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MINERS' PENSION AS AN ELEMENT OF ENERGY TRANSFORMATION

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A b s t r a c t

The energy transformation in Poland is anchored in both European Union documents and national policies and strategies. Although the national policies and strategies do not have the character of legal regulations and are binding only on the Council of Ministers, they indirectly affect the factual and legal situation of citizens. The subject of the article is an analysis of the government's program documents (strategies and policies) in the context of the planned reduction in miners' employment related to the energy transformation, as well as the institution of miners' pension as an element of this transformation - including the principles of its granting on the basis of recently amended legal provisions.

In the authors' opinion, the legal regulations of the miners' pension are insufficient, despite having been amended several times. These regulations still contain a number of unspecified concepts, despite the fact that many of them have been defined in the legislation, which leaves considerable discretion to the pension authorities.
For these reasons, the authors have undertaken to indicate the areas of law requiring amendment in order to eliminate (or at least: reduce) the currently observed arbitrariness in the application of pension regulations, and thus make the energy transformation effective in the area of miners' pensions - as a labour market instrument mitigating the social effects of this transformation.

Keywords: energy transformation, early retirement, coal mining, miners' pension

1. INTRODUCTION

The energy transition in Poland has a number of impacts, among which the loss of jobs in coal mining (hard coal and lignite), both in direct mining companies and in cooperating companies, is an important issue. Depending on the method adopted, the mining industry has estimated that for every 1 job in a mining enterprise, there are 3-4 jobs in other enterprises [PGG 2023], although it must be acknowledged that there is a lack of studies in the literature that would be more detailed than this estimate. A more accurate study depicting the actual linkage of jobs in mining is not easy due to the scale and complexity of the network of linkages between companies [IPC Research Institute 2021]. Nevertheless, assuming

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conservatively that for every 1 job in extracting a mineral from a deposit, there is 1 job in another cooperating company, the decommissioning of a mining company may have socially significant effects that reach much further than just the mining company's workforce.
In Poland, one of the instruments for reducing the negative social effects of economic transformation are bridging pensions and pre-retirement benefits, which allow people at pre-retirement age to receive a specific benefit - and thus avoid unemployment.

This article analyses the basic policy documents of the Council of Ministers relating to the energy transition from the point of view of including pre-retirement benefits or mining pensions as an instrument minimizing the negative social effects of the said transition. The discussion of the legal status in the above-mentioned area, which also includes a commentary on the recent amendment of the regulations governing mining pensions, is concluded with *de lege ferenda* proposals. These issues - although undoubtedly socially important - have not received the attention of either academics or legislators. The literature has analyzed, among other things, the economic effects of the impact of the energy transition on the mining fee income of municipalities in the Silesian Province (Sygut 2024), but there is no study devoted to the analysis of the miners' pension and protective benefits as an instrument for mitigating the social effects of the transformation.

Prior to the drafting of a legal act (including amendments to the Act), a regulatory impact assessment is prepared to identify the anticipated socio-economic effects (§ 24 par. 3 of the 2013 Resolution). The regulatory impact assessment, which presents the results of the assessment of the anticipated socio-economic effects, forms part of the justification of the draft normative act (§ 28 par. 1 of the 2013 Resolution).

In government documents, data on the role of miners' pensions and shielding benefits in the energy transformation are not specified, and can only be gleaned from the regulatory impact assessments of the proposed amendments. For example, in the regulatory impact assessment of the ongoing legislative procedure concerning the draft act on amending the act on the functioning of the hard coal mining industry (number in the list of legislative works of the Government: UD167), in connection with the extension of the scope of those entitled to benefit from shielding benefits (i.e. mining leave, leave for employees of coal preparation plants and one-time severance payments), it was estimated that approximately 30,000 people could benefit from these benefits, while the expenditure during the 10 years from the date of entry into force of the proposed legislation would amount to PLN 4,182 million (Project 2025). These estimates also take into account the costs of decommissioning mining plants, which means that the costs of the shielding benefits themselves have not been determined, as well as there is no data on miners' pensions.

The purpose of this paper is to analyze government documents - policies relating to the energy transformation in Poland in terms of determining the importance of the miners' pension and shielding benefits as an instrument for mitigating the impact of the transformation on the local community, to discuss the legal regulations in this area (with a focus on recent changes) and to identify areas of the law requiring further amendments.

2. MATERIALS AND METHODS

This thesis is divided into two parts. The first focuses on an analysis of a number of policy documents of the Council of Ministers, relating (even indirectly) to the energy transformation, in order to determine whether, and if so to what extent, the Council of Ministers considered miners' pensions and protective benefits as an instrument for mitigating the social effects of implementing the energy transformation. The study covered the National Raw Materials Policy, National Energy Policy, Programme for the

lignite mining sector in Poland, National Energy and Climate Plan, Social agreement for the hard coal sector and Social agreement for the electricity and lignite sectors.
The second part of the article analyses the legislation governing the above benefits, with the aim of determining to what extent the current legislation sufficiently supports the energy transformation and to formulate *de lege ferenda* conclusions.

3. ENERGY TRANSFORMATION IN THE GOVERNMENT'S STRATEGIC DOCUMENTS

3.1. National Raw Materials Policy

The National Raw Materials Policy [PSP] is a document adopted by Resolution No. 39 of the Council of Ministers of 01.03.2022. The Policy declares the consistency of its provisions with regard to energy raw materials with the National Climate and Energy Plan 2021-2023 and assumes a reduction to 56-60% of the share of coal in electricity generation in 2030 [PSP 2022]. The document focuses primarily on raw material security, including in the fair transition process, but ignores the issue of the social impact of this transition caused by the decommissioning of coal and lignite mining plants. Mentioning the decommissioning of mining plants, the PSP only points to the need to protect mineral deposits, which should be understood as the need to protect the unexploited resources of a mineral deposit [PSP 2022]. Interestingly, the legislator - when establishing a list of obligations related to the decommissioning of a mining facility - originally provided for such an obligation in the provisions of Article 129(1)(2) of the Geological and Mining Law [PGG 2012], but as of 1 January 2015, the legislator abandoned this obligation, repealing the cited provision. The National Raw Materials Policy euphemistically assumes the use of the 'potential, knowledge and experience' of entities currently active in the hard coal and lignite mining sector in securing the mineral resource base 'for the production of strategic and critical raw materials for the national economy and critical raw materials for the EU', without, however, providing any indicators, in particular without specifying what percentage of employees of entities in the hard coal and lignite sector this use of potential will involve. The document gives a forecast demand for hard coal of up to 36 million Mg by 2030, and up to 25 million Mg by 2040.

3.2. National Energy Policy

Another policy document of the Government is the National Energy Policy [PEP], adopted by Resolution of the Council of Ministers No. 22/2021 of 2 February 2021. [PEP 2021]. Although the subject of this Policy is - to some extent - the energy transformation of Poland, this document, too, does not describe the social consequences in the context of mining pensions acquired by employees of decommissioned hard coal and lignite mining plants. On the subject of the deadlines for the termination of hard coal production at individual mines, the Policy refers to the social agreement on the functioning of the mining sector and its transformation. It is only indicated in general terms that certain regions of Poland will be affected by the energy transition (Silesia, Lower Silesia, Greater Poland, Lesser Poland, Łódź and Lublin Voivodeships). In doing so, it was assumed that 'Part of the labour market will be transformed naturally, but support will be needed to retrain workers, stimulate investment and generate new jobs'. Although it is not specified what 'transformation by natural means' will mean in practice, it can be assumed that some part of this process will be the retirement of workers from mining.

3.3. Programme for the lignite mining sector in Poland

The Programme for the Lignite Mining Sector in Poland [PSGWB 2018], developed in 2018 by the Ministry of Energy, predicts the disappearance of lignite-based generation capacity and the liquidation of the industry between 2040 and 2045 [PSGWB 2018]. And in this case, the accompanying decommissioning of the mines is pointed out to be accompanied by the elimination of 'a multitude of specialized cooperators working for it' [PSGWB 2018]. However, the document does not mention the retirement of workers from mining as a consequence of the decommissioning of the mines (and co-operators).

3.4. National Energy and Climate Plan

In fulfilment of the obligation imposed by the provisions of Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018. on Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council, Poland adopted the National Energy and Climate Plan for 2021-2030 [aKPEiK]. Currently, the Council of Ministers is proceeding with its update (aKPEiK, 2024). While the original document made no reference to the effects of the energy transition in the area of pensions, only laconically is this mentioned in the APCC (Annex 1 to the APCC 2024, p. 84). In fact, the aKPEiK refers to the study of the "Instytut Badań Strukturalnych" foundation ("Institute for Structural Research") [IBS, 2020] stating that by 2030 'the number of employees in the coal and lignite sector will fall by around 60,000. However, this does not mean that all workers leaving the sector will have to retrain. Some will leave the sector due to reaching retirement age.' The document, however, does not provide any analysis or estimates in this regard.

3.5. Social agreement for the hard coal sector

The 2021 Social Agreement estimates that the winding down of the hard coal mining sector in the Silesian Voivodeship alone will result in the elimination of 82,000 jobs in mines and 410,000 jobs in the peri-mining sector in 73 municipalities [Social Agreement 2021]. In para. V of the Social Agreement guarantees jobs in the coal mining sector for all those employed in the sector underground or in a coal preparation plant as of 25 September 2020. (in justified cases, also after this date), with guaranteed employment valid until the right to pension is obtained. If it is not possible to secure employment, the government party has undertaken to provide such employees with social protection. Shields are also mentioned in para. VI of the Social Agreement. The following can be considered as instruments of social protection: mining leave, described in more detail below, leave for employees of a coal preparation plant, and a one-off cash severance payment. Although the Social Agreement itself is neither a source of law within the meaning of Article 87 of the Constitution, nor a strategic/programmatic document of the Government, it seems that - also due to possible pressure from trade unions - it will be implemented according to the schedule adopted in the Agreement and, for these reasons, will influence the directions of further work of the Government. One of the outcomes of the signing of the Social Agreement was the enactment of the 2023 Act.

3.6. Social agreement for the electricity and lignite sectors

The second of the Social Agreements is the Social Agreement on the electricity sector and the lignite mining industry, including the unbundling of coal production and mining assets from state-owned companies, concluded in December 2022. The conclusion of the Social Agreement was dictated by the

need to minimize the negative socio-economic effects of the transformation of the electricity sector and the lignite mining industry, required to achieve the CO2 emission reduction targets set by the European Union by 2050 and the targets from the so-called 'European Green Deal'. The agreement includes measures to create new jobs based on low- or zero-carbon technologies, including those related to RES. In addition, the government party undertook in the Agreement to carry out a legislative process leading to the enactment of normative acts regulating the system of employee social protection in the period of shutting down power units in connection with the liquidation of enterprises carrying out electricity generation activities and in the period of systemic reduction of coal output in connection with the liquidation of lignite mining enterprises. These covers are to include mining leave, energy leave and a one-off cash severance payment, described later in this article.

4. DEFINITIONS OF TERMS

The provisions regulating the acquisition of retirement and protective benefits use concepts whose definitions are included in the provisions of the Act of 1998 (hereinafter referred to as "UFUS"), but these are imperfect definitions, requiring the use of instruments of interpretation of legal provisions and a somewhat broader discussion. This applies to the concepts of: mining work and equivalent work, mine, opencast, face and transport and carriage of deposits.

4.1. Mining work and equivalent work

Mining work, which is a prerequisite for obtaining a mining pension, is characterized in Article 50c of the UFUS. 'This term generally means a miner's period of employment in deep mines (underground), in sulphur bore mines and in open-pit sulphur and lignite mines, i.e. periods of mining work listed in Article 50c(1) carried out at least half-time (a requirement of Article 50b).' (Antones, 2019, Article 50a-art. 50f).

It should be added that work equivalent to mining work is considered to be:

1) employment in positions requiring qualifications as an engineer or technician in the field of mining in mining offices, if the employment is related to the performance of inspection and technical activities in mines, enterprises and other entities defined, inter alia, in Art. 50c para. 1(4) of the UFUS, provided that they have previously worked in the aforementioned mines, enterprises and other entities specified at least 10 years underground, on the open pit in sulphur or lignite mines, as well as in borehole sulphur mines or in supervisory or traffic management positions;
2) employment in other work, not longer than 5 years, to which employees performing work specified, inter alia, in Article 50c, item 1 and in item 1 above, transferred in connection with liquidation of a mine, enterprise or other entity referred to, inter alia, in Article 50c, item 1, point 4 of the UFUS.

In addition, Article 50d sets out the rules for crediting periods of work on one and a half times. Pursuant to Article 50d(1) of UFUS, the following periods of work on the territory of the Polish State are credited on one and a half times to employees employed underground and in sulphur or lignite mines when establishing the right to a mining pension:

1) at working faces directly in mining, loading and heaping of excavated material and in other face work, in the assembly, decommissioning and transport of shoring, mining, loading, transporting and heaping machinery at faces and in shaft sinking and shaft work;
2) in rescue teams.

In addition, the periods of work listed above are also counted on a time-and-a-half basis for those supervisory and management employees of mines who work at least half of the working days per month underground, in sulphur mines or in lignite mines. A time-and-a-half basis means that every year worked

under the conditions of the law is treated as one and a half years, which de facto reduces the legal length of service required prior to obtaining a miners' pension and indirectly increases the miners' pension itself.

A comparison of Article 50c of the UFUS, which refers to mining work, and Article 50d(1) of the UFUS, which refers to work on a time-and-a-half basis, leads to the conclusion that the former of the cited provisions explicitly mentions, as mining work, also employment 'in enterprises and other entities performing mining work for sulphur and lignite mines' (i.e. in so-called 'external entities'), while Article 50d(1) of the UFUS omits such enterprises and entities. This may lead to doubts as to whether the work of persons employed by an employer other than the concessionaire can be counted as one and a half times mining work. Doubts may arise as to whether the aforementioned discrepancy is a deliberate effort on the part of the legislator or is the result of an oversight or even a legislative mess. Without going into the details of the above problem, it can be pointed out that the possibility of crediting periods of mining work on a time-and-a-half basis in the case of persons employed in companies and other entities performing mining work for sulphur and lignite mines was addressed by the Court of Appeal in Katowice in the judgment of 10 October 2012, ref. no. III AUa 280/12. In the aforementioned judgment the court stated that 'the period of time for which the miner was a member of the rescue team during work in the period from 30 May 1987 to 30 June 1988, from 1 October 1988 to 15 September 1992, from 1 October 1992 to 28 December 1992 and from 9 January 1993 to 28 September 1993 is no longer counted as one and a half times when establishing the right to a mining pension. Such crediting would be possible only if the work corresponded to the criteria set out in Article 50d of the Act on Pensions from the Social Insurance Fund. According to this provision, the period of work in rescue teams is credited at one and a half times only to employees working underground and in sulphur or lignite mines. A grammatical interpretation of the provision in question must therefore lead to the conclusion that the condition for credit for work in a rescue team is to have been in employment in a sulphur mine. A person who was not an employee of a sulphur mine (a person in an employment relationship with a sulphur mine) but, like the insured person, an employee of a company carrying out mining work for a sulphur mine, cannot therefore benefit from credit for one and a half periods of mining work.'. However, the authors of this article do not agree with the position presented by the court. It should be borne in mind that - in accordance with the view accepted and established in the case law - it is the duties actually performed by the employee, and not the content of the employment contract, which determines whether work is deemed to be mining work (see, inter alia, the judgment of the Supreme Court of 25 March 1998, ref. no. II UKN 570/97, and also the judgment of the Supreme Court - Chamber of Administration, Labour and Social Insurance of 22 March 2001, ref. no. II UKN 263/00). Also in the judgment of 23 August 2022, ref: II USKP 204/21, the Supreme Court explained in detail that 'the recognition of a given job as mining work within the meaning of Article 50c(1)(4) UFUS is not determined by the content of the employment contract, the name of the job used in the certificate of work in special conditions, the employer's internal order or the protocols of the verification commission qualifying a specific employment as mining work, but by the type of work actually performed which meets the statutory requirements.'. Similarly, also in the case of crediting periods of mining work on a time-and-a-half basis, the decisive factor should be the nature of the work performed (duties performed) and not any other issues, including whether the employer of the employee in question is a mining company (concessionaire) or a third party. Moreover, the provision of Article 50d(1) of the Social Security Act states that the employees are those employed "underground and in sulfur or lignite mines," and not those employed by "mining entrepreneurs extracting a mineral from a deposit by underground methods or extracting sulfur or lignite coal." The employer of a particular employee is not a sulfur or lignite mine, but a particular workplace - an organizational unit or person, employing employees. Due to the above discrepancy, the places listed in Article 50d(1) of the Social Security Act should be understood as places

where work is performed, regardless of who is the employer of the employee in question. The interpretation of Article 50d(1) of UFUS, as presented, corresponds to the principle of equality before the law regulated by Article 32(1) of the Constitution.
The indicated interpretative doubts are extremely important for employees who perform mining work and are not directly employed by a mining entrepreneur. These people suffer from the uncertainty of the law regarding whether or not their work can be recognized as mining work on a time-and-a-half basis.

4.2. Mine

The concept of "mine" received a statutory definition rather late, i.e. only as of October 19, 2022, although the concept is used in regulations governing pension benefits. For example, the concept appears in the provisions of:
1) the already repealed 1983 law. - and in the definition of the term "mining work",
2) the current 1994 Ordinance, defining the concept of "mining work",
3) the 1981 ordinance, referred to as the "Miner's Charter",
4) the 1998 law, hereinafter referred to as "UERFUS."
The provision of Article 50ba(1) of the UERFUS stipulates that "mine" is understood to mean a mining facility as defined in Article 6(1)(18) of the PGG. Thus, this definition coincides with the definition given by the Little Dictionary of Surface Mining [Glapa 2005, p. 44], according to which a mine is "a mining plant engaged in the extraction of minerals; underground mines, surface mines are distinguished."

With this definition, the legislator seems to have limited the scope of the concept of a mine, as the industry language assigns a somewhat broader meaning to the term. Indeed, a mine - primarily in reference to larger mines - used to be called a mining enterprise, i.e. an enterprise that was used to carry out the business of extracting a mineral from a deposit (and often to process it). A mine in this sense could consist of both a single pit and several pits, called open pits (multi-pit mines), as exemplified by such companies as "Kopalnia Węgla Brunatnego Adamów" Spółka Akcyjna (with former open pits: Adamów, Koźmin, Władysławów and Koźmin Pole Północne, "Kopalnia Węgla Brunatnego Bełchatów" Spółka Akcyjna (with open pits: Bełchatów and Szczerców) or "Kopalnia Węgla Brunatnego Konin" Spółka Akcyjna (with open pits: Kazimierz Północ, Jóźwin IIB, Lubstów, Tomisławice or Drzewce) [Koziol 2007, pp. 26-28].

4.3. Open pit

With the introduction of the definition of the term "mine," the legislature defined the term open-pit, equating it in meaning with the term open-pit mining plant. Although it does not directly follow from the provision of Article 50ba(2) of the UERFUS, it should be recognized that a mine plant should be understood as a mining plant within the meaning of Article 6(1)(18) of the PGG. Admittedly, the legal definition of the term is binding within the legal act (the law) that contains the definition (and the implementing acts for it) [Błachut et al. 2008, pp. 34, 36], but in the absence of a different definition, the meaning given to the term by the provisions of one law also extends by analogy to other laws that use the defined term.

Again, the legislature's procedure seems to be a kind of simplification, since industry language tends to understand under the term open pit a surface mining plant with a single pit, often part of a mine, i.e. a larger mining company. The authors of the Little Lexicon of Surface Mining give two meanings of the term open pit, with the second meaning coinciding with that given in the previous sentence. An open pit is "1. an exposed deposit of mineral after the removal of other rocks covering it [SG]; 2. an organizationally separated part of a lignite mine, e.g. o. Belchatow, Kazimierz, Wladyslawow" [Glapa

2005, p. 66]. The industry meaning given above, however, will not be relevant to legal trading, since at present - based on Article 50ba(2) of the UERFUS - an open-pit mine is to be considered an open-pit mine, i.e. a mining plant within the meaning of Article 6(1)(18) of the PGG that conducts open-pit mining of a mineral.

4.4. Mine face

Determining the meaning of the concept of a mine face is important for determining whether to count a period of mining work at one and a half times (Article 50d of the UFUS) in a given case. The legal definition was added as of October 19, 2022, which can be read as the implementation of the 2021 Social Agreement. A face from now on is "the area of a mine workings in which work directly related to the extraction of a mineral or the excavation of that workings is carried out, including the longwall, and in open pits, also the area directly related to the excavation of the mineral, overburden or surrounding rock and the heaping , including the formation of the body of the heap, as well as the buttress zone, which is the area immediately adjacent to the face, established in the mine on the basis of organizational and technical methods of performing mining work, in which work related to the haulage of excavated material and the maintenance of the excavation is carried out."

This definition is more favorable to the insured, as it extends the traditional understanding of the face also to include the near-face zone, which, however, is not a face in the sense of the technical language. Determination of the boundaries of such a zone should be made on a case-by-case basis for each mine, using the "organizational and technical methods of performing mining work" established for the mine. Sources of information in this regard can be any documents that make up the documentation of the mining plant's operation, such as the mining plant's operation plan, surveying and geological documentation, and others, including documentation from, for example, the concessionaire or its management and supervision services [Schwarz 2019, pp. 164-165].

Although the definition did not enter into force until 2022, it also applies to the determination of pension entitlement to earlier years, as the new definition will apply to any mining pension proceedings initiated and not completed before 19.10.2022. [Law of 2022, Article 9, as well as the judgment of the Court of Appeals in Poznań of 3.04.2024, ref: III AUa 47/23].

4.5. Transport and carriage of the deposit

Mining work can also be work in the transportation of deposit and spoil in surface mining plants (UFUS, Article 50c(1)(4)). On the ground of technical language, the differences between the concepts of transport and carriage are blurred, as evidenced by the content of the definitions given in the mining literature, for example, in the Little lexicon of surface mining [Glapa 2005, p. 106]. The law (PGG) uses the concept of carriage of a deposit only in the context of the definition of extraction of hydrocarbons from deposits (Article 6(1)(16c) of the PGG), so the meaning in which carriage is used in this definition will not be authoritative in the conditions of extraction of other minerals (e.g., lignite). The consequence of this legal position, however, is the recognition that carriage of a mineral is part of the activity of extracting a mineral from a deposit - and this includes when it is carried out outside the boundaries of a pit. In mining, it includes the relocation of material from the place of loading in the pit to the point of reception, as defined by the Polish Standard. The Little Lexicon gives the following definition of carriage: "the movement of excavated material from the place of loading at working levels to the reception points [PN-64/G-01203], the movement of excavated material, materials, machinery and people" [Glapa 2005, p. 106]. Although the second term - deposit - is defined in the law (Article 6(1)(19) of the PGG), nevertheless, in the sense used in the term in question, it is not so much the deposit *sensu*

stricto, but its stripped resources, which can be referred to as spoil. Therefore, it can be considered that "transport of deposit" will be an equivalent concept to "carriage of deposit".

5. MINING PENSION

5.1. Rules for the acquisition of a mining pension

The rules for the acquisition of a mining pension are regulated in Articles 50a and following of the UFUS. A miners' pension is available to a worker who fulfils all of the following conditions (1998 Act, art.50a(1)):

1) has reached the age of 55;
2) has a period of mining work totalling, together with periods of equivalent work, at least 20 years for women and 25 years for men, including at least 10 years of mining work as defined in Article 50c(1);
3) has not joined an open-ended pension fund or has submitted a request for the transfer of funds accumulated on an account in an open-ended pension fund, via the Company, to the State budget revenues.

The retirement age required for employees: women with at least 20 years and men with at least 25 years of mining and equivalent work, including at least 15 years of mining work referred to in Article 50c(1), is 50 years. As pointed out in the doctrine, 'the mining pension is a so-called industry pension, i.e. it is only available to certain occupational groups. The right to the mining pension is distinguished from the right to the general pension primarily by a different structure of the required insurance period, which must consist only of the periods of work in mining listed in the catalogues of Article 50c(1) (periods of mining work) and Article 50c(2) (periods of equivalent work).' (Jędrasik-Jankowska, 2019, Article 50a).

5.2. *De lege ferenda* conclusions

Mining pension cases are the subject of analysis made in a number of court rulings. The plethora of case law in these cases is related to the problem of defining concepts such as "face" and "open-pit," and consequently also the concepts of "open-pit work," "work at the face," or "other face work." The same problems relate to defining the boundaries for the concept of "transportation of ore," i.e. determining the point of demarcation between transportation of ore and transportation that is not considered mining work. A partial solution to the above problem was the amendment of the regulations to add Article 50ba of the UFUS defining the concepts of "mine" and "open pit," as well as the aforementioned Article 50d (1a) of the UFUS with the definition of "mine face." These provisions were added in 2022, a consequence of the implementation of the 2021 Social Agreement.

Despite the amendments to the UFUS regulations, the regulatory changes are still considered insufficient. They have not eliminated problems occurring in practice and causing discrepancies in case law. Employees working in mines are still exposed to the unpredictability of the actions of pension authorities and courts. This results in the failure to meet the requirement of legal certainty and the failure to realize the principle of ensuring the confidence of citizens in the state and the laws it enacts. Matters are not facilitated by the equalization after the amendment of the meanings of the terms "open pit" and "mine" (in the case of open-pit mines). Laws should not use synonyms interchangeably, as this can be misleading. For these reasons, the terminology of the law should be standardized and the definitions simplified.

6. MINING LEAVE

Regulations related to miners' pensions in the context of the energy transition can be found in vain in the UFUS regulations. They were included:
- in the provisions of the 2007 Act. (hereinafter: "UFGWK") - with regard to the coal sector,
- in the provisions of the Law of 2023 (hereinafter: "UOSP") - with regard to the electric power and lignite mining sectors.

As already mentioned, the 2021 Social Agreement and the 2022 Social Agreement provide for public support mechanisms for companies in the coal sector and for companies in the electricity sector and the lignite mining industry, respectively. The aforementioned companies can receive subsidies to cover cash benefits paid to employees, which include mining leave, coal preparation plant leave, energy leave or one-time severance payments.

The payment of benefits to coal workers is not a novelty. Such a solution was adopted in connection with the restructuring of mines and their takeover by Spółka Restrukturyzacji Kopalń S.A. (Mine Restructuring Company Inc., hereinafter referred to as "SRK S.A."). The 2021 amendment extended the deadlines for obtaining pension entitlements for those taking advantage of mining leave or leave for employees of mechanical coal processing plants, with the extension of the deadlines until January 1, 2028 for those taking advantage of mining leave and until January 1, 2027 for those taking advantage of leave for employees of mechanical coal processing plants, applying only to employees who, as part of the restructuring process, passed or will pass with their assets to SRK S.A. The purpose of the amendment to the regulations was to enable the widest possible group of employees use the above leaves.

The need to extend eligibility for the benefits in question also to employees of the electricity sector and the lignite mining industry was discussed in the justification of the draft UOSP, according to which "the transformation of the electricity sector and the lignite mining industry, which is concentrated in a few relatively small geographic areas of the country, carries a number of risks of a socio-economic nature. Without the implementation of an appropriate, comprehensive system of publicly funded social protection, and aimed at the transformation and long-term gradual reduction of lignite mining and the shutdown of power units, there may be negative socio-economic consequences consisting of, among other things. In this case, the following consequences may occur: a real threat to the country's energy security, including a sharp increase in electricity prices and temporary restriction of electricity supplies, structural degradation of lignite mining areas as a result of the targeted elimination of thousands of jobs in mines and power plants, as well as in the mining-related sector in many municipalities (especially in the Lower Silesian, Łódź and Greater Poland Voivodeships) and in entities cooperating with the mining industry, depopulation of these areas and pauperization of the population living there." In view of the above, support for the electric power sector and the lignite mining industry was also considered necessary.

As already mentioned, the first of the protective measures related to the mining sector, is mining leave. This leave is granted for up to 4 years:
- in the case of the coal industry:
1) an employee working underground in a mine, mining plant or its designated part, acquired after January 1, 2015 by SRK S.A., who, due to age and total length of service, including length of service during the period of holding elected office in the bodies of a trade union uniting employees of a mine, mining plant or its designated part, or length of service underground performed continuously and on a full-time basis, lacks no more than four years to acquire the right to a pension;
- in the case of the lignite industry:

1) an employee who, due to his age and total length of service as a miner, lacks no more than four years to acquire the right to a mining pension;
2) an employee performing mining work who lacks no more than 4 years to acquire the right to a bridge pension,
3) an employee who performs work permanently and with a working time of not less than half of full time at a workstation in the production or repair area, involved in the lignite mining process within the types of work specified in Annex No. 2 to the Act, who, due to his age and total length of service, lacks no more than 4 years to acquire the right to a pension other than that specified in points 1 and 2,
4) the right to mining leave shall also be granted to an employee who is exempted from work under Article 31, paragraph 1 of the Trade Union Law, if immediately before the date of exemption from work he performed the work indicated above.

As explained in the explanatory memorandum to the draft UOSP, the term lignite mining process is not the same as "lignite mining process," but is meaningfully broader than it. "The "lignite mining process" within the meaning of the draft law includes not only lignite mining per se, but also all preparatory activities related to it, such as preparing the deposit (open pit) for mining the mineral, etc.". The most important condition for the granting of mining leave is that taking it must allow the employee to acquire the right to a pension. Employees who, as a result of taking the above leave, would not acquire the right to a pension, are deprived of the opportunity to go on such leave. The above employees may only be entitled to a one-time severance payment, discussed later in this article. Since mining leave is linked to the right to acquire a pension, the employee loses the right to take mining leave on the date of acquiring the right to a pension.

Mining leave for coal workers may be granted only on the condition that the employee's employment contract is terminated by mutual consent at the employee's initiative as of the date the leave ends.
On the other hand, mining leave for employees in the lignite industry may be granted only under the condition:
1) termination of the employment relationship with the employee, prior to the granting of this leave, by agreement of the parties, as referred to in Article 1, paragraph 1 or Article 10, paragraph 1 of the Law on Collective Redundancies, as of the date of termination of this leave, and
2) use of the employee's vacation leave in full as of the date of commencement of the mining leave.
During the period of taking mining leave, the employee shall not be entitled to annual leave or other days off provided by law or company sources of labor law.
During the period of mining leave, a coal worker is exempted from the obligation to work and receives a social benefit in the amount of:
1) 75% of monthly remuneration calculated as remuneration for annual leave - in the case of SRK S.A. employees who have been granted entitlement to mining leave or leave for employees of a coal preparation plant before December 1, 2021;
2) 80% of monthly remuneration calculated as remuneration for annual leave - in the case of SRK S,.A. employees who become entitled to mining leave or leave for employees of a coal preparation plant from December 1, 2021.
Similarly, a lignite industry employee during the period of taking a mining leave is also relieved from the obligation to work and receives a social benefit equal to 80% of the employee's monthly salary calculated as if it were vacation pay.
For both leaves, the salary base also includes:
1) a prize or bonus on the occasion of "Miners' Day" in the amount of 1/12 of the last prize or bonus paid to the employee,

2) reward or bonus on the occasion of "Energy Day" in the amount of 1/12 of the last reward or bonus paid to the employee,
3) additional award or annual bonus in the amount of 1/12 of the last award or bonus paid to the employee,
4) jubilee award in the amount of 1/60 of the last award paid to the employee.
The reason for the loss of entitlement in the form of mining leave, in addition to the acquisition of pension rights, is:
- in the case of the hard coal industry: taking up gainful employment on the basis of an employment relationship or civil law contract on the surface in a mining company or underground,
- in the case of the lignite industry: taking up gainful employment on the basis of an employment relationship, civil law contract, as a sole proprietor or on any other basis in an energy company, a company of an energy company, a lignite mining company or a company of such a company, as well as an entity providing services to the above-mentioned entities.

Thus, not every job taken will be grounds for loss of mining leave, and the leave rules for the coal sector are less stringent than for the lignite sector. Since the *ratio legis* of the introduction of "mining leave" was to provide a source of income for employees approaching retirement age, who often find it difficult in practice to find a new job, it may be controversial that these people can take a job other than in their current industry and still benefit from mining leave. Such a solution may cause employees to exploit the above loophole, which may expose the Treasury to unnecessary burdens.
It should also be mentioned that similar to the mining leave is the leave for employees of a coal preparation plant, regulated in the UFGWK regulations, to which an employee employed in a coal preparation plant of a mine, a mining plant or a designated part thereof, acquired after January 1, 2015 by SRK S.A., who, due to age, total length of service or length of service performed continuously and on a full-time basis, lacks no more than three years to acquire the right to a pension. The rules for granting and using this leave are analogous to the rules for mining leave. However, this leave is shorter than mining leave and is granted for up to three years.

It is also worth mentioning that a draft bill to amend the Act on the functioning of the hard coal mining industry has been drawn up, but has not yet been adopted. The draft amendment to the UFGWK envisages an extension for employees of the hard coal industry of entitlements related to mining leave and leave for employees of a coal preparation plant. These entitlements are to be available to employees of mining companies covered by the support system, employed in the mining plant, who do not have pension rights (thus not only, as before, to employees of companies taken over by SRK S.A). These employees, employed underground, who due to their age and total seniority, including their seniority in elected office in the bodies of a trade union uniting employees of a mining company covered by the support scheme, or their seniority in continuous and full-time underground work, are not more than five years short of acquiring the right to an old-age pension, are to be entitled to up to five years' mining leave, i.e. an additional year's leave entitlement compared to the current regulations. The amount of social benefit due to employees is also increased from 75% to 80% of the monthly salary calculated as holiday pay.

The amended leave for coal preparation plant employees, apart from expanding the catalogue of persons entitled to leave and increasing the social benefit to 80% of monthly salary, does not introduce any changes to the length of leave.

7. ONE-TIME SEVERANCE PAYMENT

Another protective solution is a one-time severance payment. This benefit has been regulated partially differently for the hard coal and lignite sectors.

In the case of the hard coal sector, the terms of the severance payment depend on when the employment contract was terminated. A one-time severance payment is due to employees with whom the employment contract is terminated by mutual agreement after January 1, 2015, but no later than December 31, 2015, employed as of January 1, 2015:
1) in a coal preparation plant for not less than 5 years;
2) on the surface of a mine and with at least 5 years of service in a mining company other than those listed in item 1.
These employees are entitled to a severance payment of 12 times the average monthly salary from the first six months of the year preceding the termination of the employment contract at the mine where the employee was employed.

Employees with whom the employment contract was terminated by mutual agreement after December 31, 2015, but no later than December 31, 2018, employed as of the date of disposal of the mining enterprise to SRK S.A. on the surface of the mine, including in the mechanical coal processing plant, and having at least 5 years of service with the mining enterprise. The amount of severance pay varies and depends on the period of time since the disposal of the enterprise that the contract was terminated.

A one-time severance payment is also due to employees who are not entitled to mining leave or leave for employees of a mechanical coal preparation plant employed on the day of the sale of the enterprise to SRK S.A.:
1) on the surface of the mine, including in a mechanical coal processing plant, and having at least one year of service in the mining enterprise, or
2) underground and having at least one year of work experience underground in a mining company
- with whom the employment contract is terminated by mutual agreement within 3 months from the date of disposal.

These employees are entitled to a severance payment of PLN 120,000.
With regard to the lignite industry, the one-time cash severance payment is only alternative to mining leave and may only be due to employees who do not meet the conditions for acquiring the right to mining leave. A one-time cash severance payment will be due to an employee who, as of the date of termination of the employment relationship on the basis of the parties' agreement referred to in Article 1 (1) or Article 10 (1) of the Law on Collective Redundancies, remaining in connection with the reduction or termination of lignite mining , does not meet the conditions for acquiring the right to mining leave, but has at least 5 years of service with the employer. Therefore, the severance pay in question will not be entitled to new employees who have not been associated with a particular employer, which is a mining company, for a longer period of time.

A one-time severance payment will be paid to the employee in the amount of 12 times the employee's monthly salary, calculated like vacation pay due as of the date of termination.
The regulations for the lignite sector, unlike those for the hard coal sector, also normalize the return of severance pay. Such reimbursement will be required if, within 24 months from the date of termination of the employment contract, the employee takes up gainful employment on the basis of an employment relationship, civil law contract, sole proprietorship or other basis in the same enterprises as in the case of mining leave. Reimbursement will not be due in the case of taking up any employment, but only those specifically indicated in the law. Again, the solution adopted - as well as, and even more so, the lack of reimbursement of severance pay in the case of the coal sector - should be assessed as questionable, given the purpose these solutions were intended to serve.

Reference should also be made again to the yet to be adopted draft bill to amend the Act on the functioning of the hard coal mining industry. The draft amendment to the UFGWK provides that severance payment will be available to employees employed:

1) on the surface of a mine, including in a coal preparation plant, and having at least one year's service in a mining company, or
2) underground and with at least one year's seniority underground in a mining company.
The catalogue of persons entitled to the benefit in question is thus expanded once again. Severance payment is to be paid in the amount of PLN 120,000.

8. SUMMARY

Neither the government's strategic documents, nor those of the European Union, explicitly refer to mining pensions as part of the energy transition. They alsodo not provide protective solutions for workers in the coal and lignite sectors. Only social agreements have led to solutions aimed at real protection for workers related to the changes that the energy transformation will bring about.

Policies also do not estimate how many employees, currently working in coal and lignite companies, will benefit from pension entitlements after the mines are decommissioned, or how many employees will choose to take advantage of mining leave or a one-time severance payment. The economic impact of the solutions discussed in this article should be assessed as completely underestimated.

The burdening of the social security system and - directly or indirectly - of the state budget with the costs of the miners' pension and shielding benefits is a cost of the energy transformation that is borne by society as a whole. A possible reason for overlooking - or insufficiently specifying - these burdens may be the fact that this benefit structure can be considered as an indirect form of support for the mining industry (Śniegocki 2022, p. 12). At the same time, there is no doubt that early retirement is an instrument to mitigate the social effects of the energy transformation (Pai 2020), as has also been proven by the decommissioning of mining plants in other countries, such as Germany (Abraham 2017).
The draft amendment to the UFGWK, which expands the catalogue of persons entitled to mining leave, leave for employees of a coal preparation plant and a one-time severance payment, further shows that mining pensions and related benefits are becoming a tacit, not explicitly mentioned element of the energy transformation. It also involves effectively shifting some of the costs of the energy transformation to the Social Insurance Institution.

Moreover, the protective solutions in the form of mining leave are linked to the right to a mining pension, which, in view of the gaps in the law highlighted in the article that make it difficult to determine which work can be considered mining work, may prove to be a problem in practice.
As indicated above, the legal regulations concerning miners' pensions, despite several amendments to the regulations, are still insufficient. These regulations still contain a number of undefined terms, which leaves the pension authority with too wide limits for administrative discretion, also resulting in refusals to grant pension rights. In practice, this situation also creates huge burdens for the judicial system, because decisions refusing the right to a pension are appealed to common courts. We are already observing such a situation in the post-mining region, resulting in a backlog in the Court of Appeal in Poznań, where the waiting time for an appeal in pension cases is up to three years. This has a negative social effect, because while waiting for a judgment, entitled persons do not receive pension benefits in many cases. The amendment to the regulations would therefore have a positive impact on the activities of pension authorities, significantly reducing the inflow of cases to common courts, and thus shortening the administrative and judicial path for those entitled to a pension.

9. CONCLUSIONS

Taking into account the comments made above, the recommended policy action would be:

1. unification of the directions of actions taken within the framework of the energy transformation and defined in the state policies described in the article,
2. to introduce a section on the social impact of the transformation in the mentioned policies and to specify in them:
(a) the impact of the energy transition on the local labour market, as mines are often one of the largest employers in the region (CIS 2025),
(b) an analysis of the extent to which workers laid off from the mines benefit from the miners' pension and protective benefits,
c) an analysis of the extent of the financial burden on the Social Insurance Institution and the deficit created by the payment of new mining pensions and cover benefits,
d) taking initiatives in the field of education, in particular primary and secondary school education, since, due to the narrow colloquial understanding of mining (and equating mining with hard coal mining), the energy transformation in the public perception means the decline of mining as an industry, and this has the effect of making vocational training in mining less and less popular. This threatens to create a shortage of geological, mining and engineering personnel for non-coal mining - and this on a horizon of several years.

The legislator should, as soon as possible, take action to unify the application of the law, as regulations that give too much discretion (especially when determining entitlement to a mining pension) are contrary to the constitutional principle of equality before the law. The proposed changes should include:
(a) unambiguous definition of the terms: face, mining work, and opencast and mine workings,
b) recognising that mining work is not only work carried out for the entity holding the mining licence (i.e. for the mining entrepreneur), but also work carried out for an external entity providing services for the mining entrepreneur,
c) the statutory determination of whether work in the transport of extracted material constitutes mining work and, if so, the definition of a caesura for distinguishing between mining transport, giving entitlement to a miners' pension, and external transport.

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