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## A new concept of criminology for the labour market

### Abstract

There are numerous pathologies in the labour market. However, until now, no effort has been made to approach this subject from the perspective of criminology. In this study, I use the conceptual apparatus of criminology to create a model describing negative phenomena on the labour market. The key element of this model is referred to as a labour market delict (violation), a term which denotes any behaviour by a participant in this market which may lead to infringement of the rights of or damages to the possessions of another market participant, or which may create a threat to the common good, such as social order or justice, or which puts into question the economic and social meaning of work. Delicts of the labour market can be recognized in several areas, such as those involving wages, partner obligations, safety, or duties towards the workplace. The article also contains a theoretical model of labour market delicts and an analysis of preliminary empirical survey of this issue.

## Introduction

The aim of this study is to draw attention to phenomena in the labour market which, although not criminal by nature, can definitely be considered negative. It is obvious that there are many pathologies at play in the labour market<sup>1</sup>, but until now there has been little study of such phenomena as the effects of specific actions on the market where those seeking work meet those searching for workers. Obviously, employers' analytical approach has been dominated by economic concerns<sup>2</sup>, where indicators such as profit/loss are crucial, or by considerations of the effectiveness of employment from a purely legal standpoint<sup>3</sup>. When the human dimension appears in the workplace, it is often limited to the question of whether or not employee's rights have been violated<sup>4</sup>. For some time, considerations have also come forth whose recurring theme is the question of whether some of the market participants have been victims of discrimination<sup>5</sup>.

However, it is worth completing this picture by including the criminological aspect in the analysis of the labour market, with a particular emphasis on the most important elements from a criminological perspective, that is, a reflection on the genesis (etiology) of specific behaviours and an analysis of their phenomenal forms (phenomenology)<sup>6</sup>.

This last issue seems to be particularly interesting. In my opinion, there are many situations in the labour market which participants perceive as negative but which are a social aspect of specific interactions, and society does not always share the opinion of those interested. A typical example would be behaviours bearing the characteristics of sexual harassment (i.e., 'dirty jokes'), which the jokes' tellers and some recipients treat as fun, but for other recipients may be a source of trauma. To learn more about the nature and dynamics of such events, it is worth looking at them from the perspective of criminology. The key concepts of this study are criminology and its relation to the labour market<sup>7</sup>.

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1 *Pracodawcy na potęgę łamią przepisy. Trzeba zmienić prawo* <http://tvn24bis.pl/wiadomosci-gospodarcze,71/pracodawcy-na-potege-lamia-przepisy-trzeba-zmienic-prawo,485006.html> (July 2018).

2 *Podstawy ekonomii*, ed. R. Milewski, Warszawa 2001, p. 279 et seq.

3 E. Kryńska, E. Kwiatkowski, *Podstawy wiedzy o rynku pracy*, Łódź 2013.

4 A. Drozd, *Ochrona danych osobowych pracownika (kandydata) po nowelizacji kodeksu pracy*, 'Praca i Zabezpieczenie Socjalne' 2004, vol 1.

5 K. Kędziora, K. Śmiszek, *Dyskryminacja i mobbing w zatrudnieniu*, Warszawa 2010.

6 An example is a study in which the authors examine the relationship between employee solidarity and the tendency toward deviant behaviour in organisations. See: Y. Itzkovich, S. Heilbrunn, *The Role of Co-Workers' Solidarity as an Antecedent of Incivility and Deviant Behaviour in Organisations*, 'Deviant Behaviour' 2016, vol. 37, Issue 8.

7 Although I am aware that defining criminology in a legal letter is a risky procedure, I base this on the assumption that this text may also reach those who know more about the

Criminology is a 'social science dealing with the study and gathering of comprehensive knowledge about crimes, as a particular form of deviant behaviour, crime – as a social phenomenon – the perpetrators of crime, the victims of crime, and the institutions and control mechanisms that societies create to prevent and combat crime'<sup>8</sup>. Behind this 'synthetic' definition are extensive reflections on the genesis and nature of individual behaviour seen in its social context and extensive considerations of crime as a mass phenomenon, which is not the simple sum of individual behaviours and is subject to modification by extremely complicated processes. Criminology is also a science concerning the perpetrator of a crime, which is perceived as an entity that acts (rationally or irrationally), but whose actions can be analysed as one of the forms of its expression. On the other hand, we can look at the victim of a crime, which is not always just a passive 'object' under the perpetrator's influence, but also an active participant in some criminal events. Finally, criminology is the science of all that can be defined as a social reaction to crime; in other words, it comprises various ways of controlling crime as a mass phenomenon.

The presented definition is still too imprecise to serve the analysis that I would like to carry out in this text, so it is worth briefly expanding on each of its individual elements. At the beginning, an important question arises: What is a crime? Is it enough to say that a crime is everything that criminal law recognises as a crime? Without prejudging the answers, the question can be asked a bit differently: what crimes stand out from other crimes as individual or social? Imagine an observer who sees a man striking the window of a car. His first thought is the conviction that the man is doing something wrong. If the observation ended at this stage, the observer would retain this conviction, but his observation would not be completely precise as he did not know the reason for the action he observed. He would have been more certain in his conviction had he seen the perpetrator take a briefcase from the car and run away – then his assumption would have been that the briefcase was stolen. But would he have the same certainty if the perpetrator of the window's destruction simply drove off in the car? Not necessarily. Perhaps, in that case, the person was the owner of the car and he was unable to force the door open in the normal way, so he had to break the glass. The situation would be different if the observer saw the person strike the window and then pull a small child or a dog out of the car. Then, the observer would have to define the behaviour of this person as a good deed and an act of determination to help. In this way, we draw attention to the fact that for

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labour market, and that criminology was not necessarily the subject of their in-depth studies. I feel somewhat more comfortable defining the labour market, although I also know that knowledge on this subject is extensive.

<sup>8</sup> J. Błachut, A. Gaberle, K. Krajewski, *Kryminologia*, Gdańsk 1999, p. 19.

a criminologist, the behaviour itself (damage to the glass) would undoubtedly be considered negative in appearance, although it is not enough to prejudge the act as criminal or even pathological in character (theft or vandalism) without all of the facts.

Criminology is also a science which studies two entities involved in criminal behaviour<sup>9</sup>, one being the perpetrator and the other being the victim. However, here too, we also encounter some difficulties in creating a definition, not as to who is the perpetrator and who is the victim, because this is a relatively simple matter, but on the level of reflection of the term 'man'. As there are so many concepts of a man, it is not without significance which of them we use to answer this question. For example, on the basis of the behaviourist theory, man appears as an 'outside-steered' subject. Regarding this, J. Koziński says that man is reactive, i.e., susceptible to stimuli coming from the environment and strongly addicted to them<sup>10</sup>. In turn, the psychodynamic concept developed a fundamentally different vision of a man, whom Koziński calls 'imperfect' and who is controlled by internal motivational forces<sup>11</sup>. With such fundamentally different descriptions of a human being, how can one speak of a universal understanding of a functioning subject?

I draw attention to equally significant differences in the approach to the subject of crime in the field of criminal law and criminology. Criminal law will only ask whether X has committed a crime and whether we can blame him. It will also ask whether Y can be considered a victim of the perpetrator's actions and whether the situation has any consequences. Critical reflection accompanying the justice system is also important for criminology. If we adhere to the classical school of thought, then we see an individual equipped with free will, so the same person when taking action contrary to the law must be held responsible and must take account for the consequences of their actions. This concept is different when we look at a man through the prism of positivist thought, because from that perspective he can appear as an independent entity, subject to numerous influences and determinants, which he often cannot overcome<sup>12</sup>. In each of these situations, the issue of the legal liability of the perpetrator can be seen completely differently.

Finally, we come to the last issue. If criminology is to be a science of social reaction to a crime, we must take our analysis further and define the society whose response we want to investigate. After all, depending on the vision of the

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<sup>9</sup> For better clarity, I omit the so-called victimless crimes, that is, those directed against such common good as public order or road safety.

<sup>10</sup> J. Koziński, *Koncepcje psychologiczne człowieka*, Warszawa 1995, 'p. 19 et seq.

<sup>11</sup> *Ibid.*, p. 101 et seq.

<sup>12</sup> J. Błachut, A. Gaberle, K. Krajewski, *Kryminologia...*, p. 41 et seq.

society we adopt to investigate, we will also describe the social mechanisms of controlling crime differently. To avoid going too far into detail, let's just say that where members of society reach a high level of agreement as to the basic norms and values that underlie their society, then it is much easier to determine what is right and what is wrong. This agreement makes it easier to say who is a criminal and who is not. However, in such a society where there is turmoil from a number of conflicts, such as the rich being afraid of the poor, uniformed governmental agencies terrorizing civilians, and 'the North hating the South', then the matter of differentiating good and evil becomes more complicated<sup>13</sup>. For many, even such obvious negative behaviour as murder can be the subject of strong condemnation, while for others such acts can represent the manifestation of supreme devotion to the common cause. In Rwanda, two decades ago, every Hutu who killed a Tutsi gained the respect of his community, and anyone who did not accept this fact faced having to pay with their own health or life<sup>14</sup>.

From a social science perspective, if the object of criminology is to make all behaviour that deviates from the norms which have been established in the mode of normally functioning social practice, then its scope broadens substantially. Then, criminology may deal with such obvious problems as prostitution or drug addiction, but other behaviours may also enter its sphere of influence as well, such as family dysfunctions or hooligan behaviour in stadiums. This area of interest for criminology causes it to become a meta-reflection on the state of society in general, raises questions about the origin of the social order, and considers the social consequences of deficiencies in the human condition. This is precisely why in the field of criminology, the pathological behaviour discussed herein can be applied to the labour market. Criminology is a relatively young science, but it has already become independent enough that it has developed its own internal structure as well as its own research instruments<sup>15</sup>. Of course, criminology is a combined product of sociology, psychology, pedagogy, and law, but it also successfully develops and enriches everything taken from its roots.

The second concept which appears in the title of this study and which needs to be defined is the labour market. A well-developed contemporary society which functions within a democratic legal order and is subject to economic market logic develops several basic markets, including the commodity market, the financial market, or the services market, but a labour market is created as well. The latter is defined as 'the place where the exchange of labour services between employees and employers takes place, and the size of said transactions

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<sup>13</sup> L. Falandysz, *W kręgu kryminologii radykalnej*, Warszawa 1986, p. 10 et seq.

<sup>14</sup> J. Regina-Zacharski, *Rwanda. Wojna i ludobójstwo* Warszawa 2012.

<sup>15</sup> See: Kryminologia, ed. W. Świda, Warszawa 1977. Also: O. Dahlback, *Analyzing rational crime – models and methods*, Dordrecht-Boston-London 2003.

and their conditions, and in particular the price of these services, i.e., salary' is agreed upon<sup>16</sup>.

The essence of each of the listed markets – including the labour market – is that it satisfies the needs of its participants effectively, as far as possible in a given situation. It is assumed that an entity's or individual's presence on the market is voluntary and that the key instrument of the market game is the price, because 'the market is a process by which the buyer and seller determine what they want to sell or buy and under which conditions'. When the price is used in a constructive way, it leads to the formation of relations between market participants, who can discuss and strive for equivalence of mutual benefits. On the other hand, the market is a place where the principle of competition applies, thanks to which the prices of goods and services are determined, including the price of labour. Finally, there is also the state's role in the market – a quite specific role, that of a regulator only to the necessary extent. The labour market may be a bit different, but I will return to this issue.

Unlike in a market economy, the labour market is defined in the economy as planned or demand-resolving, a feature which is lacking in a market as such<sup>17</sup>. In fact, it is the state that takes over the role of the market; it plans the needs and decides about the turnover of goods and services, and the circulation of capital is almost non-existent. When it comes to the labour market, the principle of full employment applies and the status of employment must be constantly balanced. In order for the balance of work to be consistent, there should be as many jobs as needed and remuneration – except for minor exceptions – should be set from the top down.

The attempt to find a compromise between these two extremes of the continuum results in what is known as the social market economy<sup>18</sup>, which is supposed to creatively combine market principles from the economic layer with human sensitivity. The state does not interfere in the market but reserves the right to ensure that the best working conditions are in practice and that people's wages are appropriate. When it comes to the functioning of the labour market, the creators of the social market economy point out that although human work is the commodity in demand, the worker – as an entity equipped with dignity (from which numerous laws arise) and endowed with individual characteristics – is subject to special state protection<sup>19</sup>.

<sup>16</sup> E. Kryńska, E. Kwiatkowski, *Podstawy wiedzy o rynku pracy...*, Łódź 2013., p. 11.

<sup>17</sup> *Podstawy ekonomii*, ed. R. Milewski..., p. 67 et seq.

<sup>18</sup> *Spółeczna gospodarka rynkowa*, ed. R.W. Włodarczyk, Warszawa 2010.

<sup>19</sup> J. Wratny, *Państwo jako regulator stosunków pracy – tendencje zmian*, 'Praca i Zabezpieczenie Społeczne' 2004, vol 10.



The labour market is fundamentally different from other markets. For example, there is an exchange of goods on the commodity market, which results in a change in ownership of those goods. However, the specificity of the labour market is such that a special employment relationship is established. If the commodity of the labour market is work, as in other markets, the 'carrier of the commodity' also participates in making market decisions, because the employee offering the commodity of their work makes the final decision.

In the case of the labour market, the market game functions differently. For example, in the commodity market, the concept is referred to as 'a process helping buyers and sellers determine the prices and quantity of goods to be bought or sold'. On the commodity market, such interaction is in some sense objective and economists have developed a number of formulas to explain the mechanisms of the mutual influence of such market elements as the price, supply, demand, or quality of goods<sup>20</sup>. If a customer can check the quality of available goods, then in choosing a specific product he may be guided by rational principles, even when there is an element of subjective evaluation (i.e., aesthetic values). As for the quality and price of work, the matter is much more complicated. Of course, when the supply of labour increases, its price decreases, but there are no rational premises for assessing which work will be better, as is possible in the case of other goods. Although employment specialists are constantly working out the criteria for making this assessment objective, it will always be much more subjective. And as long as there is an element of subjectivism in the assessment, there is a danger of abuse or injustice.

Another important difference results from the fact that both goods and capital are brought to market because they were made for that purpose and the fact that it depends on the will of the owners as to if and when this takes place. On the other hand, individuals bring their offer of work to market in order to gain the means necessary for their survival, as well as to exercise their right to work. These points are included in the catalogue of human rights. Admittedly, these are not in the catalogue of personal and political rights, but they belong to the group of economic, social, and cultural rights ('second generation')<sup>21</sup>. Although no unemployed person will win a court case with a state that there is no job for her/him, the right to work obliges the state to strive to ensure that this right is guaranteed to the fullest extent possible.

What also fundamentally differentiates the labour market from other markets is the number of participants, because there are far more participants in the former. The key actors – employers, employees, and the state (as a regulator) – are

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<sup>20</sup> *Podstawy ekonomii...*, p. 97 et seq.

<sup>21</sup> W. Osiatyński, *Prawa człowieka i ich granice*, Kraków 2011, p. 184 et seq.

joined by rather specific entities, such as employment agencies, trade unions, confederations of employers, social institutions, or local governments.

The two most important elements of any market are supply and demand<sup>22</sup>. These are also present on the labour market, where they are defined specifically. In the simplest terms, the supply of labour is the number of people who want to work for a given wage during a given period<sup>23</sup>. Demographic factors that affect labour supply include natural growth, population movement in the form of immigration and emigration, such ecological variables as the dominant place of residence – in the city or the countryside – and the educational system, including vocational education.

The demand for labor is the request of employers, including companies and agencies, for workers<sup>24</sup>. The demand for work is also described by the market opportunities (absorptivity) of a certain group of people. Among the most important factors affecting the demand for labour are labour costs, labour productivity, the demand for goods, and the demand for services. As already mentioned, the subject of the transaction on the labour market is work, for which the employee receives specific remuneration from the employer. It is worth noting that this is only the very traditional view of the labour market, because one of the newer phenomena is ‘labour leasing’<sup>25</sup>, i.e., the ‘renting’ of employees to employers along with remuneration for the service. The effects of this process will be discussed later.

## Labour market law

The existence of a place where employers and employees meet is connected with a whole range of legal regulations on the labour market, with particular emphasis on the conditions of work performance, employee safety, financial remuneration, or the prohibition of compelling someone to work (with certain exceptions).

Poland is party to all of the most important international conventions, including, above all, the conventions of the International Labour Organization (ILO), such as Convention No. 95 ILO of 1 July 1949 on the Protection of Wages<sup>26</sup> and Convention No. 138 of the ILO of 26 June 1973, regarding the

<sup>22</sup> *Podstawy ekonomii...*, p. 99 et seq.

<sup>23</sup> E. Kryńska, E. Kwiatkowski, *Postawy wiedzy o rynku pracy...*, p. 67 et seq.

<sup>24</sup> *Ibid.*, p. 93.

<sup>25</sup> K. Ziolo-Gwadera, *Leasing pracowniczy jako forma zatrudnienia w dobie kryzysu*, ‘Zeszyty Naukowe Uniwersytetu Szczecińskiego. Ekonomiczne Problemy Usług’ 2010, vol. 43.

<sup>26</sup> Dz. U. 1955, No. 38, item 234.



lowest age of admission for employment<sup>27</sup>. The former convention provides, among other things, that earnings should be paid regularly and that salary payment methods should not deprive the employee of the opportunity to abandon their work (Article 12). According to the latter convention, each member of the ILO undertakes to pursue a national policy aimed at ensuring the effective abolition of child labour (Article 1).

From the point of view of the purpose of this study, the ILO convention which refers to the prohibition of forced labour and all forms of exploitation is important. The key in this regard is Convention No. 29 of 28 June 1930, concerning forced or compulsory labour<sup>28</sup>. In light of this treaty, 'forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which said person has not offered himself voluntarily'. Nearly 30 years later, the Supplementary Convention No. 105 of the ILO, of 25 June 1957, on the abolition of forced labour<sup>29</sup> was adopted; it is important because it is a practical development of previously formulated ideas. In contrast, the latest achievement of the ILO in terms of the regulation of forced labour is the Protocol from 2014 to ILO Convention No. 29 on forced labour, which has redefined the state's responsibilities in the area of eliminating forced labour<sup>30</sup>.

Finally, there is the question of protecting the weakest participants in the labour market, namely children. In this respect, two significant documents should be noted. The first is ILO Convention No. 138 of 1973 regarding the lowest age of admission to employment<sup>31</sup> and – complementing this agreement – Convention No. 182 of the ILO of 17 June 1999, regarding the prohibition and immediate action to eliminate the worst forms of child labour<sup>32</sup>.

In Europe, the key role is played by the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>33</sup> (also known as the European Convention on Human Rights). The problem of forced labour is expressly referred to in this treatise, as Article 4 states, 'No one shall be held in slavery or servitude. No one shall be required to perform forced or compulsory labour<sup>34</sup>.

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27 Dz. U. 1978, No. 12, item 53.

28 Dz. U. 1959, No. 20, item 122.

29 Dz. U. 1959, No. 39, item 240.

30 Poland ratified this Protocol in 2016.

31 Dz. U. 1978, No. 12, item 53.

32 Dz. U. 2004, No. 134, item 1474.

33 Dz. U. 1993, No. 61, item 284.

34 According to Art. 4 of the Convention, there are also situations when we cannot talk about forced labour: 'For the purpose of this Article the term 'forced or compulsory labour' shall not include: (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention; (b) any service of a military character or, in case of conscientious

As far as the national legal order is concerned, the most important legal act in this respect is of course the Constitution of the Republic of Poland, which contains several provisions relating to the protection of employees' rights. The most important is Article 24, stating: 'Work shall be protected by the Republic of Poland. The State shall exercise supervision over the conditions of work'. It is worth stressing that the protection of labour has been included among the most important constitutional principles of the state. By placing this provision in Chapter I of the Constitution, entitled 'Rzeczpospolita (Republic)', the constitutional legislator decided about the importance of the protection of workers' rights in Poland. However, there is no explanation of what job protection means. From the content of Article 24 of the Constitution of the Republic of Poland, it can be concluded that only by the state may or shall legal mechanisms exist which allow the state to exercise control over the performance of work<sup>35</sup>.

Some of these mechanisms are mentioned in Article 65 of the Constitution of the Republic of Poland, which in a way supplements Article 24 of the Constitution, which guarantees everyone the freedom to choose the place and practice of their work. In light of Art. 65 (1), public authorities cannot impose a job or decide on the choice of profession and place of performance<sup>36</sup>. In a sense, this implies that the Constitution establishes a ban on forced labour, although this is not directly mentioned in its provisions. The writers of the Constitution did not use any phrase stating that forced labour is forbidden, or that the exploitation of an employee is prohibited; however, based on the wording of the provision discussed here (Art. 65 (1)), one can argue that forcing people to work is prohibited. In the opinion of commentators, this provision guarantees the right to choose and practice a profession and to choose a place of work, as well as the right to be protected against forced labour<sup>37</sup>.

Also, Polish labour law does not contain a clearly expressed ban on forced or compulsory labour<sup>38</sup>. However, there are provisions that protect the freedom of work and which protect the employee against exploitation and being forced to work. First of all, reference should be made to the basic principles of labour law,

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objectors in countries where they are recognised, service exacted instead of compulsory military service; (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community; (d) any work or service which forms part of normal civic obligations'.

<sup>35</sup> P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dn. 2 kwietnia 1997 r.*, Warszawa 2000, p. 37.

<sup>36</sup> L. Garlicki, *Konstytucja Rzeczypospolitej Polskiej. Komentarz IV*, Warszawa 2005, p. 3.

<sup>37</sup> K. Sobczak, *Gospodarka w ujęciu konstytucyjnym*, 'Przegląd Ustawodawstwa Gospodarczego' 1997, No. 12, pp. 2–7.

<sup>38</sup> Ł. Winczorek, *Praca przymusowa. Zagadnienia prawne i kryminologiczne*, Warszawa 2017.

which are included in the First Section of Chapter II of the Labour Code<sup>39</sup>. A crucial role should be given to Art. 10 (1) of the Code, which states that ‘everyone has the right to freely chosen work. No one may be prohibited from exercising his profession except in the cases specified in the act’. The constitutional principle of the freedom to choose a job and the form of its provision in this way also amounts to a ban on forcing people to work. Such an interpretation is confirmed in many of the documents of international law cited above, in particular, the European Social Charter of 1996<sup>40</sup>.

A specific complement to the principle of the freedom to work is the content of Article 11 of the Labour Code, in which the legislator formulated the key principle of mutual relations between the parties to the employment relationship: ‘The employer is obliged to respect the dignity and other personal rights of the employee’. Although written generally, this is an important provision, as it transfers the fundamental principle of human rights, which is the absolute respect for human dignity, to the foundation of labour law.

From the perspective of labour market problems, the provisions of the Act of 20 April 2004 on the promotion of employment and labour market institutions should be noted<sup>41</sup>. This is one of the most important legal acts that create the legal and organisational foundations for the functioning of the labour market in Poland. However, the most important provision of this law seems to be the very extensive Art. 1, in which the legislator defines the subjective scope of statutory regulations and formulates the obligations of the state in the field of employment promotion and the protection of the labour market<sup>42</sup>.

Because victims of various violations of labour market rules are often foreigners, it is worth noting the content of Art. 120 of this act, because it applies in its entirety to the employment of these people<sup>43</sup>. In Paragraph 1 of said provision, the legislator unambiguously penalises illegal entrustment of work to a foreigner. The next part refers to situations where the perpetrator leads the foreigner to work illegally, but he does so ‘by misleading the foreigner, exploiting an error, using the foreigner’s official dependence or inability to properly

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<sup>39</sup> Dz. U. 1974, No. 24, item 141.

<sup>40</sup> Dz. U. 1999, No. 8, item 67.

<sup>41</sup> Dz. U. 2004, No. 99, item 1001.

<sup>42</sup> Article 1. The Act defines 1) the tasks of the state in the field of employment promotion, mitigating the effects of unemployment and professional activation and 2) the state’s tasks in the field of employment promotion, alleviating the effects of unemployment and professional activation are implemented by labour market institutions working toward: a) full and productive employment; b) the development of human resources; c) high quality work; d) stronger integration and social solidarity; and e) increased mobility on the labour market.

<sup>43</sup> On the same issue, see: J. Filipowicz, Z. Lasocik, Ł. Wieczorek, *Handel ludźmi do pracy przymusowej w Polsce – analiza sektorów podatnych na pracę przymusową oraz analiza istniejącej struktury pomocy ofiarom pracy przymusowej w Polsce*, Warszawa 2010.

understand the action taken'. An interesting solution is also brought forth by the provisions of Para. 5 of this article, in which it states that a person who, by means of misleading, exploits a mistake is punished ... 'leads another person to entrust illegal work to a foreigner'. In this way, the Polish legislator penalises job placement which is carried out in bad faith.

Important provisions for the functioning of the labour market and the elimination of criminal-like behaviour can be found in Art. 121 of the act discussed here. Paragraph 1 provides punishment for a person who runs an employment agency without a legally required entry of clients in the relevant register. A similar punishment is threatened to a person who, 'while running an employment agency receives other paid work from the person for whom he or she is looking for a job, or who provides assistance in choosing the appropriate profession and place of employment, additional fees' (Para. 2). Charging for help in finding jobs is one of the most negative examples of the labour market and is clearly stigmatised at the level of international norms and standards<sup>44</sup>.

The functioning of the labour market, including employment agencies, is also regulated by the Act of 9 July 2003 on the employment of temporary workers<sup>45</sup>, which is sometimes referred to as the Labour Leasing Act<sup>46</sup>. A significant innovation of this regulation is the introduction to the language of legal transactions the term 'employer-user', which refers to an entity who employs temporary workers. One does not need extraordinary sensitivity or extensive linguistic knowledge to note that defining an employer as a 'user' brings the employee to the level of an object or tool. In my opinion, this is another example of a delict (violation) of the labour market, this time committed by the legislature. To a limited extent, the criminal provisions of this act protect employees' interests in the areas of safe and hygienic working conditions, work stations being equipped with appropriate machines and devices, the provision of drinks, meals, clothing, and footwear, and the provision of information on occupational risks (Art. 27).

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<sup>44</sup> Cf. *Guidelines to prevent abusive recruitment, exploitative employment and the trafficking of migrant workers in the Baltic Sea region*, ed. L. Sorrentino, A. Jokinen, Helsinki 2014.

<sup>45</sup> Dz. U. 2003, No.166, item 1608.

<sup>46</sup> I have serious doubts as to whether this term can be applied to a person.

## Criminology for the labour market

After determining the most important terminological and legal issues, it is time to visit the main question: What is criminology of the labour market and how does it differ from criminology in general? The answer must be divided into several stages. The first will be to identify the object of interest in the criminology of the labour market, which I propose to describe as a delict of the labour market. A 'delict' is a legal concept derived from the Latin word *delictum*, meaning an unlawful act or offense<sup>47</sup>. At the same time, since antiquity the term 'delict' has been connected with the domain of private law. The equivalent of a delict in the sphere of public law was a prohibited act (crime), whose name comes from the Latin word *crimina*<sup>48</sup>. Nowadays, the notion of delict is used to describe an act which is not permitted under civil, administrative, or constitutional law.

By the term 'delict of the labour market', I suggest a means to recognise any behaviour of market participants that may lead to damages to the possessions of or infringement of the rights of another market participant, or behaviour that poses a threat to any common good, such as social order or justice, as well as those threats that put into question the economic<sup>49</sup> and social<sup>50</sup> value of work.

When describing criminal phenomena, criminology employs a number of instruments, thanks to which it is possible to assess the real scale of these phenomena and their social significance. The simplest procedure of this type is the preparation of relevant statements based on available statistical data. However, in criminology, instruments that allow the relativisation of crime data are also used, among which the most important is the 'crime rate'<sup>51</sup>, which with great simplicity informs how many crimes of a certain type or types are committed per every 100,000 inhabitants of a country. Thanks to this, we can conduct deeper studies of a society's saturation of criminal activities, both in time and in space.

I believe that a similar instrument would be extremely useful for describing and analysing any disturbances of the labour market. That is why I propose to develop a new instrument, which I am working on, as degrees of disruption

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<sup>47</sup> W. Kopański, *Słownik wyrazów obcych i zwrotów obcojęzycznych*, Warszawa 1985, p. 91.

<sup>48</sup> One of the best known Roman *paremia* states that '*Crimina morte extinguuntur*', that is, the crime expires as a result of the perpetrator's death, Cf. K. Burczak, A. Dębiński, M. Jońca, *Łacińskie sentencje i powiedzenia prawnicze*, Warszawa 2007, p. 29.

<sup>49</sup> Here, work is understood as one of the three factors of production, in addition to land and capital.

<sup>50</sup> Here, work is understood as human capital, being a common good of society.

<sup>51</sup> The crime rate describes the number of crimes affecting every 100,000 inhabitants of a country, province, or county.

of order on the labour market. This level could be measured by the number of delicts of the labour market per 100,000 employed persons. Of course, this measure will never be as precise as the crime rate, because there is no criminal code for the labour market in which all delicts are precisely described. However, it seems that by achieving a certain uniformity in the categorisation and interpretation of negative events in the labour market, it may prove to be a useful instrument for analysing social changes in this sector.

Creating such instruments and others which describe the labour market somewhat differently than it has previously been described seems sorely needed. I see two important reasons for this. The first is related to the growing chaos on the labour market, which often directly translates into violations of employee rights. The second is connected with the role of the state in this market, which remains insufficient.

Let's look at these two issues from a slightly broader perspective. In each country there are problems that draw the attention of politicians and the public. In Poland, the main public issues currently are perceived threats to democracy, the independence of the judiciary, the level of integration with the European Union, and the need to block the influx of migrants. Nevertheless, crime is still the current and favourite topic of politicians and public opinion. Politicians easily formulate threats against criminals, indicating that their place is in prison, which is sometimes decided upon by state institutions and leads to an increase in the severity of the law. In matters of the labour market, this is not the case. Here the role of the state is more than limited. On the basis of statements made by the representatives of the authorities, it is possible to propose that the state has handed the matter over to the market. The ruling authorities seem to say if the market is doing so well with prices, it will also manage jobs and their provision. However, the market has not managed this because it has become a site of numerous pathological phenomena, which are referred to herein, including those of a criminal nature. Any statements about the quality of the labour market come mainly from trade unions and the employees themselves. The state must fulfil its own responsibilities and take on the role of effective regulator of the labour market.

The second step in the process of creating the foundations for criminology of the labour market is the formulation of a theoretical model that can be helpful in diagnosing phenomena (positive and pathological) that occur in this market. Such a model can also be useful in defining delicts of the labour market. Drawing inspiration from the findings of criminology, the model referred to here could resemble the following:





**Figure 1.** The theoretical model of violations of social order on the labour market<sup>52</sup>

In order for a breach of social order in the labour market to be brought about, it is necessary to physically converge the above three elements in time and space<sup>53</sup>. In practice, this means a situation in which a ‘meeting’ of the employee and the employer takes place, and one of these entities – most often the employer – violates the interests of the other party, e.g., by proposing very unfavourable employment conditions, and the other party (the employee) accepts these terms because they have no choice. Such a violation occurs because one of the parties has a decisive advantage, such as an economic advantage, and there is no effective safeguard that would ensure no harm is committed. Therefore, it is the state that must establish itself as a guardian for the labour market.

To illustrate the considerations presented here I will use an example given by one of my PhD candidates, who has been working in the field of including disabled people in the workforce for a number of years. The basic problem these people face as far as work is concerned is that, basically, employers do not take into account their disabilities or limitations of movement. Oftentimes the actual goal

<sup>52</sup> The inspiration to give shape to this scheme came from the well-known work: L.E. Cohen, M. Felson, *Social Change and Crime Rate Trends. A Routine Activity Approach*, ‘American Sociological Review’ 1979, No. 4.

<sup>53</sup> See: *Ibid.*, p. 589; also: J. Błachut, A. Gaberle, K. Krajewski, *Kryminologia*, Gdańsk 1999, p. 184; *The SAGE Glossary of the social and behavioural sciences*, ed. L.E. Sullivan, Los Angeles-London-New Delhi-Singapore-Washington DC 2009, p. 454.

of the employer is to obtain government subsidies resulting from the employment of a disabled person. Would it not be better for such persons if in their scope of responsibilities or place they were not treated as 'fictional' employees?

In my opinion, this situation is a typical delict of the labour market. Nothing in the actions of such an employer–perpetrator bears the marks of a crime; on the contrary, we are ready to thank them for employing a person with a serious motor deficit or disability. But when matters are examined a bit more closely, it turns out that the employee cannot work effectively because there are no special provisions made regarding their disability. Such employees often cannot move about freely and are unable to qualify themselves for a bonus; in many cases they face humiliating situations, such as needing the assistance of other employees to use the toilet. At first glance, there are benefits for the disabled on the market, but a closer look reveals the many disadvantages they must face. This is the essence of a delict on the labour market.

A third step in establishing criminology in the labour market could be to map out its core departments. It seems that there is no need to reinvent the wheel, so I propose to use existing criminology methodology. A small reminder is that criminology's basic areas of interest are the structure of crime, its dynamics, the aetiology of individual and collective behaviour, and phenomenology. Therefore, after applying this approach directly to the labour market, one can say that the basic sections of criminology in the labour market are as follows:

- the nature and structure of delicts of the labour market,
- the phenomenology of delicts of the labour market,
- the aetiology of delicts of the labour market,
- the dynamics of delicts of the labour market,
- pathological phenomena on the labour market.

Thanks to the existence of the criminal code on criminological grounds, the description of the structure of crimes is not a problem. Most often, they can be analysed by defining the type of crime in terms of a good that is protected by law. Therefore, the crime structure is a derivative of the system of the penal code. In the labour market the case looks quite different because we must deal with behaviours that do not always meet the qualifications of a crime *per se* and most often are specific violations of the principles of social co-existence or the legitimate interests of another party. Therefore, it is worth attempting to set out specific areas where there may be violations of the social order in the labour market and which can be used to create a structure of delicts of the labour market.

The first of these areas is the economic dimension of the labour market; in this respect, the key categories that should be taken into account are the employer's profit, the employee's income, and manufactured goods and services – here, infractions can relate to anything related to the pathological desire to maximise profits with a minimum of expenditure. Equally, this may be expressed by an

understatement of employees' salary, unjustifiably coercing employees to exceed fixed working times, employees committing fraud in the calculation of effective working hours, or employees submitting dishonest documentation of their qualifications.

The second area is setting the obligations of labour market participants towards the state. First of all, this involves taxation as well as social insurance contributions – in this respect, any act that ultimately leads to tax depreciation can be considered an infraction (of course, tax fraud is a crime from a completely different area).

Another area is the obligations of labour market participants towards one another, which in practice boils down to the expectation of decent behaviour between partners. In my opinion, two obvious examples of violations of such a principle would be a superior directing ambiguous sexual content to subordinate employees or an employee disseminating false information (rumours) about the employer or a supervisor.

Regarding duties, the obligations of the labour market participants towards the workplace should not be forgotten. In my opinion, examples of a delict of the labour market would include a failure to report or carry out necessary repairs of a building or device which could lead to a serious threat, or the toleration of emissions of harmful substances into the environment.

Another important area of analysis is everything related to the 'human dimension' of work. A typical example would be the employment of disabled people for the sole purpose of gaining profits resulting from their status, while no efforts are made to give such people a sense of fulfilment in the workplace. I would also consider employers lowering the amount of holiday leave or neglecting the construction of necessary sanitary infrastructure, or employees extorting undue benefits of this type, to be delicts from this area.

Another source of pathology on the labour market is a specific balance of market powers which is definitely unfavourable towards employees. Until recently, due to the economic situation, it has been typical for the market to favour employers, as they were the ones dictating terms and conditions. Although the situation is changing and the unemployment rate has fallen<sup>54</sup>, the dominance of employers strengthening their position at the expense of less effective employee organisations nevertheless remains a fact. This is due to the growing role of intermediaries and employment agencies that eliminate or substantially limit the typical employee–employer relationship. In practice, this means companies closing human resources departments and using specialised institutions that offer work to people. One of the effects of this is 'labour leasing',

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<sup>54</sup> *Spada bezrobocie w Polsce – w kwietniu wyniosło 9,6 proc. To najmniej od 24 lat.* PAP, 12.05.2016.

which – although fully legal – in my opinion, is the source of many pathologies and should be treated as a delict of the labour market.

Another important area is safety – this comprehensive category includes everything that falls under the terms of health and safety, including the personal safety of all market participants. For an obvious delict of the labour market in this area, I would consider unsafe or potentially fatal social work conditions, for example, workplaces where the necessary facilities for personal hygiene at the end of a shift (for example, in a mine) are not provided. In the sphere of security, I would also include such practices as employers tolerating or instigating various forms of violence between employees.

The last area is authority (power) which is understood here in the classic sense, as the ability to take decisions and to influence the behaviour of others<sup>55</sup>. The employment relationship is in many respects connected with subordination and power, which results, for example, from the content of Article 22 of the Labour Code. The list of labour market delicts in this area is relatively long. According to my assessment, this would include arbitrary dismissal for non-economic reasons, non-transparent hiring practices, the retention of foreign employees' forms of identification, the hindrance of visa extensions, unjustified fees charged for performing administrative tasks, all forms of discrimination, and various forms of blackmail from trade unions directed towards employers or company management.

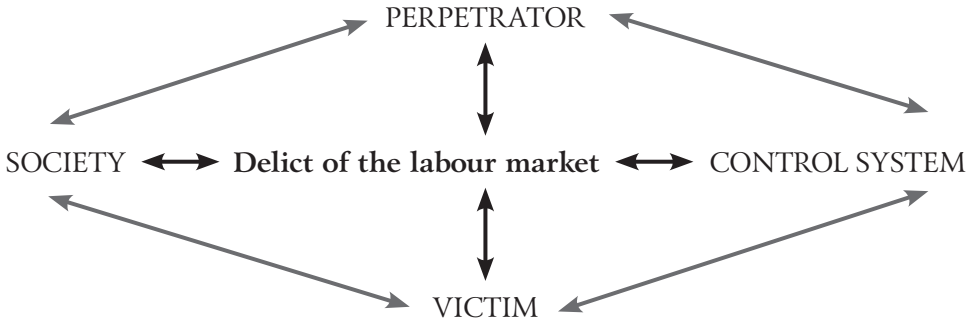
## Phenomenology of delicts of the labour market

Having established pre-designated areas in which labour market delicts can occur, it is possible to focus on defining their social context. To do this properly, we must consider the five basic components<sup>56</sup>, namely: a delict of the labour market – as a central category – and the key actors, i.e., the perpetrator and the victim, society, and the social system of behavioural control. In graphical form, this dependency system might look like as follows:

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<sup>55</sup> S. Ossowski, *O strukturze społecznej*, Warsaw 1982, p. 23 et seq.

<sup>56</sup> One of the inspirations for creating this scheme was the analysis of the relationship between the causes and consequences of crime proposed by Frank Schmalleger and presented in the form of an extensive diagram. See F. Schmalleger, *Criminology today. An Integrative introduction*, New Jersey 1999, p. 33.



Let us try to read the content of particular dependencies, starting with the horizontal axis. The labour market is a social product, in the sense that its shape depends on society. The more developed a society is and the more caring the state is, the better the labour market functions. But it is also society that determines what kind of behaviour is considered negative, what is positive, and what behaviour is ignored. As for the control system, it is extremely extensive and includes formal and informal control<sup>57</sup>. In an extreme case, this control takes the form of criminal law, which should be constructed in such a way as to raise as few objections as possible. This is possible when there is consent in society as to the basic values, social preferences, and reasons for social condemnation. The social control system is comprised of all those mechanisms that make the effect of social arrangements serious and receive social sanction.

But the social control system does not always work effectively, which can sometimes have a negative impact on the functioning of the entire social system. This happens when it does not prevent specific negative behaviours or reacts badly when they occur. Perhaps the best example is the operation of the state apparatus, which is too weak and too dependent on employers to limit the use of discriminatory civil-law contracts (sometimes called ‘junk’ contracts) instead of standard employment contracts or fair civil-law contracts. In this respect, the state is not fulfilling its role or acting preventively<sup>58</sup>.

On the vertical axis of the diagram are the two key actors of social interaction – which here we endeavour to call a violation of order on the labour market – that is, the perpetrator and the victim. Their status towards each other determines the existence of an agreed definition of delicts of the labour market.

<sup>57</sup> B. Szacka, *Wprowadzenie do socjologii*, Warsaw 2013, p. 161 et seq.

<sup>58</sup> There are ongoing attempts to regulate this issue, but for now they have been crowned with partial success. See: *Co dalej z umowami śmieciowymi?* <http://infostrow.pl/wiadomosci/co-dalej-z-umowami-smieciowymi/cid,73121>; *Zmiany w Kodeksie pracy. Koniec śmieciówek?* [http://superbiz.se.pl/wiadomosci-biz/zmiany-w-kodeksie-pracy-koniec-smieciowek\\_863826.html](http://superbiz.se.pl/wiadomosci-biz/zmiany-w-kodeksie-pracy-koniec-smieciowek_863826.html).

If there was no such definition, then their mutual relationship would be determined according to another scheme.

Let us use an example from the field of *savoir vivre*. It is a good practice that people greet each other when meeting in a small space (a corridor, lift, etc.). In France, this type of behaviour is common; in Poland there is no such habit. When a Pole enters a lift, (s)he most often does everything in his/her power to convince the other person that (s)he is not there. In France such behaviour would be considered rude, while in the Poland it is commonplace.

Everyone accepts that social events are interpreted differently depending on the cultural context and practices of the society<sup>59</sup>. This pattern fully applies to the labour market, especially in the context of a serious problem, which is the creation and use of dependencies resulting from the existence of two key roles: the employer and the employee. It is worth devoting a moment to the issue of relativising assessments of specific pathological behaviours in this specific system.

Although we use the term labour market here, in fact this term should be in quotation marks, because the 'labour market' is not and cannot be a 'normal' market. Let us add to the arguments that have already been discussed extensively one more argument, formulated by the market philosopher Michael Sandel, who said it is time to start demystifying the market and to realise that not everything is for sale, as we have thought. This author demonstrated that the belief in the omnipotence of the market is dangerous because it threatens the idea of equality, and it leads to the erosion of the most important values. Even the wealthy admit there are things that money just cannot buy<sup>60</sup>.

This does not mean that we reject wealth and the fact that the rich have more. If someone is an entrepreneur developing a serious business or the president of a large bank, we readily accept that (s)he may have a large house and a luxury car. But if this rich entrepreneur hires a young woman to clean his/her flat and requires that she do it in lacy underwear (an actual example from field research carried out by one of my co-workers), then the question arises whether he is abusing his position as employer. As for the woman's reaction, perhaps depending on the financial situation she is in, she either accepts or rejects the job offer. If she is in an extremely difficult situation and accepts this offer, then we are dealing with a situation of inequality. We cannot accept this inequality as easily as we can accept the fact that someone has a luxury car and someone else does not. So we ask: Does the employer's wealth and the woman's poor economic situation allow the former to set such requirements? Intuition says

<sup>59</sup> Such assumptions lie at the core of the Chicago School. See: J. Szacki, *Historia myśli socjologicznej*, Part II, Warsaw 1981, p. 644 et seq.

<sup>60</sup> M. Sandel, *What money can't buy. The moral limits of markets*, New York 2012; M. Sandel, *Czego nie można kupić za pieniądze*, Warsaw 2012.



No. But it is worth going beyond intuition and defining this situation in terms of a labour market delict. There seem to be two possible variants.

In the first variant, the subject of the contract between the parties is house-keeping. The employer expects that it will be done professionally and quickly, and that the work will be performed in lacy underwear. In this particular case, the subject of the transaction is not only the work of a young woman, but it also includes observing her young, attractive, and scantily clad body. While paying for the job is not in doubt, the concern is about paying for a view of the woman's body. But we must clearly state that the employer's specific expectation does not match the features of any criminal offense.

The second variant of the situation may be fundamentally different. In this scenario, the subject of the contract between the employer and employee is that the young woman agrees to reveal her body and to wear lacy lingerie once a week for 4 hours in a place indicated by the employer. From the negotiations between the parties to the contract, it depends on whether at this time the young woman will perform any sort of cleaning activities or not. Similarly to the previous situation, the employer cannot be accused of any criminal charge, but it would be difficult not to assess his behaviour negatively in purely moral terms. If the employee is not being compelled and has accepted the terms of the contract, then the employer's expectation can be considered a whim, and the whim is not punishable.

Although both situations seem to be clear, let us try to subject them to axiological assessment as well. From this perspective, we can say that in the first situation, our doubts are raised by the additional requirement of the employer regarding the employee's 'uniform'. Even if the remuneration is very high, it still must be viewed as a negative effect of inequality. I do not question that the employer is rich and the girl is poor. But I ask, can this obvious inequality lead to this form of abuse? In my opinion, the answer is, No.

The second situation is more obvious in this respect, because a specific contract for the provision of quite special work (walking about partially dressed) has been concluded. If the potential employee was aware of the type of work involved, then we do not include moral categories in the assessment of this situation. After all, women earn their living as models or in similar careers and their work does not raise any objections. Of course, there are exceptions, such as situations involving young girls or when fashion demands lead to serious disorders like anorexia.

Summing up these considerations, one can say that the first case would be a delict of the labour market, but probably not the latter. In the first case inequality and economic coercion would exist, while not in the latter. I do not put matters categorically, because the social dimension of the situation and its social meaning can be interpreted differently by individual participants of the labour market.

Let us take another example. In order to remain in the circle of moral behaviour, let us assume that taking advantage of dependence, a young and rich employer living in a small town uses his employee, a young attractive woman raising a child alone, for sexual purposes. To make the analysis difficult, let us assume that the behaviour of the employer is not typical of rape, but rather the seduction of a dependent person combined with additional payment (e.g., bonuses). The described situation may mean something different for each participant in this interaction, but also as active labour market actors. Consider this point by point:

- for the young entrepreneur, it may be another successful ‘conquest’, though admittedly a bit forced by circumstances, but the woman did not resist and she received some benefits;
- for the young woman, it may involve humiliation and a trauma that she must endure, because her predicament (a small child and limited economic options) is extremely difficult;
- for any witnesses of this event – e.g., other women from the same company – the observed situation may be a source of frustration and jealousy that the rich, young employer pays attention to this woman and not another;
- for some members of the victim’s family, (indirect participants in the labour market) who do not know the truth, this situation may be a source of pride that a rich businessman is interested in their daughter or relative;
- for others, the behaviour of the woman may seem heroic, as they may admire her for how bravely she tolerates this humiliation for the sake of her small child;
- for a labour inspector, policeman, or trade union activist who is aware of the employer’s habits, this may be a situation of professional frustration, because everything is arranged so that the perpetrator cannot be charged, because he has not violated any legal norms.

This difficult and complicated social situation was created on the labour market and is associated with the provision of work. It would not have happened if there was not a strong economic dependence between the actors, or if it was not a small town where there were few job opportunities, or if this young woman was not a single mother raising a small child. But it would be less difficult if the labour market was better controlled both by the state and by other social actors, such as non-governmental organisations. Looking at the problem from a research point of view, it can be assumed that criminology of the labour market – even more than classical criminology – should be a science on the borderline of law, especially labour law, social psychology, and social work.

## Delicts of the labour market in the practice of social life

In order to move beyond the circle of theoretical considerations, I made an attempt to empirically determine when phenomena are considered negative by employees. For this purpose and for the purpose of this study, my co-worker<sup>61</sup> and I conducted a very preliminary survey on a targeted sample of 50 people, residents of the Mazovian Voivodeship of Warsaw and the surrounding area. The study took place in the autumn of 2014. The researcher gave the respondents a questionnaire with a few questions about their experience in connection with finding a job. The respondents were young people aged 20–35, mostly women (30 women and 20 men), all of them working or looking for work in the Mazovian Voivodeship. They were relatively well-educated and almost 3/4 of the respondents had higher education or they were enrolled at university. The number of respondents obviously does not meet the criteria of a representative sample. However, although there was a small sample size, our goal was to create the first, preliminary catalogue of negative behaviours on the labour market (delicts of the labour market) and this goal was achieved<sup>62</sup>.

We asked the respondents, first of all, whether during the search for a job something they could describe as a negative personal experience occurred. Respondents had complete freedom in naming and describing these experiences. It should be emphasised that in the question we emphasised we were interested in personal experiences, not in second-hand information. Here is the catalogue of the negative phenomena indicated by the respondents:

- the lack of an employment contract or the offer of a ‘junk contract’,
- low remuneration,
- experience requirements, without offering young people the chance to gain such experience,
- nepotism in employment, connections, filling positions with family, the claim that nowadays you can only get a good job by ‘knowing the right person’,
- incompatibility of the job offer with reality (e.g., working as a restaurant manager in practice turns out to be cleaning and working in the kitchen),
- irregular remuneration (sometimes waiting several months for salary payments),
- the lack of breaks or very few breaks during working hours,
- an excessive number of tasks imposed,

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<sup>61</sup> The survey was conducted by Marta Romańczuk, who collaborated with the Human Trafficking Studies Centre of the University of Warsaw.

<sup>62</sup> The report is a working document and has not been published (in the possession of the author).

- criticism of the employee and his/her quality of work,
- the use of an official position for private purposes (e.g., ordering payments for private bills, or asking employees to look for practice exams for the national junior high school exam of the supervisor's children),
- inappropriate sexual behaviour, e.g., proposals to meet outside of work,
- frequent telephone calls for work-related issues after working hours or on days off,
- ridicule of an employee in front of others,
- unprofessional job interviews that looked more like a 'casting' audition,
- interviews conducted in the presence of other applicants for the same position, and
- disrespect for new employees, disrespectful treatment, and conflicting assignments.

Interestingly, none of the respondents chose the answer from the questionnaire, '*I have not had any negative experience in the labour market*'. This small sampling allows us to formulate a cautious but categorical conclusion that pathological phenomena in the labour market are quite common. And if this is true, this sector of social and public life should be regarded as in need of a bit more systematic research and, in the long term, intervention as well, perhaps first and foremost from the state.

Only the women surveyed were asked whether they ever had an 'immoral' job offer or questions or suggestions of a potentially sexual nature from a potential employer when looking for a job. It turned out that one in three respondents (about 10), at least once in their life, had met with such a situation, and for the majority, such situations had happened more than once. However, it should be pointed out that the most common types of propositions were sent via e-mail in response to a job search notice posted on the Internet. These were direct suggestions of regular intimate meetings in exchange for remuneration, or meetings after work, as an additional 'obligation' to the offered position of an assistant, secretary, or similar clerical vacancy.

Two women reported ambiguous propositions during their interviews; these suggestions were not formulated explicitly, but in a veiled way, for example, '*Would you like to make an appointment with me for a coffee after work? Of course, it will be additionally rewarded*'. Both of these women were under 23 years of age.

## Conclusion

The labour market is one of the most forgotten areas of social life in Poland. Left to itself as a free market game, somewhat disregarded by politicians and almost abandoned by the state, it has become a place for the emergence of various

pathological phenomena: from widespread use of discriminatory contracts to ambiguous sexual behaviour of employers. It seems that the idea of developing a new area of social analysis, which could be the criminology of the labour market, is timely and needed.

Elementary knowledge about the functioning of society and the economy suggests that the key to understanding human behaviour is the motivations that guide people, or the stimuli to which they respond. In the practice of social life, we all learn to control these motivations and to respond to stimuli. At the level of the social activity of the individual, both of these factors should act to encourage people to do as much good and as little harm as possible. In practice, it usually does not work so simply and people continue to do wrong, highlighting the need for wrongdoings in the labour market to be investigated.

Simplified, it could be said that there are three basic motivational mechanisms that stimulate behaviour: economic motivations, social motivations, and moral motivations<sup>63</sup>. Each of these can be used to analyse the reasons why people do something wrong or why they do not. There are three 'explanations' of avoidance: 1) I do not violate law because it does not pay to do so; 2) I do not do wrong because I do not want other people to hold a negative opinion of me; and 3) I do not do wrong to others because I think this is bad and I will not feel good about it.

Finally, I ask the question of whether and to what extent these three mechanisms can be applied to the analysis of labour market pathology and, in the future, to its rehabilitation?

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<sup>63</sup> S.D. Levitt, S.J. Dubner, *Freakonomica. Świat od podszewki*, Gliwice 2006, p. 42 et seq.

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## SUMMARY

The aim of this study is to draw attention to phenomena in the labour market which – although not specifically ruled as criminal by nature – can definitely be considered negative or questionable. As the labour market is a highly important sphere of social life, I have attempted to describe this type of phenomena using conceptual apparatus and by following an analytical criminology workshop. To this end, I created a pathology description model for the labour market, the central element of which is a new descriptive category defined as a delict (violation) of the labour market. An important supplement to this model is a proposed new social climate measurement instrument, which, as in criminology, refers to the degree of disturbance of order in the labour market. This level can be measured by the number of labour market delicts per 100,000 employed persons. Negative behaviour in the labour market, herein called delicts, can occur in all dimensions of labour market functioning. Violations of the social order may refer to economic issues, such as wages, employers' and employees' obligations towards one another, and to social issues or important issues concerning work safety – all of which are discussed in some detail. A brief analysis of international and domestic law regulations that control the most important issues related to the functioning of the labour market is presented in the article. I also propose a theoretical model of violations of social order for the labour market and a pattern of dependencies between individual participants of the labour market. The article ends with an analysis of the results of a preliminary survey on behaviours which are not recognised as offenses but considered by employees to be negative.

### **Keywords**

criminology, labour market, delict, negative behaviour, forced labour