtors by way of confiscation, a ban on servicing loans taken out by municipalities or cost ineffectiveness of investment in real estate.<sup>23</sup>

The freezing of assets of social insurance institutions excluded both the possibility of their realisation and completely deprived them of any income from their assets. The deprivation of income, which to a large extent served to cover statutory benefits, was particularly painful. In 1938, this constituted 20%, with 34% in the area of pension and accident insurance. This turn of events was particularly unfavourable for the Social Insurance Institution. Other insurance companies, those handling short-term benefits, had no surpluses that could be invested in the form of securities, rental properties or loans.<sup>24</sup>

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## The social insurance situation in those territories incorporated into the Reich

The situation of social insurance institutions in those areas incorporated into the Reich was much worse. After the annexing of these areas, the Germans established a trust institution called Haupttreuhandstelle Ost [English: Central Trust Office East, Polish:

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20 T. Bober, *op. cit.*, pp. 124–125; AAN, Komisja Historyczna, file No. 12, pp. 281–282.

21 Tomasz Bober (1900–1979) – long-serving director of the ZUS Finance and Property Department.

22 AAN, Komisja Historyczna, file No. 12, p. 283.

23 AAN, Komisja Historyczna, file No. 12, pp. 285–286.

24 *Ibid.*

Główny Urząd Powierniczy Wschód], based in Berlin. On the basis of the powers conferred on it by the German authorities, the Central Trust Office issued a number of executive orders, *inter alia* on the treatment of real estate within the annexed territories (the seizure of Polish property), on the satisfaction of claims by companies under receivership, *etc.* The liquidation of debts and Polish property receivables was regulated by the Debt Order of 15 August 1941.<sup>25</sup> According to this order, any mortgages, pecuniary claims, or pledges due to Poland, Polish local government entities and municipalities as well as other publically legal Polish entities, were amortized on the condition the debtors' assets had been seized [*beschlagtnahmt*].<sup>26</sup>

This regulation was to become basis for the redemption of debts from insurance contributions and from mortgages on the assets of debtors from areas incorporated into the Reich. The regulation also provided for the redemption of claims against municipalities and local government associations and other former public law entities. As a result, loans granted by ZUS, or by ZUS from the merged insurance institutions as well as by the Invalidity Insurance Institution in Chorzow were cancelled and subject to removal from mortgages.<sup>27</sup>

Polish social insurance institutions in those territories incorporated into the Reich were replaced by the relevant German insurance institutions, in which only a few Polish officials found employment. It should be noted that these officials delayed (or sabotaged) the removal of Polish legal acts from mortgages. For example, it is worth mentioning that out of the total number of loans granted by the ZUS Branch in Chorzow and taken over during the occupation by the Reichsversicherungsanstalt für Angestellte in Berlin, to the amount of 19.7 million zloty, including 16.8 million zloty granted to social insurance companies, the Silesian Treasury [Skarb Śląski] and charitable, social and local government institutions, only about 7 million zloty was deleted from mortgages.<sup>28</sup>

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## Division of ZUS assets between the Reich and the General Government

Given the war division of the Polish lands by Germany into areas annexed to the Reich and those of the General Government, attempts were made to divide social insurance assets. It should be recalled that ZUS branches, which were located in areas annexed to the Reich, were incorporated into the organisation of the relevant German institutions with their movable and immovable property becoming the property of the occupier. That said, the most important assets of the Social Insurance Institution, *i.e.*, securities,

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25 Reichsgesetzblatt 1941, part I, p. 516.

26 M. Klusek, *op. cit.*, pp. 99–106.

27 K. Kałol, *op. cit.*, p. 117; AAN, Komisja Historyczna, file No. 12, p. 288.

28 M. Lewandowska, *Rzeczpospolita...*, *op. cit.*, pp. 32–33; AAN, Komisja Historyczna, file No. 12, p. 288.

remained in the possession of ZUS in Warsaw. Taking into account the fact that the division of assets is determined by the seat of the institution, such a solution was, according to ZUS, correct. Unfortunately such an argumentation was not to convince the German authorities. Similarly, the Germans did not agree to apply the principle of any ZUS assets division according to the current place of residence of the insured party. This was very important for the Social Insurance Institution from the GG area. A significant part of the Polish population from lands annexed to the Reich was displaced to the GG, so the principle of distributing capital assets according to the capital coverage of the relevant pensions and future claims (expectatives) would be in favour of the social insurance institutions of the General Government.<sup>29</sup>

During the initial months of the German occupation, the Reich authorities postulated that ZUS assets should be divided in equal parts between the Reich and the General Government, justifying this *inter alia* by the need to take into account the actual distribution of the insured during the period before the outbreak of World War II. Negotiations on the division of ZUS assets between the German management of ZUS in Warsaw, and later also the GG government, with the Reich Ministry of Labour were conducted throughout the occupation. Representatives of the Reich Ministry of Labour used, among other things, statistical data, which were to provide conclusive arguments for the division of assets in the way proposed by them already at the beginning of the negotiations, *i.e.*, in equal parts – *i.e.*, 700 million zloty for each side.<sup>30</sup>

The Polish management of ZUS disagreed with the German arguments. A study submitted to the German management of ZUS indicated that the areas incorporated into the Reich constituted in Polish insurance the “older” insurance area. The insurance contribution introduced for the central, southern and eastern areas of Poland could be lower than the accepted one. It was unified at a higher level for all areas, in order to cover the deficit of western districts in the “older” insurance. At the outbreak of war, ZUS assets included mainly the surplus from the above mentioned areas, while the share of western areas in creating this surplus had been minimal. The Polish management believed that it was impossible to separate the assets without taking into account the additionally increased contribution of GG’s areas in relation to the western territories.<sup>31</sup>

The Polish ZUS management arguments quoted probably convinced the German side. The Germans agreed that the pool from the division of ZUS assets designed for the Reich should amount to 500 million zloty. The settlement showed that ZUS in Warsaw was to transfer 150 million zloty to the Reich in the form of BGK securities. The amount of ZUS assets located or left behind in the territories annexed to the Reich was lower by such amount than the amount finally determined in the settlement for the German side. This calculation also took into account the anticipated ZUS loss resulting from the division of BGK mortgage bonds, calculated unfavourably for ZUS at only 50% of the nominal

29 T. Bober, *op. cit.*, pp. 128–130; K. Kałkol, *op. cit.*, p. 117; AAN, Komisja Historyczna, file No. 12, pp. 228–290.

30 T. Bober, *op. cit.*, pp. 128–130; AAN, Komisja Historyczna, file No. 12, p. 290.

31 *Ibid.*

value. Such an operation was the result of the confiscation by the Reich of BGK document, *i.e.*, real estate and mortgage deeds in Poznan and Pomerania. As compensation for these expected losses, ZUS was to receive the so-called *Schuldanerkenntung*; still in its possession after the end of World War II. This was an acknowledgement of the GG government debt to ZUS to the amount of 70 million zloty, payable in 1948. However, despite the settlements made, no surplus, *i.e.*, BGK mortgage bonds, were transferred to the Reich. And *Schuldanerkenntung* was to remain the only visible trace of the division of ZUS assets between the General Government and the Reich itself.<sup>32</sup>

## The role and scope of powers of the Polish management of ZUS

As for all public institutions in the GG, the occupying authorities introduced German commissioners to social insurance institutions. After the Germans had announced that the Polish territory (the General Government) was not subject to occupation according to the rules of international law, but was a peculiar creation, governed by the principles of public German law, these commissioners were renamed institution heads [*leiters*].<sup>33</sup>

According to the regulations imposed, representatives of the German administration in Polish institutions had full executive and often legislative power. In social insurance institutions, their power was particularly broad. All kinds of financial operations required not only a German decision, but could only be carried out with the signature of the commissioner, *i.e.*, the *leiter* – even minor bank transfers and cash transaction slips had to be approved by the commissioner.<sup>34</sup>

While the role and scope of authority of those referred to as the Polish management, formally included the responsibility for the internal organisation of social insurance institutions and the submission of applications. In practice, this power proved important, because these persons made decisions on business issues, decisions on employment, promotion, transfer, working and pay conditions. The Polish management became the guardian and advocate of employee in relations with the German occupier.<sup>35</sup>

The competences of the Polish management also included the submitting of applications, something of importance in financial and property matters. Although the German management of ZUS, originating from the Landesversicherungsanstalt Breslau, was competent in insurance matters, they did not have any deeper knowledge in the field of finance and property. Despite the constant mistrust and suspicion towards the staff from Poland, the German superiors expected Polish managers to file applications. These were

32 T. Bober, *op. cit.*, pp. 128–130; K. Kąkol, *op. cit.*, p. 117; AAN, Komisja Historyczna, file No. 12, pp. 291–292.

33 T. Bober, *op. cit.*, p. 131; T. Wasylecki, *op. cit.*, pp. 194–195; M. Lewandowska, *Rzeczpospolita...*, *op. cit.*, p. 32; AAN, Komisja Historyczna, file No. 12, p. 294.

34 T. Bober, *op. cit.*, p. 131; T. Wasylecki, *op. cit.*, pp. 194–195; AAN, Komisja Historyczna, file No. 12, pp. 294–295.

35 *Sprawozdanie...*, *op. cit.*, pp. 118–119.



listened to and in most cases approved. It should be noted that the German management tended to leave no physical traces of decisions taken, willingly replacing paper records with less formalised meetings [*besprechungs*].<sup>36</sup>

## Official supervision of the financial activities of social insurance institutions

The official supervision of social insurance institutions' financial activities in GG concerned both the determination of the mode and scope of operations and the competence of the German heads of these institutions, as well as the professional overseeing of supervisory authorities, *i.e.*, in the districts and in the GG government itself.

The social insurance companies were functionally joint to the Labour Offices [Arbeitsamt]. Heads of the social insurance companies were subordinate to the managing staff of these Arbeitsamt, thus they were subject to the supervision of the Labour Department at the Office of the District Head [Urząd Szefa Dystryktu]. The German administration supervising ZUS activities was mainly interested in the exploitation of the labour force of the insured. Financial issues were not paid much attention to as long as the insurance companies were self-sufficient.<sup>37</sup>

The ZUS branch in Cracow had been taken over by the German authorities earlier than ZUS Headquarters in Warsaw. Because Cracow became the seat of the General Government, the occupier tried to move ZUS Headquarters there as well. This proved impossible for practical reasons. The problem was to provide an adequate number of flats for the Polish staff needed to run insurance agencies. For this reason, there was a long-lasting rivalry between both centres, reflected even in their names: the Central Social Insurance Institution in Cracow [Centralny Zakład Ubezpieczeń Społecznych w Krakowie] and the Main Social Insurance Institution in Warsaw [Główny Zakład Ubezpieczeń Społecznych w Warszawie]. The dispute was to end with Cracow's subordination to Warsaw, but the Cracow branch received a wide range of competences and a large degree of autonomy.<sup>38</sup>

Such an arrangement was of great importance for the financial and property situation of ZUS. Location dictated that the supervision of the Labour Department of the GG government was focused on the Cracow branch. The Headquarters in Warsaw took advantage of the distance from the GG government in Cracow. Although the German *leiter* resided at ZUS Headquarters, the Headquarters made independent decisions on many issues concerning the investment of financial surpluses, although under the Polish Social Insurance Act in force such decisions required the approval of the supervisory authority.<sup>39</sup>

36 AAN, Komisja Historyczna, file No. 12, pp. 295–296.

37 *Sprawozdanie...*, *op. cit.*, pp. 119–120; AAN, Komisja Historyczna, file No. 12, p. 325.

38 T. Wasylecki, *op. cit.*, p. 183; AAN, Komisja Historyczna, file No. 12, p. 326.

39 AAN, Komisja Historyczna, file No. 12, pp. 326–327.

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## Resumption of ZUS service activities and money surplus

ZUS was able to resume its service activities and start paying pension allowances in December 1939 thanks to the aforementioned loan taken out at the German Credit Bank. Under the terms of the loan, the Social Insurance Institution was obliged to return the borrowed money within six months. The proceeds from the realisation of ZUS assets, or the income from these assets, could not guarantee the return of the borrowed amount on time, as was already known at the time the loan was taken out. The quick inflow of funds from current insurance contributions was the only possibility considered for repayment. These inflows were supposed not only to secure the repayment of the loan, but first and foremost to finance ZUS operations, including the payment of any outstanding and current insurance benefits.<sup>40</sup>

Social insurance company activity interrupted as a result of warfare, was gradually restored by the end of 1939, the beginning of 1940; contributions from Polish companies were received without any major difficulties. Dues enforcement during the occupation improved significantly, compared to the period before the war. Contributions assessment and collection apparatus and ZUS itself were granted by the occupation authorities enforcement powers they had not have before. For during the interwar period, the collection of contribution arrears was carried out by the enforcement department of tax offices. During the occupation, contributions were received quickly and regularly, with their efficiency in payment and collection being almost one hundred percent.<sup>41</sup>

Contributions during the occupation were assessed in full with unaltered contribution rates for all types of insurance, although some of them had no benefit relevance, such as white-collar worker insurance in the event of lack of work. Then, the contributions were collected ruthlessly from insured person deprived of the right to any benefits whatsoever (the Jewish population). However, the level and scope of benefits in relation to all insured persons was significantly reduced. Therefore, it is of no surprise to learn that during the occupation there was a constant growth in money surpluses at GG social insurance institutions. Thanks to which, these institutions were able to allocate considerable funds to real estate investments, and medical equipment and to pay off pre-war debts to ZUS and other creditors. A part of the surplus was also forcibly invested in General Government treasury bills. The money surplus in ZUS accumulated during the occupation was such that it posed a serious challenge to the Polish management of ZUS.<sup>42</sup> However, this issue will be discussed in the next paper.

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<sup>40</sup> AAN, Komisja Historyczna, file No. 12, p. 292.

<sup>41</sup> K. Kałkol, *op. cit.*, p. 118; AAN, Komisja Historyczna, file No. 12, p. 293.

<sup>42</sup> K. Kałkol, *op. cit.*, p. 118; AAN, Komisja Historyczna, file No. 12, pp. 293–294.

## Summary

At the outbreak of World War II, ZUS was not properly prepared for evacuation. There was a lack of adequate transportation and no special teams had been prepared to carry out the evacuation. The lack of appropriate departure preparations was clear as German troops moved rapidly into Poland. Unfortunately, the fragmentary nature of the evacuation and its non-correlation with retreat of other administration offices, meant the evacuation of the Social Insurance Institution was chaotic.

The fate of ZUS branches under German occupation depended on the status that the Polish lands received following the German invasion. ZUS units from the areas annexed to the Reich were in a particularly difficult situation. Polish social insurance institutions on the territories annexed to the Reich were replaced by the relevant German insurance institutions, their new owners as such. All ZUS assets were taken over by German insurance institutions, with only a few Polish officials being employed.

ZUS in the territory of the General Government was in a better situation. The Germans allowed the social insurance companies to continue their activity; provided, of course, that they obeyed the ordinances of the occupier. First of all, the social insurance institutions received German commissioners, renamed heads – *leiters*, for these institutions. Representatives of the German administration within the Polish institutions also had full executive and often legislative power. Any financial operation required not only German decisions, but could only be realised when the commissioner's signature was obtained. While the role and scope of authority of those referred to as Polish management, formally included responsibility for the external organisation of social insurance institutions and application submission.

The orders of the German occupier, regulating credit and financial issues in the General Government, resulted in a complete and continued freezing of the property assets of social insurance institutions throughout the period of occupation. This excluded both the possibility of assets realisation and completely deprived these institutions of the right to draw any income. This was particularly problematic in the area of the in-payments that were largely used to cover statutory benefits themselves.

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## Sytuacja Zakładu Ubezpieczeń Społecznych pod okupacją niemiecką podczas II wojny światowej

Celem niniejszego artykułu jest przybliżenie czytelnikowi losów Zakładu Ubezpieczeń Społecznych (ZUS) w trakcie II wojny światowej. Bardzo cennym źródłem okazały się materiały archiwalne znajdujące się w zespole archiwalnym Komisja Historyczna Tymczasowej Rady Zakładu Ubezpieczeń Społecznych, działającym w Archiwum Akt Nowych. Z dostępnych dokumentów archiwalnych wynika, że po zajęciu terytorium Polski przez wojska niemieckie w szczególnie trudnym położeniu znalazły się oddziały ZUS z terenów włączonych do Rzeszy. Cały ich majątek ruchomy i nieruchomy został skonfiskowany na rzecz niemieckich instytucji ubezpieczeniowych. W lepszej sytuacji były jednostki ZUS z terenu Generalnego Gubernatorstwa – Niemcy zezwolili im na kontynuowanie działalności, oczywiście pod warunkiem całkowitego podporządkowania się rozporządzeniom okupanta. Niestety wprowadzone przez administrację niemiecką regulacje kredytowe i finansowe na terenie Generalnego Gubernatorstwa spowodowały trwające przez cały okres okupacji zamrożenie aktywów majątkowych instytucji ubezpieczeń społecznych, co całkowicie pozbawiało je prawa do czerpania dochodu od posiadanego majątku.

**Słowa kluczowe:** Generalne Gubernatorstwo, ubezpieczenia społeczne, Zakład Ubezpieczeń Społecznych (ZUS), II wojna światowa



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# Social insurance courts in the Polish People's Republic

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The article introduces basic issues relating to the genesis, circumstances surrounding the creation, activity and finally the liquidation of the social insurance judiciary as it existed in Poland in the years 1945–1975. This institution was comprised of regional social insurance courts operating in selected voivodeship cities – as the court of first instance with the Social Insurance Tribunal in Warsaw [Trybunał Ubezpieczeń Społecznych w Warszawie] – as the court of second instance. The text discusses key issues related to the system, organization, and scope of material property as well as the judicial competence of the social security judiciary determining its character. Author also demonstrates that social insurance courts were the only administrative courts in existence in the Polish People's Republic before the creation of the Supreme Administrative Court [Naczelny Sąd Administracyjny].

**Key words:** administrative control, administrative judiciary, Polish People's Republic, social insurance, social insurance courts

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# Introduction

The social insurance courts acting in Poland after World War II, in the period 1945–1975, should be considered of interest within the context of historical research (specifically, although not exclusively historical and legal research) for at least several reasons.

The post-war social insurance courts were the only institutions based on a normative act adopted in the period of the Second Polish Republic, *i.e.*, the Law on Social Insurance Courts,<sup>1</sup> which started to be in force during the period of the Polish People's Republic.<sup>2</sup> Thus in a system and in a social situation quite different from those in which the Act was passed, moreover, which acted in a formula almost unmodified in relation to the original, pre-war model until the end of the 1950s, and which were liquidated in the mid 1970s,<sup>3</sup> after almost 30 years of existence. This resulted in a number of unusual practices from today's perspective of law application, such as declaring (both by the executive authorities and by the courts) that some of the formally binding<sup>4</sup> provisions were null and void as a result of the entry into force of norms inconsistent with them, ones introduced post 1944, or only a general incompatibility of such provisions with the principles of the political system and legal order of the Polish People's Republic,<sup>5</sup> or the absence of institutions provided for by still binding pre-war regulations, which were not reactivated after World War II<sup>6</sup> or were quickly liquidated after a temporary restoration.<sup>7</sup>

Taking into account their jurisdiction, nature and position within the political system, social insurance courts (which, hereinafter also referred to as the courts, formed a network

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1 Act of 28 July 1939 – the Law on Social Insurance Courts (Journal of Laws No. 71, item 476), hereinafter referred to as the Act.

2 Since the communist authorities had recognised the continuity of law enacted in the Second Polish Republic, the Act can be considered as formally remaining in force and having legal effects as early as in 1944, although the necessary executive acts were issued and the structures of the insurance courts were constructed in the years 1945–1948.

3 In principle, the Act expired on 1 January 1975 by virtue of Art. 84(1) in conjunction with Art. 98 of the Act of 24 October 1974 on regional labour and social insurance courts (Journal of Laws No. 39, item 231), except for the Social Insurance Tribunal [Trybunał Ubezpieczeń Społecznych], which was to operate under its provisions by mid-1975.

4 In the absence of an explicit repeal.

5 From contemporary studies see L. Schaff, *Polityczne założenia wymiaru sprawiedliwości w Polsce Ludowej*, Warszawa 1950, pp. 192–194, more broadly on this subject in a historical and legal context among others A. Stawarska-Rippel, *Prawo sądowe Polski Ludowej 1944–1950 a prawo Drugiej Rzeczypospolitej*, Katowice 2006, pp. 21–30.

6 The most vivid example of this tendency was the failure to restore the Supreme Administrative Tribunal [Najwyższy Trybunał Administracyjny] in spite of initially different announcements of the authorities, and even in spite of the adoption after 1944 of regulations providing for the existence of the Tribunal and for its control functions over the administration (*cf.*, among others, M. Nowakowski, *O odtworzeniu sądownictwa administracyjnego po II wojnie światowej* [in:] *Z dziejów administracji, sądownictwa i nauki prawa, prace dedykowane profesorowi Jerzemu Malcowi z okazji 40-lecia pracy naukowej*, ed. S. Grodziski, A. Dziadzio, Kraków 2012).

7 As was the case, for example, with the General Prosecutor's Office [Prokuratura Generalna] of the Republic of Poland, which – in spite of its reactivation immediately after the Second World War – had been gradually deprived of its competence, and was finally liquidated in 1951, by virtue of the Decree of 29 March 1951 on the bodies of legal representation (Journal of Laws No. 20, item 159).



consisting of regional social insurance courts and the Social Insurance Tribunal [Trybunał Ubezpieczeń Społecznych], with bodies directly related to them, such as that of the office of the Public Interest Commissioner [Rzecznik Interesu Publicznego]) should theoretically be classified as administrative courts (of a special nature, as their jurisdiction was limited to social insurance cases). These were the only administrative courts active within the Polish People's Republic before 1980, when by the establishment of the Supreme Administrative Court<sup>8</sup> [Naczelny Sąd Administracyjny] a quasi-general administrative judiciary was created. On the one hand, the insurance courts were an example of an institution that was explicitly declared by the then authorities as useless or even harmful to a system created and then consolidated where it was unnecessary for there to be judicial control over administration bodies. On the other hand, they constituted the only courts prior to 1980, ones in which citizens of the Polish People's Republic had an opportunity to challenge the decisions of state administration bodies and before which a party to the administrative proceedings was formally equated with the body whose decision was contested.

Finally, these issues have not yet been the subject of a comprehensive and exhaustive study, either during the period of the insurance courts' existence, from 1944/45 – when the Social Insurance Tribunal and six regional social insurance courts were established – to 1975 – when these courts were abolished and replaced with courts of a civil-administrative (“mixed”) nature,<sup>9</sup> or after their liquidation. The only contemporary attempt to comprehensively discuss a part of the issues related to insurance courts of the first instance is my monograph on regional social insurance courts *Okręgowe sądy ubezpieczeń społecznych*,<sup>10</sup> published in 2017.

In this context, it is necessary to mention the insignificance of theoretical and legal analyses concerning these courts. What is equally important, deliberations on this matter can be found almost exclusively in a few pre-war studies, published in the course of discussions and legislative work on the establishment of a uniform social insurance judiciary (among others by Zygmunt Zaleski,<sup>11</sup> Eugeniusz Modliński,<sup>12</sup> Tadeusz Lawendel,<sup>13</sup> Tadeusz Dybowski<sup>14</sup>), or studies published immediately after World War II during the courts' construction and organisation (e.g., by again E. Modliński<sup>15</sup> or Jerzy S. Langrod<sup>16</sup>). The practical aspects of the courts operation, despite their undisputed role in the functioning of the post-war judicial system, were not the subject of any in-depth research and analysis during the entire period of their existence. The few post-war

8 Pursuant to the Act of 31 January 1980 on the Supreme Administrative Court and on the amendment of the Act – the Code of Administrative Procedure (Journal of Laws No. 4, item 8).

9 Established under the Act of 24 October 1974 on regional labour and social insurance courts.

10 M. Nowakowski, *Okręgowe sądy ubezpieczeń społecznych*, Kraków 2017.

11 Z. Zaleski, *Ustrój sądów ubezpieczeń społecznych*, “Przegląd Ubezpieczeń Społecznych” 1938, No. 6.

12 E. Modliński, *Sądy ubezpieczeń społecznych w strukturze władz państwowych*, “Przegląd Ubezpieczeń Społecznych” 1938, No. 6.

13 T. Lawendel, *Istota sporu na tle ubezpieczeń społecznych*, “Przegląd Ubezpieczeń Społecznych” 1938, No. 6.

14 T. Dybowski, *Ustawodawstwo polskie w zakresie ubezpieczeń społecznych w ostatnich latach*, Warszawa 1938.

15 E. Modliński, *Sądy ubezpieczeń społecznych jako szczególne sądy administracyjne*, Warszawa 1946.

16 J.S. Langrod, *Przedmowa* [in:] E. Modliński, *Sądy ubezpieczeń społecznych jako...*, *op. cit.*

writings from 1945–1975 initially focused on the description of the court organisation and procedural rules,<sup>17</sup> and later on the presentation of case law,<sup>18</sup> with the authors of most of the post-war studies devoted to social insurance courts being mainly practitioners (such as Stanisław Garlicki and also again E. Modliński), including the judges of these courts (such as Tadeusz Gleixner or Teodor Swinarski). Studies on labour law,<sup>19</sup> social insurance<sup>20</sup> or on organisation of courts/ law enforcement bodies of the Polish People's Republic,<sup>21</sup> published from the 1950s to the 1970s, often treated issues related to courts in a marginal way. Also in later studies (textbooks or occasional smaller publications, since other publications generally do not deal with court-related issues<sup>22</sup>), both of an administrative<sup>23</sup> and historical and legal nature,<sup>24</sup> courts are treated casually, with issues relating to them merely mentioned in passing.

At present, even given the above reasons, both as regards the characteristics of the institution as a whole and the many detailed threads, the social insurance courts of the discussed period remain an interesting, and at the same time undeveloped, research field, still one awaiting analysis. This publication, taking into account its nature and volume, does not aspire to a comprehensive presentation of the discussed subject, but aims to bring closer the selected, and at the same time representative problems, while only mentioning other issues (such as those related to the abolition of the courts and their replacement with the labour and social insurance courts) or even omitting them (such as issues related to proceedings before insurance courts, which – without harming the transparency of the text – seem to be negligible).

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17 Z. Kopankiewicz, *Nowe sądy ubezpieczeń społecznych*, Warszawa 1947; S. Garlicki, *Prawo o sądach ubezpieczeń społecznych. Komentarz*, Warszawa 1950; S. Garlicki, E. Szeremeta, *Prawo o sądach ubezpieczeń społecznych. Komentarz*, Warszawa 1962.

18 T. Swinarski, *Tezy orzeczeń Trybunału Ubezpieczeń Społecznych*, Warszawa 1965; T. Swinarski, *Tezy orzeczeń Trybunału Ubezpieczeń Społecznych i Sądu Najwyższego w sprawie rent i zaopatrzeń*, Warszawa 1973; *Orzecznictwo Trybunału Ubezpieczeń Społecznych*, Warszawa 1974.

19 Among others J. Licki, *Prawo pracy PRL w zarysie*, Warszawa 1962; Z. Salwa, *Prawo pracy*, Warszawa 1966; W. Szubert, *Zarys prawa pracy*, Warszawa 1972.

20 Among others Z.K. Nowakowski, *Zarys prawa ubezpieczeń państwowych*, Poznań 1950; W. Szubert, *Ubezpieczenie społeczne* [in:] Z. Salwa, W. Szubert, M. Świącicki, *Podstawowe problemy prawa pracy*, Warszawa 1957; Z. Radzimowski, Z. Tarasińska, *Obowiązki ubezpieczonych zakładów pracy w zakresie ubezpieczeń społecznych*, Warszawa 1974.

21 M. Waligórski, *Organizacja wymiaru sprawiedliwości*, Kraków 1952; S. Włodyka, *Organizacja sądownictwa*, Kraków 1959; S. Włodyka, *Ustrój organów ochrony prawnej*, Warszawa 1968; J. Waszczyński, *Ustrój organów ochrony prawnej w zarysie*, Łódź 1969; Z. Resich, *Nauka o organach ochrony prawnej*, Warszawa 1973.

22 The exception is the above mentioned monograph of M. Nowakowski, *Okręgowe sądy ubezpieczeń społecznych*, Kraków 2017 and several previous publications by the same author or also K. Kolasinski, *Postępowanie w sprawach ubezpieczeniowych* [in:] *Rozwój ubezpieczeń społecznych w Polsce*, part I: *Dwudziestolecie międzywojenne*, ed. C. Jackowiak, Wrocław 1991; R. Barra, *Z historii sądownictwa ubezpieczeń społecznych*, "Studia i Materiały z Historii Ubezpieczeń Społecznych w Polsce" 1987, Issue 5.

23 E. Ochędowski, *Prawo administracyjne*, Toruń 2013; *Prawo administracyjne*, ed. J. Boć, Wrocław 2010; *Polskie sądownictwo administracyjne – zarys systemu*, ed. Z. Kmieciak, Warszawa 2017; J. Jagielski, *Kontrola administracji publicznej*, Warszawa 2012; B. Adamiak, J. Borkowski, *Postępowanie administracyjne i sądownoadministracyjne*, Warszawa 2017.

24 M. Kallas, A. Lityński, *Historia ustroju i prawa Polski Ludowej*, Warszawa 2000; S. Płaza, *Historia prawa w Polsce na tle porównawczym. Część III. Okres międzywojenny*, Kraków 2001; J. Malec, D. Malec, *Historia administracji i myśli administracyjnej*, Kraków 2003; T. Maciejewski, *Historia administracji i myśli administracyjnej. Czasy nowożytne i współczesne (XVI–XX w.)*, Warszawa 2013; W. Witkowski, *Historia administracji w Polsce 1764–1989*, Warszawa 2007.

In the author's opinion, the findings presented in this study prove that when the Act was drafted and adopted – *i.e.*, in the period of the Second Polish Republic – the social insurance courts were intended to complement the already functioning system of administrative courts. On the other hand – basing both on normative acts and on case law – it is possible to prove the thesis that in the period of their functioning the social insurance courts exercised real control over the active legality of the insurance bodies under their jurisdiction, hence – in spite of the general negation of the idea of administrative courts by the authorities of the Polish People's Republic – they were of such a character.

## Origin and establishment of social insurance courts

The post-war social insurance judiciary functions performed by regional social insurance courts and the Social Insurance Tribunal, were not in themselves a political or organisational novelty within the legal system of the Second Polish Republic and, consequently, within the legal system of the Polish People's Republic, directly referring to it.<sup>25</sup> Insurance courts or similar organisational forms existed on the Polish territory as early as in the 19th century under relevant Prussian and Austro-Hungarian legal acts. Courts with the jurisdiction over social insurance matters were absent only in the territories of the Russian partition, due to lack of relevant substantive legal institutions under Russian law.<sup>26</sup> In the interwar period, the bodies settling insurance disputes, those “inherited” from the partitioning powers, continued their activity,<sup>27</sup> while in areas where such bodies had not previously acted (the former Russian partition), appropriate institutions were established. At the same time, work continued on the dissemination and harmonisation of such “inherited” social insurance regulations, and ultimately on their unification, with such unified solutions including, *inter alia*, procedures related to the granting of benefits and to possible means of appeal against the decisions of entities competent in this respect.

It should be remembered that when Poland regained its independence in 1918, various functions classified as social insurance were performed on its territory by more than 1,000 institutions organised on various principles.<sup>28</sup> On the other hand, before the entry into force of the Act (which ultimately took place only after World War II), depending on the material and legal grounds of the dispute and territorial jurisdiction, disputes in the

25 Which, like most countries that were left under the political influence of the Union of Soviet Socialist Republics (USSR) immediately after World War II, declared the continuity of its pre-war legal order, taking into account, however, the repeal or adjustment of part of the existing legal norms (often by way of a new interpretation to address the changed situation) resulting from the primacy of new political principles over the letter of pre-war law.

26 Except for the Act of 23 June (6 July) 1912 on the insurance of workers against sickness, adopted before the outbreak of World War I and never fully implemented.

27 The Prussian system of bodies controlling social insurance decisions operated in Polish territory in an almost unchanged form until 1939, see E. Modliński, *Sądy ubezpieczeń społecznych jako...*, *op. cit.*, pp. 16–18.

28 K. Kąkol, *Ubezpieczenia społeczne w Polsce*, Łódź 1950, p. 27.

field of social insurance were resolved in the Second Polish Republic in various configurations of territorial and material jurisdiction and in different instances, by a number of institutions<sup>29</sup> applying a total of eight, often permeating, dispute resolution procedures.<sup>30</sup> Moreover, there were no procedural regulations for proceedings in insurance cases. Therefore, many of these entities used, often selectively, various regulations in force at that time, both ones “inherited” from the partitioning powers and those introduced by the Polish legislator. This caused chaos in the field of social insurance disputes, affecting all parties concerned.<sup>31</sup> The above mentioned conditions generated a pressing need for the establishment of uniform bodies settling disputes in the field of social insurance in its broadest sense, something reflected in the numerous opinions voiced in the interwar literature.<sup>32</sup>

First of all, as an additional motive, one important in the 1930s, for the intensification of work on the creation of a uniform system of social insurance courts, there emerged a need to establish permanent bodies settling disputes regarding the pension provision for war invalids and their families. Under the provisions of the Act of 26 March 1935 on the Invalidity Administrative Court [Inwalidzki Sąd Administracyjny],<sup>33</sup> these disputes were temporarily transferred to this court, which, however, was to operate only for five years (until 30 September 1940) before being liquidated. Secondly, such an intensification of work was motivated by the International Labour Conventions adopted by the International Labour Organisation (ILO),<sup>34</sup> a member of which Poland has been since its establishment.<sup>35</sup>

Legislative work on the establishment of a uniform jurisdiction for social insurance issues (or functionally similar bodies supervising the activities of institutions performing social insurance tasks) was carried out in Poland continuously until the early 1920s. A total of six draft Acts (from 1926, 1929, 1931, 1934, 1936 and 1937) were prepared and presented in the interwar period. They were aimed to regulate the social insurance judiciary in a uniform manner throughout the country. Only the sixth one – the draft Act on social insurance courts of 1937 – was passed by the parliamentary lower house of the

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29 Among others, the arbitral courts [*sądy rozjemcze*] (in Warsaw, Lviv, Cracow and Lodz), the Arbitral Tribunal for Pension Insurance in Lviv [Sąd Polubowny dla Ubezpieczenia Pensyjnego we Lwowie], the Tribunal for Social Insurance Cases in Poznan [Trybunał dla Spraw Ubezpieczeń Społecznych w Poznaniu], the Higher Insurance Office in Katowice [Wyższy Urząd Ubezpieczeń w Katowicach], the Voivodship (Provincial) Insurance Office in Katowice [Wojewódzki Urząd Ubezpieczeń w Katowicach], the Temporary Arbitral Committee for Social Insurance [Tymczasowa Komisja Rozjemcza Ubezpieczeń Społecznych], the Voivodship (Provincial) Offices, the Minister of Social Welfare, the Supreme Administrative Tribunal.

30 See S. Garlicki, *Prawo o sądach...*, *op. cit.*, p. 6.

31 M. Baumgart, *Projektowane organa ubezpieczeń społecznych*, “Głos Sądownictwa” 1933, No. 9, pp. 548–549.

32 Among others *ibid*; *idem*, *Projektowane organa ubezpieczeń społecznych (cd.)*, “Głos Sądownictwa” 1933, No. 10; S. Fiedorczuk, *O ustawę postępowania ubezpieczeniowego*, “Przegląd Ubezpieczeń Społecznych” 1934, No. 4, pp. 226–227; E. Sisslę, *Rozstrzyganie sporów w zakresie ubezpieczeń społecznych*, “Przegląd Ubezpieczeń Społecznych” 1934, No. 8, pp. 448–449; E. Modliński, *Sądy ubezpieczeń społecznych w strukturze...*, *op. cit.*

33 Act of 26 March 1935 on the Invalidity Administrative Court (Journal of Laws No. 26, item 177).

34 In 1933, the ILO adopted six conventions on social insurance issues (Conventions Nos. 35–40), which required that the insured persons had the right to refer to “special tribunals [...] specially cognisant of the purposes of insurance and the needs of insured persons,” adjudicating with the participation of representatives of the insured persons.

35 The ILO was established on 28 June 1919 at the Paris Peace Conference, under Part XIII of the Treaty of Versailles (the so-called Constitution of the International Labour Organisation).

Republic of Poland [Sejm] on 28 July 1939, after minor modifications made during the parliamentary procedure, and published on 8 August 1939.<sup>36</sup>

The Act on social insurance courts was planned to come into force in part on 1 April 1940, however – due to the German and Soviet occupation – its actual entry into force and the establishment of the institutions provided for in the Act only took place after the end of World War II. Although different concepts were articulated in 1944–1945 (such as the temporary transfer of insurance cases to arbitral courts or administrative bodies<sup>37</sup>), in the first half of 1945 the authorities opted for the judicial model established in the Act and decided to quickly start its organisation. As a result, in August 1945, the Ministers of Justice and of Labour and Social Welfare issued an ordinance<sup>38</sup> under which six regional social insurance courts were established on 27 August 1945, along with determining the territorial jurisdiction (circuits) of individual courts.<sup>39</sup> The Social Insurance Tribunal, established in Warsaw by virtue of the Act,<sup>40</sup> did not require separate legal acts to be issued in order to start its activity.

Then the organisation of the activities of insurance courts of both instances started, judges were appointed from 1946 onwards, in 1947 all the regional courts established by virtue of the Ordinance of 20 August 1945 began to perform judicial activities, and in July 1947 the Social Insurance Tribunal started its sessions.<sup>41</sup> At the same time,<sup>42</sup> two more regional social insurance courts were established, which started their activity in 1948. Delays were mainly due to problems in recruiting judges and lay judges, as well as to the generally poor financial and organisational situation of the state institutions reconstructed after World War II.

## Legal basis for the operation of social insurance courts

The Act on social insurance courts of 28 July 1939 contained an extensive<sup>43</sup> and relatively comprehensive regulation of issues related to the administration of justice in social insurance disputes. The Act governed the court system, regulating the court hierarchy,

36 The issues related to the preparation of subsequent draft Acts and the enactment of the Act itself have been described in the following: M. Nowakowski, *Prace nad ujednoczeniem sądownictwa ubezpieczeń społecznych w 20-leciu międzywojennym* [in:] *Vetera novis augere. Studia i prace dedykowane prof. W. Uruszczakowi*, Vol. 2, ed. S. Grodziski, D. Małec *et al.*, Kraków 2010.

37 Cf. M. Nowakowski, *Okręgowe sądy ubezpieczeń...*, *op. cit.*, pp. 102–103.

38 Ordinance of the Minister of Justice and of Labour and Social Welfare of 20 August 1945 on the establishment of regional social insurance courts (Journal of Laws No. 29, item 176).

39 Based on the borders of the then voivodships (provinces).

40 Art. 5(1)(2) of the Act.

41 See Z. Kopankiewicz, *Sądy ubezpieczeń społecznych. Uwagi i spostrzeżenia po roku doświadczeń*, “Przegląd Ubezpieczeń Społecznych” 1948, No. 5, p. 123.

42 Ordinance of the Minister of Justice and the Minister of Labour and Social Welfare of 10 February 1947 on the establishment of regional social insurance courts (Journal of Laws No. 28, item 113).

43 The Act consisted of 423 articles, which meant that it was a comprehensive regulation for pre-war standards. For comparison, *inter alia* the following acts adopted in the interwar period may be mentioned: the Ordinance of the Pre-

organisation, legal status of persons acting within the social insurance courts (judges, lay judges, court trainees, court experts), as well as issues related to proceedings before the courts, such as jurisdiction, applicable procedures, instances, legal solutions available to parties of the proceedings. The above regulations were partly complementary to the provisions of the Ordinance of the President of the Republic of Poland of 6 February 1928 – the Law on the organisation of common courts.<sup>44</sup>

The Act abolished all administrative and special courts, as well as institutions of a similar nature that had been functioning hitherto on Polish territory on the basis of regulations “inherited” from the partitioning powers and those issued in the interwar period, with jurisdiction to resolve disputes concerning the awards and decisions of social insurance institutions. They were replaced by unified, two-instance administrative courts, which dealt with disputes in the field of social insurance on an exclusive basis. In connection with the political changes followed by the reorganisation of insurance institutions, the scope of cases settled by the courts was further specified in the Act of 17 February 1960 on the amendment of the Law on Social Insurance Courts.<sup>45</sup>

During the whole period of its validity, the Act was amended seven times (in 1946, twice in 1950, 1951, twice in 1960 and 1962). Moreover, in 1974, a number of issues relating to the application of the provisions of the Act after its expiry were regulated by the transitional and final provisions of the Act of 24 October 1974 on regional labour and social insurance courts, which formally repealed the Act (this, however, did not happen simultaneously with regard to all the provisions of the Act<sup>46</sup>).

The first four amendments<sup>47</sup> did not significantly modify the Act, introducing changes necessary due to the postponed starting date of courts’ activities, liberalising the minimum qualifications of judges and lay judges, or strictly regulatory changes – such as the conversion of the amounts contained in the Act or derogations from the provisions covered by the newly introduced general acts concerning parties, witnesses, experts or lay judges in court proceedings before all kinds of courts.

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sident of the Republic of Poland of 6 February 1928, the Law on the organisation of common courts (Journal of Laws No. 12, item 93) consisting of 299 articles, the Ordinance of the President of the Republic of Poland of 22 March 1928 on labour courts (Journal of Laws No. 37, item 350) consisting of 40 articles, the Ordinance of the President of the Republic of Poland of 27 October 1932 on the Supreme Administrative Court (Journal of Laws No. 94, item 806) consisting of 132 articles or the interwar water law – the Water Act of 19 September 1922 (Journal of Laws No. 102, item 936) with 266 articles.

44 Ordinance of the President of the Republic of Poland of 6 February 1928 – the Law on the organisation of common courts.

45 Act of 17 February 1960 on the amendment of the Law on Social Insurance Courts (Journal of Laws No. 11, item 70).

46 The provisions of the Act concerning the Social Insurance Tribunal remained in force until mid-1975, and the provisions of the Act governing the procedure were still to be applied in cases continued by the labour and social insurance courts.

47 Made by the Decree of 1 March 1946 amending the Law on Social Insurance Courts (Journal of Laws No. 12, item 76), the Act of 28 October 1950 amending the monetary system (Journal of Laws No. 50, item 459), the Decree of 26 October 1950 on consideration for witnesses, experts and parties in court proceedings (Journal of Laws No. 49, item 445), the Act of 8 January 1951 on consideration for lay judges for participation in court sessions and penalties for lay judges (Journal of Laws No. 5, item 41).

Hence, the Act was applicable in an almost unmodified version until 1960, when it was comprehensively amended by the Act on the amendment of the Law on Social Insurance Courts,<sup>48</sup> which changed one third of its provisions. The material scope of courts' activities was then partly modified (by limiting their jurisdiction as a rule only to disputes regarding cash benefits, and by excluding them from some scope of activities *e.g.*, cases related to protection against unemployment), and at the same time their functioning was adjusted to the numerous changes made in the Polish law system post 1945. The competence of a number of entities (the Minister of Justice, the Minister of Labour and Social Welfare, the President of the Social Insurance Institution, the President of the Council of Ministers, the State Council) was changed, assessors were admitted to work in courts, and finally many procedural provisions were changed (in terms of representation, evidence, justification of judgements and their enforceability). In addition, the institution of a complaint in defence of the law [*skarga w obronie prawa*], specific only for the social insurance courts, was abolished and replaced with an extraordinary complaint as a measure of appeal [*nadzwyczajna skarga rewizyjna*].

The Act on lay judges in common courts,<sup>49</sup> passed also in 1960, implementing the directive on the general participation of lay judges in the judiciary, raised by the Constitution of the Polish People's Republic of 1952<sup>50</sup> to the rank of a constitutional principle, regulated all matters relating to the status and rules of functioning of lay judges in all courts of the Polish People's Republic. The regulations contained in the aforementioned Act also applied to the lay judges of regional social insurance courts, which resulted in the need to amend the Act, taking into account, however, the institutional distinctiveness of the social insurance courts.<sup>51</sup>

The second significant change in the functioning of courts after the 1960 amendment was introduced by the Act on the Supreme Court,<sup>52</sup> which established the Labour and Social Insurance Chamber [Izba Pracy i Ubezpieczeń Społecznych] within the organisational structure of the Supreme Court. The statutory tasks of the Chamber included, *inter alia*, judicial supervision over court rulings, carried out through the Social Insurance Tribunal's right to refer legal issues to the Labour and Social Insurance Chamber of the Supreme Court and the right of the Minister of Justice, the Prosecutor General of the Polish People's Republic or the First President of the Supreme Court to lodge extraordinary reviews [*rewizja nadzwyczajna*] of final court rulings with that Chamber of the Supreme Court. In this way, the social insurance courts, with so far fully independent jurisdiction, were subject to supervision by the Supreme Court.

The provisions of the Act were supplemented by ordinances issued on the basis of statutory delegations, as a rule by the Ministers of Justice and Labour and Social Welfare acting in concert. In this mode, *inter alia*, initially six, then eight social insurance courts

48 Act of 17 February 1960 on the amendment of the Law on Social Insurance Courts.

49 Act of 2 December 1960 on lay judges in common courts (Journal of Laws No. 54, item 309).

50 Constitution of the Polish People's Republic passed by the Legislative Sejm on 22 July 1952 (Journal of Laws No. 33, item 232).

51 Art. 22 and 23 of the Act of 2 December 1960 on lay judges in common courts.

52 Act of 15 February 1962 on the Supreme Court (Journal of Laws No. 11, item 54).

were created, and finally eleven regional social insurance courts existed (after the establishing in 1959 of the regional social insurance courts in Bydgoszcz<sup>53</sup> and Rzeszów,<sup>54</sup> and in 1960 in Olsztyn<sup>55</sup>), court seats were designated and their territorial jurisdiction was determined. In this way, the internal organisation and the rules of internal procedure of regional social insurance courts, the Social Insurance Tribunal, and the Public Interest Commissioner were also regulated. But it is worth noting that the rules of internal procedure of the regional social insurance courts were only issued in 1963,<sup>56</sup> *i.e.*, 18 years after the creation of the first of them (until the relevant executive acts were issued, the provisions in force in the common courts were to apply to all institutions<sup>57</sup>). Separate ordinances governed numerous issues relating to the work of lay judges in regional social insurance courts, handling cases before the courts by representatives of trade unions and pensioners' organisations, as well as issues related to court trainees, assessors and court secretaries.

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## The system and organisation of social insurance courts

Pursuant to the provisions of the Act, regional the social insurance court constituted the court of first instance adjudicating in disputes in the field of social insurance (disputes regarding cash benefits from the old-age pension insurance of employees and their families and other cases delegated to them by separate provisions – according to the nomenclature of the Act introduced by the amendment of 17 February 1960). They were established by means of ordinances issued by the Ministers of Justice and of Social Welfare (after World War II the Minister of Labour and Social Welfare respectively), and could be abolished only by means of an act of Parliament. The ordinance establishing the regional social insurance court also indicated its seat, circuit, and until 1960 also the number of lay judges appointed for the court.

In 1945, the first six regional courts were established (in Warsaw, Bydgoszcz, Katowice, Cracow, Lodz and Poznan), then, due to the extension of Polish legislation to the so-called Recovered Territories [Ziemie Odzyskane]<sup>58</sup> and modification of the structure of the country's basic territorial division in 1947, two more regional social insurance courts

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53 Ordinance of the Ministers of Justice and Labour and Social Welfare of 6 November 1959 on the establishment of the Regional Social Insurance Court in Bydgoszcz (Journal of Laws No. 62, item 371).

54 Ordinance of the Ministers of Justice and Labour and Social Welfare of 18 November 1959 on the establishment of the Regional Social Insurance Court in Rzeszów (Journal of Laws No. 64, item 384).

55 Ordinance of the Minister of Justice of 7 November 1960 on the establishment of the Regional Social Insurance Court in Olsztyn (Journal of Laws No. 54, item 312).

56 Ordinance of the Minister of Justice of 18 June 1963 on the rules of the internal procedure of Regional Social Insurance Courts and the Social Insurance Tribunal (Journal of Laws No. 30, item 185).

57 Art. 400 of the Act.

58 By means of the Decree of 13 November 1945 on the management of the Recovered Territories (Journal of Laws No. 51, item 295).



were established in Wrocław and Szczecin (at the same time the seat of the regional social insurance court was moved from Bydgoszcz to Gdynia). The boundaries of circuits were modified in 1947, 1949, 1950. In 1959, two more regional courts were established (in Bydgoszcz and Rzeszów), at the same time the boundaries of circuits of the existing courts were modified. The final number of courts and the boundaries of their circuits were determined in 1960 by the establishment of the regional court in Olsztyn. Thus a total of 11 regional social insurance courts were created. The increase in the number of courts in 1959–1960 was a consequence of the growing number of cases coming to them, which resulted in significant extension of the period of their hearing in the second half of the 1950s (as compared to previous years).

As regards the judicial functions, the regional social insurance courts consisted of professional judges (from which the president and deputy presidents of the court were selected) and lay judges, half of whom represented, according to the Act, employees and half – employers. As a rule, regional courts adjudicated by a three-person bench (one professional judge as president and two lay judges), and in cases enumerated in the Act, by one – professional – judge. Courts could be divided into divisions, created under the rules of internal procedure. In practice, all the functioning regional social insurance courts acted in divisions, created according to the criterion of the types of incoming cases. Moreover, the provisions of the Act allowed for the creation of local departments of courts<sup>59</sup> or for holding court off-site sessions.<sup>60</sup> However, no local departments of regional courts were ever created and only off-site sessions were organised (often only a dozen to a score or so per year).<sup>61</sup>

The Act imposed additional substantive requirements on candidates to be regional courts judges, this in addition to the requirements equal to those imposed on candidates for judges of common courts.<sup>62</sup> These were related to the period of work in judicial bodies or knowledge of social insurance issues (such as having three years' work experience of being at the least a municipal judge [*sędzia grodzki*] or regional assistant prosecutor [*podprokurator okręgowy*] in common courts, or five years' service in government administration at a referendary position in the area of social insurance or at an equivalent position in a social insurance institution).<sup>63</sup> These requirements were abandoned by virtue of the amendments introduced by the Act of 17 February 1960 on the amendment of the Law on Social Insurance Courts. The service relationship of judges of regional court was governed by the mentioned Act by reference to similar provisions of the Law on the organisation of common courts,<sup>64</sup> which were directly applicable. The Act declared<sup>65</sup>

59 Art. 93 of the Act.

60 Art. 94 of the Act.

61 See M. Nowakowski, *Okręgowe sądy ubezpieczeń...*, *op. cit.*, pp. 150–152.

62 Provided for in Art. 82 and 83 of the Ordinance of the President of the Republic of Poland of 6 February 1928, the Law on the organisation of common courts, which were applied respectively to the judges of social insurance courts.

63 According to Art. 47(2) of the Act.

64 Art. 57 of the Act.

65 In Art. 47 of the Act.

awarding judges (both of the regional courts and of the Social Insurance Tribunal) the attribute of independence and provided for the application in this respect of the relevant provisions of Art. 79–81 of the Law on the organisation of common courts, which guaranteed judges independence and them being subject only to Acts of Parliament. It also provided for the powers and guarantees to ensure that judges would hold office in accordance with this principle. From the perspective of today’s research, a separate issue is to assess whether, and if so to what extent, formal guarantees of independence<sup>66</sup> were translated into the practice of holding office.

According to the provisions of the Act, lay judges, adjudicating in regional courts, represented a social factor, thus ensuring participation in the administration of justice of persons having experience and not legal knowledge. The introduction of non-professional judges to the model of social insurance courts resulted, *inter alia*, from an interpretation of the provisions of ILO conventions on social insurance.<sup>67</sup> The participation of lay judges was to be nominally limited to the assessment of the actual state of the case, while they were to be excluded from consideration of legal issues,<sup>68</sup> and therefore their participation was not provided for in cases decided by the Social Insurance Tribunal.<sup>69</sup> The legal status of lay judges of regional social insurance courts was governed by the provisions of the Act and numerous ordinances issued on its basis (which contained detailed provisions on the number of lay judges, their appointment and remuneration). Over time, there was a tendency to unify legal provisions concerning lay judges in social insurance courts and in common courts, first by adopting the common provisions for them and then by an increasing number of references to provisions concerning lay judges in common courts. According to the original solutions of the Act, lay judges were supposed to represent employees and employers, but as early as in the 1940s, this assumption was abandoned in favour of a guarantee for the appropriate “ideological” preparation of lay judges, who were to be appointed by the Minister of Justice from among candidates proposed by organisations sanctioned by the authorities. This process was intensified by the amendments to the Act introduced by the Act of 1960 on the amendment of the Law on Social Insurance Courts, under which lay judges were selected by voivodship national councils from among employees meeting the conditions for lay judges of common courts.<sup>70</sup> This meant a complete abandonment of the requirement of professional preparation and knowledge of social insurance issues (referred to in the Act as the “knowledge of the profession”<sup>71</sup>) that had previously applied to lay judges of social insurance courts. In this context, it should

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66 Also included in Art. 52 of the Constitution of the Polish People’s Republic of 1952, according to which judges were independent and subject only to Acts of Parliament (and – although this did not result directly from the Basic Law – to Decrees of the Council of State having the same force as Acts of Parliament).

67 ILO Conventions Nos. 35–40 of 1933.

68 Z. Zaleski, *op. cit.*, p. 367; Z. Kopankiewicz, *Nowe sądy ubezpieczeń...*, *op. cit.*, pp. 18–19.

69 M. Rybicki, *Ławnicy ludowi w sądach PRL*, Warszawa 1968, pp. 339–340.

70 Art. 72 of the Act as amended by Art. 1(38) of the Act of 17 February 1960 on the amendment of the Law on Social Insurance Courts.

71 In the original wording of Art. 73 of the Act.

be noted that it was precisely the participation of lay judges in social insurance courts that was an important advantage for the communist authorities, and here equally for propaganda purposes, anticipating the process of the “democratisation of the judiciary” that was intensified in the 1940s, where the participation of non-professional judges was introduced in successive divisions of the judiciary. Finally, the Act of 27 April 1949 on the amendment of the Law on the organisation of common courts<sup>72</sup> established the principle that common courts adjudicated with the participation of independent lay judges, were subject only to Acts of Parliament. In 1952 it became a Constitutional Principle, introduced by Art. 49 of the Constitution of the Polish People’s Republic.

The work of regional social insurance courts was managed by the presidents who performed both administrative and (under the supervision of the Minister of Justice and having regard to the independence of judges) supervisory functions, acting independently or with the help of deputies or appointed judges.<sup>73</sup> The duty of the president of the court was to supervise both the court in which the president was appointed and the judges and lay judges of that court.<sup>74</sup> The Act also provided for the possibility (but not an obligation) to appoint deputy presidents of regional courts, assuming that these positions would be created according to the actual organisational needs of the individual courts themselves.<sup>75</sup>

All regional courts had secretariats providing clerical services, consisting of court secretaries, clerical employees and other employees.

The Social Insurance Tribunal was established directly under the provisions of the Act, which designated Warsaw as its seat. It was a higher court in relation to the regional social insurance courts, and at the same time – in the period from its appointment to the entry into force of the Act of 15 February 1962 on the Supreme Court – the court of last instance in cases entrusted to the jurisdiction of social insurance courts. Therefore, the jurisdiction of the Social Insurance Tribunal included both the resolution of appeals against the judgements of regional courts, adjudicating in cases delegated to the jurisdiction of the Tribunal, as well as clarification of legal regulations that raised doubts or whose application resulted in discrepancies in the case law. The last of these powers was withdrawn from the Social Insurance Tribunal as of the date of entrusting the Supreme Court with judicial supervision over court rulings.

The Tribunal was composed exclusively of professional judges (from whom the president and deputy presidents were selected). It was divided into divisions, created according to the substantive criteria – the types of cases heard, according to their rules of internal procedure. Each of the divisions was headed by the President or Deputy President of the Tribunal.<sup>76</sup>

72 Act of 27 April 1949 on the amendment of the Law on the organisation of common courts (Journal of Laws No. 32, item 237).

73 Art. 28 of the Act.

74 Art. 31(1) of the Act.

75 Art. 11 of the Act.

76 Art. 22 of the Act.

As a rule however, the Tribunal adjudicated by means a three-person bench, while legal issues that raised serious doubts could be referred for resolution to a bench of seven judges, and if the bench intended to depart from the legal rule previously adopted by the Tribunal – only the General Assembly of the Social Insurance Tribunal could issue its ruling.<sup>77</sup>

The qualifications required of the judges of the Social Insurance Tribunal were in principle similar to those of the regional courts, with the reservation that five years' service as a judge of these courts was additionally needed.<sup>78</sup> However, this requirement was liberalised for half of the Tribunal's judges, who were alternatively required to be qualified as regional court judges, with ten years' service in government administration, at a referendary position in the field of social insurance or an equivalent position in a social insurance institution, or five years' period of work in the position of a regional court judge or as a regional deputy prosecutor.<sup>79</sup> Moreover, a professor of law at a Polish state university could be appointed as a judge of the Tribunal.<sup>80</sup> The amendment to the Act of 17 February 1960 liberalised the original requirements also for judges of the Tribunal, allowing for the appointment to this office of, among others, persons being the judges of regional courts or voivodship courts, regardless of how long they had held such a position.<sup>81</sup> All the judges of the Social Insurance Tribunal composed its general assembly.

The President of the Social Insurance Tribunal, similarly to the presidents of regional social insurance courts in the units they headed, performed both administrative and supervisory functions in the Tribunal, acting independently or with the help of appointed judges.

Irrespective of its judicial powers, in particular those resulting from the course of instances, the Social Insurance Tribunal had administrative control powers in relation to regional social insurance courts, and its judges acted as inspectors visiting regional social insurance courts.

The internal organisation of the courts (*i.e.*, regional social insurance courts and the Social Insurance Tribunal) was governed in part by the Act, while detailed matters were determined by the rules of internal procedure of the regional courts and of the Tribunal, which were issued in the form of ordinances by the Minister of Justice<sup>82</sup> (until 1960, issued in agreement with the Minister of Labour and Social Welfare<sup>83</sup>). In a number of matters concerning the legal status of judges of social insurance courts (including the requirements for taking up the position of judge, appointment to and resignation from this position, the rights and duties of judges, their delegation and disciplinary liability), the

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77 Art. 19 and 20 of the Act.

78 Art. 48(1) of the Act.

79 Art. 48(2) of the Act.

80 Art. 49 of the Act.

81 Art. 48 of the Act as amended by Art. 1(35) of the Act of 17 February 1960 on the amendment of the Law on Social Insurance Courts.

82 Art. 38 of the Act.

83 The change was introduced by Art. 1(14) of the Act of 17 February 1960 on the amendment of the Law on Social Insurance Courts.

provisions of the Law on the organisation of common courts (*i.e.*, the Ordinance of the President of the Republic of Poland of 6 February 1928 – Law on the organisation of common courts) applied accordingly.

A separate presentation, both due to the specific nature of this institution, as well as its functions within the social insurance judiciary system, is required for the Public Interest Commissioner sitting at the Tribunal.

The institution of the Public Interest Commissioner was a new solution in Polish law, created in part in the same way as a prosecutor acting at the Supreme Court, in part based on models drawn from foreign legislation, *e.g.*, the French, where the Government Commissioner and their deputies functioned at the Council of State, and the German, where an institution similar to the institution of the Public Interest Commissioner was established – *Kommissar zur Wahrnehmung des öffentlichen Interesses richten*.<sup>84</sup> Its introduction to the Act can be attributed to the initiative of J.S. Langrod,<sup>85</sup> involved in the preparation of the recent draft texts of the Act, who postulated the creation of a body with quasi-prosecutorial powers, which would act as a guardian of the protection of the law in the framework of court decisions and would strive to establish a uniform and correct interpretation of its provisions.<sup>86</sup> The name of the institution was borrowed directly from J.S. Langrod's earlier proposal for the general administrative courts organisation.<sup>87</sup> The institution of "complaint in defence of the law", reserved by the Act for the Public Interest Commissioner was of similar origin. The following motives for introducing this institution were included in the justification of the last draft text of the Act:

It is important that, in addition to the authority directly interested in the result of the proceedings, a factor independent of the current needs or views of the acting authority should also take part in the administrative dispute, expressing its free opinion on the matter from the point of view of the public interest defined in the Act. The advisability of interference of an outside factor in the insurance process is all the greater because, although insurance institutions, by their very nature, also represent the public interest, nevertheless, when managing material goods, they can more easily succumb to current fiscal or other needs, to the detriment of the violated right of an individual.<sup>88</sup>

The Public Interest Commissioner acted personally – as a single-person body or through their deputies, guarding the law and seeking to establish correct and uniform

84 E. Sisslé, *Rzecznik interesu publicznego*, "Przegląd Ubezpieczeń Społecznych" 1938, No. 6, p. 399; T. Lawendel, *O roli rzecznika interesu publicznego w postępowaniu przed sądami ubezpieczeń społecznych*, "Przegląd Ubezpieczeń Społecznych" 1939, No. 2, p. 71.

85 See *Sprawozdanie Komisji Prawniczej o zmianach wprowadzonych przez Senat w dniu 31 maja 1939 r. do uchwalonego przez Sejm w dniu 18 marca 1939 r. projektu ustawy o sądach ubezpieczeń społecznych* [the Report of the Committee on Legal Affairs on changes introduced by the Senate on 31 May 1939 to the draft Act on social insurance courts adopted by the Sejm on 18 March 1939], Sejm paper No. 251, 1939, p. 7.

86 See D. Malec, *Najwyższy Trybunał Administracyjny w świetle dotychczasowych badań*, "Zeszyty Naukowe UJ" 1992, Issue 141, p. 41.

87 Contained in the study of J.S. Langrod, *Kontrola administracji*, Warszawa–Kraków 1929.

88 E. Sisslé, *Rzecznik interesu publicznego...*, *op. cit.*, p. 400.

interpretation of legal provisions in the case law.<sup>89</sup> The Commissioner's primary role in proceedings before the courts was to express their views on how to resolve a dispute in a lawful manner regardless of the interests of any of the parties. The Commissioner, acting under the direction and supervision of the Minister of Social Welfare (then the Minister of Health and Social Welfare, and ultimately the President of the Social Insurance Institution), acted as a quasi-prosecutor, whose primary means of action was to participate, on the rights of the party, personally or through deputies, in cases pending before the courts. Moreover, until the entry into force of the Act of 15 February 1962 on the Supreme Court, the Commissioner had the exclusive right to lodge an extraordinary measure of appeal against all final decisions of regional social insurance courts, which constituted a complaint in defence of the law [*skarga w obronie prawa*].

The Commissioner also had a signalling function, as they were obliged to provide the Minister of Social Welfare (and then the Minister of Health and Social Welfare), based on the problems perceived in the course of performing their duties, with observations on the need for changes or additions to the existing legal regulations on social insurance.<sup>90</sup>

The Act required the Public Interest Commissioner and their deputies to have the same attributes and qualifications as judges of the Social Insurance Tribunal. Legal provisions concerning state officials (employees) were applicable to the Commissioner and their deputies; the Commissioner acted under the direction of the Minister of Social Welfare. The mode of the Commissioner's work was governed by the rules of internal procedure of the Public Interest Commissioner, issued in the form of an ordinance by the Minister of Social Welfare (and then the Minister of Labour and Social Welfare) in agreement with the Minister of Justice.

To complement the issue of the court system and its organisation, it should be recalled that by means of the Act of 15 February 1962 on the Supreme Court, this Court was provided with supervision over the courts, and for this purpose the Labour and Social Insurance Chamber of the Supreme Court was established. Its statutory tasks included, *inter alia*, judicial supervision over the court rulings, carried out through the right of the Social Insurance Tribunal to transfer any legal issues that raised serious doubts amongst the Tribunal to the Labour and Social Insurance Chamber of the Supreme Court and the right of the Minister of Justice, the Prosecutor General of the Polish People's Republic or the First President of the Supreme Court to submit extraordinary reviews of final court rulings to the Labour and Social Insurance Chamber of the Supreme Court. In this way, the fully independent system of social insurance courts was subject to supervision by the Supreme Court. Moreover, the Supreme Court had the competence to adopt resolutions containing answers to any legal questions submitted to it.

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<sup>89</sup> Art. 84 of the Act.

<sup>90</sup> Art. 88 of the Act.

## Jurisdiction of social insurance courts, specific procedural solutions of the Law on Social Insurance Courts

As part of the issue of courts jurisdiction, priority should be given to their material jurisdiction, which was one of the most important factors determining the nature of the social insurance courts.

The material jurisdiction of courts was regulated in Art. 1 of the Act in the form of a quasi-general clause, which provided for the inclusion in their jurisdiction of the administration of justice in social insurance disputes. This clause was supplemented by definitions clarifying the notion of social insurance disputes and social insurance institutions,<sup>91</sup> as well as by a catalogue of categories of cases excluded from the jurisdiction of social insurance courts.<sup>92</sup> The original wording of Art. 1 of the Act did not specify the nature of the benefits subject to social insurance disputes, making the courts competent in cases concerning benefits in kind as well as cash benefits. At the same time, the Act specified that:

Complaints may be lodged with social insurance courts only against decisions of social insurance institutions which have legal consequences for employers, persons insured and their families and other persons concerned, as well as in the cases provided for in Art. 208(3),<sup>93</sup> if this law or other legislative acts do not exclude the right of complaint.<sup>94</sup>

Any entity performing tasks in this area was considered an insurance institution (and thus a public person), provided that it was legally empowered to decide on the rights and obligations of individuals subject to social insurance. On the basis of the Act, the social insurance dispute was understood in a broad sense, and included disputes concerning the obligation to submit to insurance, continue insurance, voluntary forms of social insurance, as well as the obligation to accept for insurance, and finally the amount of insurance contributions.<sup>95</sup>

The jurisdiction of courts changed as a result of an amendment made in 1960. The previous quasi-general clause was replaced with a new one, according to which the courts exercised justice in disputes over cash benefits in the field of retirement provision for employees and their families and in other cases referred to them by separate regulations.<sup>96</sup> Thus, disputes about non-cash benefits were excluded from the jurisdiction of the courts. These disputes had been excluded in many areas from their jurisdiction by

91 Art. 2 of the Act.

92 Art. 3 of the Act, which excluded from the jurisdiction of the courts disputes: concerning the private law, resulting from the supervision of social insurance institutions and between social insurance institutions (subject to different specific provisions).

93 Complaint about the silence of social insurance institutions [*skarga na milczenie*].

94 Art. 4(1) of the Act.

95 Judgement of the Social Insurance Tribunal TR 578/49; S. Garlicki, *Prawo o sądach...*, *op. cit.*, p. 15.

96 Art. 1 of the Act as amended by Art. 1(1) of the Act of 17 February 1960 on the amendment of the Law on Social Insurance Courts.

special legislation already before 1960.<sup>97</sup> In the amendment, the legislator did not clarify the notions contained in this clause, while at the same time broadening the scope of cases excluded from the jurisdiction of social insurance courts.<sup>98</sup> The amendment also limited the scope of the activities of pension bodies, indicating that only their decisions were subject to appeal, which was identified with a decision within the meaning of Art. 97 of the Code of Administrative Procedure.

A significant<sup>99</sup> change in the scope of material jurisdiction of the courts took place under Art. 17(6) of the Act of 23 January 1968 on cash benefits due in the event of accidents at work,<sup>100</sup> in which the courts were entrusted with the task of handling complaints against all decisions issued on its basis, regardless of their public or private law nature. As a result of this solution, in addition to the benefits included to the social insurance field (pensions, supplementary allowances), the courts were entrusted with the resolution of disputes of a civil law nature concerning claims for compensation for permanent damage to health or the death of an employee<sup>101</sup> and for objects destroyed or damaged as a result of an accident.<sup>102</sup>

Throughout its validity, the Act excluded the possibility of appeal to courts against the decisions of insurance institutions taken on the basis of the discretion of the competent institution (referred to in the Act, in accordance with the then-current nomenclature, as “free discretion”), provided that the decision was within the limits provided by the law for its discretion. Initially, Art. 211 of the Act governed this issue, and since the amendment of the 1960 Act, it was Art. 3(1)(2) of the Act that introduced by the amendment.

In addition, during the period of the courts’ existence, apart from their general jurisdiction in all matters of social insurance resulting from the Act, a number of special regulations extended<sup>103</sup> or limited<sup>104</sup> this jurisdiction temporarily or permanently.

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97 T. Swinarski, *Nowelizacja prawa o sądach ubezpieczeń społecznych*, “Praca i Zabezpieczenie Społeczne” 1960, No. 5, p. 68.

98 The amendment resulted in the exclusion from the courts’ jurisdiction of cases concerning the obligation to insure, assess and collect social insurance contributions, benefits from sickness and maternity insurance, and from family insurance.

99 But mainly in the organisational aspect (consisting in the transfer to courts with hitherto uniform – administrative – jurisdiction also of civil cases), because compensation claims accounted for a few percent of cases incoming to courts after 1968, see H. Sz wajcak, *Sprawy wypadkowe w sądzie ubezpieczeń społecznych*, “Praca i Ubezpieczenie Społeczne” 1970, No. 6, pp. 16–18; M. Nowakowski, *Okręgowe sądy ubezpieczeń...*, *op. cit.*, pp. 181–182.

100 Act of 23 January 1968 on cash benefits in the case of accidents at work (Journal of Laws No. 3, item 12).

101 Art. 11 of the Act of 23 January 1968 on cash benefits in the case of accidents at work.

102 Art. 13 of the Act of 23 January 1968 on cash benefits in the case of accidents at work.

103 For example, disputes regarding old-age pension benefits between state railway workers in the former Prussian region and members of their families and the Polish State Railways under the Act of 15 June 1939 on the liquidation of the Pension Fund for state railway workers in the former Prussian region (Journal of Laws No. 55, item 347), disputes regarding benefits granted to Polish citizens in respect of insurance in foreign social insurance institutions under the Decree of the Council of Ministers of 28 October 1947 on amending and supplementing the Act of 28 March 1933 on social insurance and the Ordinance of the President of the Republic of 24 November 1927 on the insurance of white-collar workers (Journal of Laws No. 66, item 413), complaints against the decisions on benefits issued under the provisions governing social rights of: soldiers under the Act of 13 December 1957 on pension provision for professional and overtime soldiers and their families (Journal of Laws of 1958 No. 2, item 6, Civic Militia officers pursuant to the Act of 31 January 1959 on pension provision for Civic Militia officers and their families (Journal of Laws No. 12, item 70), *etc.*

104 For example, decisions of the Employee Medical Treatment Facility established by the Act of 20 July 1950 on the Employee Treatment Facility (Journal of Laws No. 36, item 334), disputes arising from sickness and mater-



The territorial jurisdiction of the courts can only be analysed from the perspective of the regional social insurance courts, since the Social Insurance Tribunal was uniformly competent throughout the country in the cases it handled. The Act, within the two-instance structure of the social insurance judiciary, provided for the establishment of a network of regional social insurance courts nationally, which were to be created by means of ordinances specifying their seats and circuits (and the number of lay judges). The jurisdiction of a specific regional court over a complaint was determined according to the registered office of the social insurance institution being sued (*i.e.*, whose decision was being challenged).<sup>105</sup> The regulation was intended to concentrate cases concerning the activities of a specific insurance institution in one regional social insurance court, which, by preventing one institution from conducting disputes in several or more regional courts at the same time, was to ensure for the uniform application of the law and to make it easier for insurance institutions to conduct cases before courts.

The general provisions concerning the territorial jurisdiction of regional courts did not apply when the Social Insurance Tribunal, by repealing a previously issued judgement of a regional court due to the fact that it had found a violation of important procedural provisions or the necessity to supplement the evidence to establish the facts of the case, referred the case to a regional social insurance court other than the one previously ruling the case.<sup>106</sup> The jurisdiction of the duly designated regional social insurance court was established at the time the complaint was lodged, and following that event, the court retained its jurisdiction over the case regardless of any subsequent events, including both a change in the registered office of the defendant institution and a change in the boundaries of the circuit of the regional court with which the complaint was lodged.<sup>107</sup>

As far as the procedure before the courts is concerned, the Act contained a comprehensive regulation, without making use of references to other legal acts, with the basic procedure before the courts being based on the principles of civil court proceedings – *i.e.*, the civil procedure as unified in 1930.<sup>108</sup> However, the Act provided for solutions unknown to judicial proceedings at that time, such as a complaint about silence on the part of the authorities or a complaint in defence of the law.

Probably the most significant legislative novelty contained in the Act was the right to contest the silence of an insurance institution, provided for in Art. 208(3) of the Act.<sup>109</sup>

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nity insurance, family insurance, concerning insurance contributions under the Decree of 5 February 1955 on transferring the performance of social insurance to trade unions (Journal of Laws No. 6, item 31), *etc.*

105 Article 95(1) of the Act in conjunction with Art. 109 of the Act, and after the amendment of the Act of 1960, with its Art. 95 in the newly established wording.

106 This was permissible under Art. 373 of the Act.

107 Art. 106 of the Act, see S. Garlicki, E. Szeremeta, *op. cit.*, p. 67.

108 Ordinance of the President of the Republic of Poland of 29 November 1930 – the Code of Civil Procedure (Journal of Laws No. 83, item 651).

109 Although similar solutions were included in the draft Act on the new administrative procedure, which was being prepared in the interwar period (*e.g.*, in chapter XI *Zalatywianie spraw* [Settlement of matters] – the draft Act on administrative procedure of 1930, prepared by the Commission for Legislative Proposals at the Ministry of the Interior, see: “Gazeta Administracji i Policji Państwowej” 1931, p. 567); finally, they were not included in any other legal act adopted in the interwar period.

The Act provided for the possibility to lodge a complaint when the insurance institution (pension authority – in accordance with the nomenclature adopted in the amendment to the Act of 1960), despite the fact that the party concerned had submitted a claim, did not issue a decision within six months from the date of the correct submission of the claim by the party concerned (the so-called complaint about the silence of the authorities [*skarga na milczenie władzy*]<sup>110</sup>). In such a situation, the Act allowed the insured person to lodge the complaint with the regional court, which handled it in the same way as a complaint against the decision of the insurance institution. The court informed the defendant institution of the complaint, served it with a copy and requested the submission of a case file. After the proceedings, the court issued a ruling on the substance of the case. Complaints about the silence could be lodged at any time up to the date of the announcement or service of the requested decision. If the insurance institution issued a decision after the complaint had been lodged with the court, the court discontinued the pending proceedings only if the decision fully complied with the complainant's request, otherwise it continued to hear the case.<sup>111</sup>

The Act (in the wording in force until 1960) also provided for a complaint in defence of the law [*skarga w obronie prawa*], unknown at that time to other judicial proceedings. The Public Interest Commissioner was entitled to lodge such a complaint. The procedure initiated by such a complaint was simplified and its primary objective was to issue a ruling quickly, hence it was conducted without the participation (or even notification) of the parties to the proceedings in which the ruling was issued, which was subsequently the subject of a complaint in defence of the law. The case was proceeded in a closed session after hearing the Public Interest Commissioner, and its effect – if the complaint was admitted – was only that the Tribunal determined in the content of its decision the circumstances of the infringement indicated by the Commissioner (consisting in an incorrect interpretation of the provisions of law), occurring in the proceedings that had already been concluded, without affecting the validity of the decision on which it was based.<sup>112</sup> The amendment to the Act of 1960 abolished a complaint in defence of the law, replacing it with an extraordinary complaint as a measure of appeal [*nadzwyczajna skarga rewizyjna*],<sup>113</sup> based on the model of an extraordinary review [*rewizja nadzwyczajna*] functioning in common courts.<sup>114</sup> The extraordinary complaint was abolished as early as 1962, and replaced with an extraordinary review lodged with the Supreme Court.

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110 T. Swinarski, *O sądach ubezpieczeń społecznych*, "Przegląd Ubezpieczeń Społecznych" 1953, No. 7, p. 262.

111 S. Garlicki, *Prawo o sądach...*, *op. cit.*, pp. 102–103.

112 Except for the situation when the infringement consisted in the inadmissibility of proceedings before social insurance courts in a given case or when the case was adjudicated by a judge or a lay judge excluded by virtue of law – which implied the necessity to repeal the defective ruling.

113 The provisions of the Ordinance of the President of the Republic of Poland of 19 March 1928 the Code of Criminal Procedure (Journal of Laws of 1928 No. 33, item 313) and the Ordinance of the President of the Republic of Poland of 29 November 1930 – the Code of Civil Procedure, see T. Swinarski, *Nowelizacja prawa...*, *op. cit.*, p. 70.

114 Art. 1 (110)(111)(112) of the Act of 17 February 1960 on the amendment of the Law on Social Insurance Courts.

## The nature of social insurance courts

The social insurance courts acting under the provisions of the Act should be classified as a special division of administrative courts due to their structure, organisation, jurisdiction and competence, which is not contradicted by the non-reactivation of general administrative courts in Poland after World War II.

The operation of the social insurance courts was based on a comprehensive legal act governing the organisation of the social insurance courts, the position, rights and duties of judges in these courts, as well as the proceedings before them.<sup>115</sup> The courts were independent of the administration, independent in their judgements<sup>116</sup> (judges' independence was to be guaranteed by their irremovability, non-transferability, inviolability and accountability only before the disciplinary courts), professional (to the extent that they were composed of professional judges), resolving, as a result of complaints lodged by the addressees of administrative decisions,<sup>117</sup> disputes between administrative bodies and the subjects of their previous decisions.

Proceedings before the courts were of an adversarial nature – taking into account the structural limitations of the adversarial nature of the court proceedings that supervised the legality of an administrative body's activities, guaranteed equality of parties to the proceedings (with certain facilitations for persons lodging complaints against administrative decisions, expressed *e.g.*, in the mode and form of lodging a complaint<sup>118</sup>), which at an earlier stage of proceedings in a given case did not act as equal, and finally were conducted on the basis of a special procedure.<sup>119</sup> Proceedings before the social insurance court could not be initiated *ex officio*, either by a court or by another authority, and in particular could not be initiated by the authority whose decision was to be assessed by the court.<sup>120</sup> Proceedings could only be initiated by the addressee of the insurance institution's decision, and in some situations by the Public Interest Commissioner. Only these entities were also entitled to withdraw

115 Act of 28 July 1939 – the Law on Social Insurance Courts.

116 If one accepts the thesis about the real, and not only phoney independence of the judiciary in the period of the Polish People's Republic.

117 In 1968, the scope of the jurisdiction of social insurance courts was extended to include cases concerning compensation for accidents at work (*i.e.*, civil disputes), as a result of which the courts lost their purely administrative character. See S. Włodyka, *Ustrój organów ochrony prawnej*, Warszawa 1975, p. 144.

118 Which could be lodged by a party in writing (but also orally for the record in a municipal court [*sąd grodzki*], labour court or social insurance court), directly with the competent court (but if – except for the case filed orally for the record with the aforementioned courts – the complaint was lodged with the inappropriate social insurance court, social insurance institution or an authority supervising that institution, such a complaint was sent *ex officio* to the competent court, and the date on which the complaint was brought before the wrong institution was considered as the date of its lodging with the court), within two months of the announcement or service of the decision on the complainant (but also after the expiry of that period if the complainant has shown that they were not able to lodge the complaint within the prescribed period for reasons beyond their control).

119 Contained in Part II of the Act of 28 July 1939 – the Law on Social Insurance Courts.

120 T. Szymański, *Postępowanie przed sądami ubezpieczeń społecznych*, "Przegląd Ubezpieczeń Społecznych" 1938, No. 6, p. 393.

the complaint at any time (which could be done both in writing and orally for the record, similarly to lodging a complaint<sup>121</sup>).

Until 1962<sup>122</sup>, the rulings of the Social Insurance Tribunal were final and binding on all parties to the proceedings – including the administrative body under supervision. The courts were entitled both to repeal administrative decisions (and, if necessary, reissue decisions, as well as direct guidelines for further proceedings to the administrative authorities) and to pass rulings amending administrative decisions (reformatory), so they had powers currently qualified as broadly understood supervision.

The special nature of social insurance courts was determined by the clause outlining their jurisdiction, according to which the courts, as a rule, exercised justice “in social insurance disputes”<sup>123</sup> (which was clarified by a negative clause), after the amendment of the 1960s, formally limited to

disputes over cash benefits in the field of retirement provision for employees and their families and in other cases referred to them by separate regulations.<sup>124</sup>

The actual scope of courts jurisdiction was determined by the Act, other provisions of statutory rank, as well as the case law of the courts themselves (in particular the Social Insurance Tribunal) and, after 1962, of the Supreme Court.

Taking into account the above features and jurisdiction, the social insurance courts may be situated in a wide range of different variants of administrative courts in operation or conceived within Polish territory in the 19th and first half of the 20th century. In particular, such a classification of courts is not contradicted by the reservation to their competence of rulings amending contested decisions (reformatory) – which was also the competence of other Polish administrative courts.<sup>125</sup> The administrative nature of the courts is not contradicted by the fact that in 1968 they were entrusted with the jurisdiction over disputes of a civil law nature concerning claims for compensation for accidents at work. The above cases were a clear material exception to the jurisdiction of the courts, while at the same time constituting only a fragment of a number of public-law benefits provided for victims of accidents at work.<sup>126</sup> Referring such cases to these courts was intended to ensure a uniform procedure for pursuing claims under the Act.

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121 M. Majewska, *Prawo skargi do sądu ubezpieczeń społecznych*, “Praca i Zabezpieczenie Społeczne” 1959, No. 7–8, p. 108.

122 When the Supreme Court’s judicial supervision over courts was introduced.

123 Original wording of Art. 1(1) of the Act.

124 Wording of Art. 1(1) of the Act as amended by Art. 1(1) of the Act of 17 February 1960 on the amendment of the Law on Social Insurance Courts.

125 The Invalidity Administrative Court administrative courts operating in the interwar period in the former Prussian region, as well as (although to a limited extent) the Supreme Administrative Tribunal.

126 The Act provided for the following accident benefits: disability pension, survivor’s pension, supplementary allowances to other social insurance allowances related to incapacity for work, and only in specific cases the compensation of a civil nature for permanent damage to health or for objects destroyed or damaged as a result of an accident and possibly the so-called compensatory benefit [*świadczenia wyrównawcze*].

Similarly to the courts – from a functional point of view – the jurisdiction of the Invalidation Administrative Court was determined in detail.<sup>127</sup> It ruled on cases which were subsequently included in the jurisdiction of insurance courts. It was competent to determine the facts of the case by supplementing the evidence, and regarding the complaint as justified, it could both repeal the contested decision (cassation) and replace it with its own (reformative ruling).<sup>128</sup> Just like regional social insurance courts, the Invalidation Administrative Court adjudicated by a bench composed of professional judges (*i.e.*, judges of the Supreme Administrative Tribunal, at which it operated) and lay judges (half of them representing the disabled and half – officials).<sup>129</sup>

## Liquidation of social insurance courts

The social insurance courts in the formula presented above were abolished in 1974 under the provisions of the Act of 24 October 1974 on regional labour and social insurance courts. This Act merged the hitherto independent systems: of administrative courts in the field of social insurance and of common (civil) courts in matters related to employment relationships. The newly established regional labour and social insurance courts had to a large extent lost the character of administrative courts (apart from the substantive nature of some of the cases heard – upon complaints against the decisions of administrative bodies), because they operated on the basis of respectively applied provisions on common courts. The provisions on civil court proceedings were applicable to proceedings before them to the extent not regulated by the Act of 24 October 1974.

The initiative to abolish the courts did not surprise those associated with them, because actions aimed at abolishing these courts were undertaken in the 1960s. The form given in the course of parliamentary work on the draft Act on the Supreme Court adopted in 1962 to the chamber of this court supervising the labour and social insurance courts, *i.e.*, the Labour and Social Insurance Chamber, was the first visible manifestation of the tendency to unify the labour and social insurance courts. Plans for the comprehensive unification of the labour and social insurance courts were presented as early as in the 1960s, *inter alia* during conferences devoted to the issue of the case law of social insurance courts,<sup>130</sup> and in 1967–1968 they became the subject of legislative works and press discussion. The proposed changes in the social insurance and labour courts were presented as part of the 6th Resolution of the Congress of Trade Unions of 24 June 1967,<sup>131</sup>

<sup>127</sup> In Art. 1(1) of the Act of 26 March 1935 on the Invalidation Administrative Court.

<sup>128</sup> Art. 18 of the Act of 26 March 1935 on the Invalidation Administrative Court.

<sup>129</sup> Art. 3 and 9 of the Act of 26 March 1935 on the Invalidation Administrative Court.

<sup>130</sup> R. Kielkowski, *Na marginesie projektu zniesienia Sądów Ubezpieczeń Społecznych*, “Praca i Zabezpieczenie Społeczne” 1968, Issue 12, p. 21.

<sup>131</sup> Resolution No. VI XII of the Trade Unions Congress, Warszawa 1967, pp. 39–40.

postulating the merger of the social insurance courts system with the labour divisions of common courts. In 1967, the Commission for Labour Law Organisation at the Council of Ministers presented two proposals of abolition of separate social insurance courts by establishing a quasi-independent system of labour and social insurance courts, entrusting some cases to labour and social insurance chambers at voivodship (provincial) civil courts, and abolishing the Social Insurance Tribunal.<sup>132</sup> In spite of the critical opinions of both theoreticians<sup>133</sup> and practitioners<sup>134</sup> towards the concept of unification of the social insurance and labour courts, the basic assumptions contained in the 6th Resolution of the 12th Congress of Trade Unions of 1967, and then in the proposals of the Commission for Labour Law Organisation found expression in the governmental draft Act on regional labour and social insurance courts of 1974,<sup>135</sup> which was passed by the Sejm without significant changes.

The above mentioned Act merged the hitherto independent systems: of administrative courts in the field of social insurance and of common (civil) courts in some matters related to employment relationships, in chapter III *Przepisy przejściowe i końcowe* [Transitional and final provisions], repealing in full the Act of 28 July 1939 – the Law on Social Insurance Courts,<sup>136</sup> providing for the abolition from 1 January 1975 of all 11 regional social insurance courts in existence at that time,<sup>137</sup> and from 1 July 1975 the abolition of the Social Insurance Tribunal itself.<sup>138</sup>

The change in the way of dispute resolution concerning decisions in the field of social insurance made under the Act of 24 October 1974 modified the pre-existing model, replacing the two-instance court proceedings before the mixed courts with a procedure in which special judicial bodies (regional labour and social insurance courts) were to hear cases in only one (final instance).

As a consequence of this solution, the Act of 24 October 1974 adopted the mechanism of the allocation of judges of former social insurance courts, according to which, on the date of the abolition of the Social Insurance Tribunal, its judges were appointed as judges of regional labour and social insurance courts. The territorial jurisdiction of the court where the judges were appointed was designated by their place of residence on the day the Tribunal was abolished,<sup>139</sup> *i.e.*, 30 June 1975.<sup>140</sup> On the other hand, as of the day of the abolition of the regional courts, *i.e.*, 31 December 1974, their judges were appointed as judges of common *powiat* [district] courts, and the specific court

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132 Proposals were presented by A. Mirończuk, *Zamierzenia ustawodawcze w zakresie prawa pracy*, “Przegląd Związkowy” 1967, Issue 6.

133 E. Modliński, *Podstawowe zagadnienia prawne ubezpieczeń społecznych*, Warszawa 1968, pp. 146–150.

134 R. Kielkowski, *op. cit.*

135 Sejm Paper No. 166 of the Sejm of the 6th term of 1974.

136 Art. 84(1) of the Act of 24 October 1974 on regional labour and social insurance courts.

137 Art. 84(2) in conjunction with Art. 98 of the Act of 24 October 1974 on regional labour and social insurance courts.

138 Art. 84(3) in conjunction with Art. 98 of the Act of 24 October 1974 on regional labour and social insurance courts.

139 Art. 85 of the Act of 24 October 1974 on regional labour and social insurance courts.

140 However, since the Tribunal operated in Warsaw, most of the judges, with the exception of those delegated to the regional courts, became *ipso jure* the judges of the Regional Labour and Social Insurance Court in Warsaw.

was designated by their place of residence on the day of liquidation of the regional court in which they ruled.<sup>141</sup> However, the practice was to appoint in 1975 judges of the former regional social insurance courts to the newly created regional labour and social insurance courts, usually within the boundaries of the circuit of the former social insurance court.<sup>142</sup>

The Social Insurance Tribunal was abolished six months after the entry into force of the Act of 24 October 1974, *i.e.*, as of 1 July 1975. From that date onwards, the main competences reserved hitherto for the Tribunal, consisting in the hearing of appeals against decisions taken in the first instance by the bodies adjudicating in cases concerning cash benefits from social insurance (which had been done, before the reform, by regional social insurance courts, followed by quasi-judicial bodies<sup>143</sup>), were transferred to the regional labour and social insurance courts established by the Act of 24 October 1974. In exceptional cases, where the regional labour and social insurance courts were to adjudicate in cases concerning cash benefits from social insurance independently, as the first instance body, the tasks of the second instance body, functionally corresponding to those of the Social Insurance Tribunal prior to its liquidation, were performed by the Labour and Social Insurance Chamber of the Supreme Court. It also ruled in this capacity in the event if the Supreme Court took over the case for its own consideration because the regional labour and social insurance court had presented a legal issue “raising serious doubts”. In labour and social insurance disputes, the Supreme Court retained all general competencies, provided by the Act of 15 February 1962 on the Supreme Court, in particular, to consider extraordinary reviews of final rulings, to establish guidelines for the administration of justice and judicial practice, to adopt resolutions containing answers to legal questions, and to point out to other courts obvious violations of statutory provisions when handling cases.<sup>144</sup>

## Summary

The presented issues lead to the conclusion that from the time of their establishment in 1945–1948 until their liquidation in 1974–1975 the social insurance courts were the only administrative courts operating within the Polish People’s Republic.

Their jurisdiction included almost exclusively the settlement of administrative disputes, and due to the nature of their activity they were the administrative courts of a special character, performing their tasks of reviewing the legality of social insurance

<sup>141</sup> Art. 86 of the Act of 24 October 1974 on regional labour and social insurance courts.

<sup>142</sup> M. Nowakowski, *Okręgowe sądy...*, pp. 307–308.

<sup>143</sup> As the authorities investigating complaints in cases of social insurance cash benefits (pensions and other benefits) have been defined by S. Włodyka in: *idem*, *Ustrój organów ochrony prawnej*, Warszawa 1975, p. 145.

<sup>144</sup> Art. 24 and 25 of the Act of 15 February 1962 on the Invalidity Administrative Court.

decisions issued by social insurance institutions. After World War II, when the Polish People's Republic made social insurance institutions fully public, the disputes concerning such decisions were of a purely administrative nature also because of the entity issuing the contested decisions. The courts were not deprived of their status of special administrative courts by the inclusion to their jurisdiction in 1968 of an exhaustive list of civil compensation claims.

The effect of the courts' activity allows one to formulate the thesis that in the Polish People's Republic they were not a surrogate of higher-level administrative bodies supervising the insurance institutions, but were in fact institutions situated outside the administrative structures and independent of them. Within the framework of their statutory competences, they controlled the decisions of insurance institutions under their jurisdiction (due to the identified infringements of law, regional social insurance courts repealed or changed about 30–50% of the decisions of cases appealed against and directed to them<sup>145</sup>).

The abolition of the social insurance courts did not cancel their legal acquis, and their case law, in particular the rulings of the Social Insurance Tribunal, has remained valid until today, which is reflected in the subsequent case law and doctrine. The theses of the rulings of the Social Insurance Tribunal were referred to long after the abolition of the discussed courts by, *inter alia*, the Supreme Court.<sup>146</sup>

Finally, it can be noted that the model of the judicial review of decisions of insurance institutions, introduced by the Act, seems in some aspects to be more accurate than the current one, in which common courts, acting on the basis of slightly modified general rules of civil procedure, resolve administrative disputes between social insurance bodies and the addressees of their decisions, which concern the legal defectiveness of these decisions. Contested decisions in the field of social insurance currently constitute the most numerous group of administrative decisions subject to the jurisdiction of common courts, in spite of the establishment of two-instance general administrative courts in Poland itself.

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<sup>145</sup> *Rocznik statystyczny ubezpieczeń społecznych 1946–1985*, Warszawa 1985.

<sup>146</sup> See, *inter alia*, the judgement of the Supreme Court – the Labour and Social Insurance Chamber of 12 December 1975, III PO 36/75, OSNCP 1976/5 item 119, the decision of the Supreme Court – the Labour and Social Insurance Chamber of 2 July 1976, III URN 27/74, LEX No. 16331, Resolution of the Seven Judges of the Supreme Court – the Labour and Social Insurance Chamber of 26 August 1976, V PZP 3/76, OSNCP 1976/11 item 235, *Państwo i Prawo* 1977/10, p. 161, Judgement of the Supreme Court – the Labour and Social Insurance Chamber of 21 February 1978, II URN 11/78, OSNCP 1978/9 item 170, Resolution of the Supreme Court – the Labour and Social Insurance Chamber of 22 December 1986, III UZP 53/86, OSNCP 1988/1 item 10.

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## Sądy ubezpieczeń społecznych w Polsce Ludowej

Artykuł przybliży podstawowe zagadnienia związane z genezą, okolicznościami utworzenia, działalnością, wreszcie też likwidacją istniejącego w Polsce w latach 1945–1975 sądownictwa ubezpieczeń społecznych. Na instytucje tę składały się działające w wybranych miastach wojewódzkich okręgowe sądy ubezpieczeń społecznych – jako sąd pierwszej instancji oraz Trybunał Ubezpieczeń Społecznych w Warszawie – jako sąd drugiej instancji. W tekście omówiono kluczowe materie związane z ustrojem, organizacją, a ponadto zakresem właściwości rzeczowej i kompetencjami orzeczniczymi sądownictwa ubezpieczeń społecznych, które determinowały jego charakter. Autor również dowodzi, że przed utworzeniem Naczelnego Sądu Administracyjnego sądy ubezpieczeń społecznych były w Polsce Ludowej jedynymi sądami o charakterze administracyjnym.

**Słowa kluczowe:** sądy ubezpieczeń społecznych, sądownictwo administracyjne, kontrola administracji, ubezpieczenia społeczne, Polska Ludowa

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