OUTLINE OF POLISH LABOUR LAW SYSTEM

edited by Krzysztof W. Baran

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TITLE ONE

GENERAL LABOUR LAW

Chapter I

THE CONCEPT AND SUBJECT-MATTER OF LABOUR LAW

1. Definitions of labour law

Definitions of basic concepts relevant to certain fields of study are of major importance both in empirical sciences and in practical application of the law. In the Polish literature on the subject, the term of "labour law" appeared rather late, during the interwar period, although in a rather limited scope. The terms used more frequently at that time were: "workers' law", "industrial law", "workers' and industrial law", "factory legislation" or similar. The term "labour law" became popular at the end of the interwar period and definitely prevailed after the World War II.

It became a legal term even later, under the Act of 26 June 1974 – Labour Code (*ustawa z dnia 26 czerwca 1974 – Kodeks pracy*).[1] In several legal acts of the interwar period, the set of norms governing the material scope of employment relationships (e.g. relating to industrial workers) was called "provisions on the contracts of employment"[2] and after the war the legal texts used the term "labour legislation"[3] without giving legal definitions of those terms. Therefore, by reference to the latter, it is possible to distinguish between scholarly definitions and legal (normative) definitions of labour law.

Initially, the legal doctrine defined labour law as a set of norms determining the employee status (called status definitions). Soon such definitions were considered too "narrow" and not corresponding with the scope of the labour law as a branch. At that time, definitions of labour law as a separate branch of the legal system of the Republic of Poland, governing employment relations and other social relations directly linked to employment relations, became more popular.

[1] Consolidated text: Journal of Laws [Dz.U.] of 2014, item 1502 as amended.

[2] Regulation of the President of the Republic of Poland of 27 June 1934 – Commercial Code *(Rozporządzenie Prezydenta RP z dnia 27 czerwca 1934 – Kodeks handlowy*; Journal of Laws [Dz.U.] no. 57, item 502 as amended).

[3] See, for example, Article XII § 1 of the Act on implementation of the Civil Code.

Therefore, the literature developed a specific "standard" method of defining and the related definitions of labour law which may be called "standard" definitions[4].

Both types of the definitions have certain functional elements called ontological, systemic and subject-matter:

1) the first one assumes existence of labour law (as a specific set of legal norms),
2) the second treats such set of norms as a separate, independent branch of a given legal system, and
3) the third makes reference to the set of legal norms ("subject-matter of labour law").

Since the time of codification of the labour law, our legal system has used the legal definition of "labour law". It should be understood as: "(…) provisions of the Labour Code and provisions of other laws (*ustawy*) and implementing acts (*akty wykonawcze*) regarding the rights and obligations of workers and employers, as well as provisions of collective agreements (*układy zbiorowe*) and other collective arrangements (*porozumienia zbiorowe*) based on laws, internal rules (*regulaminy*) and statutes (*statuty*) concerning the rights and obligations of parties to an employment relationship". It should be noted that consecutive paragraphs of the abovementioned article establish a specific hierarchy of sources of labour law.

Definitions of labour law assume for an element the subject-matter of a given branch of law. It is rightly pointed out that no such social relations exist which would generally be "uniform in nature" and grouping, systematisation and classification of such relations are logical measures based on a stated convention. Through "arbitrary convention" lawyers have determined also the subject-matter of labour law and agreed that this branch of law governs all social relations relating to subordinated work of people. Quite commonly, those relations were called labour law relations. Although the previously mentioned definitions of labour law give an impression of uniformity of opinions on these matters, the subject-matter of labour law still remains very controversial and the views on the labour law still vary in terms of time and space. As noted earlier, such "social employment relations" must be defined formally, through "arbitrary convention". In this regard, a reference can be made to general remarks of legal academics according to which "in the absence of appropriately general criteria" the subject-matter of labour law should be distinguished "not through a classic definition by *genus* and *differentia specifica* but through specification of its component parts". Each author of such definition, having specified the "employment relationships", to further determine the subject-matter of labour law must list and indicate those groups of social relations which he considers "practically related to work".

A relatively broader consensus was achieved in relation to the concept of "employment relationship". It is assumed that such relationship should be an obligation relationship

[4] However, some handbooks still use definitions which refer to the employee status.

and have a homogeneous structure. And the scope of "employment relationships" should be determined by the already defined criteria which distinguish them from other obligation relationships, such as: continuity of work, remuneration, performance, subordination of an employee and risk of the employer associated with the work process. However, it is still pointed out that such criteria do not ensure precise delimitation of those relationships. In this context, the legal nature of specific relations was often determined by case-law which developed, under the same legal provisions (Articles 2, 3, 22 of the Labour Code), the variable scope of that concept.

Even more discussions and scholarly disputes, causing far-reaching consequences in the practice of law enforcement authorities, arise from removal of those areas of social relations which should be considered "directly" and "intrinsically" linked to employment relationships. This applies both to specification of the groups (types) of social relations which should be a part of the subject-matter of labour law and to determination of the scope of social relations which should be included in each of those groups.

Those relations were presented in our literature on the subject in different ways:
1) by placing them on the time axis and comparing their duration to the duration of an employment relationship,
2) by taking into account both the subject-matter and the method of legal regulation of the relationships included in the labour law (see section 2 of this chapter).

Historically older is the first one, where the following relationships are distinguished besides the employment relationship:
1) relationships preceding the employment relationship,
2) relationships established along with the employment relationship and concurrent with the employment relationship or even exceeding its term,
3) relationships resulting from the already terminated employment relationship.

The relationships preceding the employment relationship include mainly: job matching, job counselling, vocational training (*nauka zawodu*), apprenticeship (*przyuczenie do określonej pracy*), legal relations connected with the conclusion of employment relationships (such as competitions, preliminary contracts); it is questionable whether some new types of social relationships, such as relationships related to internship or volunteering, should be included in this group.

The second group includes relations connected with the collective rights (of groups of workers, e.g. benefits from the company social benefits fund or, as argued by some scholars, occupational pension schemes), employee co-management relationships, relationships involving establishment of and participation in professional organisations (employers' organisations, workers' organisations, mainly trade unions). This group includes also relations within individual and collective labour disputes. Some legal scholars include in this category also legal relations concerning supervision over

employment relationships. Also social insurance relationships, until their recognition as the subject-matter of social insurance law treated as a separate branch of law, were considered "parallel" to employment relationships and after termination of the latter they were considered post-employment relationships (e.g. retirement or accident insurance).

Although the social insurance law was distinguished as a separate branch of law, there are still many labour law institutions governing social relations after the end of an employment relationship: entitlements of former employees (or members of their families) to various types of material benefits and severance payments (such as death allowance, retirement or pension allowance, termination payment for reasons not related to an employee), compensations (for example, as a result of the incorrect termination of an employment relationship or under a non-compete agreement following the term of the employment), cash equivalents in lieu (e.g. for unused leave), benefits from the Guaranteed Employee Benefits Fund (*Fundusz Gwarantowanych Świadczeń Pracowniczych*) or entitlement to obtain certain documents (e.g. employment certificate).

2. Classification of labour law

The doctrine classifies labour law as a branch for scientific, didactic and practical purposes. It is reflected also in legislative works (for example, an idea to regulate individual and collective labour laws in two codes). Former divisions, derived from foreign literature, classify the labour law into:

1) contractual (relating to the status and obligations of parties to an employment relationship) and protective (governing e.g. the rules of protection of women, young people, working time, safety and health, supervision of working conditions),
2) material (including the labour law within the meaning mentioned above), formal (including procedures for resolution of disputes and conflicts), institutional (relating to the structure and powers of bodies administering the work and employers' and employees' organisations), insurance labour law (today considered the subject-matter of social insurance) or
3) individual and collective labour law.

In the 1990s, a division of labour law into:

1) general,
2) individual,
3) collective and
4) procedural

has become more common in our literature.

The present handbook is based generally on this latter system.

3. Characteristics of labour law

3.1. General notes

Both foreign and domestic literature points out that labour law as a branch of law should have certain characteristics or "specific" features which are either absent or not so strongly visible in other branches of law.

Dynamics and expansion of labour law are traditionally considered the characteristics relating to the labour law development processes. It is pointed out that this branch of law was distinguished and undergone intensive development during a relatively short period. Sometimes, this phenomenon is presented at two levels: personal and material. As regards the first level (personal), labour law evolves – from a relatively limited group of factory workers, through sales and office employees, farmers and a significant number of persons employed in public administration – to extend its regulations to the majority of employment relationships.

Expansion of labour law as a branch of law is visible not only in the relations which have not been previously regulated but is also reflected by the fact that it "replaces" regulations of other branches of law, in particular administrative law (for example, in the field of employment in administration, management and supervision of work). In this regard, particularly active is a doctrine of labour law, strongly penetrating the so-referred non-employee employment relationships (*niepracownicze stosunki zatrudnienia*). This does not mean that in the process of transformation of labour law its "area", as a branch of law, is continually increasing; it has been highlighted, for example, that social insurance law was distinguished from labour law to form an independent branch of law. On the other hand, attention is drawn to the current tendencies to liberalisation or even deregulation of labour law: due to changes in economic and social conditions, and in particular because of dominance of neo-liberal or even liberal ideology influencing the labour law-making processes, certain legal instruments are either limited in scope or even liquidated (mainly those relating to stabilisation of wage entitlement, social entitlements or sustainability of employment relationship). Therefore, labour law is also subject to deregulation, and it "withdraws" from regulation of certain aspects of social relations.

It would be inappropriate to discuss now the axiology on which labour law regulations should be based. The values mentioned above may be derived from different ethical orders. During the period of the Polish People's Republic (*Polska Rzeczpospolita Ludowa, PRL*) reference was made to the Marxist axiology, and nowadays it is either the social ethics of the Church or universal human rights and freedoms.

3.2. Uniformity and differentiation of labour law

Uniformity of labour law is usually defined as homogeneity of legal regulations, equal treatment of all persons working in similar conditions (which should be based on the principle of equality in employment relations). Examples include: equalisation (in the Labour Code) of rights of white collar and blue collar workers, equalisation of legal situation of employees in public and private undertakings, employees employed by natural persons under the act referred to as the great amendment of the Labour Code of 1996, and introduction of provisions on equality and non-discrimination in employment.

Differentiation means different regulation of one and the same issue in relation to particular categories of employed persons. Differentiation should mean justified differentiation, otherwise it implies privileges or unjustified privileges. Most often, the criteria of differentiation are divided into personal and material ones. As regards the first category, the justified criteria mean usually differentiation of legal situation of young employees, women, employees with disabilities or – in the case of women – pregnant and breastfeeding women.

As regards the material criteria, a justified differentiation in legal regulations is the differentiation based on profession or characteristics of work (such as harmful and difficult working conditions). Formerly, explicit reference was made also to their value and usefulness to the community (for example, of mining industry, metallurgy, at shipyards). The differentiation of legal situation of employees was considered "objectively" justified by the size of the employer.

These assessments change over time, they are influenced by ideological, political and economic considerations and often also by tradition. Despite the fact that today the social "importance" of a profession or work is not directly declared to be the basis for differentiation, such criteria are still applied indirectly. An example of revaluation as to the reasonableness of a separate regulation of employment relationships of different professional groups (for example, postmen, railwaymen) is abandonment of their regulation by separate, profession-specific laws. Other examples include separation of regulations governing employment relationships in local and regional authorities and employment relationships of civil servants from the previous scope of regulations governing employment of public officials and subjecting them to separate laws governing employment of specific categories of employees.

3.3. Europeanisation of labour law

In the last decade, attention was drawn, although in a different context, to other specifics of the Polish labour law. A commonly discussed issue is the Europeanisation of Polish labour law associated with Poland's accession to the European Union. Therefore, the

national legal system, both in general and its particular legal constructs, have been subject to evaluation in terms of their compliance with European labour laws (European social law). This has involved a long-standing process of alignment of the Polish labour law with the standards prescribed by the mentioned European regulations, in particular in a form of subsequent new laws and, often very "profound", amendments of the Labour Code, including what is referred to as the European amendment, aimed at implementation in the national system of the standards set out in 30 directives enacted by the EEC bodies or the European Communities.[5]

[5] See Article 3 of the Act of 20 April 2004 on amendment or repeal of certain laws in connection with the membership of the Republic of Poland in the European Union (*ustawa z dnia 20 kwietnia 2004 o zmianie i uchyleniu niektórych ustaw w związku z uzyskaniem przez Rzeczpospolitą Polską członkostwa w Unii Europejskiej*; Journal of Laws [Dz.U.] no. 96, item 959).

Chapter II

LABOUR LAW IN THE POLISH LEGAL SYSTEM

1. General notes

The determining of the position of labour law in the Polish legal system consists in defining its place within the legal system and its relation to other branches of law.

Given the generally accepted division of the legal system into two main branches of the private law and the public law, the opinions presented in the literature should be accepted, according to which labour law includes elements of both of those legal systems. Where there is an area of non-prohibited activities, certain elements of the private law can be found; on the other hand, the norms governing state interference in the employment relationships in a form of orders and prohibitions relating to legal protection of work are characteristic of the public law.

When a legal system is treated as a set of branches distinguished on the basis of various criteria and the labour law is regarded as a separate branch, to determine the position of the latter in the system it is necessary to identify relations and interlinks between the labour law and other branches of law. The fact is that labour law is interdisciplinary and crosses with other branches classified either within the private or public law. Taking into account the subject-matter of labour law and the functional relations between the subject-matter of labour law and other social relations, it is essential to determine its relation to: civil law, social insurance law, copyright law, constitutional law, administrative law, criminal law and international law.

2. Labour law and civil law

Although it is a generally accepted argument that labour law is separate from civil law, it seems reasonable to emphasize the genetic relation of these two branches of law. It is because the labour law developed from a "civil stem" and it refers mainly to the relation of a contract of employment with *locatio conductio operarum*. The formal

separation of labour law from civil law is considered to have taken place on the date of entry into force of the Civil Code (1 January 1965), because according to Article XII § 1 of the provisions implementing the Civil Code (*Kodeks cywilny*),[6] it did not breach the labour legislation. The independence of labour law as a branch of law was eventually confirmed by the enactment of the Labour Code in 1974[7]. The relations between labour law and civil law may be found in a number of areas. In particular, they can be seen in a non-peremptory method of legal regulation characteristic of civil law, applicable also in labour law, which assumes autonomy of the parties to an employment relationship and no direct coercion from the state. An essential characteristic of the mentioned method is the predominance of *ius dispositivum* regulations (for example, Article 25 § 2 of the Labour Code). The genetic relationship between labour law and civil law is observed also in many constructs of labour law that are derived from civil law (for example, employment relationship, contract of employment) and were model concepts for many other civil law concepts (like financial liability of employees). The existence of normative relations between the two branches of law is also confirmed by Article 8 of the Labour Code, which is the literal transposition of Article 5 of the Civil Code and its concept of abuse of rights into labour law. Above all, the normative relation between labour law and civil law stems from a reference included in Article 300 of the Labour Code under which the Civil Code becomes a specific, statutory source of labour law. According to the mentioned provision of the Labour Code, in matters not regulated by the provisions of labour law, provisions of the Civil Code shall apply respectively to the employment relationship if not contrary to the principles of labour law. Therefore, the provisions of the Civil Code may be applied when there is a loophole in the labour law in force. It may be argued that through Article 300 of the Labour Code the legislature suggests a very strong link between civil law and labour law regulations.

3. Labour law and social insurance law

In the literature, social insurance law is treated as a part of social security law, which is a separate branch of law according to the accepted subject-matter criterion, i.e. legal relationships.

The relation between social insurance law and labour law results mainly from the fact that the insurance relationship is a consequence of the employment relationship. Establishment of an employment relationship within the meaning of the provisions of labour law and under terms and conditions specified therein implies, *ex lege*, establishment of an insurance relationship leading to certain registration and cost-related

[6] Act of 23 April 1964 on the implementation of the Civil Code (*ustawa z dnia 23 kwietnia 1964 – Przepisy wprowadzające kodeks cywilny*; Journal of Laws [Dz.U.] no. 16, item 94 as amended).

[7] Act of 26 June 1974 – Labour Code (*ustawa z dnia 26 czerwca 1974 – Kodeks pracy*; Journal of Laws [Dz.U.] no. 24, item 41 as amended).

obligations of an employer. Such a close link between those relationships was the basis for an assumption that social insurance law should be qualified as part of the labour law system. However, worth noting are arguments presented in the doctrine which emphasize the differences justifying the distinction between the purpose of the employment relationships and insurance relationships, different positions of parties to those relationships, a different personal scope as well as different nature of disputes and position in the disputes with regard to labour law and civil law.

4. Labour law and copyright law

The copyright law governs certain aspects relating to work as a result of individual creative activity, as well as rights of an author and the principles for granting a licence to use the work.

The main part of copyright law includes provisions governing moral and economic rights. The relation between labour law and copyright law refers to the latter (i.e. economic rights), connected to the employee's work, including scientific work. Norms of copyright law create a construct of acquisition by the employer of economic rights to a work within the limits defined by the purpose of a contract of employment and in compliance with a mutual intent of the parties. Importantly, for the mentioned construct to be effective it is necessary that the work is created as a result of performance of the employee's duties of a creative nature, arising from the employment relationship.

5. Labour law and constitutional law

Constitutional law, governing the political and socio-economic system of a state, does not regulate a specific area of social relations but lays down the foundations for different branches of law, and this is where its links with labour law may be seen. It is generally accepted that this relation should be viewed mainly with regard to constitutional principles underlying both the collective and individual labour law, developing the fundamental principles of labour law expressed in the Labour Code. In this sense, the Constitution of the Republic of Poland provides for: state supervision of compliance with labour laws (Article 24), right to equal treatment (Article 33), freedom of labour (Article 65 (1) and (5)), right to the minimum remuneration (Article 65 (4)), right to healthy and safe working conditions (Article 66 (1)), and right to rest (Article 66 (2)). As regards collective labour law, these principles include: right of coalition (Article 59 (1)), right to bargain collectively, right to resolve labour disputes (Article 59 (2)), and principle of social dialogue (Article 20).

There are also such regulations in the Polish Constitution which are not reflected in the principles of labour law but are explicitly regulated therein, such as the chapter

of the Labour Code on rights of employees relating to parenthood for which a specific basis are family rights specified in Article 71 of the Constitution of the Republic of Poland.

6. Labour law and administrative law

To describe a relation between labour law and administrative law, it is necessary – for the sake of clarity of concepts – to adopt a broad approach to administrative law as a set of provisions and norms governing the organisation and operations of public administration as well as behaviour of entities in matters not regulated by the provisions of other branches of law, assuming that in administrative law, as part of public law, public interest is of key importance. Therefore, this branch is basically far from labour law since the provisions of the latter generally put an emphasis on the protection of an employee and protection of an individual interest. However, such argument must be accompanied by an observation that there are many close relations between the norms of administrative law and those of labour law, such as provisions relating to service relationships, protection of work or unemployment. As regards service relationships (*stosunki służbowe*), a particular mention must be made of those relationships which are based on nomination (*mianowanie*) since the act of nomination itself is the best example of interlinks between the analysed branches of law. There is an argument presented in the literature according to which there are no grounds *de lege lata* for uniform and general treatment of the instrument of appointment as an administrative act or a labour law act since it is not a uniform legal construct, as confirmed by the analysis of separate laws governing employment of specific categories of employees (called *pragmatyki*). As regards the right to protection of work, attention should be drawn in particular to the forms of state supervision of compliance with labour laws, which originate in administrative law.

7. Labour law and criminal law

Relations between labour law and public law may also be identified by reference to criminal law, and in particular to the provisions including criminal-law sanctions. As regards the Labour Code regulations, these are provisions governing liability of employees for breach of order at the workplace, and as regards non-Code regulations, also provisions on disciplinary liability since all of them use the penalty concept.

The relation between labour law and criminal law is reflected also in penalisation which applies both in individual and in collective labour law. Regardless of the offences defined in the Criminal Code[8] (Chapter XXVIII: Offences against employed persons),

[8] Act of 6 June 1997 – Criminal Code *(ustawa z dnia 6 czerwca 1997 – Kodeks karny*; Journal of Laws [Dz.U.] no. 88, item 553 as amended).

the labour law acts other than the Labour Code also define certain offences in relation to this branch of law and are thus a part of non-Code material criminal law. The examples include: Article 12 of the Act of 4 March 1994 on the company social benefits fund (*ustawa z dnia 4 marca 1994 o zakładowym funduszu świadczeń socjalnych*),[9] Article 27 of the Act of 9 July 2003 on employment of temporary agency workers (*ustawa z dnia 9 lipca 2003 o zatrudnianiu pracowników tymczasowych*)[10] or Article 39 of the Act of 23 May 1991 on resolution of collective labour disputes (*ustawa z dnia 23 maja 1991 o rozwiązywaniu sporów zbiorowych*).[11]

8. Labour law and international law

In so far as international law is considered to be a set of legal norms governing mutual relations between states, between states and other actors, as well as between other actors of international law, it must be recognised that it differs from other, conventionally separated branches of law.

As regards relations between labour law and international law, reference should be made to the impact of the international law on the domestic labour law order. According to Article 87 (1) of the Constitution of the Republic of Poland, an international agreement shall be one of sources of generally applicable law, and according to Article 91 of the Constitution, a ratified international agreement, after its promulgation in the Journal of Laws of the Republic of Poland, shall constitute a part of domestic legal order and shall be applied directly, unless its application is dependent on enactment of an act.

It is also necessary to refer to the standards adopted within the United Nations system, and in particular to the activity of the International Labour Organisation.

In the context of interlinks between labour law and external laws, seen also in terms of an impact of that law on the Polish labour law system, also European laws and labour laws of the Council of Europe should be taken into account.

[9] Consolidated text: Journal of Laws [Dz.U.] of 2015, item 111.
[10] Journal of Laws [Dz.U.] no. 166, item 1608 as amended.
[11] Consolidated text: Journal of Laws [Dz.U.] of 2015, item 295.

Chapter III

FUNCTIONS OF LABOUR LAW

1. Overview of functions of labour law

The functions of labour law may be understood in different ways. In a broad (sociological) sense, those include any social effects of legal norms, also atypical or pathological. In a narrow sense, a function of law means a planned, useful impact of legal norms on the social environment. Labour law academics do not have scientific instruments which could allow them to empirically and comprehensively identify the socio-economic consequences of practical application of labour law provisions in economic relations. Such research is the domain of the sociology of law. Therefore, this handbook focuses exclusively on legal and teleological understanding of the functions of labour law relating to the effects and consequences specified by the legislator for the positive law.

Separation of labour law as an autonomous branch of law originated from the need to protect fundamental interests of employees as a weaker party to an employment relationship (protective function). However, at the beginning of the 21st century, in the industrial society, norms of the labour law protect also reasonable interests of employers (organisational function). The employment legislation is characterised also by strong tendencies to settlement and conciliation targeted at various forms of social dialogue, therefore, the irenic function of labour law can be distinguished. In the market economy, the processes of redistribution of goods and financial resources occur, owing to the norms of labour law, hence one can identify additionally the redistributive function.

The above selection of labour law functions carries some element of subjectivity. To reduce the subjective aspect, this study covers all the basic constructs of labour law, also of the collective and procedural labour law. With such methodological assumption, it was possible to select the general functions based on the idealistic theory of science. Before the analysis of respective functions of labour law, it should be emphasized that one legal norm may fulfil two, or sometimes even more, functions. Such accumulation

is a result of multi-functionality of many provisions of labour legislation. Therefore, for the sake of clarity, I focused on the normative regulations in which one of the mentioned functions is visibly dominant.

2. Protective function of labour law

The protective function is fulfilled by labour law when its norms protect occupational and social interests of employees. As regards the personal scope, they often apply also to other persons performing community service or work, including in particular persons employed under civil law contracts and officers of military service. Provisions of collective and labour laws protect also the interests of pensioners, unemployed persons and families of workers.

To the largest extent, the protective function is fulfilled by the provisions relating to occupational health and safety (Article 207–237[15] of the Labour Code). Also the provisions governing the status of particularly protected employees, such as parents, young people and persons with disabilities, are aimed at safeguarding fundamental interests of those groups with respect to protection of life and health. Certain anti-discrimination (Article 18[3a]-18[3e] of the Labour Code) and anti-mobbing (Article 94[3] of the Labour Code) provisions play an important role in protecting an employee in the workplace. As regards individual labour law, the protective function is reflected in matters relating to sustainability of employment relationship (Article 45 of the Labour Code), working time (Article 131), annual leave (Article 154), limitation of financial liability (Article 119) and protection of remuneration (Article 84 of the Labour Code).

In collective labour law, the protective function is fulfilled by provisions governing the right to strike. In terms of protection of employee's economic interests, of particular importance is Article 23 (2) of the Act on resolution of collective labour disputes, establishing a principle that during a legal strike an employee retains entitlement to social insurance benefits and entitlements arising from the employment relationship, except the right to remuneration. In a broad sense, this function is reflected also in regulations regarding collective agreements. They are often focused on safeguarding economic and social interests of the employed persons (Article 241[13] § 1 of the Labour Code).

When analysing the protective function in the collective labour law, one must emphasize that in the employment relations in civilized states this function is fulfilled also indirectly, through activities of employees' representatives. This refers in particular to trade unions and participation bodies (for example, workers' councils). This function is illustrated by Article 4 of the Act on trade unions (*ustawa o związkach zawodowych*), under which trade union organisations shall be entitled to protect both collective and individual interests of employees.

The protective function is fulfilled also by procedural labour laws, in particular, the procedural provisions which ensure certain procedural facilities for an employee, for example Article 460 § 2 and Article 477 of the Code of Civil Procedure (*Kodeks postępowania cywilnego*). In the Polish legislation, regulations protecting employees' interests apply in particular at the adjudication stage. There is a possibility of adjudging an alternative claim (Article 477^1 of the Code of Civil Procedure) or an obligation to declare, ex office, the judgment favourable to an employee to be immediately enforceable in a part not exceeding a monthly remuneration (Article 477^2 § 1 of the Code of Civil Procedure). A possibility of obligating an employer to continue employment of an employee until the final resolution of a case (Article 477^2 § 2 of the Code of Civil Procedure) is also an important protective instrument. Similarly important are procedural mechanisms of control by labour courts of particular steps taken by an employee in court proceedings (such as withdrawal of a claim).

3. Organisational function of labour law

Labour law fulfils the organisational function when its norms ensure appropriate work process in a broad sense. In personal terms, they serve interests of an employer since the latter is most interested in an efficient and smooth work process. In a broad sense, the organisational function of the individual labour law is expressed in managerial powers. According to Article 100 § 1 of the Labour Code, an employee shall comply with the superior's instructions. The Labour Code guarantees to an employer also other rights relating to the organisation of work, in particular it refers to provisions relating to arrangement of working time (Article 135), on-call time (Article 151^5), annual leave planning schedules (Article 163 § 1), and recall from leave (Article 167).

As regards fulfilment of the organisational function by the individual labour law, provisions governing work discipline are particularly important. The first to mention are penalties for breach of order at the workplace which may be imposed on an employee for non-compliance with the established organisation and order in a work process (Article 108 of the Labour Code). The legal provisions authorising an employer to terminate employment of an employee without notice also play the organisational role. In this respect the key is Article 52 § 1 (1) of the Labour Code, under which an employer shall have the right to dismiss an employee for gross misconduct. Equally essential for the protection of the employer's interests are non-competition clauses (Article 101^1 § 2).

Apart from repressive mechanisms, the organisational function is fulfilled also by individual labour laws regulating awards and distinctions (Article 105). They encourage employees to proper and creative performance of their duties. Similarly important in economic relations are incentive schemes included in the provisions setting out the terms and conditions of remunerating employees.

The organisational function is fulfilled also by the provisions governing the rules of co-operation between an employer and trade unions and participation bodies. It refers to both individual (Article 38 of the Labour Code) and collective relations (Article 26 (2) of the Act on trade unions. However, to the largest extent such function is fulfilled by the provisions of collective labour law governing the principles of collective bargaining. Their main purpose is to prevent dysfunction of the working environment. In this regard, the principle of monopoly of trade unions to organise strikes is particularly important (Article 20 of the Act on resolution of collective labour disputes. A strike carried out outside trade union structures is illegal. A similar role is played by other legally approved directives relating to strikes, in particular a principle of economic rationality and *ultima ratio*. An expression of the organisational function of labour law is also an obligation imposed on persons on strike by Article 21 (2) of the Act on resolution of collective labour disputes to cooperate with the employer to the extent necessary to ensure protection of the employer's property and uninterrupted work of facilities and equipment and to restore normal operations. This function is dominant also in the regulations governing workers' behaviour during strike. According to Article 21 (1) of the Act on resolution of collective labour disputes, a manager of an establishment cannot be restricted in exercising his rights and duties in relation to employees who do not participate in the strike and to the extent necessary for the protection of property and uninterrupted work of facilities and equipment.

In the Polish labour law system, particularly organisational are also certain provisions governing the conclusion of collective agreements. This is illustrated by Article 241^4 § 2 of the Labour Code under which employees' representatives participating in collective bargaining shall not disclose the information obtained from the employer and constituting business secret. Of particular importance among these provisions is Article 241^{27} § 1 of the Labour Code which allows suspending the application of a company collective agreement based on the financial situation of the employer. Similar mechanisms were introduced also in relation to the crisis agreements concluded with trade unions under Articles 9^1 and 23^{1a} of the Labour Code.

4. Irenic function of labour law

The irenic (conciliatory) function of labour law consists in ensuring maintenance of social peace in employment relations by means of labour law norms. The purpose of these norms is to prevent social conflicts in the working environment and to amicably resolve possible conflicts through formal procedures.

This function is fulfilled in particular by collective labour laws when they introduce different forms of a mandatory dialogue between social partners. This is the case in collective labour disputes. An employer lodging a dispute must immediately start negotiations with trade unions. According to the provisions of Article 8 of the Act on

resolution of collective labour disputes, negotiations between parties to a dispute shall be obligatory. From a normative point of view, the parties cannot avoid the negotiations. The irenic function in the labour law system is fulfilled also by mediation which consists in participation of a third party, a mediator between the parties, in order to reach a mutually acceptable compromise. In view of the provisions of Article 10 of the Act on resolution of collective labour disputes, there is no doubt that the mediation procedure is obligatory. In practice, it means that a party carrying out a dispute on behalf of employees may not skip this stage. Such regulation is undoubtedly an instrument serving an amicable resolution of a collective labour dispute.

The irenic function of the labour law is also fulfilled by the provisions governing collective redundancies procedure. According to Article 2 of the Act on collective redundancies (*ustawa o zwolnieniach grupowych*),[12] an employer planning mass layoffs should inform trade unions thereof in order to carry out consultations. The main purpose is to reduce the number of the redundancies and mitigate the related tensions in the workplace.

At the institutional level, the irenic function in the collective labour relations is fulfilled by entities appointed to support the social dialogue. The first to mention is a Tripartite Committee for Social and Economic Dialogue (*Trójstronna Komisja do Spraw Dialogu Społeczno-Gospodarczego*). In this Committee, social partners negotiate on fundamental economic and social factors of labour relations. At the regional level, the irenic function is fulfilled by the regional commissions of social dialogue (*wojewódzkie komisje dialogu społecznego*). Under Article 17 of the Act on the Tripartite Committee for Social and Economic Affairs (*ustawa o Trójstronnej Komisji do Spraw Społeczno-Gospodarczych*), their competences include giving opinions on any matters of social significance, falling within the responsibilities of trade unions and employers' organisations. Some irenic elements are visible also in information and consultation procedures carried out by workers' councils.

In spite of appearances, the irenic function of labour law is not limited to the collective labour law. In my opinion, it is fulfilled also by individual and procedural labour laws. In particular, it refers to Article 243 of the Labour Code which provides that both an employer and an employee should seek an amicable resolution of a dispute arising from an employment relationship. It also indicates a socially desired direction of activities of the parties involved in a labour dispute. The fact that Article 243 of the Labour Code was included among general provisions means that the directive expressed in it applies to all stages of the procedure, from mediation before a mediation commission to the conclusion of proceedings before a court of the second instance. It must be

[12] Act of 13 March 2003 on particular rules of terminating employment relationship due to redundancies (*ustawa z dnia 13 marca 2003 o szczególnych zasadach rozwiązywania z pracownikami stosunków pracy z przyczyn niedotyczących pracowników*; Journal of Laws [Dz.U.] of 2003, no. 90, item 844 as amended).

emphasized that its scope is not limited only to claims arising from employment relationship but extends to any disputes resulting from such relationship, also the disputes which do not involve claims.

At the organisational level, the irenic function in the labour relations is fulfilled mainly by conciliation commissions. These are legal protection bodies established for amicable resolution of individual labour disputes (Articles 244–258 of the Labour Code). They are still not legally competent to resolve, on a binding basis, cases submitted to them.

In the labour relations, the irenic function is fulfilled also by labour courts within judicial conciliation schemes (*sądowe postępowanie pojednawcze*) (Articles 184–186 of the Code of Civil Procedure). Their main objective is to achieve reconciliation between the parties in a dispute, and specifically, to seek to reach a settlement between such parties. In terms of functionality, the judicial conciliation procedure serves only conciliation since there are no ongoing court proceedings yet. It should be borne in mind that court proceedings are initiated when a legal action is brought before court.

Under the current law, the judicial conciliation schemes fill the gap in the system of amicable resolution of individual labour disputes. Provisions of Articles 184–186 of the Code of Civil Procedure are important instruments serving the irenic function of the labour law. In my opinion, these norms seem particularly useful in amicable resolution of minor matters relating to financial liability of employees. In practice, this applies mainly to matters relating to cash shortage or other compensation matters. Similar objectives are reached in labour law matters by mediators acting under Article 183^1 of the Code of Civil Procedure.

5. Redistributive function of labour law

The redistributive function of labour law involves the provisions of labour law consisting in establishment of abstract principles and general procedures of redistribution of material goods and financial resources in labour relations within distribution of the national income. In the individual labour law, provisions of the Labour Code governing the rules of setting wages (Articles 77^1–82) are assigned the central place. The same function is fulfilled also by the provisions of separate laws governing employment of specific categories of employees or by special legislative provisions, for example the Act of 31 July 1981 on remuneration of persons in public executive positions (*ustawa z dnia 31 lipca 1981 o wynagrodzeniu osób zajmujących kierownicze stanowiska państwowe*).[13]

[13] Consolidated text: Journal of Laws [Dz.U.] of 2011, no. 79, item 430 as amended.

The provisions governing guarantee payments (*wypłaty gwarancyjne*) also play a redistributive role. I refer primarily to the provisions of the individual labour law which establish the right of an employee to remuneration in a situation where the latter did not perform work (Articles 49, 81, 210 § 3) or obtained a leave of absence (Articles 37, 188, 237^{13} § 2 of the Labour Code). This function is fulfilled also by the provisions on severance payments (Article 92^{1} of the Labour Code) or financial benefits (e.g. holiday benefits).

In the economic relations of the civilised states, a basic instrument of the redistributive function of labour law, in collective terms, are collective agreements and other social arrangements. In particular, the redistributive function of labour law is fulfilled by the collective labour agreements (*układy zbiorowe pracy*). In this context, attention should be drawn to their normative aspect. In the Polish business relations, they concern mainly wage issues. Sometimes, the parties set out the entire systems of remuneration, starting from wage scales, through indexation clauses, to wage "regulators". A social part of collective work agreements also plays a redistributive role in relation to distribution of goods and resources. Very often, it regulates in detail the sources of financing of a company social fund (*zakładowy fundusz socjalny*) and the rules of management of the fund. The social part of the collective agreements may also establish various economic privileges for employees and other beneficiaries of the agreements.

The redistributive function is clearly visible also in the provisions of the collective labour law which directly govern wage issues. For example, a reference can be made to Article 241^{26} § 2 of the Labour Code, according to which a company collective agreement may not set out the rules of remuneration of persons managing the business on behalf of an employer. Similar redistributive functions, in terms of distribution of goods in economic relations, are fulfilled by social transfer agreements (*socjalne porozumienia transferowe*) concluded on the occasion of ownership transformations in undertakings. In practice, apart from the system of guarantees of employment, they also provide for certain social and economic benefits for the personnel or individual employees from the investor (such as non-repayable or low-interest loans for the purchase of shares in the privatised company). Other collective arrangements concluded either at the end of a labour dispute or within an institutionalised social dialogue, very often regulate, in a general and abstract manner, the principles of redistribution of goods in business relations.

Chapter IV

INTERPRETATION OF PROVISIONS OF LABOUR LAW

1. The concept and subject-matter of interpretation of labour laws

It is accepted in the legal doctrine that the process of interpretation involves all cognitive activities aimed at establishment of the proper meaning of legal provisions. The interpretation activities lead to establishment of the actual meaning of particular normative expressions. From among many concepts of interpretation presented in the literature, the one which may seem most useful in the process of decoding the provisions of labour law is the interpretation of the "current legislature", according to which a hint for interpretation of law should be the knowledge of reality, axiological preferences and political objectives of the current legislature.

From a technical point of view, the process of interpretation of law consists primarily in the denotation of terms used in the provision, and further in establishment of the meaning of the provision itself, that is decoding the norm included in the provision. According to the *clara non sunt interpretanda* principle (what is clear does not need to be interpreted), such interpretation will not cover provisions the meaning of which is clear. However, nothing prevents interpretation of provisions which include legal definitions and are, therefore, apparently clear but in fact use unclear expressions. The limits for interpretation of a provision and application of interpretation processes will be set in accordance with the number of unclear elements.

The definition of the material scope of the interpretation of legal provisions must take into account the plurality and diversity of legal acts recognised as part of the system of sources of the branch of law. The subject-matter for interpretation of labour law will be primarily the provisions included in the Labour Code, other laws, including separate laws governing employment of specific categories of employees, and other regulations, that is sources of labour law in the constitutional sense. It is generally accepted that interpretation of such legal acts is an interpretation in a strict sense. However, according

to Article 9 of the Labour Code, the system of legal acts including provisions of labour law covers also collective agreements, other collective arrangements, statutes and internal rules (autonomous sources). A specific characteristic that allows distinguishing interpretation of those sources of law from their direct interpretation is the fact that the meaning of provisions included in those autonomous acts is established by the parties who participate in drafting of those acts.

2. Types of interpretation of labour law provisions

In the theory of law, there are different divisions and classifications within different types of legal interpretation. The most obvious, also when establishing the meaning of the provisions of labour law, is the classification based on the entitled party criterion. It allows distinguishing in particular: an authentic interpretation, a court interpretation and a doctrinal interpretation.

The authentic interpretation of the legal provisions is the one conducted by the legislative authority itself according to a principle: *cuius est condere eius est interpretari* (whoever is authorized to establish the law is authorized to interpret it). Within the authentic interpretation, reference can be made in particular to legal definitions included in the legal provisions, such as the concept of an employer set out in Article 3 of the Labour Code. As has already been indicated, also in the process of drafting of the said definitions, the legislator uses vague expressions which require secondary interpretation, such as the concept of an employee in Article 2 of the Labour Code which, in fact, refers to the basis of the employment relationship. According to the concept of authentic interpretation, the provisions of implementing acts may be interpreted by the Council of Ministers (*Rada Ministrów*) or a minister competent at labour law.

Certain doubts arise as to the application of rules of authentic interpretation to establish the meaning of the provisions of labour law included in autonomous acts. In terms of collective agreements, firstly, a reference should be made to Article 241^1 (3) of the Labour Code, according to which the parties, while defining mutual obligations in the agreement, may determine in particular the procedure for clarification of the provisions of the agreement and for settlement of disputes between them in respect thereof. Moreover, according to Article 241^6 of the Labour Code, the provisions of the agreement shall be clarified by the parties jointly, and the clarifications of the provisions of the agreement, provided jointly by the parties thereto, shall be binding also upon the parties who have concluded an arrangement on application of such agreement. The clarifications should be provided to the parties to the arrangement. Given the said principles, attention should be drawn to a resolution of the Polish Supreme Court (*Sąd Najwyższy*, *SN*),[14] according to

[14] Resolution of the Polish Supreme Court (SN) of 11 February 2003, III PZP 12/03, OSNP 2004, no. 11, item 187.

which clarifications as to the contents of a collective agreement made jointly by the parties thereto are not binding for the court, however, it is difficult to assume that the will of the parties will be absolutely of no relevance for the interpreter.

The judicial (operative) interpretation is applied in a form of legal principles, adopted by the whole Labour Law Chamber of the Polish Supreme Court or by the panel of seven judges of the Supreme Court, whereas the resolutions of the seven judges are not legal principles *ex lege* but become ones upon their entry in a book of legal principles and bind upon all court panels (see the resolution of seven judges of the Polish Supreme Court of 15 January 2003[15] on determination of the length of a notice period).

The doctrinal interpretation, also called scientific or theoretical interpretation, is specific in that it is difficult to discuss its binding force, also in relation to the parties involved in the application of law. Legal interpretation by labour law scholars may take a form of an abstract, commentary analysis relating to the examination of a conceptual scope of a normative expression, and thus a provision or a specific, evaluative analysis usually in reference to the court's interpretation (commentary). The advantage of this kind of interpretation is most certainly the specialist and precise legal language, and its disadvantage is lack of uniformity and multi-directional approach.

3. Process of interpretation of labour laws

The doctrine of labour law distinguishes two stages in the process of interpretation of legal provisions:

1) a preliminary interpretation the purpose of which is to establish whether a provision in question is a current provision and is included in a legal act in force;
2) an essential interpretation which involves reconstruction of a norm and further determination of its contents using linguistic, systemic and functional rules.

The linguistic interpretation consists in the establishment of a meaning of a provision using the rules of language in which the provision is expressed, in particular the meaning of words, context in which they are used or a sentence structure.

If doubts as to the meaning of a legal norm cannot be resolved on the basis of linguistic rules, then such option should be selected which is in compliance with the principles of the legal system to which this norm belongs.

Functional (teleological) directives, in establishing the meaning of a legal provision, make reference to a social context, to the objective pursued by the legislature in drafting the given provision (for example, the analysis of provisions relating to termination

[15] OSNP 2004, no. 1, item 4.

of employment relationship in the context of protection of sustainability of employment is an objective of the legislature). The functional interpretation is based on the assumption of rationality of legislature, according to which an analysis of a provision should be rational, namely the meaning of the provision should be established by reference to social, political and economic principles. Due to the fact that a large number of labour law regulations were enacted a few decades ago and they have not yet been amended, it seems necessary to apply also a historic interpretation which puts an emphasis on the intent of the legislature when the provisions and the entire legal act were drafted.

Importantly, there is a specific sequence of application of directives in the second phase of the essential interpretation, namely the first one should be the linguistic interpretation, followed by the systemic and functional interpretation. Moreover, these latter two interpretations are useless when the meaning of a provision has been established using linguistic rules. It is also important to emphasize a close relation between the systemic and functional interpretation implying the possibility of their simultaneous application.

Depending on the effects of application of particular (linguistic, systemic or functional) directives, the interpretation may be broken into three distinct classes:

1) declaratory interpretation (*interpretatio declarativa*) in which results of the analysis of a provision are conformable;
2) restrictive interpretation (*interpretatio restrictiva*) when the meaning of a provision is narrower in scope than its meaning based on the linguistic interpretation;
3) extensive interpretation (*interpretatio extensiva*) when a systemic or functional interpretation produces the meaning of a provision which is broader in scope than the meaning resulting from the linguistic interpretation.

4. Loopholes in labour law

In the labour law, like in other branches of law, one may identify cases when parties or authorities involved in the application of law cannot find a necessary solution in the applicable normative provisions, which give rise to loopholes in law.

Characteristic of the labour law is a technical loophole (*luka techniczna*), i.e. the absence of a regulation for a particular situation in the provisions of this branch of law, which does not mean that such regulation is absent in other branches of law. According to Article 300 of the Labour Code, in matters not regulated by the provisions of labour law, the provisions of the Civil Code shall apply, respectively, to the employment relationship if not contrary to the principles of labour law. This provision not only signals existence of technical loopholes in the labour law but, most importantly, introduces a mechanism for their removal.

First, if there is a loophole, the legislature orders application of an *analogiae legis* method (reasoning from similarity) which consists in application of a provision of the same branch of law (labour law) as close as possible to the situation to be resolved. It is worth noting that this method may not always be applied in the labour law, for example with regard to the regulation of an employee's capacity to perform acts in law provided for in Article 22 § 3 of the Labour Code and its inadequacy to determine the employer's capacity to perform acts in law. In such case, Article 300 of the Labour Code allows the application of *analogiae legis* from civil law, limited only to the provisions of the Civil Code. The *analogiae iuris* method (reasoning from law about law), to be applied further, consists in the creation of a normative solution on the basis of applicable laws.

The process of closing legal loopholes may involve also:

1) *Argumentum a contrario,* according to which if a situation meets certain conditions, it is associated with certain legal consequences, and on the contrary: if the situation does not meet such conditions, it will not have such consequences;
2) *Argumentum a fortiori*, in a form of *a maiori ad minus* argumentation (if a legal norm allows one to do more, then it also allows one to do less) and in a form of *a minori ad maius* argumentation (if a legal norm forbids one to do less, then it also forbids one to do more).

Chapter V

PRINCIPLES OF LABOUR LAW

1. The concept and meaning of labour law principles in the Polish labour law doctrine

The issue of legal principles has been discussed for many years both in the Polish theory of law and in the studies on particular branches of law, including labour law. Their meaning has been explained in a variety of ways. According to the followers of natural law, legal principles are certain rules outside the statutory law and transcendental in nature. Nowadays, such approach is inspired in particular by the social doctrine of the Church and by a doctrine of human rights based on the "inherent dignity" of the human being (see, for example, the Universal Declaration of Human Rights of 1948). The natural law theories compete with the concepts jointly referred to as legal positivism. According to the latter, the basis for distinguishing the legal principles is the intent of the legislature expressed in a positive legal norm.

In the Polish theory of law, the legal principles became a major concern at the end of the 1960s. In this regard, the most important is the contribution of J. Wróblewski and the Poznań school of theory of law (S. Wronkowska, M. Zieliński, Z. Ziembiński). According to J. Wróblewski, a distinction must be made between the principles of the legal system (principles-norms) and the postulates of the system (postulate principles). The former are legal norms of a particular system or "logical" consequences of a group of norms[16] which, based on certain criteria (such as hierarchical precedence), are "fundamental". On the other hand, the postulate principles of the legal system are the rules which are not of the above-mentioned nature. Therefore, they are neither norms of positive law, nor their "logical consequences". As proposed by the authors of the Poznań school, a distinction must be made between directive legal principles and descriptive legal principles. In the first case, attention should be given to the principles within

[16] J. Wróblewski, *Prawo obowiązujące a "ogólne zasady prawa"*, ZNUŁ 1965, Nauki Humanistyczne, series I, vol. 42.

the meaning of a directive of conduct, among which directives considered legally binding are particularly important for lawyers. On the other hand, the descriptive principles serve to determine a specific method of creating a particular legal construct.

In academic works relating to labour law there has been a strong interest in the principles of law. It was caused by different factors in different periods. At first, the most important were undoubtedly the ideological aspects and the pursuit of emancipation of labour law, attempts to emphasize its independence, in particular from civil law in which labour law has its origins. In the concept adopted by the legislature, the labour law principles have played an important role. According to Article XII § 3 of the provisions implementing the Civil Code,[17] these principles defined the scope of subsidiary application of the Civil Code in employment relations (the provisions could not be contrary to the principles of labour law). The presumption that the Civil Code should not violate the labour law legislation explicitly confirmed the distinction between the branches of labour law and civil law.

Although the process of emancipation of labour law from civil law could be considered complete upon enactment of the Civil Code when the mutual relations between these two branches were determined in a quite unequivocal manner, it was often considered that the codification of labour law should be complimentary to this process. In the discourse on the need for codification it was emphasized, among others, that it could be an opportunity to clarify labour law and, most importantly, to put a stronger emphasis on its independence as a branch of law. The idea to create a separate general part of the code played a major role. One of the important issues under discussion was that relating to the principles of labour law. Above all, it was considered whether the general provisions should include a catalogue of these principles and what the possible contents of such catalogue should be. The view on the need to include the catalogue of the principles of labour law in the Code was quite popular. It was generally agreed that, on the one hand, such catalogue could not be exhaustive and, on the other hand, that these principles should be normative. The views concerning the rank and the importance of the principles of labour law, presented during the period preceding the enactment of the Labour Code, were to a large extent reflected in the act adopted in 1974. Above all, a section of the Code defining general provisions included a chapter on the general principles of labour law. At the same time, Article 300 of the Labour Code repeated, with minor changes, the provisions of Article XII § 3 of the Act on the implementation of the Civil Code and provided that in matters not regulated by the provisions of labour law the provisions of the Civil Code shall apply respectively to the employment relationship if not contrary to the principles of labour law.

[17] Act of 23 April 1964 on the implementation of the Civil Code *(ustawa z dnia 23 kwietnia 1964 – Przepisy wprowadzające Kodeks cywilny*; Journal of Laws [Dz.U.] no. 16, item 94 as amended).

2. Systematisation of the principles of labour law

The concept of labour law principles is not uniform. Different categories of these principles are distinguished on the basis of various criteria and for various purposes. Hence there is a need for their systematisation. By reference to the general theoretical background, the principles of labour law are divided (depending on the source of inspiration) into principles-norms (normative principles) and postulate principles, or directive and non-directive (descriptive) principles. In the labour law scholarly works, the advisability of distinguishing the postulate principles is rightly questioned. In general, they indicate the function of normative principles (for example, they are guidelines in the legislative process or the labour law interpretation directive). Also distinguishing the descriptive norms is not generally accepted. However, it seems that such norms could play an important role as regards characterisation of key constructs of labour law and might, therefore, be useful for academic and didactic purposes in the field of labour law. Considering the above, further comments will focus on normative principles.

One of the major criteria of systematisation of the principles of labour law is the rank of the legal provisions (a type of a legal act) on the basis of which they are distinguished in the legal system. Therefore, the first to be defined are the constitutional principles of labour law. Certain constitutional principles are important for the whole legal system, and hence for labour law. These certainly include, for example, the principle of democratic rule of law embodying the principle of social justice (Article 2 of the Constitution of the Republic of Poland). Therefore, it would be difficult to call it a principle of labour law. It is easy to find in the Constitution also inter-branch principles which are important for several areas of law, including labour law. Such inter-branch principle is, for example, the right to respect and protect dignity (Article 30 of the Constitution) or the right of every human being to protect life (Article 38 of the Constitution). The significance of certain constitutional principles is reflected primarily in labour law. In particular, it refers to certain economic and social rights and freedoms. What needs to be pointed out is the freedom to choose and to pursue occupation and to choose a place of work (Article 65 of the Constitution) or the right of every person to healthy and safe working conditions (Article 66 of the Constitution). These principles are constitutional principles, significant for labour law but relating also to other branches of law. The contents of such principles need to be adjusted to the legal relationships governed by the labour legislation, also through deductive reasoning. There are also such constitutional principles which are exclusively the principles of labour law (therefore, they are not inter-branch principles). These include the freedom to associate in trade unions and in employers' organisations, the right to conclude collective agreements, the right to organise strikes (Article 59 of the Constitution) or the right of an employee to rest, including the right to days off and paid annual leave (Article 66 (2) of the Constitution). Specification of the principles essential for labour law in the Constitution is important not only because they constitute guidelines for legislative activities but also mainly allow examining whether certain provisions of that branch of law are compliant

with the Constitution. The principles essential for the labour law relationships which are included in the Constitution are public-law principles.

Certainly, the international laws and EU laws are also of relevance for reconstruction of the principles of labour law. Therefore, there are principles of the international labour law and the principles of labour law of the European Union. Recently, they have been increasingly important and affected the internal legal system. In that regard, attention should be given to the ILO's Declaration on Fundamental Principles and Rights at Work adopted in June 1998. The relevant conventions, called "fundamental" (nos. 29, 87, 98, 100, 105, 111, 138, 182), were ratified by Poland and thus became part of the Polish legal system. The same applies to the European Social Charter of 1961 as regards provisions listed in the ratification act and binding upon Poland. As regards labour law of the European Union, provisions of its Charter of Fundamental Rights (OJ C 303 of 14.12.2007, p. 1) must also be mentioned. The provisions of significant importance are included in different parts of the Charter, in particular, in the chapters regarding equality and solidarity.

Another category of the principles of labour law are those based on the labour legislation. The Labour Code is particularly important. Above all, it specifies the fundamental principles of labour law. Most of them are repetitions, with certain modifications (not always equal to extension and clarification of constitutional norms), of the principles already expressed in the Constitution of the Republic of Poland, in the international legal order or the EU laws, which may raise doubts as to the appropriateness of such method of regulation. They do not exhaust all the principles which are based on this legal act. Attention should be given also to the principles developed by scholars and case-law on the basis of other provisions of the Code or deduced in quasi-logical reasoning. Apart from the Labour Code, the principles are distinguished also in other labour law legislation. For obvious reasons, they have a narrower impact and are limited to the legal relations to which these acts relate (for example, procedural employment relationships, right to employment, unemployment or collective labour law).

Another criterion of systematisation of the labour law principles is their impact. In this sense, the first issue to be addressed should be distinguishing inter-branch principles which are relevant not only for labour law. As mentioned above, this is indeed the case with most of the principles defined in the Constitution of the Republic of Poland (for example, the principle of respect for human dignity). The second group are principles relevant only for the areas governed by labour law as a separate branch of law. These include primarily the principles which, because of their status and in particular because of the fact that they are characteristic (specific) of this part of the legal system only, are called "principles of labour law" or – according to the legislature – "fundamental principles of labour law". Bearing this in mind, one cannot but say that they are not necessarily equally important for different legal relations governed by labour law. Some of them refer mainly or exclusively to individual employment relationships

(the principle of freedom to enter into employment relationship), some to collective labour law relationships (the principle of freedom of association), and still other to the right of protection of work (employer's obligation to provide safe and healthy working conditions). There are also principles of labour law which refer to specific concepts or a set of concepts (a principle of limited financial liability or employee's right to rest). Certain principles are distinguished also in specific sections of labour law, constructs of labour law or its parts.

Yet another criterion of systematisation of labour law principles is the method of their expression in the legal provisions. It should be borne in mind that the principles in normative terms are based on the provisions constituting a system units of legal acts. Therefore, sometimes a principle is explicitly expressed in a provision and named by the legislature in a similar way as in the case of principles defined in the chapter of the Labour Code on the fundamental principles of labour law. This does not necessarily mean that a provision expressing the principle is always sufficient to create a complete legal norm. Sometimes, it is necessary to refer to other legal provisions (in particular, in order to specify sanctions) or even go beyond the labour law regulations (respective application of provisions of the Civil Code as stipulated in Article 300 of the Labour Code). It is also possible to distinguish principles which are expressed in a specific provision (provisions) named explicitly not by the legislature but by the doctrine or the case-law (for example, the principle of protection of remuneration for work). Some of the principles of labour law are expressed *implicite* in legal provisions. In such a case, they are distinguished through quasi-logical reasoning, usually by generalisation of what is stated in a set of legal provisions. These may be included in one or several legal acts, also such that have a different rank in the hierarchy of those acts (for example, in the Labour Code and in the Constitution of the Republic of Poland), taking into account the international and EU regulations. For instance, such generalised conclusion is a reference to the principle of protection of sustainability of employment relationship, the principle of limited financial liability or the principle of protection of parenthood. There is an opinion presented in the literature that the principles referred to in Article 300 of the Labour Code are exclusively the secondary norms (also referred to as metanorms), reconstructed through inductive reasoning based on the primary norms of labour law (like, for example, the principle of protection of a legitimate interest of an employee). This allows distinguishing them from the fundamental principles of labour law as defined in the Labour Code and the constitutional principles expressed in the primary norms.

3. Functions of labour law principles

The principles of labour law, defined by the legislature and created by the doctrine and case-law, have certain tasks to fulfil and, therefore, certain functions may be assigned to them. In the case of normative principles, their primary function is regulatory.

Therefore, they can be directly applicable since there are certain orders and prohibitions arising from them, addressed to entities that are subject to labour law, and they grant certain rights and powers to perform conventional acts. Because of a fairly high level of generality of a normative principle, its application requires more specific norms what is sometimes explicitly stipulated in a provision containing the principle (for example, Article 14 of the Labour Code establishing a principle of the right to rest indicates also that this right is guaranteed by the provisions governing working time, days off and annual leave).

Apart from the regulatory function, the normative principles fulfil also other functions. Identification of these principles in terms of their essential nature and major importance for the regulated matters leads to a conclusion that they are an "embodiment" of certain ideas, rationale and axiological assumptions associated with the legislative process. Therefore, these rules should define the direction of further development of the labour law and should be guidelines for legislative work. Certainly, the principles embedded in the Constitution of the Republic of Poland are of major importance since they allow elimination from the legal system of the provisions found by the Constitutional Tribunal (*Trybunał Konstytucyjny, TK*) non-compliant with such principles. Normative principles of labour law are at the same time interpretation guidelines for authorities involved in the application of law. Therefore, they have significant functions in the process of interpretation of legal provisions. And finally, they play an organising and cognitive role since they express what is most important and most characteristic of the adopted legal solutions.

Relatively highest attention has been focused in the literature on the functions of the principles of labour law in the context of Article 300 of the Labour Code. It is emphasized that their original function is evaluative. When assessing the possible application of the Civil Code to employment relationships, the starting point is evaluation whether the provisions in question are not contrary to the principles of labour law. If there is no such contradiction, a provision of the Civil Code is compliant with the principles of labour law and may, to the full extent, serve to create a legal norm applicable to the employment relationship. In such a case, the principles have an approving function (allowing function). Identification of such relation between the principles of labour law and the provisions of the Civil Code allows definitive resolution of a matter "not governed" by the provisions of labour law. If, however, the provisions of the Civil Code are not in compliance with the principles but can be modified (yet not completely amended) in such a manner that they are no longer contrary to those principles, then the condition of their ancillary application to the employment relationships specified in Article 300 of the Labour Code is met. Apart from the eliminative and approving functions, the principles of labour law fulfil also a modifying (corrective) function. A vast majority of the provisions of the Civil Code which, in fact, refer to the social relations other than those arising from performance of work is of no regulatory use for the latter. In terms of employment relationships, these provisions are simply irrelevant