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In addition, in the second paragraph of Art. 11 of the Act of 14 April 2016 on withholding the sale of property of the Agricultural Property Resource of the State Treasury and change of some acts [37] we read that agricultural properties which on the day of entry into force of the Act, in final decisions on spatial development and land development conditions are intended for purposes other than agricultural purposes were also excluded from under the influence of the ASSA. It follows that it is about lands which are not located within the area included in the local special development plan and at the same time a final decision was made on them regarding the conditions of spatial development and land development, from which it follows that they are intended for non-agricultural purposes. Therefore, they are not an agricultural property in the understanding of the ASSA.

In addition, it should be noted that at the stage of adopting the act amending the ASSA[38], it was proposed to include in this definition the words "and in the absence of such a plan intended for other than agricultural purposes on the basis of final decisions"[39], and despite the amendments submitted by deputies in this regard, the legislator did not decide to introduce such changes to the definition of agricultural properties[40]. Therefore, since the legislator did not refer to the decision, it must be assumed that this is not an oversight but an intended purpose.

It seems wrong to think that if a significant part of the territory of Poland does not have any spatial development plans drawn up, and the land development conditions replace this plan as a matter of fact, the recognition that they do not exclude the land from the concept of agricultural property, leads to the inhibition of the trade[41].

## VERIFICATION OF AN AGRICULTURAL PROPERTY IN TERMS OF THE AREA

After confirming that we are dealing with an agricultural property in the meaning of the ASSA, one should proceed to the subsequent level of the study i.e. the determination of the property area. Admittedly, since the entry into force of the amendment to the Civil Code of 1990[42] the area criterion is not a determinant of the category of agricultural property, and this is also the case for the definition of agricultural property in terms of

[37] Journal of Laws of 2016, item 585.
[38] The Act of 14 April 2016 on the withholding the sale of the Agricultural Property Reserve of the State Treasury.
[39] M. Korzycka, *Analiza prawna przepisów ustawy o wstrzymaniu sprzedaży nieruchomości Zasobu Własności Rolnej Skarbu Państwa oraz o zmianie niektórych ustaw zwana dalej ustawą (senateprint no. 124),* www.senat.gov.pl/prace/senat/opinie-i-ekspertyzy/.
[40] See e.g. amendment by senator P. Florek [in:] *Sprawozdanie Komisji Ustawodawczej oraz Komisji Rolnictwa i Rozwoju Wsi (wraz z zestawieniem wniosków),* Warsaw on 13 April 2016 r., Print no. 124 Z, published on the website of the Senate of the Republic of Poland on 13 April 2016.
[41] Ibidem, p. 43.
[42] Act of 28 July 1990 on act amendment–Civil Code (Journal of Laws no. 55, item 231).

Art. 2 point 1 of the ASSA, however, in accordance with Art. 1a of the ASSA, the provisions of the Act do not apply, among others, to agricultural properties with an area of less than 0.3 ha. The buyer of any agricultural property with an area larger than 0.3 ha can only be an individual farmer. It means that, the ASSA does not introduce any restrictions on trade in agricultural properties to the area of up to 0.3 ha. Therefore, the sale of a part of an agricultural property with an area of 0.3 ha requires the prior separation of such a plot by means of a registered division of the property provided for by the provisions of the Act of 21 August 1997 on property management[43]. However, it cannot be assumed that the division of the agricultural land by separating from it a plot of land up to 0.3 ha can be made repeatedly until the area is completely depleted, because it would lead to the circumvention of the provisions of the Act[44].

The minimum area standard was also introduced in the definition of an agricultural household, as in accordance with Art. 2 point 2 an agricultural household, as defined by the ASSA, should be understood as an agricultural household within the meaning of the Civil Code[45], in which the area of the agricultural property is not less than 1 ha[46]. At the same time, it should be remembered that according to Art. 4a of the ASSA, the provisions of the Act shall apply accordingly to the acquisition of an agricultural household. As it results from Art. 2 point 2 of the ASSA, for the purpose of this act, an agricultural household should be understood as an agricultural household within the meaning of the Civil Code, in which the area of an agricultural property is not less than 1 ha.

## CONCLUSION

The provisions of the Act of 11 April 2003 on shaping the agricultural system changed by the amendment, which entered into force on 30 April 2016, provided for a special regime concerning trade in agricultural properties. As it turns out in practice, the application of these provisions is not easy. The regulations are constructed in several stages, i.e. to apply the special principles of the turnover, it is first necessary to determine whether the property is an agricultural property within the meaning of the Act and whether the event the property relates to is subject to a special regime.

The very definition of whether a property is an agricultural property in the sense of the ASSA also is a multistage action. The definition of an agricultural property first

[43] Uniform text Journal of Laws of 2015, item 1774.

[44] H. Ciepła, *Aspekty prawne…,* p. 40.

[45] In the wording given in the Act of 14 February 2003 amending the Civil Code and certain other acts (Journal of Laws No. 49, item 408). - According to Art. 55 of the Civil Code, an agricultural holding is understood as agricultural land with forest land, buildings or their parts, equipment and stock if they constitute or may constitute an organized economic whole and rights related to running a farm.

[46] In the Act, we have the maximum area standard, i.e. 300 ha of agricultural land (Article 2a section 2 and Article 5 section 1).

refers to the Civil Code, and then - by reference to the local spatial development plan - it narrows down. The reference to the code definition does not make it easier for the interpreter because the definition provided there is not precise and unambiguous. The reference to the potential use to conduct agricultural production ("it is or may be used to conduct production activity in agriculture") indicates the need for the interpreter to conduct some kind of investigation in order to determine this possibility.

It should be added that having no spatial development plans in Poland complicates the possibility of the property verification, since the legislator applied the criterion that does not apply to all properties. It should be postulated that the narrowing of the definition of agricultural property would be a reference not only to the local spatial development plan, but – in its absence – also in the final decisions on the location of the public purpose or decision on development conditions (location decisions).

The above points to the pains in the process of determining whether a property whose legal event concerns, should be subject to the special regime provided for by the ASSA and may cause practical difficulties and, thus, destabilize the trading confidence.

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https://www.anr.gov.pl/web/guest/zarzadzenia-prezesa-anr/-/asset_publisher/9Vzu/content/13193427?redirect=%2Fweb%2Fguest%2Fzarzadzenia-prezesa-anr.
*Report of the Legislative Committee and the Committee on Agriculture and Rural Development (with a summary of applications), Warsaw on April 13, 2016, Print No. 124 Z,* published on the website of the Senate of the Republic of Poland on 13 April 2015.

**Summary:** The Agricultural System Structuring Act of 11 April 2003 which was amended as of 30 April 2016 implemented a special regime concerning trading in agricultural properties. The provisions are constructed on multiple levels, which means that in order to apply the special rules of trading, you first need to determine whether or not a given property is an agricultural property within the meaning of the said Act and whether the event concerning the property is subject to the special regime. The process of defining whether or not a property is an agricultural property within the meaning of the Agricultural System Structuring Act also takes place in several stages. It is because the definition of the agricultural property refers to the Civil Code, and it is then narrowed by making a reference to the spatial development plan. This implies that the process of applying the Act is arduous and may lead to difficulties in practice, thus destabilizing the certainty of the transactions.

**Keywords:** Agricultural property, trading in agricultural properties, spatial development plan, farming house, decision on land development conditions, land registry

# WERYFIKACJA POJĘCIA NIERUCHOMOŚCI ROLNEJ W ŚWIETLE ZNOWELIZOWANYCH PRZEPISÓW USTAWY Z DNIA 11 KWIETNIA 2003 ROKU O KSZTAŁTOWANIU USTROJU ROLNEGO

**Streszczenie:** W znowelizowanych z dniem 30 kwietnia 2016 r. przepisach ustawy z dnia 11 kwietnia 2003 roku o kształtowaniu ustroju rolnego wprowadzony został przewidziany szczególny reżim dotyczący obrotu nieruchomościami rolnymi. Przepisy skonstruowane są wielostopniowo, tj. aby zastosować szczególne zasady obrotu, wpierw należy ustalić, czy nieruchomość jest nieruchomością rolną w rozumieniu ustawy i czy zdarzenie, którego nieruchomość dotyczy, podlega szczególnemu reżimowi. Samo określenie, czy nieruchomość jest nieruchomością rolną w rozumieniu u.k.u.r., też jest działaniem wielostopniowym. Definicja nieruchomości rolnej odnosi się bowiem do Kodeksu cywilnego, a następnie – poprzez odwołanie do planu zagospodarowania przestrzennego – zawęża. Powyższe wskazuje na mozolność procesu stosowania ustawy i może powodować trudności w praktyce, a tym samym destabilizować pewność obrotu.

**Słowa kluczowe:** nieruchomość rolna, obrót nieruchomościami rolnymi, plan zagospodarowania przestrzennego, siedlisko, decyzja o warunkach zabudowy, ewidencja gruntów

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# *MISSELLING* OF FINANCIAL SERVICES AS A PRACTICE THAT INFRINGES COLLECTIVE CONSUMER INTERESTS

## INTRODUCTION

The foundation of consumer law is the principle of consumer protection as a weaker party in relation to the entrepreneur. The consumer protection package is extensive. Beginning with the Constitution of the Republic of Poland[1], through the Civil Code[2], the Act of 30 May 2014 on consumer rights[3], as well as the Act of

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[1] Art. 76 of the Constitution of the Republic of Poland of 2 April 1997, Journal of Laws of 1997, No. 78, item 483 as amended Art. 76. Public authorities protect consumers, users and tenants against activities that threaten their health, privacy and security as well as against dishonest market practices. The scope of this protection is specified in the Act.

[2] E.g. Art. 385, Art. 385 [1] of the Act of 23 April 1964 –Civil Code, i.e. Journal of Laws of 2017 item 459 as amended.

[3] I.e. Journal of Laws of 2017 item 683. Used abbreviation: Consumer Rights Act.

16 February 2007 on competition and consumer protection[4]. Consumer law also contains more detailed regulations[5], including the sector-specific regulation related to the services provided to consumers. An example of this is the financial services market[6], and in particular the regulation of the abovementioned Act on Competition and Consumer Protection. This law is designed to protect free competition on the free market, which indirectly protects the consumer as the last link in the market economy chain. The provisions of this Act expressly contain the prohibition of using practices that violate the collective interests of consumers. One of these practices, introduced by the legislator on the basis of Art. 1 point 3 sub-point c of the Act of 5 August 2015 on the amendment of the act on competition protection and consumers and some other laws[7], has been – effective since 17 April 2016 – the so called ban on *misselling* of financial services[8]. The introduction of the ban on *misselling* is related to the trend that can currently be observed, consisting in offering products, including financial ones, which are individualized, that is, tailored to the consumer's needs.

## SELECTED SCOPE OF CHANGES INTRODUCED BY THE ACT AMENDING THE ACT ON COMPETITION AND CONSUMER PROTECTION (ACCP)

On the basis of the above Art. 1 point 3 sub-point c of the Act amending the ACCP, the legislator made a thorough change of Art. 24 of the ACCP. In the provision of Art. 24 sec. 1 of the ACCP, the legislator has imposed a ban on practices that violate the collective interests of consumers, which are torts or delicts. The practice of infringing collective consumer interests, which consists of two elements, is in turn included in section 2 art. 24. The first is a general clause manifesting itself in an unlawful or contrary to good practice behaviour of an entrepreneur that is detrimental to the collective interests of consumers. On the other hand, the second clause was expressed in the form of four calculations (including one repealed, which will be discussed below) of exemplary groups of practices.

Starting from the first general clause, it should be emphasized that general clauses usually contain phrases that are not specified in the form of, for example, good practices, respecting consumers' legitimate interests or rules of social coex-

[4] I.e. Journal of Laws of 2017 item 229 as amended. Used abbreviation: The Act on Competition and Consumer Protection, ACCP.

[5] E.g. The Act of 29 August 1997 on tourist services i.e. Journal of Laws of 2016 item 187, 1334 as amended, the Act of 29 August 1997 –Bank Law, i.e. Journal of Laws of 2016 item 1988 as amended

[6] E.g. financial services contracts concluded at a distance, regulated in the Consumer Rights Act.

[7] Journal of Laws 2015, item 1634. Used abbreviations: Act on Amending the Act on Competition and Consumer Protection,AAtheACCP.

[8] There is also spellingmisselling.

istence, which are not defined strictly in legal provisions. This accounts for a lot of freedom in their interpretation, within the framework of legal interpretations that exclude completely free interpretation. General clauses are therefore not always subject to the same interpretation, but their feature is a certain flexibility of use depending on the actual situation[9]. The general clause indicated in Art. 24 sec. 2 of the ACCP concerns a situation in which the following conditions are met. First of all, practice is an act or omission of an entrepreneur, thus a manifestation of behaviour towards the consumer. The action manifests itself in undertaking some kind of active behaviour (e.g. concluding a contract), while omission means the lack of a given behaviour (e.g. not included in the contractual provisions). Secondly, the practice is illegal (unlawful). Unlawfulness of action is broadly recognized in the civil law[10]. It is understood as non-compliance (contradiction) of the behaviour of the perpetrator (here: entrepreneur) with the national legal order, but also with international treaties[11]. On the basis of the issues discussed, the contradiction with the legal order may refer to the contradiction with the Act of 16 April 1993 on combating unfair competition[12], as well as the Act of 23 August 2007 on counteracting unfair market practices[13]. Illegality within the meaning of Art. 24 of the ACCP also includes inconsistency with criminal law regulations – however, an act threatened by a criminal sanction can be considered a practice infringing collective consumer interests only if it harms their collective interests[14]. Thirdly, the practice is contrary to good practices. The Act amending the Act on competition and consumer protection has distinguished in the definition of practices violating collective consumer interests a feature of contradiction with good practices. The need to add a criterion of violation of good practices was submitted by the Supreme Court[15], which emphasized the need to add this criterion due to the introduction of a new practice in the form of *misselling* of financial services, which will be discussed below. The notion of good practices belongs to the group of unclear notions, whose interpretation raises many controversies. The concept "good practices" should be looked at through the prism of the criterion of morality, justice, honesty, decency, morals. It

[9] https://uokik.gov.pl/download.php?plik=2152

[10] On unlawfulness among others T. Karaś, S. Żółtek, *Bezprawność w prawie cywilnym i karnym,* https://pk.gov.pl/plik/2013_12/30121f8d8c014ca1dc725f5bc3312ba2.doc In addition: Judgment of the Appeal Court in Poznań of 24 June 1992, I ACr 204/92, Case list 1993, no. 2, p. 30.

[11] Z. Radwański, A. Olejniczak, *Zobowiązania – część ogólna*, Warsaw 2014, p. 192 and following.

[12] I.e. Journal of Laws of 2003 No. 153, item 1503 as amended. Used abbreviations: Act on Combating Unfair Competition, Unlimited Competition, ACUCUC.

[13] I.e. Journal of Laws of 2016 item 3, 1823. Abbreviations used: Act on Counteracting Unfair Market Practices, ACUMP

[14] C. Banasiński [in:] C. Banasiński, E. Piontek (ed.), *Ustawa o ochronie konkurencji i konsumentów. Komentarz,* Warsaw 2009, p. 410 and following.

[15] Comments of the Supreme Court of 29 April 2015 to the draft Act amending the Act on competition and consumer protection and the Act - Code of Civil Procedure, https://legislacja.rcl.gov.pl/docs//2/12271401/12284097/12284100/dokument161996.pdf.

is assumed that "good practices" not being legal norms, are norms of conduct, and their content, subjective scope and subject matter need to be specified and defined in the jurisprudence and literature[16]. Fourthly, the practice is detrimental to the collective interests of consumers, which should be understood by the denial expressed in Art. 24 section 3 of the ACCP, according to which the sum of consumers' individual interests is not a collective consumer interest. The Supreme Court of Appeal also expressed the above statement in the justification of the judgment, pointing out that the essence of the action of the President of the Office for Competition and Consumer Protection (hereinafter: the President of UOKiK) in the proceedings concerning practices violating collective consumer interests is to examine the entrepreneur's actions as a practice towards collectivity, and not towards individual consumers[17]. It should also be emphasized that the collective interests of consumers must be referred to current, future, as well as potential consumers[18].

In turn, the second general clause was expressed in the form of listing examples of practices that infringe collective consumer interests. Below there will be only mentioned all exemplary practices that infringe the collective interests of consumers listed in Art. 24 section 2 of the ACCP, and this publication will emphasize one, newly-introduced practice – the so called *misspelling* of financial services. First of all, it should be noted that the legislator deleted point 1 of Art. 24 sec. 2 of the ACCP from the catalogue of these practices, stating that the practice infringing collective consumer interests was the application of the provisions of templates of contracts, which have been entered in the register of provisions of template contracts recognized as unlawful, referred to in Art. 479[45] of the Act of 17 November 1964 – Code of Civil Procedure[19]. The removal of the above practice was a consequence of the introduction of Art. 23 a to the Act on competition and consumer protection, establishing the ban on the use of prohibited clauses in templates of contracts concluded with consumers, while changing the system of abstract control of contractual provisions. At present, the use of prohibited provisions of template contracts is therefore a separate delict, and the register of the provisions of templates of contracts deemed to be unlawful is revoked, however, subject to Art. 8 sec. 1 of the Act on amending the ACCP, on the basis of which the legislator introduces ten years of *vacatio legis* for the repealed provisions of the Code of Civil Procedure in respect of cases brought by the action for recognition of the provisions of a standard contract not

[16] https://repozytorium.amu.edu.pl/bitstream/10593/4938/1/04_Artur_Zurawik_Klauzula%20generalna_dobrych%20obyczaj%C3%B3w_35_51.pdf.

[17] Judgment of the Supreme Court in Warsaw of 28 March 2008, VI ACa 1098/07, unpublished see A. Stawicki and E. Stawicki (ed.), *Ustawa o ochronie konkurencji i konsumentów. Komentarz*, LEX 2011.

[18] M. Sieradzka, *Komentarz do art. 24 ustawy o ochronie konkurencji i konsumentów*, LEX 2008.http://orka.sejm.gov.pl/izo7.nsf/www1/i16564o0/$File/i16564o0.pdf.

[19] I.e. Journal of Laws of 2016, item 1822, 1823 as later amended. Used abbreviations: Code of Civil-Procedure, CCP.

allowed before 17 April 2016. In the light of the above, it was necessary to delete from the catalogue of the discussed practices, the provisions of templates of contracts entered into the register of prohibited clauses based on the court's judgment. Another example of practices infringing collective consumer interests is the breach of the obligation to provide consumers with reliable, genuine and complete information, expressed in point 2 of Art. 24 sec. 2 of the ACCP. The fundamental right of the consumer to obtain information, which is the correlate of the entrepreneur's information obligations, has been included in the Consumer Rights Act. Information and transparency of the market are an instrument of consumer protection. The mechanism of information obligations is the focal point of the consumer protection system in the law of the European Union[20]. This was also expressed by the Court of Justice of the European Union[21] in the judgment[22], in which it decided that the information is one of the constitutive prerequisites for consumer protection. The contemporary society is an information society. In the present reality, the information and the method of its acquisition, transmission and collection has gained a key meaning. Currently, no one questions the consumer's right to information. On the contrary - the importance of information is more and more appreciated by the legislator, which is expressed, for example, by the above-mentioned Act on Consumer Rights. The legislator puts more and more detailed requirements on information obligations for the entrepreneur. E. Łętowska emphasizes that in providing information, we should not only notice the obligation imposed on the entrepreneur as a moral obligation but also as a financial burden[23]. A properly informed consumer is the best guarantor of the protection granted him by the law. The next type of practices violating the collective interests of consumers mentioned in Art. 24 sec. 2 point 3 of the ACCP, constitute unfair market practices or acts of unfair competition. Without going into details, as this issue is not the subject of the analysis in this publication, it should only be pointed out that the market practice applied by entrepreneurs towards consumers is unfair if it is contrary to good practices and significantly distorts or may distort the market behaviour of the average consumer before concluding an agreement concerning a product, during or after its conclusion[24]. In turn, the action of unfair competition is action contrary to the law or morality, if it threatens or violates the interest of another entrepreneur or client [25]. The last, introduced in Art. 24 of the ACCP, the amendment constitutes the addition by

[20] F. Grzegorczyk, *Prawo konsumenckie w Unii Europejskiej: aspekty systemowe harmonizacji,* Warsaw 2009, p. 49.
[21] At the date of the judgment, the European Court of Justice.
[22] Quotation after M. Pecyna [in:] S. Włodyka, *Prawo umów handlowych,* tom 5, Warsaw 2014, p. 186, judgment in the case C-362/88 GB Inno BM of 7.3.1990.
[23] E. Łętowska, *Europejskie prawo umów konsumenckich*, Warsaw 2004, p. 128 and following.
[24] Art. 4 section1 of theACUMP.
[25] Art. 3 section 1 of the ACUCUC.

the legislator of point 4 to Art. 24 sec. 2 of the ACCP, which concerns the so-called prohibition of *misselling* of the financial services referred to below.

## BAN ON *MISSELLING* OF FINANCIAL SERVICES

In line with what has been indicated above, based on the provisions of the Act amending the Act on competition and consumer protection[26], the legislator introduced to the content of Art. 24 sec. 2 pt. 4 the ACCP a new type of practice infringing collective consumer interests, in the form of the so-called *misselling* of financial services. The regulation defines *misselling* of financial services as an offer to consumers to purchase financial services that do not meet the needs of these consumers, based on the information available to the trader regarding the characteristics of these consumers or suggesting that these services are inadequate to their nature. Therefore, the legislator defined *misselling* as offering and selling the products that do not match the needs of consumers. The phrase *misselling* from English alone means "missed sales", which also perfectly reflects the whole phenomenon, understood as the sale of services that are not adjusted to the customer's needs. *Misselling* is becoming more and more widespread and is especially visible on the market of insurance[27] and bank services. Life and endowment insurance with an insurance capital fund, mortgage loans denominated in foreign currencies and the so-called "chwilówki" have been indicated as an example of actions in the form of *misselling,* in the justification of the draft act on the protection of competition and consumers[28]. In addition, in the explanatory memorandum to the draft of the discussed act, it was stressed that withdrawal from agreements on financial products is very difficult and expensive.

By introducing a ban on *misselling* of financial services, the Polish legislator copied the experience of the British Company Financial Conduct Authority, which applies a new approach to financial services. It is characterized by the fact that the majority of products offered to individual consumers is tailored to the needs of specific consumer groups, and the problems appearing on the market do not concern the features of these products, but whether the products are offered to the right group of consumers. The new approach to financial services is aimed at eliminating the situation when an improperly offered product can cause losses on the part of consumers in the situation of mass sales. Actions taken by the Financial Conduct Authority concern the exer-

[26] Art. 1 point 3 of the Act amending the Act on competition and consumer protection.

[27] On this subject among others P. Kozik, *Misselling w ubezpieczeniach – czyli ochrona konsumentów usług ubezpieczeniowych na gruncie najnowszych zmian prawodawczych,* [in:] M. Jagielska, E. Sługocka-Krupa, K. Podgórski, *Ochrona konsumenta na rynku usług,* Warsaw 2016, p. 155 and following. Moreover, in particular, Art. 21 Acts of 11 September 2015 on insurance and reassurance activity, i.e. Journal of Laws of 2017, item 1170, 1089, on the subject, among others: M. Szczepańska (ed.), *Ustawa o działalności ubezpieczeniowej i reasekuracyjnej. Komentarz*, Warsaw 2017, E. Bukowska [in:] P. Czubluna (ed.), *Ustawa o działalności ubezpieczeniowej i reasekuracyjnej. Komentarz,* Warsaw 2016, p. 81 and following

[28] https://legislacja.rcl.gov.pl/docs//2/12271401/12284097/12284098/dokument158625.PDF.

cise of control, and, if necessary, intervention, to protect consumers against a possible threat (hence the own analysis of the institution is sufficient, for example, a consumer complaint is not necessary, i.e. a problem has arisen on the market). These are preventive actions aimed at protecting the consumer against potential threats[29].

Commented Art. 24 sec. 2 point 4 of the ACCP introduced two varieties of *misselling*, thus two new practices violating collective consumer interests [30]. The first is to offer consumers the purchase of financial services that do not meet the needs of these consumers, determined with the information available to the entrepreneur in terms of the characteristics of these consumers. In turn, the second concerns the proposal to purchase these services in a manner inadequate to their nature. Both forms have three common features. First of all, both forms concern the behaviour of the entrepreneur, who will usually be an insurer or a bank based on *misselling*, depending on the service market. Entrepreneur's behaviour can take the form of both actions (e.g., providing false information) as well as omissions (e.g., concealing certain information from the consumer). Another common feature concerns the contract stage. The introduced ban on *misselling* (in both above mentioned forms) already at the pre-contract stage is a positively assessed solution aimed at elimination of entrepreneurs' behaviours which lead to distorting of the process of making decisions by consumers. Thus it concerns already the proposal itself, and strictly speaking, the ban on offering the consumers to purchase financial services before the conclusion of the contract. Thirdly, both varieties of *misselling* concern financial services. This common premise raises a lot of doubts which result from the lack of definition of financial services in the competition and consumer protection Act[31]. In connection with the above, it seems helpful to refer to the regulation of Art. 4 section 2 of the Act on consumer rights, according to which the provisions of the Act do not apply to the contracts concerning financial services, especially such as: banking operations, consumer credit agreements, insurance operations, contracts for the purchase or repurchase of participation units of an open-ended investment fund or an open-ended specialized investment fund and acquisition or subscription of investment certificates of a closed-end investment fund, payment services (with one exception of contracts regarding financial services concluded remotely, to which the indicated provisions of chapters 1 and 5 of the Act on consumer rights apply). As can be seen from the above, the legislator also does not define financial services under the Act, and indicates which actions the provisions of the Act on Consumer Rights do not apply to. Nevertheless, an attempt to define

[29] A. Wędrychowska-Karpińska, A. Wiercińska-Krużewska [in:] *Ustawa o ochronie konkurencji i konsumentów. Komentarz*, A. Stawicki, E. Stawicki (ed.), Warszawa 2016, p. 686.
[30] P. Kozik, *Misselling w ubezpieczeniach…,* p. 164 and following.
[31] J. Sroczyński, *Misselling – nowy rodzaj zakazanej praktyki naruszającej zbiorowe interesy konsumentów,* „Przegląd Ustawodawstwa Gospodarczego" 2016, no. 04, p. 27.

financial services was made in the literature indicating that the activities listed in Art. 4 par. 2 of the Act on consumer rights are widely regarded as financial activities, and thus the provisions contained in Chapter 5 of the above act are applicable to them[32]. In addition, the calculation of financial services is exemplary, which is already indicated by the very phrase "in particular". In the case of both forms of *misselling*, at the very beginning, some concerns are raised by the word "proposing", which has not been clarified under the Act on competition and consumer protection. In this situation, it is worth referring to the definition of "product purchase proposal" included in Art. 2 point 6 of the Act on counteracting unfair market practices, which means commercial information defining the product's characteristics and its price, in a manner appropriate for the means of communication with consumers that directly affects or may affect the consumer's decision on the contract. From the definition cited, the notion of commercial information should be specified, which has a direct impact on the consumer's decisions. Commercial information is understood as the entrepreneur's advertising of various types of goods and services (especially prospectuses, catalogues, invitations to transactions and purchases available to the individual needs of the recipient). In the draft amendment to the Act on Competition and Consumer Protection, it was proposed to use the phrase "offering", which was eventually replaced by the word "proposing". The reason for this solution was the argument that "proposing" means exclusion from *misselling* the financial services of general advertising (television or radio), which are only a general presentation of the service by the entrepreneur or initial "incentive" for the consumer to be interested in the proposal of the entrepreneur[33].

In the regulation under point 4 of Art. 24 sec. 2 of the ACCP, the legislator included a postulate of adequacy, that is, matching the needs of the consumer, or taking the opposite, prohibiting the inadequacy of proposing the purchase of financial services as to their nature. The inadequacy of proposing the purchase of financial services as to their nature is manifested as the inadequacy of the content and method of proposing the purchase of financial services, depending on the form of *misselling* mentioned below.

The first form of *misselling* mentioned above, prohibited by the legislator through the regulation of art. 24 sec. 2 point 4 of the ACCP is to propose to consumers purchasing financial services that do not correspond to the needs of these consumers including information available to the entrepreneur regarding the characteristics of these consumers. The phrase that in this form of *misselling* raises reservations is the concept of "need". The premise in the form of not responding to the needs of the consumer by proposing a financial service makes it that the President of UOKiK has no grounds to challenge the financial service itself, which is fully allowed, but

[32] M. Skory [in:] *Ustawa o prawach konsumenta. Kodeks cywilny (wyciąg)*: *Komentarz,* B. Kaczmarek-Templin, P. Stec, D. Szostek ed., Warszawa 2014, p. 202.
[33] A. Wędrychowska-Karpińska, A. Wiercińska-Krużewska [in:] *Ustawa o ochronie konkurencji…*, p. 693.

only its mismatch to the needs of a given group of consumers. Due to the fact that in the situation of using the financial service, the needs of consumers come down to financial needs, and these usually occur, the unfortunate form of "need" should be interpreted as the possibility of using a given financial service[34]. Another doubt emerging in this form of *misselling* concerns the identification of consumer needs, which the entrepreneur has to make "including information available to the entrepreneur regarding the characteristics of these consumers". The above raises the question - were additional obligations imposed on the entrepreneur in the area of obtaining and collecting comprehensive data about the consumer?

In the justification of the draft to the Act amending the Act on Competition and Consumer Protection, the legislator rationally stressed that the discussed regulation does not impose an obligation on entrepreneurs to determine the needs of consumers, but only establishes failure to fulfil this obligation as a practice violating collective consumer interests[35]. It seems reasonable to assume that the entrepreneur will not break the prohibition of *misselling*, who will, at the pre-contractual stage, come out with the initiative to provide all information about a given financial product, relevant terms of the offer and at the same time will provide the consumer with appropriate conditions to get acquainted with them. Thus, the above mentioned inadequacy of the content of the proposal for the purchase of financial services is manifested in the lack of providing the consumer with relevant information on a given financial service or providing it in a vague, misleading or incomplete manner (e.g. unclear informing on the rules for the collection of instalments or misleading as to the investment risk)[36]. However, it is not the responsibility of the entrepreneur to examine whether the consumer will be able to bear the risk and fulfil the obligations under the contract[37].

The second type of *misselling* is proposing the acquisition of financial services in a way that is inadequate to their character. The inadequacy of the method of proposing the purchase of financial services may be expressed in the form of offering highly complicated financial services using a telephone, which often distorts the image of the proposed services. And everyday life still provides examples, that even the very way of presenting the terms of a given financial service and how it affects the consumer has a fundamental impact on his choice. Therefore, in summary, it can be argued that the mismatch of the offer itself or the way it is presented to the specificity of the product and the needs of individual consumer groups is not allowed, which is also considered an unethical behaviour[38].

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[34] M. Namysłowska [in:] *Ustawa o zmianie ustawy o ochronie konkurencji i konsumentów* z 5.8.2015 r. *Komentarz,* M. Namysłowska, A. Piszcz (ed.), Warsaw 2016, p. 54.

[35] Justification for the draft Act amending the Act on competition and consumer protection, p. 12.

[36] M. Namysłowska [in:] *Ustawa o zmianie ustawy o ochronie konkurencji* …, p. 55.

[37] A. Wędrychowska-Karpińska, A. Wiercińska-Krużewska [in:] *Ustawa o ochronie konkurencji…,* p. 695.

[38] http://www.biuletyn.bdo.pl/biuletyn/podatki-i-rachunkowosc/bdo-podatki-i-rachunkowosc/Przepisy-prawne-i-orzecznictwo/misselling-czyli-sprzedaz-nieetyczna9290.html

For breaking the prohibition of *misselling*, the President of UOKiK issues a decision on the recognition of the practice as infringing collective consumer interests and ordering its discontinuation[39]. In this decision, the President of UOKiK may determine the means to remove the ongoing effects of infringing collective consumer interests, to ensure the execution of the order, in particular may oblige the entrepreneur to submit a single or multiple statement of the content and form specified in the decision[40]. In addition, as in the case of other practices infringing collective consumer interests, also in the event of violation of the prohibition of *misselling* (even unintentionally) the President of UOKiK may impose on the entrepreneur a financial penalty in the amount not exceeding 10% of turnover achieved in the financial year preceding the year of imposing the penalty[41]. Therefore, the extension of the list of practices infringing collective consumer interests, expressed in the discussed Article 24 sec. 2 of the Act on competition and consumer protection, about *misselling,* contributed to the increase in the number of situations in which the UOKiK may impose a fine. Financial penalties play a fundamental role in ensuring the effectiveness of competition and consumer protection standards[42]. They constitute the basic sanction for violation of the provisions of the Act on competition and consumer protection, because in principle Polish law (except for the so-called bid-rigging behaviour between tenderers) does not provide for criminal liability for violation of the provisions of the Act.

It should also be added that the President of UOKiK, even before the end of the proceedings regarding the entrepreneur's practices violating collective consumer interests, may issue the so-called provisional decision requiring him to refrain from certain actions[43]. The reasons justifying the publication of the above mentioned provisional decision should include prima facie evidence (which is sufficient, no evidence is necessary) that the continued application of the alleged practice can result in serious and difficult threats to the collective interests of consumers. Both hazard characteristics (serious and difficult to remove) must occur simultaneously.

[39] Art. 26 section 1 of the Act on Competition and Consumer Protection.
[40] Art. 26 section 2 of the Act on Competition and Consumer Protection.
[41] Art. 106 section 1 point 4 of the Act on Competition and Consumer Protection.
[42] M. Król-Bogomilska, *Kary pieniężne w prawie antymonopolowym,* Warsaw 2001.
[43] Art. 101a section 1 sentence 1 of the Act on Competition and Consumer Protection.

## CONCLUSION

Consumer protection in the case of financial services is the most justifiable idea. By amending the discussed regulation of Art. 24 of the ACCP, and especially by introducing a ban on *misselling* of financial services, the Polish legislator wanted to create a practical and effective mechanism for consumer protection on the market of these services. It was the financial market that was indicated as carrying the greatest risks for the consumer. However, the regulation of *misselling* is accused of certain imperfections, mainly in the form of using too many indeterminate concepts, with the simultaneous lack of definitions of the concepts used or the transfer of total responsibility to the entrepreneur[44]. It is also debatable to accept *misselling* as a practice that infringes collective consumer interests only on the basis of financial services, since analogous unfair sale practices are also taking place in many other markets, which, however, are not affected by the ban. Thus, the situation of entrepreneurs operating in various sectors and applying similar sale practices was diversified in a controversial manner. Consequently, only those who operate in financial markets are subject to a ban and possible sanctions related to its violation. Taking into account the numerous irregularities in the activities of entrepreneurs whose victims are unaware consumers, one should expect that the regulation of *misselling* will solve the problems of the entire market. However, from the perspective of entrepreneurs operating on financial markets, who were the only ones obliged to comply with the ban on *misselling*, there are doubts about the application of this provision in practice[45]. Nevertheless, the conflict of competence between the President of UOKiK and the Financial Supervision Commission (hereinafter: KNF) is important, i.e. a situation in which one case is subject to two different state bodies. At this point, much depends on the practice of applying the regulation of *misselling* by the President of UOKiK, at the meeting point with the KNF's competences[46]. In addition, in practice there is a fear, how an entrepreneur is to behave so as not to be accused of unethical *misselling*. In practice, it may be problematic for an employee of a given financial institution to assess whether a given service meets the needs of the consumer (it may be assumed in advance that, for example, an elderly person is not interested in a complex financial service - this may be inappropriate)[47].

Bearing the above doubts in mind, it seems reasonable to interpret Article 24 sec. 2 point 4 of the ACCP on the basis of a proper balance of entrepreneurs' interest

[44] C. Banasiński, M. Bychowska, *Między efektywnością administracji a pewnością sytuacji prawnej przedsiębiorców,* „Internetowy Kwartalnik Antymonopolowy i Regulacyjny" 2015 no. 5 (4), p. 68 and following: http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.desklight-e47a7115-897e-45c2-bd33-a05fbc1af2f7/c/59.pdf.

[45] http://www.biuletyn.bdo.pl/biuletyn/podatki-i-rachunkowosc/bdo-podatki-i-rachunkowosc/Przepisy-prawne-i-orzecznictwo/misselling-czyli-sprzedaz-nieetyczna9290.html.

[46] J. Sroczyński, *Misselling…*, p. 29.

[47] http://www.biuletyn.bdo.pl/biuletyn/podatki-i-rachunkowosc/bdo-podatki-i-rachunkowosc/Przepisy-prawne-i-orzecznictwo/misselling-czyli-sprzedaz-nieetyczna9290.html.

and consumer protection, in such a way that not every offer of financial services is considered as *misselling*[48].

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[48] M. Namysłowska [in:] *Ustawa o zmianie ustawy o ochronie konkurencji …*, p. 55.

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**Summary:** Currently, we can observe a trend consisting in offering products, including financial ones, which are individualized, that is, tailored to the consumer's needs. To meet the above, the Polish legislator, following the example of the British regulation, introduced the so-called ban on *misselling* financial services to the Polish legal order. The aim of this publication is to analyse the *misselling* understood as offering and selling products that do not match the needs of consumers.

**Keywords:** consumer law, consumer, *misselling,* financial services, practices infringing the collective interests of consumers

## MISSELLING USŁUG FINANSOWYCH JAKO PRAKTYKA NARUSZAJĄCA ZBIOROWE INTERESY KONSUMENTÓW

**Streszczenie:** Aktualnie można zaobserwować trend, polegający na oferowaniu produktów, w tym finansowych, które są zindywidualizowane, czyli dopasowane do potrzeb konsumenta. Wychodząc naprzeciw powyższemu, ustawodawca polski, na wzór regulacji brytyjskiej, wprowadził do polskiego porządku prawnego tzw. zakaz missellingu usług finansowych. Celem niniejszej publikacji jest analiza missellingu rozumianego jako oferowanie i sprzedaż produktów niedopasowanych do potrzeb konsumentów.

**Słowa kluczowe:** prawo konsumenckie, konsument, misselling, usługi finansowe, praktyki naruszające zbiorowe interesy konsumentów

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# SELECTED PROBLEMS OF SHAPING THE AMOUNT OF REMUNERATION FOR WORK

## INTRODUCTORY REMARKS

Greater autonomy of the will of the parties in the market economy means numerous threats to the rights and interests of the working people. Consequently, the need for pursuing appropriate socio-economic policies and the introduction of specific legislation results not only from the protection of the rights and interests of the employee and employer but it is also justified by the public interest. The state should provide employees and members of their families with decent living and remuneration conditions. It is therefore necessary to make a real change of the economic growth paradigm for the concept of sustainable socio-economic development. An important goal from the point of view of the individual and the society is therefore the continuous increase of prosperity, understood as the improvement of all condi-

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tions in which life takes place[1]. The legal protection of the employee is primarily based on the creation of legal means that will effectively protect the rights and interests of the working people. At this point, the question arises as to whether the existing legal standards provide a sufficient basis to effectively increase the amount of employee remuneration in our country or whether further legal actions are required without which achieving the objective of equitable remuneration is not possible. *De lege lata* existing legal solutions should be indicated in this regard and it should be assessed if they are sufficient, as well as the demands *de lege ferenda* which will help to strengthen and extend this protection should be formulated. It is particularly important to have an effective claim system for the employee in this regard to protect his threatened or violated rights and interests on the labor market. It is expected that each Polish employer respects satisfactorily the basic provisions and principles of the labor law that guarantee benefits to employees at a sufficiently high level within the European standards and create safe and hygienic working conditions.

## CONSTITUTIONAL BASES FOR LABOR PROTECTION

Employment protection should be implemented in many areas of social life. The Constitution of the Republic of Poland does not expressly define the principle of freedom of contract as the institution of constitutional status. However, it can be derived from some of its provisions[2]. On the other hand, the Constitution of the Republic of Poland provides for broader legal bases to limit the freedom of employment contracts than is the case of other private-law agreements, contained in article 24 and indirectly in article 20 of the Constitution related with labor protection and with the existence of autonomous legal acts from the social partners. The provision of article 24 of the Constitution of the Republic of Poland refers primarily to labor protection in the context of employment. There is no doubt that one of the most important areas are employment relationships. This provision also includes, in addition to the obligation of labor protection, the obligation of the state to protect working conditions, understood as the overall obligations and rights connected with work of the person employed. The importance of the Constitution for the labor law is in this case much higher than for the civil law, as workers and other people employed should be particularly protected from the dangers connected with employment. The employer is generally a stronger economic party and usually strives to achieve the greatest possible benefits from employment, often with the exploitation of employees.

[1] Compare Ł. Jabłoński, *Teorie rozwoju gospodarczego a konwergencja ekonomiczna*. „Nierówności Społeczne a Wzrost Gospodarczy" 2008, no 13, p. 151-166; R. Piasecki, *Ewolucja teorii rozwoju gospodarczego krajów biednych,* [in:] *Ekonomia rozwoju*, ed. R. Piasecki, Warsaw 2007, *passim*.

[2] More on his topic: Compare. L. Florek, *Ustawa i umowa w prawie pracy*, Warsaw 2010, p. 108 and next.

The obligation of labor protection means that people living with work can not be in a much worse social situation than people living from other incomes (capital, real estate, etc.), which is directly related to the principles of social justice and to the protection of the dignity of the individual[3]. This means both suitable shaping of the situation of employees compared with those who receive incomes from other sources, as well as appropriate shaping of the relationships between the particular groups of these individuals. Accordingly, the state's obligation to protect employment comes down to the creation of certain legal guarantees by the state concerning both the protection of those persons as well as their property and non-property interests. The Constitution does not prejudge, however, the specific protective measures that should be contained in ordinary legislation[4].

The general wording „labor protection" does not preclude the protection of work performed under other legal relationships, in particular the civil law relations. Accordingly, the thesis of the Supreme Court judgment of October 7, 2004, eloquently reads: „The establishment in court proceedings that the work was provided on the basis of the civil law agreement does not violate article 24 of the Constitution of the Republic of Poland, but the differentiation of the legal situation of the employee and the party to the civil law agreement does not constitute an infringement of article 32 of the Constitution of the Republic of Poland"[5].

## AUTONOMY OF THE WILL OF THE PARTIES IN FREE MARKET CONDITIONS

The principle of autonomy of the will of the parties allows for the independent and free shaping of legal relationships by the parties to these relations through carrying out legal actions, including conclusion of contracts. This interpretation of the autonomy of will arises from the content of article 56 of the Polish Civil Code, under which a legal action causes legal effects[6] expressed in it. Further reinforcement of this principle is contained in article 353[1] of the Polish Civil Code introducing into the area of contract law the freedom of contract recognized as a separate principle of private law. Freedom of contract contained in that provision means that the parties concluding the contract may shape its content at their discretion, but the content or purpose of the contract may not be contrary to the nature of the legal relationship, the law or

[3] Compare H. Szewczyk, *Ochrona dóbr osobistych w zatrudnieniu,* Warsaw 2007, *passim*.

[4] See L. Florek, [in:] *Konstytucyjne podstawy indywidualnego prawa pracy. Konstytucyjne podstawy systemu prawa,* ed. M. Wyrzykowski, Warsaw 2001, p. 70-71; B. Zdziennicki, [in:] *Znaczenie orzecznictwa Trybunału Konstytucyjnego dla umocnienia pozycji władzy sądowniczej. Rola orzecznictwa w systemie prawa,* ed. T. Giaro, Warsaw 2016, p. 18 and next.

[5] See Sentence of the Supreme Court of 7 October 2004, II PK 29/04, Case Law of the Supreme Labor Court 2005, no 7, item 97.

[6] Compare M. Wilejczyk, *Zagadnienia etyczne części ogólnej prawa cywilnego,* Warsaw 2014, p. 96-97.

the principles of social interaction. Thus, this freedom is not unlimited. The limits of freedom of contracts in terms of their purpose and content are determined by the law, the character of the legal relationship created by the contract and the principles of social interaction.[7] The principle of freedom of contracts can not violate the provisions of *iuris cogentis*.[8] The content of this principle includes such elements as: freedom contract, freedom of contractor selection, freedom of shaping the content of the contract, freedom of its termination and the admissibility of any form of contract[9].

The normative relation between the labor law and the civil law is specifically shown in article 300 of the Polish Labor Code and other provisions referring to the civil code in matters not regulated by the labor law[10]. The provision of article 353[1] of the Polish Civil Code satisfies the conditions contained in article 300 of the Polish Labor Code, which is confirmed in the judicature and doctrine[11].

On the basis of the labor law, the principle of freedom of contract (contractual) or more broadly the principle of autonomy of the will of the parties is, in particular, the principle of the free establishment of labor relations as one of the fundamental principles of the labor law contained in article 11 of the Polish Labor Code, which is confirmed in the nature of obligation of the labor relation that is followed by the voluntariness of incurring obligations towards each other and deciding about their content[12]. A consistent statement of the will of the parties to the labor relation is a condition of establishing any labor relation, including non-contractual, where there are undoubtedly more limitations of this principle than in the contractual labor relation[13].

You can not forget about the role of article 10 and article 18 of the Polish Labour Code in this area as other fundamental principles of the labor law. In a broader sense, freedom of contract arises also from the content of article 18 § 1 of the Polish

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[7] Compare R. Trzaskowski, *Granice swobody kształtowania treści i celu umów obligacyjnych*. Art. 353[1] of the Polish Civil Code Kraków 2005, *passim*; the same, *Właściwość (natura) zobowiązaniowego stosunku prawnego jako ograniczenie zasady swobody kształtowania treści umów*, „Kwartalnik Prawa Prywatnego" 2000, no 2, p. 389 and next.

[8] See Sentence of the Supreme Court of 5 June 2002, II CKN 701/00 with glosa of Z. Radwański Case Law of the Labor Court 2003, no 10, item. 124.

[9] Compare Z. Radwański, [in:] *System prawa cywilnego.* V. 3. Section 1. *Prawo zobowiązań - część ogólna,* ed. Z. Radwański, Ossolineum 1981, p. 261.

[10] See T. Zieliński, *Prawo pracy. Zarys systemu*. Część I *ogólna,* Warsaw-Kraków 1986, p. 141 and next.

[11] Compare L. Florek, *Ustawa i umowa w prawie pracy*, Warsaw 2010, p. 104-105; B. Wagner, [in:] *O swobodzie umowy o pracę raz jeszcze. Prawo pracy a wyzwania XXI wieku. Księga Jubileuszowa Profesora Tadeusza Zielińskiego,* ed. M. Matey-Tyrowicz, L. Nawacki, B. Wagner Warsaw 2002, p. 366; A. Malinowski, *Redagowanie tekstu prawnego. Wybrane wskazania logiczno-językowe*, Warsaw 2006, p. 176 and next; S. Lewandowski, *Retoryczne i logiczne podstawy argumentacji prawniczej*, Warsaw 2015, p. 203 and next; Sentence of the Supreme Court of 18 May 2005, III PK 27/05, Case Law of the Supreme Labor Court 2006, no 9-10, item 141; Sentence of the Supreme Court of 4 June 2002 I PKN 71/01, Case Law of the Supreme Labor Court 2004, no 7, item 119.

[12] More on his topic, Z. Góral, [in:] *System prawa pracy,* t. 1: *Część ogólna prawa pracy* [ed.] K.W. Baran, Warsaw 2010, p. 580 and next; B. Wagner, *Zasada swobody nawiązywania stosunku pracy*, „Krakowskie Studia Prawnicze" 1982, v. XV, p.66.

[13] See J. Stelina, *Charakter prawny stosunku pracy z mianowania,* Gdańsk 2005, p. 172 and next.

Labor Code, according to which the provisions of employment contracts may not be less favorable to the employee than the provisions of the labor law. In the light of judicature, the protective standards of the labor law counteract exploitation of the employee in the labor relation, leading to the invalidity of employment contract provisions less favorable to the employee than the labor law provisions (article 18 of the Polish Labor Code)[14]. As a matter of principle, the parties may lay down the labor relation at their discretion in favor of the employee in comparison with the law provisions[15]. It finds its application in matters not regulated by the law, also in those which are demanded by the law to be specified in the contract, but leaves the parties their formation, among others on the basis of article 29 § 1 of the Polish Labor Code. It is noteworthy that only the law is the clearest restriction on the freedom of contract, and other restrictions on the basis of the labor law, such as the nature of the legal relationship, the principle of social interaction and the autonomous sources of the labor law, are less pronounced[16].

## LEGAL CONCEPT OF EXPLOITATION AND THE AMOUNT OF REMUNERATION FOR WORK.

It is worth reflecting on the role and importance of the legal concept of exploitation in the context of the amount of remuneration for work. With its very nature it should serve to counteract the establishment of relatively low remuneration for work.

The mechanism of exploitation interferes with the freedom of the parties to develop the content of the legal relationship by contract and it is an expression of the principle of contractual justice[17]. The legal nature of the mechanism of exploitation is disputable in the doctrine of the civil law[18]. Exploitation is treated as the defect of the will statement or exploitation should be considered the defect of the content of the legal action. To this day there is no agreement in the doctrine of the civil law in this regard. The contract

[14] See Sentence of the Supreme Court of 24 November 2004, I PK 6/04, Case Law of the Supreme Labor Court 2005, no 14, item 208.

[15] Compare L. Florek, *Ustawa i umowa w prawie pracy*…, p. 105.

[16] As above; W. Sanetra, *O zasadach prawa pracy i zasadach współżycia społecznego*. State Labor Inspectorate 1966, no 11, p. 706.

[17] Compare M. Safjan, [in:] *System prawa prywatnego,* vol. 1, ed. M. Safjan, Warsaw 2012, p. 356-358; A. Fermus-Bobowiec, I. Szpringer, *Laesio enormis jako podstawa współczesnej instytucji wyzysku,* [in:] *Ex contractu, ex delicto. Z dziejów prawa zobowiązań*, ed. M. Mikuła, K. Stolarski, Kraków 2012, p. 191-209; M. Wilejczyk, *Umowy nacechowane wyzyskiem,* [in:] *Współczesne problemy prawa prywatnego. Księga pamiątkowa ku czci Profesora Edwarda Gniewka. Modern problems of Private Law. Essays in Honour of Proffesor Edward Gniewek,* ed. J. Gołaczyński, P. Machnikowski, Warsaw 2010, p. 663-670; A. Cisek, J. Kremis, *Z problematyki wyzysku w ujęciu kodeksu cywilnego* „Ruch Prawniczy, Ekonomiczny i Społeczny" 1979, no 3, p. 61-73.

[18] Compare J. Andrzejewski, *Czy art. 388 k. c. jest potrzebny? Wyzysk w kodeksie cywilnym oraz w tzw. perspektywie kodyfikacyjnej – spojrzenie krytyczne i wnioski de lege ferenda,* [in:] *Wokół rekodyfikacji prawa cywilnego. Prace jubileuszowe,* ed. P. Stec, M. Załucki, Kraków 2015, p. 185-199; D. Bierecki, *Regulacja prawna wyzysku. Uwagi de lege lata* i *de lege ferenda*, „Rejent" 2015, no 7, p. 21 and next.

concluded for the purpose of exploitation of the other party goes beyond the scope of freedom of contract stated in article 353[1] of the Polish Civil Code. It is about abusing freedom of contract and not about the action prohibited by law constituting a forbidden act, such as a fraud, contrary to the applicable legal order[19]. Exploitation is an element limiting the principle of freedom of contract, i.e. the contract concluded for the purpose of exploitation is contrary to the nature (characteristics) of the obligation relationship as well as to the law and the principles of social interaction.

The regulation of the mechanism of exploitation in the civil code aims to protect one of the parties of the civil law relationship, which is in a worse position, against being used by the other party. Exploitation refers primarily to mutual agreements[20], but the broad application of article 388 of the Polish Civil Code to all private law contracts should be recognized.

In the light of article 388 § 1 of the Polish Civil Code the contract is concluded for the purpose of exploitation if the following conditions are fulfilled:

1) an objective condition – one of the parties in return for their benefits accepts or reserves for themselves or for a third party benefits whose value at the time of conclusion of the contract exceeds the value of their own benefits to a considerable degree;

2) a subjective condition - the party, who accepts or reserves for themselves or for a third party benefits whose value at the time of conclusion of the contract exceeds the value of their own benefits to a considerable degree, in order to achieve that goal exploits: a) the state of necessity; b) disability, or c) inexperience of the other party.

In the light of judicature, the moment of conclusion of the contract decides about a gross disproportion between benefits and the subsequent changes that have taken place after its conclusion are irrelevant, unless they have been foreseeable for the other party and consciously used by them.[21] The state of necessity means such material, personal or family conditions of the party which force them to conclude the contract at any price, or do not allow for free agreement on individual contractual provisions[22].

In the case of concluding the contract for the purpose of exploitation, it is possible to modify the content of the contact in such a way as to restore the economic balance of the benefits of the parties, or the cancellation of the contract. The law allows the exploited party to apply to the court with the following claims:

1) reduction of their benefits;
2) increase of mutual benefits;

[19] See sentence of the Supreme Court of 24 March 2009, I PK 205/08, Case Law of the Supreme Labor Court 2010, no 23-24, item 282.

[20] See H. Witczak, A. Kawałko, *Zobowiązania.* Warszawa 2007, p. 72-73.

[21] See sentence of the Appeal Court in Katowice of 10 January 1995, I ACr 839/94, Case Law of the Appeal Court 1997, No 7-8, item 46.

[22] See sentence of the Supreme Court of 28 January 1974, I CR 819/73, Lex no 7391.

3) simultaneous reduction of their benefits and increase of mutual benefits;

4) cancellation of the contract (sanction of relative nullity); such a claim may be submitted if the implementation of the above-mentioned claims will prove excessively difficult.

Modification or cancellation of the contract concluded for the purpose of exploitation occurs due to a constitutive judgment of the court effective *ex tunc*. This implies an obligation to return mutual benefits or parts of benefits that have already been fulfilled in performance of the contract concluded for the purpose of exploitation. When assessing the value of benefits fulfilled in performing the contract affected by exploitation, you should not be guided by the recognition of the parties themselves, but – as equivalent (article 497 § 2 of the Polish Civil Code) - take into account the objective value of benefits[23]. In the case of exploitation, it comes to an objective lack of equivalence of the value of mutual benefits[24].

The contract concluded in the conditions of exploitation is therefore not affected by the sanction of absolute nullity, but it belongs to legal actions rebuttable by the constitutive judgment of the court. Such a normative solution is beneficial due to the fact that the parties do not have to return their mutual benefits. It can only be undermined in court proceedings, by means of action for the formation that can be connected with the claim for awarding benefits changed by the constitutive judgment. The sanction of rebuttal, both in respect of legal actions rebuttable by the constitutive judgment of the court as well as with respect to those rebuttable by the constitutive declaration of will, acts as a follow-up mechanism, resulting in the exclusion of the rules of legal action and, in the case of exploitation, it is even possible to modify these rules. As a consequence of the application of this mechanism, the sanction consists in the subsequent annulment of legal action or modification of its content, with the effects in principle analogous to the consequences of absolute nullity, in this case acting *ex tunc*, nullifying both the factual and the binding consequences of the rebutted action. Also in the case of exploitation, when it comes to responsibility on the basis of *culpa in contrahendo* and possibly the liability in tort on the basis of article 415 of the Polish Civil Code[25]. Therefore, until the judgment is issued by the court, the defective legal action causes all legal effects envisaged in it.

It is worth noting, however, that court judgments stating the invalidity of the civil law contract on the basis of article 388 of the Polish Civil Code are rare[26]. Conse-

[23] See sentence of the Appeal Court in Białystok of 27.10.2004, I ACa 530/04, Case Law of the Appeal Court 2005, No 9, item 37.

[24] See sentence of the Appeal Court in Łódź of 12.07.2013, I ACa 201/13, http://orzeczenia.lodz.sa.gov.pl/details/$N/152500000000503_I_ACa_000201_2013_Uz_2013-07-12_001.

[25] Compare M. Gutowski, *Bezskuteczność czynności prawnej*, Warsaw 2013, p. 428; the same, M. Gutowski, *Wzruszalność czynności prawnej*, Warsaw 2012, p. 335 and next.; A. Grebieniow, *Częściowa wzruszalność umowy opartej na wyzysku – na przykładzie prawa szwajcarskiego,* „Forum Prawnicze" 2012, no 5, p. 25-35.

[26] See among others sentence of the Appeal Court in Białystok of 27 January 2004, I ACa 530/04, Lex no 143483.

quently, it is recognized in the judicature that the contract violating the principle of equivalence of benefits (glaring disproportion of benefits) of the parties may also be assessed in the light of article 58 § 2 of the Polish Civil Code, especially when all the conditions of exploitation provided for in article 388 § 1 of the Polish Civil Code did not occur[27]. The effect of exceeding the limits of freedom of contract is, therefore, the recognition of the contract or its individual provisions as null and void by law, as provided for in article 58 § 1 and 3 of the Polish Civil Code. In this case, the provisions should be considered incompatible with the principles of social interaction due to the violation of the principle of equivalence and the construction of the contract on the glaring disproportion of rights and obligations of the parties. However, this condition should be applied with caution, bearing in mind the broad scope of freedom including also some consent to the factual inequality of the parties, without having to prove the existence of specific circumstances that would justify it.

In the civil law doctrine it has been shown in a convincing manner that the mechanism of exploitation under article 388 of the Polish Civil Code does not fulfill its primary function, failing to protect against exploitation. The injured party (usually inexperienced, disabled, or in the state of necessity) was made to bear an extremely difficult burden of proof to demonstrate all the conditions under article 388 of the Polish Civil Code. Thus, on the basis of private law the legislator puts before the exploited party a more difficult task than before the prosecutor accusing in the lawsuit on the basis of article 304 of the Polish Civil Code[28]. These claims should be submitted by the exploited party within two years from the date of conclusion of the contract (article 388 § 2 of the Polish Civil Code). This term has the nature of a strict time limit (limitation period), i.e. after its expiration the powers to modify or cancel the contract concluded for the purpose of exploitation expire. It is difficult, therefore, to expect the injured party bearing the procedural risk and high court costs to take effective protection of their rights in the limitation period. As a result, the mechanism of exploitation in practice protects the exploiters, because after two years an "immoral contract" will be non-actionable[29]. It is therefore at least necessary to amend article 388 of the Polish Civil Code towards relaxing the conditions of its application and article 58 of the Polish Civil Code towards making the sanctions more flexible in this latter provision. J. Andrzejewski even proposes the removal of article 388 of the Polish Civil Code from the Civil Code, as the relevant states of fact should fall under the general clause of the principles of social interaction (good

[27] See sentence of the Supreme Court of 14 January 2010, IV CSK 432/09, Case Law of the Labor Court 2011, no 3, item 30 with glosa of A. Girdwoyń, „Monitor Prawa Pracy" 2016, no 12, p. 660-663; sentence of the Appeal Court in Warszawa of 17 July 2015, I ACa 1958/14, Lex no 1805957.

[28] Compare J. Andrzejewski, *Czy art. 388 k.c. jest potrzebny?...,* p. 191 and next; R. Trzaskowski, *Skutki sprzeczności umów obligacyjnych z prawem. W poszukiwaniu sankcji skutecznych i proporcjonalnych,* Warsaw 2013, p. 650.

[29] Compare J. Andrzejewski, *Czy art. 388 k.c. jest potrzebny?...,* p. 192.

morals) which, in his view, will provide adequate protection and flexibility of interpretation[30]. It is therefore necessary to consider whether the mechanism of exploitation under article 388 of the Polish Civil Code can, by necessity ("forcefully"), be transferred directly (without modification) to the labor law. The fact is that the appropriate application of article 388 of the Polish Civil Code in labor relations, even if formally acceptable, does not fulfill its protective function in such a situation, and in practice the mechanism of exploitation will be poorly used in labor relations as before, especially in terms of the amount of remuneration for work.

## EQUITABLE REMUNERATION FOR WORK

The legislator's aim for the realization of the principles of justice and social solidarity in labor relations must involve a greater limitation of the principle of freedom of contract. "The glaring nature of the disproportion of benefits" and "the state of necessity of the party" should be considered with regard to the protective function of labor law and the situation on the labor market. It is worth noting that freedom of contract can on the one hand serve the interests of both parties to the employment relationship, and especially the employee, providing him with additional powers or higher benefits, which is not always possible through statutory regulation. On the other hand, freedom of contracts carries certain risks in the form of exploitation of a generally weaker position of the employee. Hence the greater statutory and other limitation of the principle of freedom of contract in labor law, which, however, does not affect - according to the doctrine[31]– the formal equivalence of the parties to the employment relationship.

Exploitation in labor law should be considered primarily in the aspect of remuneration of employees. There is no doubt that it is in the interests of the employer to set in the current wording of article 78 of the Polish Labor Code the criteria for determining the amount of remuneration for work related to work (type, quantity and quality of performed work)[32] as well as necessary qualifications, which means for the employer the possibility of shaping remuneration excluding social elements such as the personal and family situation of the employee.[33] As far as remuneration is concerned, the interest of the employer depends therefore on a possibly close connection between the remuneration and work performed by the employee. *De lege lata* the limits of the protection of the employer's interest are thus determined

[30] Ibidem, p. 199.
[31] Compare B. Wagner, *Zasada swobody umów w prawie pracy*, „State Labor Inspectorate" 1987, no 6, p. 64 and next; L. Kaczyński, *Zasada swobody umów w prawie pracy po nowelizacji kodeksu pracy*, „State Labor Inspectorate" 1997, no 3, p. 8 and next; A. Sobczyk, *Prawo pracy w świetle konstytucji RP*, vol. I: *Teoria publicznego i prywatnego indywidualnego prawa pracy*, Warszawa 2013, p. 246.
[32] See T. Zieliński, *Prawo pracy. Zarys systemu. Cz. II. Prawo stosunku pracy*, Warsaw-Kraków 1986, p. 233 and next.
[33] Compare M. Latos-Miłkowska, *Ochrona interesu pracodawcy*, Warsaw 2013, p. 186-187.

by the social interest of the employee in the form of, first of all, the minimum remuneration for work, as well as various social and guarantee benefits such as the severance payment and the guarantee remuneration under article 92 of the Polish Labor Code[34]. Constitutionally guaranteed right to the minimum remuneration for work is a significant limitation on the part of employers, but in a country like Poland it is difficult at the present stage of socio-economic development of the country to find a better solution, which would force many employers to determine remuneration at the minimum social level. The democratic state of law can not lose sight of the development and consolidation of social justice[35]. The aim of the regulation of labor law can not be only the maximization of the employer's profit. Excessive freedom of contract in employment relationships can not thus lead to the social exclusion of employees, excessive stratification of wealth and to their exploitation[36].

The principle of justice can be used to protect the employee from exploitation as the weaker party of the employment relationship. This applies in particular to the employment relationship, one of whose characteristics is bearing the economic, personal and technical risk by the employer. Consequently, as a rule, the amount of remuneration due to the employees may not be affected by the poor financial condition of the loss-making company. Therefore, the remuneration associated with the economic situation of the company can only supplement the remuneration for the input of labor, but it should not replace it unless we are dealing with a managerial staff. The obligation to pay the appropriate amount of remuneration for work is in fact one of the main responsibilities of the employer. The employer is obliged to pay the remuneration even if the outcome of the work does not match his expectations or even if the objectives for which the employment relationship was concluded were not achieved[37].

One of the unfulfilled to this day 21 so called August demands of Solidarity of 1980 is to guarantee the automatic wage growth parallel to the rise in prices and inflation. According to the Council of Europe, the concept of „fair wage" should include not only the economic element (objective) related to the equivalence of benefits but also the social one (subjective). The employee's right to equitable remuneration for work resulting from the fundamental principle of the labor law contained in article 13 of the Polish Labor Code does not in fact break with the equivalence

[34] Compare M. Seweryński, *Minimalne wynagrodzenie za pracę – wybrane zagadnienia*, [in:] *Wynagrodzenie za pracę w warunkach społecznej gospodarki rynkowej i demokracji,* ed. W. Sanetra, Warsaw 2009, p. 53 and next; G. Goździewicz, *Refleksje na temat prawa do godziwego wynagrodzenia za pracę,* [in:] *Wynagrodzenie za pracę w warunkach społecznej gospodarki rynkowej i demokracji,* ed. W. Sanetra, Warsaw 2009, p. 63 and next.

[35] Compare M. Zieliński, *Wykładnia prawa. Zasady - reguły - wskazówki*, Warsaw 2017, p. 258 and next.

[36] Compare M. Latos-Miłkowska, *Ochrona interesu pracodawcy*…, p. 388, 400.

[37] Compare H. Szurgacz, *Zagadnienia kształtowania warunków wynagrodzenia przez pracodawcę*, [in:] *Kształtowanie warunków pracy przez pracodawcę. Możliwości i granice,* Warsaw 2011, p. 52; Ł. Pisarczyk, *Konstrukcje i zakres ryzyka pracodawcy*, PiZS 2003, no 12, *passim*; the same, *Ryzyko pracodawcy*, Warsaw 2008, p. 49, 152 and next.

of benefits[38], but this law must be interpreted primarily through the prism of the European Social Charter referring to the criterion of the needs of the employee and his family, constituting in connection with article 78 of the Polish Labor Code the indicator of fair remuneration according to the social doctrine of the church[39]. However, Poland has not ratified article 4 paragraph 1 of the European Social Charter which implies the right of the employee to such (fair) remuneration which will provide a decent standard of living for him and his family[40]. *A contrario* a question can be asked whether the remuneration of employees in Poland is inequitable and thereby does not allow to satisfy the necessary needs of the employee and his family, which is connected inseparably with the excessive pay differential and exploitation of workers. The problem also lies in the fact that hardly anyone believes that in Polish conditions European standards can be reached in this regard at the level specified in article 4 paragraph 1 of the European Social Charter[41] and the Covenants on Human Rights[42]. Thus, the prospect of the ratification of this Charter by Poland is quite remote. However, Poland is obliged, in virtue of the partial ratification of the European Social Charter, to extend the ratification to other provisions of the Charter[43]. Remuneration at the level defined by the Charter (equitable) is nothing uncommon in the old EU countries and constitutes accepted standards.

In the light of the jurisdiction of the Constitutional Tribunal the provision of article 65 of the Constitution of the Republic of Poland containing the right to work constitutes another argument for the recognition of the principle of equitable (fair) remuneration for performed work as a principle of a constitutional rank[44]. In turn, according to article 10 § 2 of the Polish Labor Code the state determines the minimum amount of remuneration for work. The amount of an equitable wage, however, goes beyond a certain minimum level. The provisions of article 13 and article 78 of the Polish Labor Code do not however constitute in practice in our country the independent basis of the employee's claims to determine remuneration for work at the appropriate (fair) level. Therefore, the employee can not claim a higher wage payment, but can only claim its compensation to the level of minimum remuneration[45].

[38] See M. Nowak, *Prawo do godziwego wynagrodzenia za pracę. Regulacja prawna i treść,* Łódź 2007, *passim*; J. Skoczyński, *Prawo do godziwego wynagrodzenia za pracę*, PiZS 1997, no 4, p. 14.

[39] Compare J. Wratny, *Niektóre dylematy polityki płac a ustawodawstwo pracy,* PiZS 2001, no 7, p. 6; G. Goździewicz, *Refleksje na temat prawa do godziwego…*, p. 63 and next.

[40] Compare A.M. Świątkowski, *Karta praw społecznych Rady Europy*, Warsaw 2006, p. 132-139.

[41] Journal of Laws of 1999 No 8, item 67 with.changes.

[42] Journal of Laws of 1977 No 38, item 167 and Journal of Laws of 1977, No 38, item 169.

[43] See T. Zieliński, *Konsekwencje ratyfikacji Europejskiej Karty Społecznej dla polskiego systemu prawnego*, [in:] *Obywatel – jego wolności i prawa*, ed. B. Oliwa-Radzikowska, Warsaw 1998, p. 209.

[44] See sentence of the Constitutional Court of 7 May 2001, K 19/00, Case Law of the Constitutional Court 2001, no 4, item 82.

[45] See sentence of the Supreme Court of 29 May 2006, I PKN 230/05, Case Law of the Supreme Labor Court 2007, no 11-12, item 155 with glosa of A. Musiała; sentence of the Supreme Court of 10 lutego 2011, II PK 194/10, http://www.orzeczenia.com.pl/orzeczenie/hklwg/sn,II-PK-194-10,wyrok_sn_izba_pracy_

One can risk the claim that Polish minimum remuneration for work as grossly low (understated) is „inequitable", although formally compliant with the law.

As it has already been noted, highly disputable is also the view according to which the appropriate application of article 388 of the Polish Civil Code about exploitation is acceptable in relation to article 300 of the Polish Labor Code, when the employee receives remuneration that violates the principle of equitable remuneration in a blatant manner under article 13 of the Polish Labor Code. The employee would then have to show that the value of the work he performs blatantly exceeds the remuneration received for it, and that the employer, setting remuneration that is too low, has used his state of necessity, disability, or inexperience. The employee could then demand an increase in pay or a reduction in the dimension of the work performed.

Despite the fact, however, that more than one representative of the science of labor law[46] in theory allows for the application of article 388 of the Polish Civil Code in employment relationships, in Polish courts there have been no cases against the payment of grossly low remuneration for work brought under this provision for many years. So the fact is that this provision is very difficult to apply adequately on the basis of article 300 of the Polish Labor Code and it does not protect effectively against real exploitation in employment relationships. The more so, that there is no lack of legal doubt as to its application in employment relationships in terms of remuneration for work. The regulation of the Labor Code concerning remuneration is in fact exhaustive and it is difficult to see a legal gap here[47]. But, it would be even more difficult, in the case of exploitation in employment, to use *the analogy of legis* or *the analogy of iuris*[48].

There are however lawsuits against grossly high remuneration (also wrongly called „inequitable")[49]. Meanwhile, one should share the view in the light of which grossly high remuneration for work can not be assessed in terms of its equitability, but only its compliance with the principles of social interaction[50]. According to

ubezpieczen_spolecznych_i_spraw_publicznych_ii/6/; E. Maniewska [in:] *Kodeks pracy. Komentarz,* t. I, ed. K. Jaśkowski, Warsaw 2014, p. 91; K. Walczak, *Problematyka wynagrodzenia w świetle Europejskiej Karty Społecznej oraz Zrewidowanej Europejskiej Kary Społecznej i jej odzwierciedlenie w polskich realiach,* PiZS 2017, no 1, p. 3-4; A. Sobczyk [in:] *Kodeks pracy Komentarz,* ed. A. Sobczyk, Warsaw 2015, p. 53.

[46] See B. Wagner [in:] *Kodeks pracy 2011. Komentarz,* ed. B. Wagner, Gdańsk 2011, p. 73; G. Goździewicz, T. Zieliński, [in:] *Kodeks pracy. Komentarz,* ed. L. Florek, Warsaw 2011, p. 98-99; K.W. Baran, [in:] *Kodeks pracy. Komentarz,* ed. K.W. Baran, Warsaw 2016, p. 1590; B. Bury, *Odpowiednie stosowanie w prawie pracy wybranych przepisów księgi III Kodeksu cywilnego,* „Monitor Prawa Pracy" 2007, no 5, p. 233; M. Raczkowski, *Odpowiednie stosowanie przepisów kodeksu cywilnego o wyzysku w stosunkach pracy*, PiZS 2006, no 7, p. 9 and next.

[47] Compare M. Nowak, *Wynagrodzenie za pracę*, Warsaw 2014, p. 51.

[48] Compare K. Roszewska, *Skutki sprzeczności przepisów kodeksu cywilnego z zasadami prawa pracy,* PiZS 2005, no 2, p. 22 the same, *Klauzula niesprzeczności przepisów kodeksu cywilnego z zasadami prawa pracy w odesłaniu z art. 300 k.p.,* PiZS 2004, no 6, p. 25.

[49] Compare G. Goździewicz, *Refleksje na temat prawa do godziwego wynagrodzenia za pracę…*, p. 70 and next with quoted case law and literature.

[50] See B. Wagner [in:] *Kodeks pracy 2011…*, p. 73. See among others sentence of the Supreme Court of 7 August 2001, I PKN 563/00, Case Law of the Supreme Labor Court 2002, no 4, item 90 with glosa of

the Supreme Court, granting over-standard or extraordinary employee privileges is subject to judicial review in terms of the socio-economic assessment of the parties' interests or the rights of the beneficiaries, and requires taking into consideration the principles of good faith, decency in negotiating, the obligation to maintain loyalty of the parties and respect for their legitimate interests, good morals, as well as other principles of social interaction (article 8 of the Polish Labor Code)[51]. In the light of the judicature, remuneration regulations, including those regulating the remuneration policy and the rules of the assessment of employees, should be interpreted, taking into account the circumstances of their issue, the principles of social interaction and the established customs. The intent and purpose of the issue of these regulations should also be examined, paying less attention to their literal wording. Lack of precise and clear rules causes that the positive assessment of the employee should in this case lead to the establishment of higher remuneration – in accordance with the adopted rules [52].

## AMOUNT OF REMUNERATION FOR WORK AND WAGE DISCRIMINATION

By the way, in such cases, wage discrimination in employment is also a real problem. Practice has shown that in the same period in different workplaces (even public) the conditions of remuneration for work of the same type, the same quantity and quality, with the same qualifications may be more or less favorable. It is not uncommon that the level of the rights of employees varies significantly, although both employees perform the same or very similar work in different workplaces. Quite often, especially in the conditions of high unemployment on the labor market, many employers offer understated remuneration following the assumptions of shallow economism. In the doctrine remuneration is considered grossly understated when being reduced by ¼[53].

The interpretation of international and European law points to the need to occasionally leave „the area of one employer" in order to, among others, eliminate wage discrimination in the same sectors and industries. Using the phrase „discrimination in employment" in the Labor Code may also suggest the legislator's aim to extend the scope of the application of anti-discrimination standards as well as going beyond the specific,

Z. Hajna, PiZS 2002, no 6, p. 39 and next and with glosa of B. Cudowski i Z. Niedbała, Case Law of the Labor Court 2002, no 1, item 9; sentence of the Appeal Court of Kraków of 20 09.2012, III AUa 420/12, http://orzeczenia.krakow.sa.gov.pl/content/$N/152000000001521_III_AUa_000420_2012_Uz_2012-09-20_001; sentence of the Appeal Court in Katowice of 21.04.2016, V ACa 814/14, Lex no 2055098.

[51] See Sentence of the Supreme Court of 4 November 2010, II PK 106/10, Case Law of the Labor Court 2012, no 10, item 98 with glosa of J. Wratny.

[52] See Sentence of the Supreme Court of 16 February 2017, II PK 11/16, „Gazeta Prawna" of 27 February 2017.

[53] Ibidem.

individualized employment relationship, particularly in the process of shaping fair wage relations[54]. In recent years the Court of Justice of the EU has adopted a very broad understanding of the prohibition of discrimination in the field of remuneration. Discrimination in this respect can be established even if the compared employees perform work at different workplaces, if the working conditions of these employees derive from the same source, for example from the same law or the same supra-institutional collective labor agreement[55]. However, so that a person making a claim of discrimination could indicate as a reference object a worker employed with another employer there must be the entity (source) who has powers in respect of the employment conditions with one and the other employer and is able to restore the state of equal treatment and non-discrimination (*single source*)[56]. A good example of such discrimination may be here the comparison of remuneration conditions in two different Polish public academies (e.g. universities), where there are significant disproportions in the amount of remuneration at the same job positions (assistant professors, professors, etc.)[57]. The Supreme Court therefore rightly states that the equitable (non-discriminatory) relation of the academic professors' remuneration for dimensional hours (contained in the teaching quota) and overtime hours means that the remuneration rate for overtime hours should not be lower than the remuneration rate for didactic classes held within the teaching quota[58]. The anti-discrimination law constitutes admittedly the formally undeniable achievement as the synonym of human rights and civilization progress. The problem begins, however, only in the case of its factual application by employers, State Labor Inspectorate, labor courts. The issue of remuneration discrimination (indirect) in the field of remuneration is one of the most difficult to prove in court by a single employee who needs support from colleagues, lawyers and trade unions in this regard[59].

[54] Compare M. Nowak, *Wynagrodzenie za pracę*…, p. 76–77; M. Wandzel, *Równe wynagradzanie pracowników niezależnie od miejsca świadczenia pracy*, „Monitor Prawa Pracy" 2006, no 11, *passim*.

[55] Compare L. Mitrus, *Rozwój prawa wspólnotowego w dziedzinie równego traktowania mężczyzn i kobiet w zatrudnieniu,* PiZS 2007, no 1, p. 4–5 with quoted there case law of the European Court of Justice.

[56] See glosa of P. Czarnecki to sentence of the Supreme Court of 18 September 2014 to sentence III PK 136/13, Case Law of the Labor Court 2014, no 9, item 85.

[57] Compare H. Szewczyk, *Równość płci w zatrudnieniu.* Warsaw 2017, p. 77 and next.

[58] See Sentence of the Supreme Court of 26 November 2002, I PKN 632/01 Case Law of the Supreme Labor Court 2004, no 10, item 172.

[59] See M. Tomczak, *Wykazanie dyskryminacji płacowej to walka z wiatrakami,* „Gazeta Prawna" of 12 January 2017.

## FINAL REMARKS

It is *in fine* worth pointing out that the right of the employee to the minimum remuneration for work has a constitutional dimension, which also prejudges the normative character of the basic principles of labor law contained in article 13 of the Polish Labor Code. In order to reduce the exploitation of the employee receiving the lowest remuneration for work, it is necessary to continue raising the minimum remuneration with regard to the financial capacity of the state, so that in effect raise it to such a level that it would increasingly take into account the needs of the worker and his family and in this way fulfill the requirements contained in article 4 of the European Social Charter[60]. Particularly that the level of national income in our country still does not translate into the amount of wages, which results in the fact that employees do not fully benefit from economic growth, and do not participate sufficiently in social development[61].

It is also worth considering the demand for admitting the claiming nature of article 78 of the Polish Labor Code (as well as changes in its content towards taking into account the social part of remuneration) and introducing changes in the anti-discrimination law towards making it easier to demonstrate remuneration discrimination (indirect)[62].

Under Polish conditions, such legal solutions would certainly be needed in order to, while strengthening the protection against exploitation, exclusion and social stratification, positively affect the improvement of the quality of life and work of employees and their families and promote social integration[63].

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[60] Compare M. Nowak, *Wynagrodzenie za pracę*…, p. 52-53.
[61] Compare Z. Jacukowicz, *Płaca minimalna w Polsce i w innych krajach o gospodarce rynkowej*. Warsaw 1992, p. 39; Z. Studniarek, *Wynagrodzenie godziwe w ujęciu Europejskiej Karty Społecznej i możliwość jej wdrożenia w realiach polskiej gospodarki*, PiZS 1995, no 6, p. 25.
[62] M. Raczkowski, *Odpowiednie stosowanie przepisów kodeksu cywilnego*…, p. 13.
[63] Compare B. Godlewska-Bujok, *Ryzyko wykluczenia i niepewność*, PiZS 2008, no 8, p. 5-7.

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**Summary:** The normative relationship between the labour law and the civil law is specifically shown in article 300 of the Polish Labour Code, the provisions of which are met by article 353(1) of the Polish Civil Code. The mechanism of exploitation interferes with the freedom of the parties to develop the content of their legal relationship as a contract and it is an expression of the principle of contractual justice. Exploitation limits the principle of freedom of contracts, i.e. a contract concluded for the purpose of exploitation is contrary to the nature (characteristics) of the obligation relationship as well as to the acts and the principles of social interaction. It is difficult to apply the provision of article 388 of the Polish Civil Code based on article 300 of the Polish Labour Code; it does not ensure effective protection against exploitation in employment contracts either.
The mechanism of exploitation in the labour law should be reviewed in terms of remuneration of employees. The employee's right to receive equitable remuneration for work resulting from the basic principle of the labour law provided for in article 13 of the Polish Labour Code does not depart from the equivalence of benefits, but it should take both the economic aspect associated with the equivalence of benefits and the social aspect into account. However, the provisions of article 13 and article 78 of the Polish Labour Code do not provide the sole basis for employee's claims for the determination of the remuneration for work at the "fair" level, and the employee can only demand that the remuneration be increased to the level of the minimum wage. Therefore, new mechanisms of protection against exploitation in the field of the labour law should be sought.

**Keywords:** freedom of contracts, exploitation, legal protection, employee, remuneration

## WYBRANE PROBLEMY KSZTAŁTOWANIA WYSOKOŚCI WYNAGRODZENIA ZA PRACĘ

**Streszczenie:** Związek normatywny prawa pracy z prawem cywilnym uwidacznia się zwłaszcza w art. 300 k.p., którego warunki spełnia przepis art. 3531 k.c. Instytucja wyzysku z kolei ingeruje w swobodę stron w kształtowaniu w drodze umowy treści stosunku prawnego oraz jest ona wyrazem zasady sprawiedliwości kontraktowej. Wyzysk jest elementem ograniczającym zasadę swobody umów, tj. umowa zawarta w celu wyzysku jest sprzeczna z naturą (właściwością) stosunku zobowiązaniowego, a także z ustawą i zasadami współżycia społecznego. Przepis art. 388 k.c. jest trudny do odpowiedniego zastosowania na podstawie art. 300 k.p. i nie chroni również skutecznie przed wyzyskiem w stosunkach pracy.
Instytucję wyzysku w prawie pracy należy rozpatrywać przede wszystkim w aspekcie wynagradzania pracowników. Prawo pracownika do godziwego wynagrodzenia za pracę wynika-

jące z podstawowej zasady prawa pracy zawartej w art. 13 k.p. nie zrywa wprawdzie z ekwiwalentnością świadczenia, jednak powinno ono obejmować nie tylko element ekonomiczny wiążący się z ekwiwalentnością świadczenia, ale również socjalny. Przepisy art. 13 oraz art. 78 k.p. nie stanowią jednak samodzielnej podstawy roszczeń pracownika o ustalenie wynagrodzenia za pracę na „godziwym" poziomie, a pracownik może żądać tylko podniesienia wynagrodzenia do poziomu wynagrodzenia minimalnego.

**Słowa kluczowe:** swoboda umów, wyzysk, ochrona prawna, pracownik, wynagrodzenie

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# THE SCOPE OF THE OBLIGATION TO INTRODUCE REMUNERATION REGULATIONS AFTER THE AMENDMENT TO THE LABOR CODE OF THE YEAR 2016

## INTRODUCTORY REMARKS

The Labor Code has contained the provisions of remuneration regulations since 1996[1]. The obligation to introduce regulations, provided for in the Code, initially concerned an employer with at least 5 employees not covered by a collective labor agreement. In 2002

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[1] See Art. 1 Point 71 of the Act of 02.02.1996 amending the Act - the Labor Code and amending certain laws (Journal of Laws no 24, section. 110). Earlier, remuneration regulations were normalized outside the Labor Code. See more G. Goździewicz, *Układy zbiorowe pracy*. *Regulamin wynagradzania. Regulamin pracy,* Bydgoszcz 1996, p. 195 and next.

this number was increased to 20 employees[2]. At the same time, it was assumed that an employer with fewer than 20 employees, with whom the remuneration regulations apply, has the possibility to withdraw from the act by introducing the conditions of remuneration for work provided for in it and granting other work-related benefits connected with employment contracts[3]. In turn, in 2016, the obligation to introduce remuneration regulations was limited to an employer with at least 50 employees not covered by a collective labor agreement or from 20 to 49 such employees if the enterprise trade union applies for the introduction of regulations[4]. This study is devoted to the latest amendment.

## THE OBLIGATION TO INTRODUCE REMUNERATION REGULATIONS AFTER THE AMENDMENT TO THE LABOR CODE OF THE YEAR 2016

When considering the obligation of the employer to introduce remuneration regulations after the amendment to the Labor Code of 2016, it should first be noted that the criterion determining that obligation still means employing an appropriate – with every change bigger - number of employees not covered by a collective labor agreement determining the conditions of remuneration for work and granting other work-related benefits in the scope and manner making it possible to determine, on its basis, the individual conditions of employment contracts. This criterion is not uniformly understood. In the study of labor law the prevailing view – based on the literal and systemic interpretation of Article $77^2$ of the Polish Labor Code – is that the obligation to introduce remuneration regulations rests not only on the employer without a collective labor agreement, but also on the employer with whom the agreement applies, but does not cover a defined number of employees[5]. However, another view is also expressed – as it seems right *de lege ferenda* - according to which the systemic interpretation and the related teleological interpretation of Article $77^2$ and other provisions of the Labor Code speak for the obligation to introduce remuneration regulations only with a reference to an employer not covered by a collective labor agreement [6].

[2] This was due to the enactment of the Act of 26.07.2002 on the amendment to the Act - Labor Code and on the amendment of some other acts (Journal of Laws no 135, item 1146) This occurred as a result of the adoption of the Act of 26.07.2002 on the amendment to the Act - Labor Code and on the amendment of some other acts, hereinafter referred to as the Amending Act of 2002. By inserting in thisAct Art. 1 point 10, the postulatewas reported in the doctrine, amongothers by K. Rączka (*Sytuacja małych pracodawców w prawie pracy,* Work and Social Security (Polish Economic Publishing) 1999, no 9, p. 7) and Z. Hajna (*Regulacja pozycji prawnej pracownika i pracodawcy a funkcje prawa pracy,* Work and Social Security (Polish Economic Publishing) 2000, no 10, p. 9).

[3] See Art. 8 paragraph. 1 of the 2002 amendment act.

[4] See Art. 2 point 1 of the Act of 16.12.2016 on amending certain acts to improve the legal environment of entrepreneurs (Journal of Laws, item 2255).

[5] See e.g. B. Wagner, [in:] *Kodeks pracy. Komentarz,* ed. L. Florek, Warsaw 2011, p. 439 and K. Rączka, [in:] M. Gersdorf, K. Rączka, M. Raczkowski, *Kodeks pracy. Komentarz,* Warsaw 2014, p. 597.

[6] L. Florek, *Obowiązek wydania regulaminu wynagradzania*, PiZS 2015, no 3, p. 18 and next. See also J. Piątkowski, [in:] *Kodeks pracy. Komentarz,* ed. K.W. Baran, Warsaw 2016, p. 1341.

Since January 1, 2017, the boundary between the entitlement and the obligation to issue remuneration regulations is set by employing at least 50 employees not covered by a collective labor agreement or from 20 to 49 such employees if the enterprise trade union applies for the introduction of regulations. Thus, *de lege lata* one can distinguish an employer with up to 19 employees not covered by a collective labor agreement, an employer with at least 50 such employees and an employer employing from 20 to 49 employees not covered by the agreement.

An employer with up to 19 employees not covered by a collective labor agreement is released from the obligation to issue remuneration regulations. However, if he wants, he can introduce such regulations. The difference in comparison with the legal status which was in force by the end of 2016 lies in the fact that the currently indicated possibility results directly from the provision of Article $77^2$ § $1^1$ of the Polish Labor Code. It is worth noting because, before this provision came into force, some representatives of the doctrine raised objections as to whether remuneration regulations issued by the employer not obliged to introduce them, constitute a source of labor law if not based on the law[7]. *De lege lata* does not raise any doubt that such regulations are based on the law and thus – have a normative character.

As for the employer with at least 50 employees not covered by a collective labor agreement, his situation with respect to remuneration regulations remains unchanged. Like before, he has the obligation to issue this legal act.

From the perspective of the analyzed problem, an employer with between 20 and 49 employees not covered by a collective labor agreement constitutes a new category. While so far he was absolutely obliged to introduce remuneration regulations, his situation is more complex now. At present it is crucial whether there is an enterprise trade union acting on the premises of the employer and whether it applies to the introduction of remuneration regulations. If so, which is unlikely due to a negligible presence of trade unions at the enterprise level[8], the employer is obliged to introduce regulations. However, in the case of the absence of a trade union organization or the absence of an application for issuing regulations, the act may, but need not be determined.

Submitting an application for the introduction of remuneration regulations by the enterprise trade union is undoubtedly a manifestation of implementing the basic objective of this organization which is, in accordance with the Trade Union Law, the representation and defense of the rights and interests of employees[9]. Submitting an application gives rise to the obligation on the part of the employer to introduce

[7] See e.g. W. Uziak, *Akty zakładowe jako źródło ustaleń płacowych*, [in:] *Wolność i sprawiedliwość w zatrudnieniu. Księga pamiątkowa poświęcona Prezydentowi Rzeczypospolitej Polskiej Profesorowi Lechowi Kaczyńskiemu*, ed. M. Seweryński and J. Stelina, Gdańsk 2012, p. 363.

[8] It is estimated that trade unions operate at approx. 5% of employers. See J. Stelina, *Związki zawodowe w systemie zbiorowej reprezentacji zatrudnionych – stan obecny i kierunki zmian,* [in:] *Zbiorowe prawo pracy w XXI wieku*, ed. A. Wypych-Żywicka, M. Tomaszewska and J. Stelina, Gdańsk 2010, p. 149, footnote 1.

[9] See Art. 1 of the Act of 23.05.1991 on trade unions (Journal of Laws of 2015, item 1881).

regulations, and shaping the system of the conditions of remuneration for work in this act is certainly in the interests of employees. This will be discussed in the last part of this study.

However, failure to submit the above-mentioned application by the enterprise trade union should be assessed differently. The passive attitude of this organization, although legally permissible, is at least questionable from the point of view of the indicated purpose of trade union activity. It should be emphasized that if the enterprise trade union does not apply for the introduction of regulations, it deprives itself of the possibility to have a binding effect on the shape of the statutory conditions of remuneration for work and consequently leads to the fact that wage conditions are determined without the participation of employee representation. It is difficult to consider this to be beneficial to employees. The employer may then issue remuneration regulations anyway, but it can be assumed that he is not generally interested in it because – as indicated above – establishing regulations and introducing any possible changes in them would require making arrangements with the trade union organization, which means working out a common position with it regarding the content of the regulations. Instead, the employer may shape the conditions of remunerating individual employees in their employment contracts and, if necessary – modify those conditions by means of agreements or notices of amendment. He does not apply then to the trade union, but to individual employees, so his power to influence the shape of remuneration conditions is far greater.

It is worth noting that the code regulation concerning the application for the introduction of remuneration regulations does not refer to specific issues, which may give rise to questions of interpretation, which in turn may adversely affect the practice of introducing regulations. This concerns, for example, establishing who can oblige an employer to issue regulations if there is more than one trade union organization acting on the premises of the employer. To consider here is on the one hand the application by analogy legis of the provisions of Article 30 of the Trade Union Law and, consequently – the recognition of the requirement to apply for the introduction of regulations by all trade union organizations acting on the premises of the employer, on the other hand – the assumption that every trade union organization is entitled to submit this application. The lack of a clear regulation on this matter in Article $77^2$ § $1^2$ of the Polish Labor Code, combined with the principle according to which in collective cases trade unions represent all employees, regardless of their union membership (Article 7 paragraph 1 of the Trade Union Law), encourages to opt for the second of these options, notably because it promotes the autonomy of trade unions[10]. However, in order that this issue does not arise any doubt, it would be advisable to clearly indicate in Article $77^2$ of the Polish Labor Code – on the

[10] This option is not supported by Art. 24124 of the Labor Code. Its application to regulations of remuneration by analogy legis is excluded due to the validity of Art.772 § 5 of the Labor Code.

model of the provision of Article 3 paragraph 1 of the Collective Dispute Resolution Act – that in a workplace where there is more than one trade union organization acting, each of them may apply for the introduction of regulations.

Code regulation would also require a supplement with regard to the effects which arise in reference to remuneration regulations due to the termination of the enterprise trade union which applied for the issue of this legal act. It is worth considering the introduction of the provision providing that the employer may, in such a situation, repeal remuneration regulations, unless the other enterprise trade union organization, informed about his intention, stands for the maintenance of the regulations in legal force.

## CESSATION OF THE OBLIGATION TO ISSUE (HOLD) REMUNERATION REGULATIONS

Since the employer's obligation to issue remuneration regulations depends on employing an appropriate number of employees not covered by a collective labor agreement, it is obvious that concluding the agreement for these employees (or the additional protocol) causes the indicated obligation to cease. According to Article $77^2$ of the Polish Labor Code it is however important that the agreement meets two requirements. In the first place, it is crucial that it determines the conditions of remuneration for work and granting other work-related benefits, in the scope and manner making it possible to determine the individual conditions of employment contracts on its basis. If the analysis of the content and the degree of detail of the agreement[11] shows that this is not the case, then the systemic conditions of remuneration for work need to be substantiated in remuneration regulations.

The second circumstance that *de lege lata* is not meaningless for the cessation of the obligation to issue remuneration regulations is the fact for whom the collective labor agreement is concluded. As indicated above, the agreement may not cover the entire crew. In such a case, the obligation to introduce remuneration regulations ceases only for those employees for whom the agreement has been concluded (if the agreement does not require clarification), but it is still to be fulfilled in respect of the employees not covered by the agreement, if there are at least 50 or from 20 to 49 employees, and the enterprise trade union has applied for the introduction of regulations[12]. One may have doubts about the relevance of this solution. It appears that the

[11] It is not entirely clear to whom it is necessary to analyze the provisions of the arrangement and assess whether individual terms of employment contracts can be determined on their basis. It seems that the employer is the authorized entity. Similarly, M. Włodarczyk, [in:] *Zarys systemu prawa pracy,* vol. I: *Część ogólna prawa pracy*, ed. K.W. Baran, Warsaw 2010, p. 449-450. The author critically refers to the fact that the employer makes the indicated analysis and assessment.

[12] See B. Rutkowska, *Stabilność regulaminowych warunków wynagradzania za pracę,* [in:] *Tendencje rozwojowe indywidualnego i zbiorowego prawa pracy. Księga Jubileuszowa Profesora Grzegorza Goździewicz*a, ed. M. Szabłowska-Juckiewicz, B. Rutkowska, A. Napiórkowska, Toruń 2017, p. 263.

autonomy of agreement and the nature of remuneration regulations as a substitute act for a collective labor agreement and occupying a lower position in the hierarchy of sources of labor law argue against the obligation to introduce regulations after the entry of the agreement into force – even if the agreement is not concluded for all employees of the employer concerned[13].

If remuneration regulations are already applied by the employer, they are replaced with the entering into force collective labor agreement. This is confirmed by Article $77^2$ § 3 of the Polish Labor Code, according to which remuneration regulations are in force until employees are covered by a corporate or supra-institutional collective labor agreement. It is also important here, however, to state whether the agreement allows, on its basis, for the determination of the individual conditions of employment contracts and whether it covers the entire crew. The arrangements in this matter decide whether the existing so far remuneration regulations lose legal validity or are still in force, and if so, to what extent. It turns out that when the regulations are retained in force after the employees are covered by the agreement, the scope of their validity is generally changed[14].

It is worth noting that reducing the number of employees not covered by a collective labor agreement to the level causing the cessation of the obligation to issue (hold) remuneration regulations may result not only in the entry of the agreement into force (or the additional protocol), but also in the termination or expiry of the employment relationships for a specified group of employees. This is the case for example when the number of workers employed by an employer is reduced from at least 50 to fewer than 20. It is similar when the employment falls to the level from 20 to 49 employees, and there is no enterprise trade union on the premises of the employer or the acting organization is not in favor of the introduction (further validity) of remuneration regulations. The trade union organization may of course change its mind at any time and submit the above mentioned application. Then the employer, who was first obliged and then entitled to introduce remuneration regulations, again becomes obliged in this matter. His obligation to issue regulations ceases once again when the number of workers employed by him is reduced to a level lower than 20 people.

It seems that the same effect occurs when the enterprise trade union which has applied for the introduction of regulations is terminated unless it is not the only organization, acting at the premises of the employer, which is in favor of shaping the conditions of remuneration.

One may wonder, what if remuneration regulations are already applied by the employer being in one of the above mentioned situations[15]. In the new legal status,

[13] Numerous arguments for this position are given by L. Florek. See L. Florek, *Obowiązek…*, p. 18 and next.
[14] See B. Rutkowska, *Stabilność…*, p. 263.
[15] This issue was also analyzed by me in the study *Stabilność...*, p. 264-265.

the view expressed in the doctrine remains valid, according to which reducing the number of employees not covered by a collective labor agreement to the level lower than indicated in Article $77^2$ of the Polish Labor Code does not cause the expiry of remuneration regulations[16]. Does that mean, however, that nothing changes then in relation to these regulations? Such a conclusion would not be appropriate. Since the employer ceases to be obliged to issue remuneration regulations in the above circumstances, he is not - as it seems - obliged to maintain the regulations in force in the case when he applies this act. Such an obligation would constitute a restriction on the freedom of economic activity and ownership and therefore would have to result directly from the law (see Articles 22 and 64 paragraph 3 of the Constitution[17]).

Thereby reducing the number of employees not covered by a collective labor agreement to the level lower than defined in Article $77^2$ of the Polish Labor Code does not result in the expiry of this act. This fact should, however, allow the employer to repeal regulations. The same should be in the case of the termination of the enterprise trade union which has applied for the introduction of remuneration regulations unless there is no other enterprise trade union, acting on the premises of the employer, which stands for shaping the conditions of remuneration in the regulations. The problem is that when amending Article $77^2$ of the Polish Labor Code, the provisions that would regulate the procedure for repealing remuneration regulations in the case of the discussed situations have not been provided. There is even no transitional provision that would apply - just like Article 8 paragraph 1 of the amending law of 2002, to a procedure of possible withdrawal from the regulations by the employer so far obliged and now entitled to introduce and hold this legal act[18].

It seems that the Labor Code should be supplemented with regard to the abovementioned procedure of repealing remuneration regulations. It would be at the same time advisable for legal regulations to provide that in the case of reducing the number of employees not covered by a collective labor agreement to the level lower than specified in Article $77^2$ of the Polish Labor Code, depriving the regulations of legal power is permissible only after a certain period of time – e.g. a couple of months – since the cessation of the obligation to issue them (hold). This would limit the frequent cases of introducing and repealing remuneration regulations by an employer with around 50 employees (when there is no enterprise trade union acting on the premises of the employer or it does not submit appropriate applications regarding the regulations) or about 20 employees (when the present enterprise

[16] Z. Salwa, *Kodeks pracy po nowelizacji. Komentarz,* Bydgoszcz 1997, p. 156. Similarly, among others, B. Wagner, [in:] *Kodeks pracy…*, p. 439 and K. Rączka, [in:] M. Gersdorf, K. Rączka, M. Raczkowski, *Kodeks pracy…*, p. 597.

[17] Constitution of the Republic of Poland of 2.04.1997 (Journal of Laws No. 78, item 483, as amended).

[18] This refers to an employer with between 20 and 49 employees who are not covered by a collective labor agreement and who either does not have any trade union organization, or an active organization is not in favor of leaving the regulations in force.

trade union applies for the introduction of regulations).

It is not entirely clear how to *de lege lata* relate to the analyzed problem. It seems that one of the solutions that can be considered here is the application of the same procedure as when introducing regulations. This is obviously not an optimal solution. There are, for example, doubts as to whether the employer himself can repeal the regulations by informing employees two weeks in advance or whether he should first agree on this with the enterprise trade union if there is such an organization acting on his premises. Although the employer with fewer than 50 employees is not often included in the scope of the trade union activity, yet making him entitled in such a case to work out a common position with it on the repeal of the regulations would certainly mean depriving this act of legal power, which is extremely rare in practice.

## ASSESSMENT OF THE SCOPE OF THE OBLIGATION TO INTRODUCE REMUNERATION REGULATIONS AFTER THE AMENDMENT OF THE LABOR CODE OF 2016

The conducted considerations allow for the assessment of the current provisions of the Labor Code defining the scope of the obligation to introduce remuneration regulations. Adopting in the first place as a criterion for this assessment the principles of legislative technique included in the regulation on the "Principles of legislative technique", it should be stated that the code provisions relating to remuneration regulations do not exhaustively regulate certain aspects of the obligation to introduce and hold this legal act[19]. This does not mean, of course, that the Labor Code should regulate all the issues related with it in detail. However, in accordance with § 2 of the Principles of legislative technique, the law should exhaustively regulate a given area of issues, leaving no significant sections of this field outside the scope of its regulation. Referring this requirement to the Labor Code in the section concerning remuneration regulations is equivalent to the obligation to regulate in this law any issues that significantly affect the practice of the introduction and application of the regulations. This concerns, for example, the procedure of repealing the regulations by the employer who ceases to be obliged to introduce (hold) this act.

In the meantime, it turns out that the amendment to the Labor Code of 2016 once again failed to take the opportunity to supplement the provisions on remuneration regulations. Moreover, the last amendment introduced a new solution which also seems not to be exhaustive and would therefore require supplementation. This refers to the above-mentioned right of the enterprise trade union to apply to the employer with between 20 and 49 employees not covered by a collective labor agreement for the introduction of remuneration regulations without concluding, at the same time,

[19] Regulation of the Prime Minister of 20.06.2002 regarding the "Principles of legislative technique" (Journal of Laws of 2016, item 283).

whoever can submit such an application when there is more than one trade union organization acting on the premises of the employer concerned, and what consequences in terms of the application of the regulations are caused by the termination of the organization that submitted this request. Failure to regulate these issues may contribute to the development of interpretative disputes and, consequently, adversely affect the practice of the introduction and application of remuneration regulations. It therefore seems necessary to supplement not only the existing arrangements on remuneration regulations but also those which entered into force on 1 January 2017.

The new provisions of the Labor Code regarding remuneration regulations need to be evaluated also from the point of view of the direction of changes. When analyzing this aspect of the amendment, it should first be noted that the introduction of the provisions of Articles $77^1$ and $77^2$ to the Code in 1996 was based on the overall assumption that pay conditions should result from the autonomous labor law, which together with the voluntary nature of the conclusion of collective labor agreements meant the need to extend the codebook of law sources shaping these conditions with remuneration regulations constituting a mandatory legal act issued in a wide range. In order to evaluate the direction of the changes made, it is also important that the Constitution, enacted in 1997, provides in Article 20 that the solidarity, dialogue and cooperation of the social partners are, in addition to the freedom of economic activity and private property, the principles on which the social market economy is based, which is the foundation of the economic system of the Republic of Poland. By exposing the dialogue of the social partners, the Constitution gives it a special meaning, which should be reflected in ordinary legislation by introducing such specific solutions that would create the right conditions for dialogue. Obviously, one of the most important areas in which such solutions should be applied is the systemic establishment of the conditions of remuneration for work. It seems therefore that pay conditions should be determined in the autonomous labor law, preferably created through the dialogue of the social partners.

There may be some doubt as to whether this is indeed the case, as the conclusion of collective labor agreements does not constitute a common practice, and yet the legislator, contrary to the assumption indicated above, once again limits the scope of the obligation to issue remuneration regulations. However, while an employer hiring from 20 to 49 employees not covered by a collective labor agreement has been so far obliged to issue and hold this legal act, after the amendment of the Labor Code of 2016, he is usually entitled in this regard. This is due to the fact that, in general, there is no enterprise trade union acting on the premises of the employer, and only that organization could, by means of submitting an appropriate application, oblige the employer to issue the regulations. Only the trade union organization itself is also entitled to make arrangements with the employer as to the content of the regulations.

Insufficient contractual practice, combined with the limitation of the scope of the obligation to issue remuneration regulations, as well as maintaining the trade

union monopoly in the sphere of participation in shaping the statutory pay conditions, mean that the conditions of remuneration are established in the autonomous labor law created through dialogue between the social partners in the case of fewer and fewer employees, and in relation to increasingly more employees exclusively in the employment contract. In the case of determining the pay conditions in the employment contract, employees act in their relationships with the employer on their own. Their position is then much weaker than those of a collective nature, so there is a risk of imbalance in employment relations in favor of the employer.

Meanwhile, the establishment of the conditions of remuneration for work in the autonomous labor law, preferably as a result of the social partners' dialogue, is extremely important for the protection of employee rights and interests in this area. This is of particular importance in the context of respecting the principle of equal treatment of employees in employment[20], because the application of the system of pay conditions by the employer reduces the risk of violating this principle and also facilitates the detection of such cases.

The existence of systemic solutions in terms of the conditions of remuneration for work restricts the emergence of conflicts on this background and, consequently, promotes the maintenance of social peace, thus having positive effects also for the employer. It seems that imposing an obligation on the employer to form such solutions in remuneration regulations does not necessarily constitute an excessive or unnecessary burden, even if he employs only a few employees[21]. Indeed, he has more direct contacts with them, which makes it easier to determine their conditions of remuneration for work individually, but this fact does not in itself justify the claim that the obligation to introduce remuneration regulations is a manifestation an excessive or unnecessary burden for the employer. However, the key fact here is the above-mentioned general assumption underlying the introduction of remuneration regulations to the codebook of law sources, according to which pay conditions should result from the autonomous labor law, as well as the recognition of the social partners' dialogue in the Constitution as one of the pillars of the social market economy which is the basis of the economic system of the Republic of Poland. Equally important is the fact that the employer decides or co-decides on the form of solutions adopted in the regulations, including the structure of remuneration for work and the level of benefits that he can guarantee to employees (of course maintaining the amount of at least the minimum remuneration for work and respecting the above-mentioned principle of equal treatment in employment). The problem arises, however, when the employer is unable to convince the enterprise trade union acting on his premises to his rights. *De lege lata* failure to agree on the content of the remuneration

[20] See J. Piątkowski, *Przedstawicielstwo związkowe jako podmiot zakładowego dialogu społecznego,* [in:] *Zakładowy dialog społeczny,* ed. J. Stelina, Warsaw 2014, p. 72.

[21] The designer of the amendment seems to have a different opinion in relation to an employer employing from 20 to 49 employees not covered by a collective labor agreement. See justification for the government bill amending certain acts to improve the entrepreneurs' legal environment, item 2.2.1. The project was submitted to the Parliament on 9 November 2016. (Form No. 994).

regulations with the trade union excludes the lawful introduction of this act, and if the regulations have already been introduced - makes it impossible to adjust the statutory pay conditions to the changes taking place on the market.

All the above-mentioned points lead to the conclusion that the amendment to the Labor Code provisions on the remuneration regulations of 2016 does not entirely deserve a positive assessment. This does not mean, of course, that the relevant provisions did not require changes. It would be advisable, however, that these changes are aimed at the introduction of such a regulation that would optimally balance the interests of employees and the employer. It is particularly important for employees that, in the absence of a collective labor agreement, the pay conditions are determined by the remuneration regulations resulting from the social dialogue. On the other hand, from the employer's point of view, it seems important to create the possibility of adjusting the systemic conditions of remuneration for work to the dynamically changing market situation as fast as possible. It seems that the code provisions concerning remuneration regulations should reflect both of these needs.

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**Summary:** The article deals with the amendment of the Labour Code of the year 2016 concerning the scope of the obligation to introduce remuneration regulations. An employer with fewer than 50 employees has been released from the obligation to issue remuneration regulations except when he employs at least 20 employees not covered by a collective labour agreement and the enterprise trade union requests the introduction of regulations. Article $77^2$ of the Labour Code does not relate to specific issues concerning the trade union's request for remuneration regulations, which may give rise to questions of interpretation. It may affect the practice of issuing remuneration regulations. One may also wonder whether the direction of the above changes is correct – the changes restrict the role of remuneration regulations in determining the conditions of remuneration whereas the interpretation of Art. $77^1$ and $77^2$ of the Labour Code and Art. 20 of the Constitution leads to the conclusion that the conditions of remuneration should be determined in the autonomous labour law created through dialogue between social partners.

**Keywords:** remuneration regulations, employer's obligation to introduce remuneration regulations, conditions of remuneration for work, enterprise trade union, collective labour agreement

## ZAKRES OBOWIĄZKU USTALENIA REGULAMINU WYNAGRADZANIA PO NOWELIZACJI KODEKSU PRACY Z 2016 R.

**Streszczenie:** Dotychczas obowiązek ustalenia regulaminu wynagradzania spoczywał na pracodawcy zatrudniającym co najmniej 20 pracowników nieobjętych układem zbiorowym pracy. Nowelizacja kodeksu pracy z 2016 r. ograniczyła zakres tego obowiązku do pracodawcy zatrudniającego co najmniej 50 pracowników nieobjętych układem lub od 20 do 49 takich pracowników, jeżeli działa u niego zakładowa organizacja związkowa i występuje z wnioskiem o wydanie regulaminu. Przepisy kodeksu pracy nie regulują kwestii szczegółowych dotyczących wskazanego wniosku, co może powodować wątpliwości interpretacyjne, a te z kolei mogą wpływać negatywnie na praktykę ustalania regulaminu. Oceniając kierunek przeprowadzonych zmian, należy zauważyć, że pomniejszają one znaczenie regulaminu wynagradzania, podczas gdy analiza przepisów art. 771 i 772 k.p. oraz art. 20 Konstytucji skłania do twierdzenia, iż warunki płacy powinny być ustalane w autonomicznym prawie pracy, najlepiej tworzonym w drodze dialogu partnerów społecznych.

**Słowa kluczowe:** regulamin wynagradzania, obowiązek pracodawcy wydania regulaminu wynagradzania, warunki wynagradzania za pracę, zakładowa organizacja związkowa, układ zbiorowy pracy

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# CONCEPT AND TYPES OF COLLECTIVE LABOR AGREEMENTS IN LIGHT OF THE POLISH LABOR LAW

## GENERAL REMARKS

This article presents the concept and types of collective labor agreements in the Polish labor law. The law on collective labor agreements itself was reformed essentially in 1986 by the Act of 24 November 1986 amending the Labor Code Act - Journal of Laws No. 42, item 201) and then for the second time in 1994 by the Act of 29 September 1994 amending the Labor Code Act and amending certain Acts (Journal of Laws No. 113, item 547). The first change had the character of adjusting the legal regulations of collective labor agreements to the attempts undertaken to reform the command-and-distribution economy, while the reform of Section XI of the Labor Code, made in 1994, aimed at creating legal provisions fully adapted to the requirements of the market economy which was at the stage of development[1].

* M.Sc.
[1] T. Liszcz, *Prawo pracy*, Warsaw 2011, p. 45.

In 1986, in addition to collective labor agreements, institutions of company's collective agreements were established to deliberately eliminate gradually the so-called arrangements on company's remuneration systems known from the Act of 26 January 1984 on the establishment of company's remuneration systems (Journal of Laws of 1990, No. 69, item 407)[2]. In addition to collective labor agreements, company's collective agreements and arrangements on company's remuneration systems in workplaces in with trade unions operated, the whole pay systems could be regulated in the form of the so-called regulations provided for in Art. 23 of the Act of 26 January 1984[3]. At the time of the amendment of Section XI of the Labor Code, the company's collective labor agreements and the arrangements on the introduction of the company's remuneration system became by law company's collective labor agreements, while the issued regulations retained their binding power, until the entry into force of the company's collective labor agreement in a given enterprise, whereas as a result of the reform of the law on collective labor agreements realized in 1996 when the regulations issued in accordance with Art. 23 of the Act of 26 January 1984 became the regulations of remuneration in accordance with Art. $77^2$ of the Labor Code[4]. The company's collective arrangements on the introduction of the company's remuneration system and the regulations issued in accordance with Art. 23 of the Act of 26 January 1984 ceased to apply[5].

The Labor Code after the amendment does not provide a definition of a collective labor agreement, focusing on the way of the formation of the agreement, its content, contractual capacity and other issues. However, if we were to define what a collective agreement is, then it would be necessary to use initially the definition of Jan Herbert, in which he states that "A collective agreement is a normative arrangement, that is such a particular legal device that correctly associates the characteristics of each bilateral agreement with the characteristics specific for a general legal act.[6]"

Collective labor agreements belong to autonomous sources of labor law as they arise through negotiations between the parties to the employment relationship, act as a regulator of employment conditions and an instrument by means of which conflicts in the field of labor relations are resolved[7].

Art. 9 § 2 of the Labor Code defines the relations between the common (the Constitution, laws, regulations) and specific (collective agreements) sources of labor law in accordance with the principle of advantage. Art. 9 of the Labor Code

[2] J. Wratny, *Układy zbiorowe pracy* [in:] J. Wratny, K. Walczak (ed.), *Zbiorowe prawo pracy,* Warsaw 2009, p. 137-140.
[3] Ibidem, p. 141.
[4] E. Wronikowska, P. Nowik, *Zbiorowe prawo pracy*, Warsaw 2008, p. 75-94.
[5] L. Florek, *Źródła prawa pracy w polskim systemie* [in:] L. Florek (ed.), *Źródła prawa pracy*. Seria monografie, 2000, p. 61.
[6] J. Herbert, *Układy zbiorowe pracy*, Scientific Society of Organization and Management, Bydgoszcz 1997, p. 6.
[7] Ibidem, p. 7.

specifies the mechanisms of application priority between the various acts of labor law. In § 2 the relations between the common and specific sources of labor law are defined according to the principle of advantage. The provisions of collective labor agreements, collective arrangements as well as regulations and statutes may not be less favorable for employees than the provisions of the Labor Code and other laws and implementing acts[8].

On the other hand, Art. 9 § 3 of the Labor Code regulates the issues of internal normative relations within the framework of specific sources of labor law[9]. The dominant rule here is the principle of advantage, which means that the provisions of regulations and statutes may not be less favorable for employees than the provisions of collective labor agreements and collective arrangements[10].

The provisions of the collective labor agreement are binding for all employees working in the workplace during the period of the agreement, even those who are not members of trade unions[11].

In light of the provisions of Art. 240 of the Labor Code the collective agreement determines:

- the conditions that the content of the employment relationship should correspond to, however the agreement can not infringe the rights of third parties.
- the mutual obligations of the parties to the agreement, including those relating to the application of the agreement and the compliance with its provisions
- other matters that are not regulated in the provisions of labor law in a mandatory manner.

Collective agreements may also specify:

- the way of publishing the agreement
- the distribution of its content
- the procedure for making periodic assessments of the functioning of the agreement
- the procedure for explaining the content of the agreement's provisions
- the resolution of disputes between the parties[12]

Adjusting to the employees' legal situation of a given workplace, the working conditions existing in it, and the responsibilities and rights of the employees being shaped, collective labor agreements in force in these conditions are a source of differentiation of rights and obligations. They are therefore a very important instrument for the correct adjustment of the legal situation of employees to changing working conditions, required qualifications, contributing to resolving conflicts in

[8] K. Gonet, *Prawo pracy i ubezpieczeń społecznych,* Warsaw 2008, p. 84.
[9] W. Sanetra, *Źródła prawa pracy w świetle Konstytucji RP,* [in:] L. Florek (ed.), *Źródła prawa pracy*. Seria monografie, 2000, p. 9.
[10] Ibidem, p. 85.
[11] E. Osiecimski, *Branżowe układy zbiorowe pracy,* Wrocław 1976, p. 1.
[12] E. Wronikowska, P. Nowik, *Zbiorowe prawo pracy*, Warszawa 2008, p. 75.

the field of labor relations[13]. The Labor Code after the amendment does not provide a definition of a collective labor agreement, focusing on the way of the formation of the agreement, its content or contractual capacity[14]. However, one should adopt definitions that collective agreements are voluntary arrangements concluded between employers and employees represented by trade unions. They regulate the mutual rights and obligations of the parties to the employment relationship, including primarily working and pay conditions as well as other work-related benefits[15].

In connection with the above-mentioned features of collective agreements, one can create the following definition in which the collective agreement is understood as "a normative arrangement" concluded between the employees' representatives who are represented by trade unions and the employees' representatives (here the employer or the organization of employees may be representatives)[16]. On the basis of the wording "normative arrangement", different views are expressed concerning the very legal nature of collective labor agreements[17].

The study of labor law assumes that the collective labor agreement is an act consisting of non-homogeneous parts in terms of the legal nature. It is a diverse act because in its legal structure some elements having the obligatory nature are interwoven, while the effects of the collective agreement have the normative nature, as it results directly from Art. 9 of the Labor Code, which included collective labor agreements into the provisions of labor law[18].

The labor law doctrine itself distinguishes two theories on collective agreements. According to the first theory, collective labor agreements are defined as obligatory acts. The supporters of this theory point to the contracts of the agreement nature in which trade unions and employers form mutual rights and obligations on the basis of a bilateral declaration of will. Its nature is derived directly from the way of concluding the agreement, changing its content and resolving it. Its contractual nature is closely connected with the freedom of agreement, that is, the freedom of the parties to lay down the type of agreement, its subjective and objective scope, as well as with resolving the disputes directly connected with the conclusion of the agreement. But f we were to compare it with the principle of freedom, then its limited aspect is noticeable. The Code itself defines in which situations it is possible to proceed with negotiations and excludes certain issues in the scope of the agreement matter. It is worth noting here that certain employees can not be covered by the

[13] I. Sierocka, *Układy zbiorowe pracy,* Białystok 1996, p. 8.
[14] J. Herbert, *Układy zbiorowe pracy, Scientific Society of Organization and Management,* Bydgoszcz 1997, p. 6
[15] K.W. Baran, *Swoiste źródła prawa pracy,* [in:] K.W. Baran, *Prawo pracy i ubezpieczeń społecznych,* Warsaw 2013, p. 88.
[16] L. Florek, T. Zieliński, *Prawo pracy,* Warsaw 1997, p. 309.
[17] Ibidem, p.9.
[18] J. Herbert, *Układy…*, p. 7.

agreement and the parties only partially decide on the entry into force of the agreement, as it depends on the date of its registration[19].

According to the second theory - the theory of the law - collective agreements are qualified as normative acts that regulate the rights and obligations of employees and employers. Its agitators emphasize the fact that the agreements derive their legal power from the law which directly sanctions the standards created on the basis of the social partners' arrangements. The normative nature of the agreement derives from the statutory authorization - the parties acting at their will can not change it[20]. The provisions of the agreement are in force in the same way as the provisions of the law, as stated in Art. 9 of the Labor Code, according to which labor law is also understood as the provisions of collective labor agreements. The statutory nature is also manifested in the legal solutions which provide for detachment from the parties that concluded it - this refers above all to the obligation to apply the agreement regardless of the will of the trade union's employer and by imposing the obligation to apply it on the employer who is not the party to the agreement - at the time of taking over the workplace by another employer, the provisions of the agreement which employees were covered by prior to the takeover of the enterprise, are applied within one year from the acquisition date[21].

Therefore, it can be said that collective labor agreements have both contractual and statutory nature. The contractual one provides conditions for regulating the issues of working and pay conditions, while the normative one provides the protection of employees and the order in labor relations[22].

## COMPANY'S COLLECTIVE LABOR AGREEMENT

The provisions of the Labor Code make it possible to create collective labor agreements also at the level of the workplace. This solution deserves recognition because:

1. In the conditions of a free market economy, each enterprise is autonomous because it has its own and independent bodies, in each of them a trade union can operate. Therefore, there are entities that have a contractual capacity, but there are no grounds for depriving them of their rights in this respect.
2. Company's Collective Labor Agreements approximate the bilateral law to their creators. Employees are required not only to enforce but also respect the law, and since agreements are not imposed from the outside, it may be presumed that they will fully comply with their provisions[23].

Therefore, collective labor agreements should be understood as a minimum bi-

[19] Ibidem, p. 12.
[20] G. Goździewicz, *Szczególne właściwości norm prawa pracy,* Toruń 1988, p. 45.
[21] I. Sierocka, *Układy…*, p. 12.
[22] Ibidem, p. 12.
[23] G. Goździewicz, *Układy zbiorowe pracy,* [in:] W. Muszalski (ed.), *Kodeks pracy. Komentarz,* Warsaw 2011, p. 1052.

lateral agreements between the representatives of employees and the employer, in which the parties clearly define their rights and obligations as well as the consequences of their non-compliance. In exceptional situations a company's agreement may cover more than one employer if the employers are part of the same legal entity (Art. 241[28] § 1 of the Labor Code)[24]. The Company's Collective Labor Agreement is signed for employees employed by a particular employer who, within the meaning of Art. 3 of the amending Act of the Labor Code is an organizational unit, even if it does not have legal personality, and at the same time by natural persons if they employ employees. These may also be state-owned and cooperative enterprises, mixed capital and private-owned companies. Powers in this regard are not entitled to employees employed in the public sector units, who can be covered only by a multi-establishment agreement[25].

In connection with the above, one can draw the following thesis that the company's contractual capacity is entitled to the employer and the union structures which in their statutes have been formed as company's trade union organizations. An inter-company trade union organization operating on the premises of the employer can sign alias conclude the agreement. Accordingly, the following justification can be put forward that other entities and trade union authorities operating in the workplace are not entitled to conclude a collective labor agreement. This means that the founding committee that was set up to form a trade union or a multi-establishment structure does not have the company's contractual capacity[26].

The Collective Labor Agreement may be concluded when the employer is not covered by a multi-establishment agreement, as well as when he applies the provisions of such an agreement. In the first case, the provisions of the company's agreement, in accordance with the principle expressed in Art. 239 of the Labor Code, can not be less favorable than the provisions on the employment relationship. If a given workplace is covered by the provisions of a multi-establishment collective labor agreement, then according to Art. 241[26] of the Labor Code, the provisions of the collective agreement may not be less favorable than the provisions of a multi-establishment agreement. This rule should be observed throughout the entire period of the application of the company's agreement. At the time of its conclusion by the employer, he is covered by a multi-establishment agreement, and these provisions, which are less favorable, will be automatically replaced with more favorable provisions of the multi-establishment agreement[27].

Changes on the socio-economic and political ground that occurred in Poland made the situation of many economic entities dramatically deteriorate. As a result

[24] K.W. Baran, *Swoiste źródła…,* [in:] K.W. Baran, *Prawo pracy…*, p. 99.
[25] J. Herbert, *Układy…*, p. 18.
[26] I. Sierocka, *Układy…*, p. 15.
[27] Ibidem, p. 17.

of overcoming the difficulties, employers made and still continue making organizational, production, technological and economic changes that usually involve collective redundancies[28]. In order to avoid or possibly limit redundancies for the above-mentioned reasons in Art. 241[27] of the Labor Code, a limited derogation is taken into account, which means that the parties to the company's agreement may conclude an arrangement suspending the application of this agreement or some of its provisions for a period not longer than one year. Consequently, the provisions of Article 241[26] § l of the Labor Code are not applied[29]. Accordingly, legal provisions that result from a multi-establishment and a company's agreement - employment conditions and other acts constituting the basis for the establishment of an employment relationship, are not applied in this arrangement. The above arrangement should be reported to the register of agreements[30].

The content of the employment relationship itself in this period is governed by the provisions of the Labor Code and other legal acts. This limits employers in shaping the terms and conditions of employment contracts or other legal acts on the basis of which the employment relationship was established, thus ensuring compliance with statutory employee rights as a certain minimum.

Rules that provide for the creation of a collective labor agreement for one employer take into account an exception contained in Art. 241[28] of the Labor Code. Under this provision, a collective agreement may cover more than one employer if these employers form an economic organization - a legal entity. The above-mentioned provision applies especially to large, multi-employer enterprises in which internal organizational units use statutory, organizational or property separation and independence. Due to these considerations, they are treated within the meaning of Art. 3 of the Labor Code for employees or companies in which there are several employers. Under the above-mentioned provision individual workplaces may include a company's agreement or may be covered by an agreement concluded at the level of an economic organization[31].

The Code does not directly regulate the effects of the dissolution of the economic organization of employees being a party to the company's agreement. In connection with the above, the following conclusion can be drawn that the consequences of dissolution of this organization for workplaces previously covered by it are the same as for economic entities covered by a multi-establishment agreement[32]. In connection with the removal or dissolution of the party to the agreement so far representing the workplaces collected in it, the conclusion arises that in such a case one should apply

[28] J. Wratny, *Kodeks pracy. Komentarz*, Warsaw 2013, p. 455.
[29] J. Wratny, *Ewolucja zbiorowego prawa pracy w Polsce w latach 1980-1991,* Warsaw 1997, p. 91.
[30] J. Herbert, *Układy…*, p. 22.
[31] K. Gonet, *Prawo pracy i ubezpieczeń społecznych*, Warsaw 2011, p. 84.
[32] J. Wratny, *Kodeks pracy. Komentarz*, Warsaw 2013, p. 459.

the rule set out in Art. 241[19] of the Labor Code that concerns the dissolution of the employers' organization who are the party to the arrangement[33].

At the time of the operation of the company's agreement, the parties to the agreement may undergo organizational changes which involve the division or connection of the workplace. The rules applied in such a situation in relation to a multi-establishment agreement also take place in the case of agreements that are concluded at a lower level. In the light of Art. 241[29] of the Labor Code, at the time of the division of the workplace, all rights and obligations of the parties to the company's agreement are transferred to employers or trade union organizations resulting from the division[34]. They are obliged to comply with the provisions of the agreement. This obligation arises ex lege, without the need to submit any additional statements. At the moment of merging trade union organizations, all rights and obligations are automatically transferred to the newly created organization. At the moment when all trade union organizations are dissolved, the employer may withdraw from the application of the agreement in whole or in part after the expiration of the period of its termination. It is worth noting that the employer uses these rights only when one party to the agreement is missing, and therefore in the event of dissolution of all trade union organizations that are parties to the agreement, and not those that have concluded it[35].

The situations depicting the removal from the register are described in the Law on Trade Unions, namely Article 17 of the Act, which says that the Court deletes a trade union from the register when:

1) the body indicated in the statute has passed a resolution to dissolve the union;

2) the workplace in which the trade union has been operating so far has been removed from the relevant register due to the liquidation or bankruptcy of this workplace or its organizational and legal transformation, making it impossible to continue the activity of this union;

3) the number of union members stays below 10 for more than 3 months[36].

The deletion may also take place on the basis of Article 36 of the above-mentioned Act. It says:

„If the registration court finds that the trade union body conducts activities contrary to the Act, it sets a deadline of at least 14 days to adapt the activity of that body to the applicable law. Proceedings are initiated at the request of the competent regional prosecutor[37]. In the event of ineffective expiry of the period provided for in paragraph 1, the registration court may:

[33] Ibidem, p. 85.
[34] K.W. Baran, *System prawa pracy,* vol. VI, Warsaw 2016, p. 277-282.
[35] L. Florek, *Kodeks pracy*, Warsaw 2011, p. 111.
[36] http://isap.sejm.gov.pl/DetailsServlet?id=WDU19910550234 [access: 10.03.2017].
[37] http://isap.sejm.gov.pl/DetailsServlet?id=WDU19910550234 [access: 10.03.2017].

1) order a fine in respect of individual members of the union body in the amount specified in Art. 163 § 1 of the Code of Civil Procedure;

2) designate the authorities of the union the date of the new elections to the union body referred to in paragraph 1, under pain of suspension of the activity of this body.

3) if the measures referred to in paragraph 2 will prove ineffective, the registration court, at the request of the Minister of Justice, decides to delete the trade union from the register. The decision may be appealed.

4) for matters referred to in paragraphs 1-3, the provisions of Art. 18 are applied respectively.

5) trade union deleted by a valid decision from the register in accordance with paragraph 3 is obliged to cease its activities immediately, and within three months from the validation of this decision, make its liquidation in the manner provided in the statute[38].

In summary, it should be said that a collective agreement can not regulate the conditions of employees and managers on the employer's behalf. Our legislator defines the concept of "the person managing the workplace on behalf of the employer". It is assumed that these are people who manage the workplace, e.g. board members, business executives. According to the Supreme Court's decision, the Company's Proxy may be recognized as a manager on behalf of the employer. Analyzing this part of the article, it should be emphasized that the special role of collective labor agreements is primarily due to the fact that, coming to fruition through negotiations, agreements concluded by the employer or employers' organizations with trade unions, they are of great importance, both social and legal, for shaping correct relations in the sphere of labor law. This is the way to the agreement of social partners without interference and participation of authorities and state administration[39].

## MULTI-ESTABLISHMENT COLLECTIVE AGREEMENT

The provisions of the Labor Code provide for the possibility of creating multi-establishment collective labor agreements but do not specify at what territorial level they can be concluded. This concept of a multi-establishment agreement only indicates that it is to be a contract concluded for employees of more than one workplace. However, we can conclude that a multi-establishment agreement may be understood as a collective labor agreement set up by a competent statutory authority of a multi-establishment trade union organization and an employers' organization body[40].

[38] http://isap.sejm.gov.pl/DetailsServlet?id=WDU19910550234 [access: 10.03.2017].

[39] K. Jaśkowski, *Kodeks pracy: komentarz Lex: ustawy towarzyszące z orzecznictwem. Europejskie prawo pracy z orzecznictwem*, vol. 1 Warszawa 2012, p. 1063-1080.

[40] G. Goździewicz, *Układy zbiorowe pracy,* [in:] W. Muszalski (ed.), *Kodeks pracy. Komentarz*, Warsaw 2011, p. 1052.

Acting on the basis of Art. 241[14] of the Labor Code the collective labor agreement is concluded by the employees' parties, the competent statutory authority of a multi-establishment trade union organization (a nationwide trade union, a trade union association or a nationwide inter-trade union organization commonly known as a confederation). On the part of the employers, the competent statutory authority of the employers' organization acts on behalf of the employers associated in this organization[41]. The Act (the Labor Code) itself does not specify what characteristic features the organization should be distinguished by. Most probably it is about the Act on employers' organizations and Art. l, paragraph 2, which says: „An employer within the meaning of the Act is the entity referred to in Art. 3 of the Labor Code." In connection with the above, it can be deduced that only employers who conduct business activity have the right to set up employers' organizations. This means depriving the entities that belong to other types of associations or organizations of their contractual capacity[42].

The right to conclude a multi-establishment agreement is entitled de facto to nationwide business entities, on whose part the agreement may be concluded by the statutory bodies of these entities. The indication of these entities remains the responsibility of the Minister of Labor. From the wording of Art. 241[14] § 2 of the Labor Code it follows that the Minister has complete freedom in choosing nationwide economic organizations that obtain the right to conclude multi-establishment agreements. Only some entities may be authorized to conclude agreements directly[43].

By a nationwide entity we mean an organizational unit that can act and acts as a separate legal entity, in particular if it has legal personality, and its activity covers the entire country and has organizational structures in its territory. An example in the 90s are such state entities as:

1. PKP (Polish State Railways),
2. Poczta Polska (Polish Mail),
3. Państwowe Gospodarstwo Leśne „Lasy Państwowe" (The State Forest Holding „State Forests")[44].

The very interpretation of Art. 241[14] of the Labor Code indicates the ambiguity of this term. The legislator uses the word "parties" in a very broad sense, as it defines employees and employers covered by the arrangement or narrower. The content of the provision itself may lead to the following conclusion that by "party" we mean an entity authorized to negotiate and conclude a collective labor agreement in the interest of employees[45].

[41] Ibidem, p. 1053.
[42] I. Sierocka, *Układy* …, p. 37.
[43] Ibidem, p. 39.
[44] W. Sanetra, *Prawo pracy*, Białystok 1994, p. 234.
[45] Ibidem, p. 235.

According to Art. 241[15] of the Labor Code the initiative to conclude the agreement may be made by an organization of employers authorized to conclude an agreement on the part of employers and each multi-establishment trade union organization representing employees for whom the agreement is to be concluded[46]. Prior to the conclusion of the agreement itself, talks with trade union organizations are held in order to create a joint representation. The right to apply for such an initiative is entitled to all trade union organizations, even those that do not have contractual capacity. If one organization is entitled, then it can conclude an agreement, even if it is not a representative organization as it is understood by the Labor Code[47]. If there are more organizations with such entitlements, they must within 30 days establish a joint representation or act together. According to Art. 241[16] § 2 of the Labor Code it follows that organizations can enter negotiations only when, in due time, all organizations representing employees, not all trade union organizations, join negotiations under the procedure set out in § 1, trade union organizations that have entered negotiations are entitled to conduct negotiations[48]. These negotiations are conducted in the manner set out in § 1. However, if they do so, and as a consequence the representation will disintegrate, representative organizations will not be entitled to continue the interrupted negotiations. The consequence is the collapse of negotiations and the absence of an agreement. The legislator imposed the obligation of conducting negotiations by all unions, and on representative organizations only under specific conditions. The latter will not accept common representation or joint action[49].

The representativeness of trade unions should be emphasized in negotiations regarding a multi-establishment collective labor agreement at the request of a non-union employee. This principle is described in the Law on Trade Unions, specifically in Art. 7 which says "In terms of the collective rights and interests trade unions represent all employees regardless of their union membership". This is more concretized in Art. 30 which, according to its content, says: "In a workplace in which more than one trade union organization operates, each of them defends rights and represents the interests of its members. A non-union employee has the right to defend his rights under the terms of employees who are members of a union if the trade union chosen by him agrees to defend his labor rights"[50]. Adequately to Art. 7 paragraph l each trade union is representative for all employees. In the light of the resolution of the Supreme Court, a trade union is representative for employees in a multi-establishment labor agreement if it has structures associating employees of most workplaces on the territory of the Republic of Poland, regardless of the number of members[51].

[46] Z. Salwa, *Źródła prawa pracy,* [in:] K.W. Baran (ed.), *Zarys systemu prawa pracy,* Warsaw 2010, p. 397.
[47] U. Jelińska, *Ponadzakładowy układ zbiorowy pracy: informacje, wyjaśnienia, porady,* Warsaw 1997.
[48] Ibidem, p. 399.
[49] I. Sierocka, *Układy…*, p. 45.
[50] K. Gonet, *Prawo pracy i ubezpieczeń społecznych*, Warsaw 2011, p. 85.
[51] K.W. Baran, *Źródła prawa pracy,* [in:] K.W. Baran (ed.), *Prawo pracy,* Warsaw 2009, p. 99.

In the light of Art. 241[18] of the Labor Code "At the joint request of employers' organizations and multi-establishment trade unions that have concluded a multi-establishment agreement, the minister competent for labor issues may - when required by important social interest – extend, by regulation, the application of this agreement in whole or in part to employees employed by an employer not covered by any multi-establishment agreement, conducting business activity that is the same or similar to that of employers covered by this agreement, determined on the basis of separate provisions relating to the classification of business activities, after consulting the employer or the indicated by him employer's organization and the trade union organization if it operates on the premises of the employer". The extension of the application of a multi-establishment agreement is valid not longer than until the employer is covered by another multi-establishment agreement. This clause applies only to the normative provisions regulating the content of the employment relationship. At the time of withdrawal from the extension of the application of the agreement, the conditions of employment contracts or other acts constituting the basis for concluding an employment relationship do not automatically return to their original version but are valid until the expiration of the period of their termination[52].

In the light of Art. 241[19]§1 of the Labor Code "In the event of a connection or division of a trade union organization or employers' organization which has concluded a multi-establishment agreement, its rights and obligations are transferred to the organization resulting from the connection or division". These consequences should be considered in three aspects:

1. towards employees associated in a given organization,
2. employers,
3. in relation to the party to a multi-establishment agreement.

The most serious consequences relate to the party to a multi-establishment agreement, because the division of the trade union organization that has concluded the agreement not only changes the circle of addressees of the mandatory provisions of the agreement, but also entities authorized to undertake activities related to the agreement. From the very content of Art. 241[19] §1 of the Labor Code it follows that the connection or division of employers has the same consequences as in the trade unions. On one side of the multi-establishment agreement the same trade unions remain, but the new employers' organizations become the other side. This new organization represents the interests of its members and can independently (without acting with other organizations of employers) carry out the Open Actions regarding this agreement with the consequences not going beyond that organization[53]. The division itself means that in place of the previous agreement, there have arisen as many multi-establishment agreements as the given employers' organization divided

[52] Ibidem, p. 101.
[53] J. Wratny, *Kodeks pracy. Komentarz*, Warsaw 2011, p. 884-887.

into, having previously been the party to this agreement. On the basis of Art. 241[29] of the Labor Code it may be deduced, that each employer individually becomes a party to the agreement because the agreement is a two-sided arrangement. Therefore, the conclusion is that such a division causes complications in the functioning of entities that are to follow the multi-establishment collective labor agreement[54].

Another problem in a multi-establishment agreement is the dissolution of the party, because as a result of this operation automatically one party to the agreement is missing. However, it will continue to apply until the expiry of the period for which it was concluded or until the end of the period of notice, yet, no changes can be made to it. In order to avoid complications, the employer must submit a relevant statement in writing to the other parties to the multi-establishment collective labor agreement.

In conclusion, it should be stated that multi-establishment collective labor agreements are the foundation for collective labor agreements. Their issues and components highlight the complexity of labor law.

## INTERNATIONAL FRAMEWORK AGREEMENTS

In this subsection I will present the conditions related to the formation, development and implementation of framework agreements concluded on a global scale - otherwise referred to as international framework agreements (IFA – International Framework Agreements). In connection with the above, the question should be asked where the framework agreements having an international character come from?

Global development is widely perceived through the dynamics of the spread of supranational corporations. It is not entirely clear if this trend has a positive character from the point of view of the development of the world economy. However, it is an undeniable fact that supranational corporations employ millions of employees of different nationalities through their subsidiaries around the world. The result of this are far-reaching repercussions. One global manager, usually a single global operation strategy is implemented consistently at the local level. On the other hand, however, we also have different standards of employment and work, which is a derivative of the economic development of a given country, but also its ability to defend the collective interests of employees[55].

One of the responses of the employee representation to the increasing power of the corporations have been the attempts undertaken since the early 1960s of cross-border coordination of trade union cooperation between subsidiaries of the same concern. Some international secretariats of trade unions have undertaken this task.

[54] K.W. Baran, *Źródła prawa pracy,* [in:] K.W. Baran (ed.), *Prawo pracy,* Warsaw 2009, p. 102.
[55] S. Adamczyk, B. Surdykowska, *Międzynarodowe układy ramowe jako przykład dobrowolnie podejmowanych negocjacji między pracą a kapitałem*, [in:] Z. Góral (ed.), *Układy zbiorowe pracy,* Warsaw 2013, p. 132.

The visions of the leaders of the world trade union movement assumed that the deepening cooperation of trade unions will as a result lead to mutual support in protest actions. However, it turned out to be a complete misfire, because the negative approach on the part of corporate boards plus the trade unions themselves were not ready for such far-reaching restrictions of their trade union autonomy. The climate has changed radically, when the lack of global regulations have attracted attention of such international institutions as:

1. Organization for Economic Co-operation and Development (OECD)
2. International Labor Organization (ILO)[56].

The result was a document signed in 1976 under the name "Guidelines for Multinational Enterprises" revised in 2000 and then in 2006. The ILO adopted in 1977 a "Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy". The appearance of these documents was a breakthrough in the perception of non-economic aspects of the activities of supranational corporations. The disadvantage of these texts was that they assumed the total voluntary compliance to their records. At the same time, a discussion was initiated on the legislative strengthening the powers of employee representation in supranational corporations. As a result, in 1988 a supranational framework was signed, entitled "Common Point of View". It was not until 1994 that the creation of a Community legal framework for the institutions of the European Works Council became a real catalyst for the development of negotiation practice[57].

IFA was created as a result of imbalance between work and capital. It is visible in the global dimension. IFAs are concluded completely voluntarily, the question arises about the motive on the side of corporate boards. This is related to the so-called corporate social responsibility. The IFA's negotiation itself is closely related to the employee side to spreading international labor standards. All standards are included in the ILO declaration. It is indicated in the declaration that all member countries are obliged to comply with them. These are such elements as:

1. freedom of association and the rights of collective bargaining,
2. elimination of all forms of forced or compulsory labor,
3. effective elimination of child labor,
4. elimination of discrimination in the field of employment and occupation[58].

In the literature itself, it is pointed out that the moment of signing the majority of IFA can be classified into one of several categories:

1. The situation of a deepening conflict between local management and local employee representation, which is "broken" by intervention from the headquarters

[56] Ibidem, p. 133.
[57] B. Surdykowska, *Kodeks dobrych praktyk,* Warsaw 2008, p. 129-130.
[58] S. Adamczyk, B. Surdykowska, *Międzynarodowe układy ramowe jako…,* [in:] Z. Góral (ed.), *Układy...*, p. 134.

having its roots in Europe (IFA becomes an element of subordinating the standards of relations with employee representation in the global dimension).

2. The signing of the international framework comes as a result of the development of trade unions' networking and exerting coordinated pressure.

3. It is the result of a combined social campaign conducted by the trade unions and non-governmental organizations[59].

We can define IFAs as the agreements that are important, social instruments of employment policy, preventing differentiation of standards in competing European locations and around the world, and strengthening the social responsibility of multinational enterprises. IFA, despite its global reach, is still recognized as a European "invention", because the overwhelming majority of agreements are still signed in the European area. However, it should be noted that the majority of IFA as a reference point adopts international acts relating to fundamental rights such as:

1. Respect for the Universal Declaration of Human Rights,
2. The rules indicated in the Global Compact,
3. ILO Declaration on Fundamental Rights,
4. OECD guidelines,
5. Tripartite ILO declaration,
6. Rio Declaration on Sustainable Development,
7. The UN Convention on the Elimination of All Forms of Discrimination against Women,
8. The UN Convention on the Rights of the Child,
9. ILO Code of Practice on HIV / AIDS[60].

IFA content can be divided into four areas:

1. Minimum labor standards and minimum human rights standards;
2. Elements regarding the content of the employment relationship;
3. Guidelines for negotiation at the level of individual locations "soft issues" such as OHS (health and safety), training and restructuring;
4. Other standards[61].

I referred to the first area earlier. In the second one you can indicate, for example, a framework system in the Greek telecommunications concern OTE. It indicates the creation of stable employment through contracts for an unspecified period of time. In the third area, particularly advanced provisions concern training connected with the issue of restructuring and international and inter-corporation mobility, for example in Danone. The fourth area is the standards concerning for example ISO 14001 - environmental management. As for the IFA's legal status itself, there is no such lively discourse. It results from two premises:

[59] http://www.oecd.org/.
[60] http://www.mop.pl/html/index1.html.
[61] S. Adamczyk, B. Surdykowska, *Międzynarodowe układy ramowe jako…*, [in:] Z. Góral (ed.), *Układy...*, p. 135.

1. They are characterized by a far greater degree of generality of their records
2. There is no ambiguity in their case regarding the mandate of the signatories on the employee side[62].

It should be emphasized that IFA is not perceived as part of the internal corporate order. There is a noticeable emphasis put on the desire to include in the content of agreements elements that are to create a tool for internal organizing. In texts of many IFA, there are records that explicitly signal this aspect. The key issue, however, is its proper implementation.

In conclusion, it can be stated that international framework agreements are created in a certain legal vacuum. However, despite this and the obstacles that are posed to them, their quantitative and qualitative development is observed. This shows the determination to overcome cultural, mental and geographical barriers in connection with the activities of corporations[63].

## THE IMPORTANCE OF THE COLLECTIVE LABOR AGREEMENT

The genesis of collective labor agreements is related to the employees' striving to improve the pay and work conditions. They have their origin in 1911, where various agreements started to be given a normative character. Thus, collective agreements obtained the status of sources of labor law with the same power as the Act. This means that the contract can not depart from the provisions of the agreement to the disadvantage of employees, unless the Act provides otherwise. Thanks to this, an effective instrument for the protection of employees has evolved. The provisions of the agreements themselves may form the basis of employee claims. A collective labor agreement is considered to be a manifestation of social dialogue. In labor relations, it constitutes the clearest part of the dialogue, it leads to agreement and not only to an exchange of views. This results in giving the dialogue a legal form[64].

The very rules for running and concluding collective labor agreements are set out in Recommendation No.91 of the ILO of 1951 concerning collective agreements, according to which the procedure of a collective bargaining and dispute settlement resulting from the interpretation of the agreement should be established[65]. Confirmation of the guarantee of negotiations is Article 59 paragraph 2 of the Constitution. This provision does not refer to the Act as the reason for this may be the fact that the right to bargain is primarily freedom from state interference in matters of bargaining and concluding collective agreements.

[62] Ibidem, p. 147.
[63] S. Adamczyk, B. Surdykowska, *Międzynarodowe układy ramowe jako…*, [in:] Z. Góral (ed.), *Układy…*, p. 148-149.
[64] W. Szubert, *Układy zbiorowe pracy*, Warsaw 1960, p. 98.
[65] Ibidem, p. 99.

The collective labor agreement was shaped primarily as an element sustaining the achievements of employees (concessions of employers). They have contributed to the civilization of employment conditions. Genesis is associated with the organization of employees whose collectivity can better resist the employer's advantage. An important element of employee protection is collective security. The essential instruments of this protection are legal acts deriving from employers and trade unions. It is assumed that the protection of employee interests is an extension of union freedom. The agreement may regulate matters not covered by labor legislation as well as matters regulated by statutory provisions in a more favorable way than these[66]. It allows employees to obtain higher privileges than those that could appertain to employees without the agreement, increase employees' privileges when the employer's profit increases, which by nature is not reflected in labor legislation.

When discussing collective agreements, it must be said that they are an integral part of the market economy. Agreements define part of the employment conditions of employees. The possibility to determine these conditions must be regarded as a manifestation of freedom of economic activity within the meaning of Article 20 of the Constitution. On the other hand, contractual conditions of employment are a reflection of the market situation. The consequences of employment costs and their impact on efficiency are taken into account. Therefore, it can be said that collective agreements are a link between the market and the level of employee rights. This applies in particular to remuneration for work constituting the essential subject of the agreements. The collective labor agreement can also be an instrument of individualization of employment conditions, in the sense of adapting them to the conditions of business activity of particular workplaces, which in the market economy are inherently different for individual enterprises. The agreement allows the employer to react to the changing market situation, including the crisis situation. In particular, the employer may unilaterally terminate it Article 211 [7] of the Labor Code, sometimes it is related to the necessity to adapt to market conditions[67].

It is more sensitive than the Act on economic reality, as well as related social problems, an effective instrument of order in collective labor relations and, in particular, maintaining social peace, which undoubtedly serves not only the interests of employers but also the entire economy. It makes the whole labor law more flexible. Four ways can be distinguished:

1. general authorizations to depart from the rules in an agreement
2. authorization regarding certain sections of labor law
3. authorization regarding certain provisions

[66] L. Florek, *Znaczenie układów zbiorowych pracy,* [in:] Z. Góral (ed.), *Układy zbiorowe pracy*, Warsaw 2013, p. 51.
[67] Ł. Pisarczyk, *Ryzyko pracodawcy*, Warsaw 2008, p. 185.

4. resignation from part of the statutory regulation[68].

A good example of expanding the freedom of agreement are the regulations adopted in the Hungarian Labor Code, which concern daily working hours, length of settling periods, breaks at work and night time. As a result, interest in signing collective labor agreements has increased. A separate aspect of the importance of collective agreements is linked to the implementation of international agreements and EU law. As a rule, international agreements do not provide for such regulations, however in Art. 33 paragraph l of the European Social Charter according to which in the Member States that are mentioned in this provision, the provisions of the Charter are the subject of agreements concluded between employers or employers' organizations and employee organizations. Many conventions of the International Labor Organization provide for the implementation of their provisions by means of collective agreements. A similar role may be played by collective labor agreements within the scope of EU directives. According to Art. 155 of the Treaty on the functioning of the European Union, agreements concluded at Community level are implemented in accordance with the procedures and practices specific to the social partners and Member States[69].

The agreement can be a means of making the Community law implemented in a given country more flexible. An example is Art. 18 of Directive 2003/88, on the basis of which derogations from the majority of the provisions of the directive may be introduced by means of collective agreements and arrangements concluded between the social partners at national or regional level or in accordance with the principles established by them in collective labor agreements[70].

## FINAL REMARKS

In Polish law, the actual meaning of collective labor agreements is legally limited. It is dependent on many elements. The first one is the poor use of the agreements at a multi-establishment level – underdeveloped structures of multi-establishment trade unions. The importance of the agreement as an axis of flexibility of labor law depends on the situation in trade union movement. The agreements will command authority when the strength of trade unions increases. Flexibility of labor law in our conditions is problematic regardless of the legal solutions adopted. The atrophy of multi-establishment bargaining is quite often mentioned, because every union treats the agreement as a tool to protect their own interests and to strengthen their own position in the workplace[71]. Unfortunately, the importance of the agreements decreases

[68] L. Florek, *Znaczenie układów…,* [in:] Z. Góral (ed.), *Układy…,* p. 57.
[69] Journal of Laws of 1981, No 2, item 41.
[70] L. Florek, *Znaczenie układów…,* [in:] Z. Góral (ed.), *Układy…*, p. 63.
[71] U. Jelińska, *Układy zbiorowe pracy po nowelizacji,* Warsaw 2001.

in connection with their replacement by collective arrangements. They are a more convenient form of a collective agreement for the parties, due to the lack of control over their compliance with the law, as well as the non-functioning of the principle of trade union representativeness and the freedom to shape the side of the labor market. Remuneration regulations, introduced in 1996, contribute to the weakening of the agreements. It is not subject to registration, which is connected with the control of compliance of the regulations with the law. Therefore, the employer and unions easily choose the regulations as a legal act easier to adopt. Replacing the agreements with remuneration regulations impoverishes the entire collective protection of employees, limiting it only to the conditions of remuneration for work[72]. This tendency is getting stronger and stronger, displacing collective labor agreements. The mere replacement of a collective agreement with a collective arrangement or remuneration regulations is a denial of the historical development of labor law sources. Polish labor law as a result of ill-considered legislation, lack of strong trade unions on the premises of many employers, as well as opportunism of representatives / social partners does not take advantage of the chance to restore the full meaning of collective labor agreements[73].

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**Summary:** In my work I wanted to present the concept and types of collective agreements in the Polish labor law. I took into account all known kinds of collective agreements in the Polish legal system (collective agreement, multi-employer collective agreement) and so called International Framework Agreements. At the same time, I have presented the agreements as an integral part of the market economy within the meaning of Art. 20 of the Polish Constitution. I've showed the Agreement as an element that allows employers to react to changing market conditions, including the crisis situation – Art. $211^7$ of Labor Code and as an element of making the Community law more flexible.

**Keywords:** labor law, collective agreements, multi- employer collective agreement, International Framework Agreements, corporate social responsibility, international standards of work, International Organisation for Work.

## POJĘCIE i RODZAJE UKŁADÓW ZBIOROWYCH PRACY W ŚWIETLE POLSKIEGO PRAWA PRACY

**Streszczenie:** W niniejszym opracowaniu przedstawiono pojęcie i rodzaje układów zbiorowych pracy w świetle polskiego prawa pracy. Uwzględniono wszystkie rodzaje układów zbiorowych znane w polskim systemie prawnym (zbiorowy układ pracy, ponadzakładowy układ pracy) oraz tzw. międzynarodowe układy ramowe. Zaprezentowano jednocześnie układy jako integralną część gospodarki rynkowej w rozumieniu art. 20 Konstytucji. Przedstawiono ponadto układ jako element pozwalający pracodawcy reagować na zmieniającą się sytuację rynkową, w tym także na sytuację kryzysową – art. $211^7$ Kodeksu pracy oraz jako element uelastyczniający prawo UE.

**Słowa kluczowe:** prawo pracy, układy zbiorowe pacy, ponadzakładowe układy zbiorowe, międzynarodowe układy ramowe, międzynarodowe standardy pracy, znaczenie układów zbiorowych, Międzynarodowa Organizacja Pracy

# GLOSSES, OPINIONS, COMMENTARIES

Anna Marcinkowska*

# THE COMMENTARY TO THE DECISION OF THE SUPREME COURT OF 15 FEBRUARY 2012, II CRIMINAL CODE 193/2011 (OSNKW NO. 9-JURISPRUDENCE OF THE CRIMINAL AND THE MILITARY CHAMBER OF THE SUPREME COURT, ITEM 89)

**Judgement II CC 193/2011:**

**The penal liability for the effect justifies such contribution, which significantly increases the risk of this effect. To accept the punitive nature of contributing to the effect, it is necessary to establish that the perpetrator - irrespective of other conditions of objective attribution - has significantly increased the risk of the effect of a type of offense, which would most often be inferred from a material violation of the prudential rule of dealing with the legal right under the given conditions.**

The Supreme Court in case II Criminal Code 193/2011 considered the criminal liability of teachers organizing a Nativity play, who had given the pupils participating in the performance an order to use open fire, even though the students were dressed in flammable clothing. During the performance the students, changing the scripts themselves, lighted the candles earlier than it was planned, not on the stage, but among the audience, sitting in the eleventh row. They did this at the teacher's request and during the performance. It was then that one of the schoolgirl's costumes became inflamed, which in turn resulted in severe injuries to her body, qualified by the experts as a life-threatening illness. There was a total ban on the use of fire. The expert's opinion indicated that the candlesticks used in the presentation caused the deterioration of fire safety and caused the student's costume to ignite. The acquittal verdict was found to be legitimate.

The question then arises regarding the criteria for attributing the effect to those responsible for organizing the play and school management, i.e. serious injury, direct danger of loss of life or serious injury and fire hazard.

In the judgement, the Supreme Court considered the criteria for objectively attributing the effect, emphasizing that the subject matter of the evaluation should be the actual causal path leading to the effects of the offenses of Article 156 § 1, Article 160 § 2 and Article 164 § 2 the Criminal Code. The court also pointed out that the

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accused should be objectively aware of the significant increase in the risk of this causal event at the time of the behavior that triggered this episode. The basis for criminal liability for the effect can be only a contribution that significantly increases the risk of its occurrence. These arguments of the Supreme Court do not raise much doubt on the grounds of modern law of criminal law. It was more puzzling to conclude that due to the arbitrary change of the script by the students, the subject of the assessment could not have been a hypothetical causal nexus consistent with the script, but rather 'the organization of the play itself.'

The result of this judgement was the reopening of the discussion on penal liability for effect. This was connected with the statement by the Supreme Court that such responsibility justifies such a contribution which significantly increases the risk of the effect of a type of offense, which in turn should be based on a material breach of the rules of prudent conduct under the given conditions. Not every unlawful act deserves to be punishable, and the attribution of an unintended offense should be linked to the scope of the sanctioning norm for a particular offense, and not solely to the unlawfulness of the act or omission. Publications analysing this provision pointed out that the rationale of objectively attributing the effect was taken from another point of view, which was expressed by the emphasis placed on a significant increase in the risk of the effect of the perpetrator, which in turn should be deduced from the materiality of the breach of the rules of prudential conduct itself.

This "materiality" has in some sense become a platform for *ex ante* risk assessment. This depends in particular on the probability of occurrence of such an event and the possibility of objectively attributing the effect to the guarantor[1]. In an approving commentary Mikolaj Malecki shared the conviction of the Supreme Court that the probability of such an incident, against the background of established facts, was not high. This statement was expressed in the view that there was no serious failure to supervise the safety of students. The author shared the Court's argument that there was no update of the obligation to prevent the effect, since the organization of the play did not involve a significant risk of occurrence of the effects referred to in Article 156 or 160 the Criminal Code.

The Supreme Court assessing the facts of this particular case concluded that the actors of that play were adults or were about to reach the age of majority (17 years), which allowed them to know that they knew how to handle fire and have the necessary life experience. They can independently take steps that would prevent the occurrence of a dangerous situation. Although there was a violation of the fire regulations, this was not a sufficient condition for criminal liability (it should be borne in mind that the school strictly prohibited handling fire). The emphasis was placed on the breach of the rule of procedure in relation to particular facts.

[1] M. Małecki, *Glosa aprobująca do postanowienia SN z dnia 15 lutego 2012 r.,* GSP Decision 2013/3/89-106.

In this way, it was considered that the main cause of the effect was the disobedient (contrary to the script) behavior of the pupils in the guise of the angels. Originally, the students were supposed to light the candles on stage and only such events should be evaluated for actual risk. These students, as indicated above, had previously sat in the audience. According to the Supreme Court, with appropriate and predetermined proceedings, such risk was not high, which should be essential for assessing the criteria for objective attribution. This approach has also been criticized.

It has been pointed out that the consequence of this is the overly general approach to the liability of the accused and the Supreme Court focusing on objectively attributed criteria without taking into account the rules of responsibility for co-operating in the criminal stadial form. Indeed, in the discussed judiciary a lot of space was devoted to the responsibility of the "play organizers" for the effect caused by the behavior of a third party. The question therefore is whether only the predictability of a significant outcome determines criminal liability or whether the objective predictability resulting from the violation of the precautionary principle is sufficient to assume responsibility for the effect. This, in turn, is connected with defining the obligations of the guarantor, not only on the basis of Article 9 § 2 the Criminal Code, especially the attribution of the offense of omission to the offender, especially since some types of offenses, such as land, water or air disaster, include an effect that is not related to physical change in the external world. Going forward, one has to ask about the role of the rationale of an objective attribution of the predictability of a significant degree of probability of occurrence of a particular causal course.

In the realities of this particular case, there was no doubt that there had been a violation of the fire regulations, as confirmed by the unambiguous opinion of the expert. The requirement for responsible behavior with fire was not only for students dressed in flammable clothing, but also for the play's organizers and the particular teacher who wrote the script and was obliged to watch over its proper execution.

While it is possible to agree with the Supreme Court that the correct execution of the script (lanterns on the stage rather than the audience) was not associated with a high probability of a tragic outcome, the question may be raised whether, in the case of improper execution of the script, the risk of the occurrence of this tragic effect would indeed have increased? An analysis of the facts and a specific set of events allow us to conclude that the change of the script was an event that directly led to the result. The students lit the candles earlier than they were supposed to and not on the stage, but in the clam, in the audience, which numbered about 300 people. As evidenced by the description of the allegations being investigated by the Supreme Court, fire inflammation was, however, at the behest of one of the accused, who was the organizer of the Christmas play. There is no doubt that this command violated the precautionary principle, even though the girls did not follow this command and probably lit the candles too early, so before going out on stage. The principal

question to be asked is whether the guarantor (the teacher) has created an excessive risk of harm in the form of an infringement of a legitimate good, treated as a consequence of the failure to do activity to which the guarantor was obliged, and above all whether it is possible to consider his or her liability on the basis of Article 2 the Criminal Code as a referring person (see the judgement of the Supreme Court dated 9 May 2012, V Criminal Code KK 21/02, LEX No. 54393).

Another question concerns the fact when an offender can be attributed the effect of a third party as a result of the unlawful breach of the guarantor's obligation? Both these questions must be related to the accuracy of the charges presented to the defendants.

So far, it has been assumed that, in order to attribute an effect to the danger of a particular good, it is irrelevant whether the person obliged to act did not interfere with the immediate threat, or by failing to comply with the obligation increased the immediate threat that can not be attributed to the obligee (Supreme Court of 5 November 2002, IV KKN 347/99). From this point of view, the objective attribution of the effect of omission is based on the finding that if the obliged had taken the ordered action, the consequence would not have occurred[2]. Going forward, since the guarantor must conduct behavior that aims to prevent or reduce a significant risk of its occurrence, it is necessary to determine whether the teacher was required to supervise such a course of the scenario in such a way as to preclude the increase of the risk (SC did not make reasoning in this direction).

The answer to this question must be affirmative, especially when we look at this problem from the legal point of view of the guarantor. In the analyzed situation, the teacher was an entity with a special legal obligation. Here the legal norm imposed on him, as a person defined by certain characteristics, distinction due to the relationship to the good protected by the norm of law[3]. The teacher therefore belongs to the group of subjects that is addressed to such an obligation. This particular nature must also influence the assessment of the fulfillment of its obligation to act.

The teacher knew that, in school conditions, the use of fire at the Nativity play was a violation of the precautionary principles. Therefore, his duty was to minimize any danger – already "in the bud". The practical implementation of this obligation was to take all the actions that were associated with observing the script. Schoolgirls, in spite of this script, occupied places among other people, with a significant reduction in the movement in a lack of space, and by executing the command of lighting the candles, immediately created a state of immediate danger. Direct executors, departing from the script, behaved in a manner contrary to the previously issued command. However, there has also been a violation of the precautionary principle on the part of the teacher, which has been left in the causal nexus link to

[2] A. Zoll (ed.), *Kodeks karny. Część ogólna. Komentarz do art. 2 k.k.*, Warsaw 2012, p. 92.
[3] Ibidem, p. 94.

the effect. The teacher possessed a specific "power over the situation". This was a dominant position in relation to the students, whose role consisted in command execution. It is difficult to imagine that such orders, even completely unjustified, in such a specific situational context as the ongoing performance may have been challenged by the addressees. The third person (the student) who lit the candle and consequently led to the occurrence of the effect was characterized by the limitation of the autonomous decision of the will, which resulted in increased responsibility for the occurrence of the so-promoter-guarantor[4]. Although there has been an inclusion of another subject (the student) in the chain of causes, the relationship of subordination between the two subjects greatly increases the effect attributed to the teacher at the normative level. Therefore, responsibility should be attached not only to the issue lighting the candle itself and the presumption that the order was to be executed in accordance with the script, but not the omission of certain reaction with the appropriate *ex ante* response, that is to say when it was necessary for the guarantor to be involved in causation.

It can be said that the 'devil is in the details'. Of course, it is difficult to require the teacher, in the dynamic course of events, to stand directly with each student who lit the candle, but where there is a risk of harm and a sense of danger (in this case, the participants were instructed to act according to the script), there should be not only basic but also specific actions aimed at eliminating the danger (the Supreme Court stated differently saying that the play organization itself was not related to the increased risk of effects of Article 156 § 2 and 160 § 1 the Criminal Code); It was enough to instruct students who were close to the age of majority.

The attribution of the offender's effect to the offender should be linked not to the causal effect of the offender, but above all to the fact that he/she has not interfered with the existing obligation. This omission must, of course, be unlawful and based solely on the normative association with the effect. This association must result from the creation or substantial enhancement of a legally unacceptable danger to a legitimate interest. The risk of negative effect is therefore "created" by the guarantor, but the mere fact that the mere omission to fulfill the obligation has occurred can not prejudge the attribution of the effect. This can be demonstrated by the fact that the hazard has actually materialized, and the guarantor may and should have reversed it, and the omitted action would have ruled out the effect[5].

Agnieszka Barczak-Oplustil also raised another problem concerning the rationale of objectively attributing an effect in the form of predictability of a given causal event. The requirement of substantial predictability as a general rationale of liability would

[4] A. Jezusek, *Glosa aprobująca z pewnymi zastrzeżeniami*, „Przegląd Sądowy" 2014, no. 3, p. 125 and following.

[5] J. Giezek (ed.), *Kodeks karny. Część ogólna. Komentarz do art. 2 k.k.*, Warsaw 2012, p. 38; J. Majewski, *Prawnokarne przypisanie skutku przy zaniechaniu,* Kraków 1997, p. 114.

have the effect of depreciating the importance of the prohibition itself. The standard of conduct provided for in such a ban (here the ban on the use of fire on the school premises) would be significantly impaired in practice[6]. In turn, T. Bojarski noted that it is not correct to give the essential meaning of "materiality" to the effect investigated itself and the materiality of the contribution should be related primarily to the scope of responsibility. Each contributing to the effect becomes a rationale of responsibility and it is sufficient to take into account the subjective limitation resulting from the principle of guilt[7]. According to the aforementioned, the materiality of the contribution may affect the scope of responsibility, rather than prejudge about it.

Such edition of charges determined the Supreme Court's decision, which had to focus on assessing the organization of the play and assessing the risk of a material increase in effect. It is reasonable to assume that another edition of charges, consisting in a general indication of lack of diligence in caring for students who refrain from taking action to eliminate the threat, would result in the accused being guilty.

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**Summary:** The commented sentence concerns the assessment of the responsibility for the result. The Supreme Court admitted that the proving of the casual nexus is necessary for the establishment of the perpetrator's crime's responsibility and the perpetrator's behavior should substantially improve the risk of its appearance.
According to the Supreme Court not every increase of risk is punishable. The author indicates also the fact, what the rules infringement of careful proceedings with the legal interest in specific conditions consist of. In the gloss there was spotlighted another possibility of the criminal responsibilities interpretation of the accused teachers, particularly their negligence as persons who were obliged to the special protection of the performance's participants (students) in a specific place (school) where the accident took place.

**Keywords:** result**,** responsibility, risk, casual nexus, obligation

[6] A. Barczak-Oplustil, *Glosa do postanowienia SN z dnia 15 lutego 2012 r.*, II Criminal Code 193/2011, CzPKiNP 2012/4/149-157.
[7] T. Bojarski (ed.), *Kodeks karny. Komentarz do art. 2 k.k.*, Warsaw 2013.

## GLOSA DO POSTANOWIENIA SĄDU NAJWYŻSZEGO Z DNIA 15.02.2012 R., II KK 193/2011 (OSNKW NR 9, POZ. 89)

**Streszczenie:** Komentowany wyrok zajmuje się oceną odpowiedzialności za skutek. Sąd Najwyższy uznał, że dla ustalenia odpowiedzialności sprawcy przestępstwa konieczne jest wykazanie związku przyczynowego, a zachowanie sprawcy powinno istotnie zwiększać ryzyko jego wystąpienia. Zdaniem SN nie każde zwiększenie ryzyka jest karalne. Autorka wskazuje także, na czym powinno polegać istotne naruszenie reguł ostrożnego postępowania z dobrem prawnym w danych warunkach. W glosie zwrócono jednak uwagę na możliwość innego ujęcia odpowiedzialności karnej oskarżonych nauczycielek, w szczególności na popełnione przez nie zaniedbania jako osób, które były zobowiązane do szczególnej opieki nad uczestnikami przedstawienia (uczniami), w miejscu o szczególnym charakterze, gdzie doszło do zdarzenia (szkoła).

**Słowa kluczowe:** skutek**,** odpowiedzialność**,** ryzyko**,** związek przyczynowy**,** obowiązek

# REPORTS

# REPORT FROM THE SCIENTIFIC CONFERENCE "MEDIATION IN POLISH LEGAL ORDER: DOCTRINE – LEGAL REGULATIONS – PRACTICE"

On May 22, 2017, the Faculty of Law and Administration at UMCS in Lublin held a scientific conference entitled "Mediation in Polish legal order: doctrine - legal regulations - practice". The honorary presidency was held by the Ministry of Justice, represented by dr Aneta Jakubiak-Mirończuk. The conference was opened by Dean of the Faculty of Law and Administration UMCS, Prof. dr hab. Anna Przyborowska-Klimczak. The opening speeches were also delivered by:

– Prof. dr hab. Leszek Leszczyński, Director of the Institute of History and Theory of State and Law WPiA UMCS;

– Dr hab., prof. UMCS Andrzej Korybski, chairman of the scientific committee of the conference;

– Stanisław Estreich, Dean of the District Bar Association in Lublin;

– Director of the Department of Strategy and European Funds of the Ministry of Justice, dr Aneta Jakubiak-Mirończuk and on behalf of the President of the District Court in Lublin, Eleonora Porębiak-Tymecka, District Court Judge.

The debate began with a plenary session entitled "Mediation in legal doctrine and judicial practice" moderated by dr hab Andrzej Korybski, Associate Prof. It was attended by:

1. Eleonora Porębiak-Tymecka, District Court Judge, with the paper entitled: *Mediation in court practice (an example of the Lublin court district)*, presenting the beginnings of the development of mediation in the Lubelskie District;

2. Prof. dr hab. Leszek Leszczyński (Department of Theory and Philosophy of Law, UMCS) with the paper entitled *Mediation and a judicial type of the application of law*, in which the models of both processes have been compared;

3. Dr Aneta Jakubiak-Mirończuk (Ministry of Justice and the Faculty of Law and Administration UKSW in Warsaw) with a speech entitled *The effectiveness of mediation and access to justice* – presenting the Ministry of Justice's ongoing efforts in promoting and developing mediation;

4. Dr Barbara J. Pawlak (Regional Bar Association in Łódź, mediator, member of the Social Council for Alternative Methods of Resolution of Conflicts and Arguments) with the paper entitled *Mediation in the field of domestic violence,* concerning the perspective of corrective justice from the victim's point of view;

5. Mgr Robert Kaszczyszyn (mediator, Polish Mediation Centre) with the paper *The decision-making processes of mediators during the mediation process,* in

which he referred to the most "mysterious" mediation issue, namely the course of mediation and what is going on between the participants.

The plenary session finished with a discussion. After the coffee break, the conference was continued in three panels.

The first panel entitled "Mediation in Polish private law" was moderated by Prof. dr hab. Leszek Leszczyński. The panel was attended by:

1. Dr hab., prof. WSH Anna Kalisz (Office of Jurisprudence of the Chief Administrative Court in Warsaw, Humanitas University in Sosnowiec) with the paper entitled *Mediator's status in civil cases in the light of the inclusion of common courts in the system*, in which the most recent changes in civilian mediation were analysed;
2. Dr hab., Associate Prof. WSEI Katarzyna Popik (Faculty of Administration and Economics at the University of Economics and Innovation in Lublin) and Marta Gierczak (District Court Judge at rest) with the speech entitled *Mediation in family law: obligatory or facultative nature?,* where the role of plenipotentiaries was discussed and *de lege ferenda* postulates on mandatory referral to family mediation were discussed;
3. Dr Adam Zienkiewicz (Center for Economic Mediation at OIRP in Olsztyn, Department of Philosophy and Law Policy at the University of Warmia and Mazury in Olsztyn) with the paper entitled *Conciliatory settlement of economic disputes (reflections on the prospects of the Centre for Business Mediation at OIRP in Olsztyn),* where the role of legal counsel is discussed in encouraging and supporting clients in economic mediation;
4. Dr Wojciech Graliński (UMCS) with the presentation entitled *Guarantees of impartiality of the permanent mediator in civil cases,* which discussed impartiality in the context of entities other than the deciding ones;
5. Dr Piotr Szczekocki with the paper entitled *Mediation and enforcement proceedings*, which presented the dependence between these institutions;
6. Mgr Katarzyna Hanas (UMCS) with the presentation entitled *Mediation and the good of the child,* where the clause of the wellbeing of the child is understood as a "weighted" rule with the rule of neutrality of mediation;
7. Mgr Paweł Kłos (Polish Mediation Centre, Lublin Branch, UMCS) with the speech entitled *Confidentiality of mediation proceedings in civil cases against the concept of conjugated norms,* concerning the mystery of mediation as a legal duty and an ethical mediator.

The second panel entitled "Public law aspects of mediation in Polish legal order" was moderated by dr hab. Małgorzata Stefaniuk, Associate Prof. The participants in this panel were:

1. Dr hab. Ewa Kruk (UMCS) with the speech entitled *Criminal mediation as a form of conflict resolution in criminal cases*, where the title issue was presented from the perspective of preparatory proceedings;

2. Dr Jakub Kosowski (UMCS) with the paper entitled *Mediation in sports disputes*, concerning the criminal, civil and administrative aspects and the Sports Act;

3. Mgr Katarzyna Luty (Leon Koźmiński Academy in Warsaw) with the paper entitled *The principles of impartiality and neutrality of the mediator (example of the law on medical chambers),* where analogies to the Code of Criminal Procedure are shown;

4. Mgr Natalia Kurek (UMCS) with the paper *Reasons for non-use of mediation by the courts in administrative court proceedings;*

5. Dr hab. Bartosz Liżewski (UMCS) and barr Michał Liżewski (Regional Bar Association in Warsaw) with the paper *Public-private partnership and the institution of mediation (theoretical and legal aspects),* showing the elements of contractual and judicial social mediation within the title institution.

The last, third panel entitled "The issues of mediation in theoretical and legal perspective" was moderated by dr hab. Anna Kalisz, Associate Prof. The following attendees presented their papers:

1. Dr hab. Wojciech Dziedziak (UMCS) – *Mediation and justice of the decision resolving a dispute,* presenting a classic approach to justice as a contraindication to mediation;

2. Dr Marzena Myślińska (UMCS) – *Mediation functions implemented by the mediator in mediation,* ordering indirect and direct goals of mediation;

3. Dr hab., Prof. UMCS Andrzej Korybski (UMCS) – *The requirement for professional vocational preparation and legal responsibility of the mediator,* emphasising the need for a regulatory framework for mediation and mediators.

Each of the above panels ended with a discussion which was participated mainly by: dr hab. Ewa Kruk, dr hab. Anna Kalisz, dr Adam Zienkiewicz, dr hab. Wojciech Dziedziak, District Court Judge Wojciech Wolski, District Court Judge Eleonora Porębiak-Tymecka, mediator Robert Kaszczyszyn and mgr Paweł Kłos. The conference summary, including the parallel student-doctoral panel organised by the Student Scientific Club of Mediation and Negotiation at UMCS in Lublin, was made by Professors Andrzej Korybski and Leszek Leszczyński.

Anna Kalisz

# „MUSEUMS – THEORY AND PRACTICE. TO BE OR NOT TO BE IN THE CONTEMPORARY WORLD" – A CONFERENCE SUMMARY

On May 15th 2017 a national scholarly conference entitled „Museums – Theory and Practice. To be or not to be in the contemporary world." took place at Humanitas University in Sosnowiec. The conference was organized by the Administration and Law Institute of Humanitas University, along with the Promotion Department, the „Sztygarka" City Museum in Dąbrowa Górnicza, the City Museum in Jaworzno, the Schoen's Palace Museum in Sonowiec and the Scientific Association of Polish Archeologists (Upper-Silesian Department).

The Authorities of the University and the guests were all welcomed by the Organizors. The conference was oficially opened by the Rector of Humanitas University – Professor Michał Kaczmarczyk, PhD, who emphasized the significance and topicality of the subject matter. The introductory speech was given by Humanitas University Professor Dariusz Rozmus, PhD, who, after having welcomed the guests and elaborated on the agenda of the conference, detailed its thematic scope.

The scientific part of the conference was opened by the introductory lectures given by: the University of Gdańsk Professor Kamil Zeidler, Phd, the University of Warsaw Professor Maciej Trzciński, Phd, Humanitas University Professor Dariusz Rozmus, PhD, Alicja Jagielska-Burduk, PhD from Kazimierz Wielki University in Bydgoszcz, Wojciech Szafrański, PhD from Adam Mickiewicz University in Poznań. The further part of the conference was divided into three parallel panels during which 23 speakers presented their papers altogether. The conference was closed with a summary given by its moderators, which was followed by a discussion of all the Participants.

Anna Rogacka-Łukasik

# REVIEWS

# DIANA MAKSIMIUK, *1956 IN POLAND. COURTS, PROSECUTION, CRIMINAL LAW,* IPN BIAŁYSTOK 2016, PP. 357.

In November 2016 a Diana Maksimiuk's book entitled *1956 in Poland. Courts, prosecution, criminal law* was published by the Institute of National Remembrance in Białystok. The book constitutes an analysis of the results of the ideological de-Stalinization campaign against the background of the events taking place in the People's Republic of Poland in 1956. The analysis has been made through the prism of the then ongoing scholar and journalistic discussions on the criminal law, and the prosecution service, and court system.

The thaw of 1956. The year of change; tension and hope for going back to normality free from terror, expectations of making amends and the rehabilitation of the falsely convicted and executed. The headlines from that time say: „the Gomułka thaw," „October 1956." The reason for such a turn in the internal policies of the People's Republic of Poland was known: most of all the death of Josef Wissarionowitsch - „the host," as he used to be referred to by Józef Światło in Radio Free Europe. His death caused quite a turmoil and anxiety in the party, as Beria had his own sovereign weapon in the form of NKVD. Ławrientij Beria, taking advantage of his strong position in the party and the security apparatus, began the liberalization of law.

The first crucial decision was announcing amnesty, which was to win favor with the society. Beria›s further plans did not meet with his party comrades› favor, the effect of which was a conspiracy by Nikita Khrushchev which finally lead to Beria›s detention in June 1953. The new rulers chosen through collegiate management, headed by Nikita Khrushchev, introduced hasty changes in the economic and foreign policy of the USSR. In his secret paper given on the 20th convention of the CPRF, Nikita Khrushchev announced that „[...] yesterday's leader of progressive humankind, the inspiration of the world, the father of the Soviet nation, the great coryphaeus of science, the greatest military genius and the greatest genius in history at all, was a murderer of millions, a torturer, a paranoiac, and an ignoramus on military issues, who lead the Soviet Union to the edge of the abyss," which became known worldwide soon after.

Undoubtedly, it was a selective criticism directed at Stalin as the one guilty of reprisals and distortions in an ideologically right system. A wind of big change could be felt, nevertheless. According to the operative rule and past practice, the satellite countries began to copy the Soviet solutions.

Meanwhile, for the People's Republic of Poland the year 1953 was still dominated by terror and „escalating class conflicts resulting from building socialism." Two months after Stalin's death, ten officers were executed as a result of general Stanisław Tatar's case. However, at the turn of 1953 and 1954 first symptoms of the upcoming changes could be seen, which was manifested in the party's policy concerning judicature, as there was an end of „[...] the time of massive political processes of people who had not committed the crimes they were accused of […]. It also meant the end of judges' great fear of the secret police officers and the limitation of >>manual control<< of the courts by the party."

An event that the Stalinist regime in the People's Republic of Poland was convulsed by was the high-profile case of Józef Światło's breakout in December 1953, the deputy director of 10th Department of the Ministry of Public Security, who ran away West. A consequence f that was a series of interviews given to Radio Free Europe divulging the activities of the security apparatus and the bloody history of the Ministry of Public Security.

So much for the introduction, as it is impossible not to mention the reason for the thaw after the nightmare of totalitarianism, which the criminal communist system with its army of executors definitely was.

The question is whether in 1956 the transformations that took place in Poland were real or it was just „a change of setting." Such a question is Diana Maksimiuk's issue in her monograph. The Author scrutinizes the process of transformations in the People's Republic of Poland as far as the institutions mentioned in the very title of her work are concerned., and in the criminal law, too. She does not limit her analysis to the political changes or the transformations in the security apparatus, however, as she believes these fields to be analyzed thoroughly. The Author focuses on the area which has been only partially discovered and, would that it is the most significant one as it constituted the basic tool of the terror, mainly the transformations in the judicial system. Her analysis reaches further than 1956, referring to the effects of actions taken before the contractual date of the „thaw" up until 1959. In her work, Diana Maksimiuk scrutinizes the changes planned to be introduced within the scope of the judicial system and the criminal law, proving how closely related politics and judiciary used to be.

The reviewed work is comprehensive and detailed, based on numerous sources coming from the Archive of New Files in Warsaw, the Institute of National Remembrance, the National Archive in Białystok, dozens of volumes of printed sources, scientific and political commentary texts, as well as remembrances and interviews. The archives of Polish United Workers' Party (PZPR) constituted a significant research material, and so did numerous minutes from the meetings of the party leadership, report notes, as well as law journals and daily newspapers. The Author used the already existing scientific literature scrupulously, which has its confirmation in the

bibliography containing almost 200 items being monographs and articles published after 1989 only.

The work is divided in a thematic order, according to the institutions mentioned in the title and it also contains a chapter devoted to criminal law. It has been crowned with issues common to the judiciary, significant especially for the court system from the perspective of the then ongoing process of de-Stalinization, such as the notion of law and order, the problems of 1956 amnesty and the rehabilitation of political prisoners. The structure of each chapter is based on the scheme: who, what, how and what for, which gives the effect of clarity, avoiding chaos and too much information at the same time. The aforementioned impressive bibliography results in an abundance of footnotes, which not only refer to the sources, but also develop questions which might not be directly related to described facts, but they explain thoroughly their origins or describe people referred to in the research material. It completes the whole picture of events and enables the reader to build a complete vision of the situation, as well as it inspires to draw your own conclusions without referring to other sources of knowledge.

An essential part of scrutinizing the topic is definitely the introduction to the very phenomenon of „the thaw," without which it would be difficult for the reader to perceive how big the damage to the judiciary was, in its broadest sense. Diana Maksimiuk condensed the ideological depravation and degradation of morality, the most characteristic of the Stalinist period, which put a judge into the role of an executor: „judges acted with an intention to kill the accused"[1]. Following the researchers of the court system and law of those times, the Author indicated the steersmen of the unlawful machine of lawlessness and their methods of action without the elaboration getting too lengthy, which constitutes a big advantage of the book, as the reader is to get the gist of the background for later events instead of discovering the whole truth of the Stalinist period. The Author emphasizes the close relationship of politics and the judiciary through an array of institutions, unknown before, whose job was to politicize the judiciary, such as the guidelines, which the Supreme Court was Authorized to so that the uniformity of case-law and judicial decisions was provided. Also, the institution of extraordinary inspection was introduced, similar to the Soviet one, which had the power to discredit final and binding sentences[2]. It was impossible for the Author to omit the question of changes in the legislation, especially in the criminal law, as it was to uphold the system and be the weapon in the class struggle, which concerns mostly the 1944 penal code of the Polish Armed Forces and the decree of November 16, 1945 *on the crimes particularly dangerous during the period of restoration of the state* (1st version of the so called small penal

[1] W. Kulesza, *Crimen laesae iustitiae: odpowiedzialność karna sędziów i prokuratorów za zbrodnie sądowe według prawa norymberskiego, niemieckiego, austriackiego i polskiego*, Łódź 2013, p. 320.
[2] A. Lityński, *O prawie i sądach początków Polski Ludowej*, Białystok 1999, pp. 151-153.

code), which was replaced with another decree of the same title but a broader penalization scope on June 13, 1946, introducing, in addition, a number of ambiguous statements and enabling even more lenient interpretation of the precepts of law[3]. The Author notes that „the culmination of the Polish penal system repressiveness was defined by four decrees of March 4, 1953, the so called March decrees, which […] made community property a separate subject of the criminal law protection. The decrees operated with a fierce penal sanction, which actually came down to imprisonment." (p. 55). However, cannot agree with Diana Maksimiuk at this point as I believe that the aforementioned penal code of the Polish Armed Forces and the small penal code were the most severe decrees in the whole history of the People's Republic of Poland.

First clear signs of the thaw in the judiciary became visible at the turn of 1954 and 1955. At this point Diana Maksimiuk's dissertation gathers momentum. The Author is well acquainted with all the nuance of numerous problems. Each detail, every press quotation mentioned coming from archival documents is seasoned with a subsumption justified with a range of arguments. The Author does not impose her own opinions, but she guides the reader into the atmosphere of „the thaw," especially heated for those who felt loosening the fetters of censorship. Such liberalization of social life could be observed in the quoted statements of the members of parliament, judges and journalists. A wave of open criticism of the lawlessness forced the Central Committee of the Communist Party (PZPR) to introduce a range of changes into the judiciary system. The first step was Henryk Świątkowski's disqualification from the function of the Minister of Justice and replacing him with Zofia Wasilkowska, a representative of the liberal group of former Polish Socialist Party (PPS) members, „who got restored to favor in order to lend credence to the de-Stalinization process. […] Prosecution and the judiciary became obliged to rehabilitate those who got wrongly sentenced and to repair the harm done in the Stalinist period." (pp. 66-67). The first one to be scrutinized was the Chief Military Prosecutor Office. The results of the examination were so horrifying," Diana Maksimiuk says, „that, as it resulted from a secret document of March 3, 1955, the authorities decided to limit the aptitude of the military courts by handing over a particular category of criminal cases to the jurisdiction of the ordinary courts." (p. 58). The decision resulted in the liquidation of the military district courts under the Act of April 5, 1955. The Author refers to the active role of the legal community in the process of „the thaw," emphasizing the role of the Polish Lawyers› Association. There might be some doubts as far as the authority of the organization is concerned, since it was strongly involved in the introduction of the revolutionary peasant law and order, and its expertise deteriorated due to a broad group of members of rather

[3] Ibidem, pp. 101-111.

questionable, pseudolegal education[4]. However, the Fourth Convention, mentioned in the study, attended by the head of the Ministry of Justice Henryk Świątkowski, despite of being full of political-ideological issues, turned out to be a breakthrough in the context of arising changes. In his speech, the Minister of Justice incited to lean over the substantive issues concerning functioning of the judiciary, as well as the organization and functioning of the People's Republic courts, which could be a signal to focus more on the expertise of its members, transformation from ideological-political into professional. Perhaps that was the reason why Diana Maksimiuk emphasizes the significance of the convention in the context of the changes to come.

Among a number of important, as well as interested questions elaborated on in the part of the book devoted to the attempts to transform the image of the courts of law, it is worth mentioning the Author›s reflections on the notion of the judicial independence. The definition functioning in a democratic and liberal country has nothing in common with its meaning in the Leninist-Marxist context, distorted additionally by the ideology of Stalinism. Against this background, there was a wide debate on the place of the judiciary in the system of the People›s Republic of Poland State bodies. The Author of the monograph mentioned numerous comments and postulates concerning giving the right meaning to the notion of the independence of the judiciary, but she also presents how difficult it was to break the ideological thread in the understanding of the concept. The excerpts of speeches, studies and press articles dating back to those times are read with great interest. The heated atmosphere can be felt, and, most of all, the narrow-mindedness of the ruling party, thinking always through the prism of an important tool to bring everyone and everything under the manage of the party. „The independence of judges cannot and should not be understood in the sense of their not being dependent upon the people›s state, as, while applying the laws and regulations which express the will and interest of working people of cities and villages – the sovereign in our country, the judges […] serve the purpose of building socialism in our country, realizing the policy of the party and the people›s government and they carry out the functions of the people›s state." – the Author quotes the voices of the party leaders (p. 79).

Another important issue touched upon by the Author is the attempt to call those responsible for violating the rule of law to account for it. The whole odium of guilt was directed mostly at the military jurisdiction and the secret sections, not without any reason, as they were given the authority to try civilians for the so called political offenses in the broadest context possible. Specially appointed committees found those who were guilty of distortion, the results of the foundings, however, will definitely disappoint the reader. The Author presents the process basing on the commit-

[4] A. Watoła, *Geneza i działalność Zrzeszenia Prawników Demokratów (Zrzeszenia Prawników Polskich), oraz jego wpływ na postawy sędziów w latach 1945–1956*, http://www.polska1918-89.pl/pdf/geneza-i-dzialalnosc-zrzeszenia-prawnikow-demokratow-zrzeszenia-prawni,4640.pdf [access: 23.07.2017].

tee reports and she does not leave any doubt as for the way the problems were dealt with. „Although appropriate committees were then established in order to solve the problem, their activities were far from satisfying as compared to the expectations. None of the judged who, according to the committees, committed a forensic crime was held criminally responsible for it." (p. 143).

One of the chapters of the monograph has been devoted to the public prosecution service. The author analyzed in detail the opinions of legal communities on its place in the system of state authorities, its role and appointed tasks. Up until the year 1946 prosecution constituted a separate unit subordinate directly to the Council of State, after the Soviet fashion. According to the trend of „the thaw" there appears an attempt to evaluate the functioning of prosecution and its supervision which was regarded as insufficient. What appears exceedingly interesting is the clash of opinions and the argumentation of both sides of the discourse; each opinion might well be rationalized or discredited, ince the Author does not impose her own opinion, only confronting the past, the moment of the awakening of „the thaw," and the final. How? The readers will learn.

„The law, which in the Stalinist period had been instrumentally used to achieve political goals by the authorities, was, next to the judiciary, in the center of interest of, inter alia, lawyers. - writes Diania Maksimiuk (p. 188). In this case the criticism wend hand in hand with particular postulates, which resulted in issuing the draft of the Criminal Code in March 1956. Lawyers, however, picked it to pieces. „There even was a doubt whether it was written by lawyers." (p. 192). Written in a Stalinist style. Full of slogans characteristic of the then system, it was pompous, but too impractical for both the judiciary and the society. Still, it is worth looking at the doctrine representatives› opinions, as the project introduced a couple of changes, more or less controversial, such as the concept of an independent sanction, which included corrective work order, a reprimand and an additional punishment. There arouse a lot of controversy around treating the death penalty as an exceptional punishment, although it did not seem to be so, as it was mentioned in fifteen different cases, excluding chapter 22 devoted to the military offences. The criticism was by all means well-founded, as it is known that the project, despite of being finally published in March 1956, was not compiled entirely in the time of „the thaw," since the works on it dated back to 1950. Anna Stawarska-Rippel writes about a document found among the resources of the Archive of New Files which seems to be a note written as if it was an „inside information." The document refers to the Polish delegation visiting Moscow before the end of May 1956, where the questions of the direction of the judicial policy was broadly discussed in terms of criminal and civil cases. „Being in Moscow, the delegation consulted the project of the Polish Penal

Code: the comrades generally evaluated our project of the penal code well"[5]. Further in the note it can be read: „we conferred about the penal code with the chairperson of the working subcommittee on the penal code, the USRR Deputy Minister of Justice, comrade Suchdariev and comrade Professor Kariev"[6]. Thus, how was it possible for the project to break with the thesis of class struggle which increased as socialism successfully grew? Undoubtedly, it distinguished law from terror, but it was still far from the canon of democratic country legislation.

A recapitulation of the October thaw in Diana Maksimiuk's work is the 1956 amnesty and the rehabilitation of the wrongly sentenced. While the amnesty with thousands of political prisoners coming back to their families and the society can be treated as the only true image promoted in reference to the process of „the rectification of errors and distortions," the rehabilitation trials raise a number of fundamental doubts. Actually, the amnesty itself was treated by the ruling party as an act of kindness of the government, which was expressed by Józef Cyrankiewicz, the Prime Minister, during the 7th session of Parliament in April 1956: „As Socialism progresses and develops and we grow in strength in our people's statehood, we can mitigate the repressive measures directed at those who once, in the times of fierce class struggle, acted against revolution and the people's government" (pp. 271-271). The Author of the monograph conducted a substantial analysis of the amnesty act and its effects, especially for the political prisoners. Indeed, the essence of amnesty was not exoneration.

Another issue, as important as the previous one, that the Author scrutinized is the problem of rehabilitation. There was lively polemics over the question of rehabilitation and how different it was from amnesty, which was not as obvious as it seemed at that time, despite its definition. A year later, in 1957, during a meeting of the Minister of Justice's College, the process of rehabilitation was summed up: „the heads of the Ministry and the General Prosecutor's Office did not work out the concept of the rehabilitation processes. The issues, left without control, were basically shaped by the defense and accusation, whereas the advantage of the defense was considerable. Both the prosecution and the attorneyship had no political preparation. Moreover, the cases were thrown light on by the press inappropriately. As a result, instead of rehabilitating particular people, the courts endeavored to conduct socio-political rehabilitation of all the communities hostile towards us." (p. 292).

Undoubtedly, something budged in the foundations of the communist system as a result of the 1956 changes, and Diana Maksimiuk presented in her study exactly what it was, basing, as I already mentioned repeatedly, on excellent and conscientiously gathered sources and literature. The Author achieved even more, however,

[5] A. Stawarska-Rippel, *Resort Sprawiedliwości ZSRR w świetle sprawozdania polskiej delegacji*, „Roczniki Administracji i Prawa. Teoria i Praktyka" 2014, p. 103.
[6] Ibidem.

as she enriched the facts with the hot atmosphere of lawyer communities discussions, which the phenomenon of „the thaw" was accompanied with. She showed the terrorized nation's hope for a comeback to normality and the faith that it might be successful. The work has great value for those readers who do not remember the times themselves. The Author, maintaining a high quality of academic standards, skillfully interspersed the texts with sociological issues so that the reality gets closer and clearer to an average reader for whom the existence of the totalitarian system in the People's Republic of Poland. was an abstraction. As a historian of law wrote, it is easier to perceive it for the generations „who know the totalitarian system from experience and are familiar with the meaning of the criminal law as a tool of the totalitarian regime, as an instrument of the government's power used to deal with political opponents with full consent of the law, to physically eliminate those who think different. It was a negation of humanitarianism and the natural human rights born in the Age of Reason"[7].

Undoubtedly, the book constitutes a synthesis of the phenomenon of the 1956 thaw, significant from the scholarly point of view and written in an interesting way. The reader has the chance to travel to the difficult times of change, worn away by the occupation, poverty and twisted morality. The new system developed and got distorted in such environment. Excellent narration enables the reader to make an attempt at understanding the expectations of the society towards the ideologically mutated communist system imposed without social consent. Diana Maksimiuk's monograph is a book worth paying attention to.

Ewa Strug

[7] A. Lityński, *Między humanitaryzmem a totalitaryzmem. Studium z dziejów prawa karnego*, Tychy 2002, p. 8.

# THE STUDENTS OF HUMANITAS UNIVERSITY AS THE AUTHORS OF A REVIEW

*Only useful work makes*
*the soul happy.*
Nikolaj Gogol

## INTRODUCTION

*The Principles of Jurisprudence, the Theory and Philosophy of Law,* a book of my authorship, has been provided a positive review by Professor Adam Jamróz, a prominent theoretician and practitioner of law.

Also, the text has been edited by Danuta Dziewięcka, the Editor of "Humanitas" Publishing House, which she did, in close cooperation with myself, with outstanding devotion and in a very conscientious and professional way. My gratitude to her for her effort has been expressed to the authorities of Humanitas University.

Mrs Dziewięcka, the Editor, Professor Jamróz, and of course me as the author of the book, did our best to achieve an important social goal together and to convey content significant to the readers, especially the students, in a right and proper way. The visual aspect of the book was taken care of by Mr Bartłomiej Dudek, who designed its cover. All of the aforementioned, somehow co-authors of the book, made all reasonable efforts to provide the highest quality through communicative language, valuable content, a cohesive structure and a pleasing to the eye design. In the end, however, it is the author who takes the ultimate responsibility for the work, and expects, as every author does, splendor rather than criticism. Our cooperation has been crowned, in a short time, by the printers from "Humanitas" Publishing House. While working on my book, I had relatively clear intentions which resulted from my building relations with the Students. Invariably, in my academic teaching I try to follow the rule, which I do believe to true, that the value of a professor, which decides about the quality of their teaching, is their academic achievements available to the students. A typical form of this type of academic output is a handbook available to the students, not restricting them, by any means, from obtaining knowledge from other academic sources on the subject belonging to the curriculum. That was my purpose as far as the book here discussed is concerned – a handbook entitled *The Principles of Jurisprudence, the Theory and Philosophy of Law. A critical reinterpretation.*

My next purpose resulted from my certainty that, nolens volens, the students who use a handbook evaluate and make an opinion on it in a variety of different ways. It

is entirely natural that each and every author, including the authors of handbooks, improves their self-esteem if the opinions are favorable. It is usually the case that students, from obvious reasons, speak high of the book while contacting directly a professor, who is the author, even though the opinions might not always be frank and honest. In a request to my students, which I posted on my website, I asked them to write a review of my handbook, almost begging them for honest opinions. I emphasized the mutual benefit coming from compiling the textbook reviews: "An in-depth cognizance of the content of the textbook might both ensure your exam success and provide me with some valuable information." The information, which indeed turned out to be useful, will be used to prepare a new edition of my handbook.

Undoubtedly, the author of the handbook, as well as the authors of its reviews dream of their works being perfect. If, according to my self-assessment, the handbook is far from perfect, one of my top Student-Reviewers, **Jarosław Łukasz Ferdyn,** got to it closer than ever. The review he submitted to me was so good that I recommended it to be printed in a periodical. Coming back to the question of perfection, I will quote Alfred de Mussed, who tempers excessive optimism: "Perfection is beyond our reach as much as infinity is," he wrote. Arthur Schopenhauer, on the other hand, not excluding the possibility of achieving perfection, claimed that "The nobler and more perfect a thing is, the later and more slowly does it mature." I had both the quotations in mind while assessing the reviews I received from my Students from Humanitas University. Not expecting them to be perfect, I graded the best ones the highest, and the scarce poorest ones – the lowest. The reviews were read by my academic co-workers first so that the most objective assessment was possible.

As a person devoted to the academic life for over half a century, I have never overestimated the significance of either my publications or my teaching. For it is not about how long you gain the experience, but how much it is worth. However, I did not fall into the Radical pessimism of Solon, who used to claim that "experience is a sum of mistakes we have made." Nevertheless, the opinion that in our experience mistakes intermingle with successes is probably closer to the truth. In my publications I tried to search for original and significant issues that has net been elaborated on yet, which I emphasized, compiling the handbook I am mentioning, in its subtitle *A critical reinterpretation.* A great reward for my teaching activities, on the other hand, constituted the honorary title of Homo Didacticus, which I was awarded by my Students at Maria Curie Skłodowska University in Lublin. I highly appreciated the originality of the content and form of the reviews written by my students at Humanitas University, as originality is an indication of independent thinking. Walter Lippmann, in turn, wrote about unoriginal thinking: "Where all think alike, no one thinks very much." If you want to be great, you must think in an original way. I do try to think originally, but I do not crave for being great. However, let's agree with what Voltaire said "It is wonderful to be humble when you are already great."

## STUDENTS' REACTIONS

*Each and every STUDENT*
*is UNIQUE to me.*
Roman Andrzej Tokarczyk

Only a few Students accepted my request to write a review of my handbook as completely obvious. All of them, however, 127 students of law and administration altogether, declared that they would not make a commitment to write such a review on their own initiative, which they explained in many different ways. It was **Jarosław Łukasz Ferdyn** who maturely pointed out main difficulties of so doing. He said, exceedingly accurately, that "making a reliable, insightful and correct review of a scholarly monograph is not an easy task, since the reviewer should possess extensive knowledge in the field of the publication they are to review, as well as be aware of how to create a work of this type."

**Karolina Kentnowska** appreciated the courage of the professor who, on his own initiative, asked his own students asses a handbook of his authorship with no limitations. I am in favor of her opinion that "Not many authors would dare to expose their works to the critique of their students." **Elżbieta Justyna Kubica-Węgrzyn**, on the other hand, spotted threats for the Students resulting from their professor's bold request. In her excellent review she put it in the following way: ordering your students to write a review of a scientific work on the philosophy of law, written by a prominent author, is a truly diabolic idea, taking into account that the review will influence the student's position before the exam – it might well work as either a catapult or »a nail in the student's coffin«. Even students of administration are not suicides, therefore they must find a comfortable area in which they feel competent. The idea of the review should then be: Whether and to what extent is the book readable? In other words, my review will focus on the aspects of perception of the scientific work. In this very field, every student appears to be highly competent and able to commit a professional review... A strategic goal of students' reading is one – to obtain the magical credit in the index book."

Two Students regarded the professor's request to write a review of his own handbook as unrealistic.

According to **Elżbieta Małgorzata Wieczorek**, the request was "awkward." Approaching the awkward request, she said, "making an effort to review a publication so rich in content and representing such broad knowledge seems unfeasible to me. I am a novice student of administration and everything I come across, learn and experience is new and often obscure... Reading the outstanding publication forces the readers to open their minds to the vastness of knowledge which the authors has to pass on... The reader has the impression that the author of the book has exceedingly wide knowledge

and through sharing it he realizes a very important objective – a mission." Elżbieta, despite of her scruples, prepared a review which I graded as very good.

The reaction of **Monika Krukowska**, on the other hand, was rather unusual and quite hasty. First, while my presenting the request during a lecture, she ostentatiously announced that "making the review" is "absolutely impossible." Moreover, the "order" was, according to her, to humiliate the Students' dignity. After this public enunciation, she ignored my further conversation with other Students. As she wrote reportingly in her review, "I [the author] did not ask as a single question because it seemed unnecessary to me." However, when she calmed down at home she perceived that her behavior was inappropriate and driven by hasty and impulsive emotions. In her review, she apologized to the professor many times. As if she wanted to neutralize her faux pas, she praised me, as the author, whether I deserved it or not. It was not the praise, however, but the content that made me grade her review as good. For I belong to the people who do not take a dislike to someone because of their inappropriate behavior, therefore I have respect and only friendly feeling for Monika. People whose reactions are different are just alike those who they disapprove of.

Many authors of reviews bridled at writing them because of the lack of competence, as if they had forgotten that the whole course of university education is based on striving, with more or less success, for particular competences. Asking my Students to write the review I wanted them to gain the competences of a reviewer. The lack of their competence as far as "assessing the content of professor's monograph" was openly claimed by **Małgorzata Kuberska, Dagmara Patrycja Czakoń**, **Joanna Katarzyna Gidek** and **Monika Anna Urbanik**. According to **Katarzyna Borowiec**, such reviews "should be written by people who have expertise in the field." Why, Kasia, one would say, after all they must have learned everything, just like you! According to a few of the Students, among others **Angelika Katarzyna Baryła**, **Beata Stanisława Grzelec**, **Roksana Paulina Pogoń** and **Sonia Irena Szymańska,** the difficulties of writing a review resulted mainly from significant difficulties in understanding philosophy in general, and especially the philosophy of law. **Irena Przybylska-Kołodziejczyk** did not have to deal with the aforementioned problems, however, she found the review difficult because of the author himself, as it was difficult for her to distance herself from the content of the handbook, which is crucial in the process of evaluation. She had "the feeling that the author guided her »by hand«." **Aleksandra Natalia Polis** would not decide to compile a review on her own initiative because she would feel embarrassed by the hierarchic nature of the professor-student, superior-subordinate, authority-layman relation.

„To me, as a student," **Małgorzata Alicja Król** confessed, „it is very difficult to evaluate in detail particular chapters of the handbook, written by such a titled professor... But trying to review the book I want to focus on these chapters which I have particular interest in." Motivated in this way, yet emphasizing politely that the whole "content of the book is really impressive," she paid the most attention to the chapters devoted to legal profes-

sions, the idea of social contract, and, as many other Reviewers also did , biojurisprudence. Driven by similar or different reasons, **Dominika Nadzieja Horoszko** would rather refer to her text not as a review but "reflections of the book." **Karolina Kentnowska,** who I have already mentioned, admitted that "The proposal to write a review of Professor Roman Andrzej Tokarczyk's book... was surprising to me. It appeared so original and extraordinary to me that I decided to take a closer look at the very Author. I was glad to learn that the Author's Wife turned out to be a graduate of my Alma Mater Jagiellonica, which, out of purely feminine sentimentality and recollection of warm reminiscences, made an impression of intimacy and closeness with the Publication." **Katarzyna Justyna Szczęsna** wrote her review in the form of a personal confession. Having expected another dull book, she was pleasantly surprised after reading the handbook. She managed to understand the meaning of a number of difficult words that were used in the book. "I am really glad," she says with amazement, "that I am a human and I have the right to make mistakes. The book has a great scholarly and educational value and it may well be referred to as an exemplary handbook, which will appear useful in the education process (as well as self-study) of every person interested in the principles of jurisprudence."

When I decided to risk and ask my Students to write a free and independent review of a handbook of my authorship, I could have expected the worst, only negative reactions. However, similarly to **Katarzyna Justyna Szczęsna** after reading the handbook**,** when I read the reviews I was truly pleasantly surprised. Having expected even only the worst, I played safe in case the worst really happened. I followed Peter Westholm who once said, "Always expect the worst and you will never get disappointed." I did not get disappointed, however, but I became pleasantly surprised by the fact that my handbook generated mostly positive, and even very positive reactions. If the situation had been different, I would have done everything so that no one believed that only the negative opinions on my book were true.

## THE LANGUAGE OF THE BOOK

*The measure of literature is not the one*
*who writes, but the one who reads.*
Roman Andrzej Tokarczyk

The author of a scholarly publication, like *The Principles of Jurisprudence, the Theory and Philosophy of Law. A critical reinterpretation,* must use different languages as means of expression. The main language for the aforementioned publication is the legal language and the language of law, which constitute languages for specific purposes for those who deal with the law. To be able to communicate meaning by means of these languages to the reader so that it is clear and comprehensible, the author of a scientific publication

makes use of the literary language. The literary layer constitutes a kind of connective tissue of a scientific work, uniting its languages for specific purposes. A scholarly publication, especially a handbook, does not have to be dull and boring. Using the literary language, in justified situations, it is possible to make the book more attractive and interesting. I try to make use of the possibilities in my scientific work.

Those review authors who either do not know, or do not respect the relations of professional languages and the literary language, had a very one-sided, critical opinion. For those who support the rule that a scientific work should only use scientific and professional language (here legal language and legal jargon) using the literary language seemed to be either unnecessary, or even wrong, deteriorating the linguistic quality of the book. They accused the author, though shyly, of "too flowery a style." On the other hand, those who admire the beauty of the literary language, especially the Old Polish, expressed their being bored with the majority of legal language and jargon. In case of such discrepant opinions and expectations of the reviewers, only one saying comes to mind: "You can't please everyone."

Obviously, the author of a handbook, as well as authors of any other scientific publication must obey the general principles and specific rules as far as syntax, grammar and logic of the Polish language are concerned. The aforementioned linguistic correctness is not the same as the author's style. Each and every author of every single work can be characterized by their own, individual, unique style of expressing their thoughts. Respecting the style is an obligation for both editors and reviewers of the work. The authors of the reviews of the handbook, in the vast majority, approved of the style of the author which resulted in many warm words. Only a few of them expressed some unclear doubts as far as the language of the book is concerned. The latter, however, made me think more than the former.

Regarding the language of the reviewed book, the intentions of its author were quite accurately interpreted by **Beata Stanisława Grzelec,** who says "Writing about law is a real art, which is not obvious to everyone. However, nothing improves the quality of a text better than its beautiful style and correct (in terms of grammar and spelling) language. Personally, I do believe that legal writing does not have to amount to dry and indifferent sentences made of the same phrases used a thousandfold. Therefore, I got charmed and encouraged to further reading by the language of the handbook from the very beginning. Relatively clear, if I might say so, readable, vivid and graphic, emphasizes excellent knowledge of the issues which the author elaborates on." The author of the aforementioned thoughts also noticed a great achievement of the author in his underscoring distinctive parts of the content of the book and the possibility of comparing them thanks to the logical order and methodologically uniform and cohesive division into chapters. However, "I will not pretend to have understood everything," she adds.

Other authors of the reviews showed off their great frankness, too. "The language of the book is very scientific and demanding," said **Angelika Katarzyna Baryła.** However

the language is referred to as "clear and fluent" by Sonia Irena Szymańska, and "careful and considered, but requiring maximum concentration of the reader" by **Aleksandra Natalia Polis.** Neither of them labels the language as legal, nevertheless. According to the refined impression of **Monika Ewelina Maj**, the language of the book is "exceedingly sophisticated... lacking all the contemporary colloquialisms, and giving the impression of reading belles-lettres... The author takes us back to the Old Polish times and helps us re-discover the beauty of the Old Polish language." **Roksana Paulina Pogoń s**hares the opinion and says: "The language is extremely sophisticated, some words bring poems to mind... like the clothes of piety or aspiring ideas, they take the reader back to another era, which is a very interesting idea, I realize, however, that nor everyone might be fond of it." This potential and actual diversity in the reception of the author's style and vocabulary was noticed by **Aleksandra Tomczak**: "The author is excellent at selecting words, and although some of them did not appeal to me, they might appear really valuable to other readers." **Olimpia Nowak,** similarly to **Jarosław Łukasz Ferdyn,** remarked that "The Author uses a number of complicated notions... but he is great at explaining and defining all the unclear expressions... I did not feel bored with the pompous descriptions of the super-difficult legal phrases. On the contrary, while reading I had the feeling that it was an idyllic belles-lettres piece of writing, telling and incredible story about the law. "Mr Tokarczyk's book," Olimpia continues, "definitely does not fit the canon of obligatory dull reading list, which leave you with nothing but confusion." **Klaudia Bereziuk**, in turn, did not perceive the values of literary language of some parts of the book, as to her "The book is very demanding and using professional language." **Magdalena Zofia Brzezińska** refers to the professionalism of language explicitly: "I think that the book is written in the language of law which makes it incomprehensible for most readers. Those who do not possess the knowledge of philosophy as Professor does will find it very difficult to understand the principles elaborated on in the book." Magdalena's statement raises doubts as far as her knowledge of the extent of understanding the book by other readers is concerned. When it comes to her knowledge of the philosophy of law, if it is insufficient, she has the possibility to acquire it on the level of the Professor's or even higher, which is possible thanks to the high quality of teaching at Humanitas University. It is the nature of studying that sometimes some texts must be read more than once, so as to understand what the author wanted to say," which **Ewa Adelajda Jachimowska** refers to. **Anna Kantor** discovered special features of the author's original language in the book. "As far as the language is concerned, the readers can admire impeccable Polish and extraordinarily florid style... Nevertheless, the language is very demanding and it might cause difficulties in understanding some issues, requiring the reader to reread and analyze some parts of the text." Ms Dziewięcka's opinion, who edited the book in the Humanitas Publishing House, was shared by **Kacper Jaromir Jaromirski**, who agreed that its erudition is pervaded by impeccable Polish. **Marta Teresa Sendobry**, however, saw educational benefits coming from the necessity of checking up new and unfamiliar words. "I am glad," she said, "that the book made me go deeper and broaden my

knowledge... Undoubtedly, the biggest advantage of the language and styl is their precision and clarity." Marta encouraged me even to compile a dictionary of the philosophy of law as a separate publication. I reply immediately that it is a very serious and extremely big task for a number of co-authors, and therefore beyond a single author's capacities. **Anna Maria Jedlińska**'s words sound as if they were a motto to the whole book; the reviewer claims that "Perfectly selected words do not need improvements." For **Dominik Maciej Błoniarczyk**, on the other hand, it is superfluous to add, next to the words in Polish, their synonyms in English. I promise to reconsider the idea, I do generally believe, however, that it happens to be necessary. I would like to remind **Paweł Marek Mańczykowski** about the indispensability of referring to the Latin language in the Polish legal discourse, as Latin still constitutes an established element of both the tradition and culture of Polish and EU law, and sometimes even the culture of the case law. **Urszula Ewa Dydak** does not see any shortcomings of the language of the book. "The language is very simple and accessible even for a person who has never been in contact with studying law, which is not very common, unfortunately." **Paweł Marek Mańczykowski** shares a similar opinion: The Professor... writes in such a way that it is comprehensible for a potential reader. Whether you are a lay person or an expert in law, you will find something for yourself in the publication. Particular issues are explained in a clear and legible way. "A knack for the written word is clearly visible," emphasizes **Agnieszka Stachańczyk**... Some sentences are contrived and exaggeratedly long, in a broader context, however, they seem to be necessary... the book is directed at a slightly different target group, therefore it can be written in this way." I assure Agnieszka of the fact that I addressed the book to Her, as well as to all my Students at Humanitas University, not to an indefinite target group. I do not know, however, what **Kacper Borysik** had in mind suggesting that the language of the book is "simple and easy" only "thanks to cunning (sic!) literary tricks."

What will appear useful in improving the second edition of my book is small typos, spelling mistakes and usually debatable stylistic faults. Such mistakes and defects only confirm what is true for both authors and editors, that proofreading is almost a never ending process. I have already become convinced that it is the case, and I hope that Mrs Danuta Dziewięcka, the Editor, will agree with me.

## THE STRUCTURE OF THE BOOK

*A reissued book has a structure*
*of old and new content.*
Roman Andrzej Tokarczyk

At first glance only a book constitutes a uniform whole. Once we look inside, however, it reveals its structure, which happens to be the most multifarious in case of art books, children's books and occasional publications. The architecture of scholarly and

scientific publications usually seems to be much more meager, even there, however, there is space for diversity. The cover is the first thing we see while reaching a book, once we open it there are title pages, a table of contents, an introduction or any other type of introductory content. All the aforementioned components altogether are referred to as introductory materials. Obviously, the most important part of each and every book, especially a scientific work, is the main text, with its own more or less complex structure. The main text might be divided into volumes, parts, chapters, subchapters, sections and subsections. It might also contain extra materials, such as tables, diagrams, illustrations, prints of reproductions. What closes a scientific publication is a bibliography, an index, and sometimes a foreign language summary.

The structure of the handbook in question needs diversification and enrichment, which I declare that the second edition of the book will contain the essential improvements. I must admit, however, that it was "Humanitas" Publishing House that limited the possibilities of publishing the book in a richer form because of its binding standards. If the new version of the handbook, compiled taking into account both the Reviewers' and the author's postulates, gets rejected, I will need to look for another publisher. As for the details concerning the diversification and enrichment of the architecture of the handbook, they are mentioned further in the paper in the opinions of the Reviewers and my opinions of the ones they wrote.

One of the main objectives of the critical reinterpretation, which guided the author of the reviewed book, was the concept of three in one: including the bases of three disciplines, which are usually treated separately in academic publications and teaching – jurisprudence, the theory of law and the philosophy of law. None of the Reviewers called the reasonableness of the solution into question. **Angelika Katarzyna Baryła** wrote that it was a manifestation of the author's courage: "The author should be regarded with admiration as he found courage to combine knowledge of jurisprudence, philosophy and theory of law in one literary work." According to **Aleksandra Natalia Polis** "the very concept of a publication combining jurisprudence, the theory and philosophy of law is very ambitious and demanding." "From a student's perspective it can be pointed out," **Jarosław** Łukasz **Ferdyn** validates the idea, "that the issues related to the principles of jurisprudence are of particular interest to the students of the 1st year, whereas the problems of the theory and philosophy of law belong to the range of interest of 5th year students. Combining these issues in one handbook might constitute a good solution for those students of law who, being in their 5th year and struggling with the questions of the theory and philosophy of law, need to go back to the basic issues related to the law in general." According to **Aleksandra Natalia Dylewska,** "the Author superbly managed to combine three disciplines of knowledge in a structural whole, which constituted a precarious task. The authors of the reviews regarded the structure of the book as successful. "I am enchanted by the fact that everything has its own place in the book. There is no accidental information, everything is perfectly planned and harmonious," noticed **Paweł Marek**

**Mańczykowski.** According to **Marzena Grażyna Libera**, "The book is written with flair, everything is coherent and accurate." A few Reviewers, among others **Magdalena Zofia Brzezińska** and **Marzena Grażyna Libera,** shared Professor Adam Jamroz's opinion that in both the first and the second part of the book a chapter on the application of law should precede the chapter on the validity of law. In my opinion, however, the order is not as obvious as it might seem, since if the chronology of the phenomena are taken into consideration, primarily it was the law that must have existed so that it could be applied. Later, however, the validity of law is a result of its application, therefore the chronological precedence of the application of law in the processes of creating it can be acknowledged as opposed to the validity of law. In the second edition of the book I will standardize the chronology in both first parts of the book, however. I will put first the chapter on the validity of law, however, further there will be the chapter devoted to law application. In my opinion, however, only such law can be applied, which is already valid. And this is my justification and response to the supporters of the other opinion who wanted me to change the order of chapters in the book. **Marta Teresa Sendobry** expressed an opinion similar to other Reviewers' that the structure "is very coherent... The gradation of the complexity of issues is applicable here. The author as if leads the reader up the stairs, from the easiest basic issues to the more detailed ones." At this point, I must admit again that the first edition of the book was influenced by some restrictions imposed upon me by the "Humanitas" Publishing House. In the second edition I will do my best to somehow overcome the limitations. As I did in my other books published by Zakamycze, Wolters Kluwer and LexisNexis, I am going to place key words and references to them on the margins of particular paragraphs, which are sometimes referred to as "side headings" in the editorial jargon. Therefore, I will meet **Rafał Czesław Rygielski**'s expectations, as he wrote: "I suggest placing key words, or *definiendum*, on the margins, which will help find *definiens* quickly. It is worth mentioning, not being too overconfident, I believe, that it was me, with reference to Tomasz Hobbes, who gave a new second life to the useful "side headings" in the Polish scholarly literature. It is clearly visible in many publications of mine. I am also going to follow **Monika Jadwiga Olkusa**'s advice to introduce the so called "running title," as it was applied in a memorial Book dedicated to me. She expressed it in the following way: "Perhaps it would be better for the general legibility to place the title of a given chapter at the top of the page, instead of the title of the book." I will also take into consideration a few Reviewers' suggestions to correct and enrich the content of the book in its second edition by introducing listings, tables, diagrams, prints and bold-face of key words. **Natalia Karolina Rozwadowska** along with a few other fellow Reviewers are right while suggesting that horizontal listings are much less legible than listing horizontally, one above the other (e.g. in case of pages 20, 21, 38, 66, 74, 109, 348). I will also consent to **Dagmara Ewa Pukowiec**'s suggestion to diversify the content of the book by introducing tables, especially while classifying law types on pages: 27, 43, 45, and maybe also in other places in the book. I am only at the stage of

considering the form and the possibility of introducing graphs, charts and diagrams. What I am already certain of, however, is that I will include a number of humorous illustrations by Józef Tarłowski, which will show the seriousness of law "in a distorting mirror". I am also going to add some anecdotes. Perhaps I will also satisfy **Natalia Teresa Goik**, who wrote: 'Those who are the so called visual learners would appreciate some illustrations or prints, which would make it easier to understand some issues." It seems that contrasting phenomena, i.e. the seriousness of law and its weaknesses might help comprehend it easier and deeper. On the other hand, **Aleksandra Judyta Motylewska** supported the idea of maintaining the form of the book as it is, which I found extremely interesting, I will not comply with the suggestion, nevertheless. She somehow defends me, which I am really grateful for: "The author refrained from using tables and other graphic forms which seems reasonable as it forces the readers, mostly students used to acquiring knowledge in a simplified way, to think. Such attitude is primarily fair, as the student-reader must put effort if he or she wants to understand the content of the book, which is, or should be, one of the requirements of higher education." Ola saw a value of studying in dealing with difficulties, whereas I, declaring the will to remove them, take the position of an author who aims to maximize the clearness of the contents he passes on to the readers. I will also do my best to enlarge and diversify the fonts in the book, as **Angelika Katarzyna Baryła**, **Dorota Aleksandra Kowalczyk**, **Mateusz Nowakowski** and **Natalia Karolina Rozwadowska** requested. I am going to include a list of chosen literature concerning the issues elaborated on in the handbook, as well.

## THE CONTENT OF THE BOOK

*If knowledge can create problems,*
*it is not through ignorance that we can solve them.*
Isaak Asimov

Referring to the content of the book, I am not going to summarize it, which would be completely unnecessary as my Students are already familiar with it and know it even better than the author himself. I focus exclusively on the issues which the Reviewers criticized or elaborated on, suggesting its various improvements.

The book is of neutral character as far as the worldview is concerned, which is the author's intention. Therefore, it does not encourage the readers to accept one particular outlook. In his brilliant, comprehensive and inquisitive review, however, Fr. **Krzysztof Antoni Myjak** somehow tries to convince the author to be in favor of the Christian, mainly Catholic interpretation of the natural law, which would manifest itself in including in the book a description of Clive Staples Lewis's, a British professor, contribution to the theological comprehension of the natural law. However interest-

ing the contribution is, it will be included in the second edition of the handbook only in the form of a passing reference, as its place among the most prominent Christian interpretations of the natural law is not yet established, and the book itself has limited edition size; also, the distribution of space devoted to particular problems elaborated on in the book must be proportional. To avoid a conviction that **Fr. Myjak** limited his review only to the aforementioned issue, I will quote his very mature evaluation of the book: "At the very beginning it must be stated that the comprehensiveness, erudition and eloquence of the discourse make it possible to say that the publication, in case of its form and content, constitutes an excellent introduction into areas undiscovered by either the students of law or common readers, law amateurs. Not only is it an introduction, but also a well-thought lecture, not devoid of erudite references to the practice and the theory of law, the most significant example of which are not only the introductory terminological issues, but also, and most of all, the extensive reflection on biojurisprudence. As far as the didactic and linguistic side of the work are concerned, big experience and particular freedom of communication are clearly visible, along with the floridity of language, which does not disturb, however, the process of absorbing the content; it builds the atmosphere of agreement with the reader, which makes reading the book an adventure of cognition rather than an unpleasant necessity... Summing up, professor Tokarczyk's publication is an invaluable source of information when it comes to the field of jurisprudence and the theory and philosophy of law, which should be found on the reading list of each and every student or even professor of law, and the style with its clearness makes it possible for an amateur or a lay person to acquire the content of the book easily, too."

As Fr. **Krzysztof Antoni Myjak** already introduced us to the sphere of religious issues, let us look into **Monika Anna Urbanik**'s reflections. She questioned convincingly a statement from the reviewed book that "miraculous recoveries are spotted only by religious bigots." "There are numerous examples," she says, "of different recoveries which cannot be explained by contemporary medicine. Obviously, a number of them constitute the result of believing in the recovery, but it seems that it has nothing to do with bigotry or fanaticism...it is very difficult to say whether the reason for it is deep faith or deep conviction that thanks to internal strength and confidence it is possible to overcome all the menace." It would be difficult to add anything to this wise reasoning of Monika's, therefore I will reconsider and transform the sentence in question.

If there was a ranking of the most original, controversial, intriguing, innovative, interesting, attractive, appealing, cognitively and practically significant issues of the handbook, the predominance would go to the chapter devoted to biojurisprudence. It is "a truly hypnotizing" chapter for **Anna Kantor**, and "closest to **Andżela Jurga**'s heart." **Ewa Adelajda Jachimowska** was encouraged by the chapter to get acquainted with some "other publications of the author." **Patrycja Magdalena Wytrwał** predicts, giving probably too much hope to the author, that "the suggestion might bring

about the renaissance of humanities, philosophy and the general knowledge of law." "I find the chapter exceedingly fascinating, as it stimulates the reflection about birth, life, existence and death," wrote **Marlena Barbara Noworyta. Katarzyna Barbara Boruta** confessed, in turn, „I stand in awe for the Professor, who created a new concept called biojurisprudence, combining philosophical and scientific contents, which proved his refinement and broad knowledge, as well as the creative power of his mind as an author... It is somehow the piece-de-resistance." This is how **Beata Stanisława Grzelec** referred to the concept of biojurisprudence: "The Author created biojurisprudence, which fits perfectly the contemporary subject matter... the chapter entitled PRO FUTURO made the biggest impression on me. It was once said that if you do not feel like reading a book again, there was no point in reading it at all. I think that I will study and analyze its contents more than once." J**oanna Puchyrska** adds, "I believe that the innovative concept indicated what is really important in life, as it encompasses human in a holistic, not fragmentary way, and it keeps pace with the fast changes of the contemporary world."

Before I quote a suggestion to change the situation of quotations and maxims as mottos preceding each chapter of the book, I will present the Reviewers' opinions on the them, the majority of which are in favor, even very enthusiastic. It was only **Sylwia Uścimiak** whose opinion was completely opposite to the aforementioned, which will be elaborated on in the next paragraph. **Patrycja Magdalena Wytrwał** stated that, "The maxims are a brilliant solution, as they appear before every chapter of the book, and their main idea refers to and emphasizes (as well as the titles of subchapters) the subject matter and its topics presented one by one... the choice of quotes is excellent since they precisely refer to the questions elaborated on in the successive sections of the book." **Marzena Grażyna Libera** added**:** "Professor begins every chapter with a maxim, which makes the reader stop for a while and reflect on the subject matter." **Roksana Pogoń** has no doubts as for the suitability of the mottos: "Maxims are useful, not only in case of law and philosophy, but also in many other areas of science and life situations. Moreover, they are valid in the antiquity and in the 21st century alike." **Renata Elżbieta Domagała** noticed that "It makes us feel intellectually stimulated to further discovering something new." **Mateusz Nowakowski** "takes a fancy" to the quotes and maxims, as "they refer to the content of the chapters in a very accurate, encouraging and interesting way." **Dominik Maciej Błoniarczyk** and **Małgorzata Alicja Król** also like the idea, and **Olimpia Anna Nowak** and **Dorota Pośpiech** find it "interesting."

The only Reviewer who suggested a different location of the quotes was the aforementioned **Sylwia Uścimiak**. Although I do not share her opinion, I quote her review as a whole: "In my opinion a quotation or a maxim is an embellishment at the most and I personally think that they are redundant. Of course, if the Author really wants to include quotes and legal maxims in the book, I would suggest creating another page at the very end of the book, devoted exclusively to such mottos, which

could be entitled »Chosen quotes, legal tips and Latin maxims which every lawyer should be familiar with«. Also, the examples of legal tips given on page 139 could be moved to the section of the handbook." I will not follow Sylwia's advice because of both my personal convictions and the opinions of the reviewers in favor of the present distribution of the quotations and maxims in the book. She did not notice, most of all, the closest relation of the chosen quotations and legal maxims with the successive chapters. The relation would be entirely broken if the quotes were move to the very end of the book. While choosing the maxims I did not attempt to create a selection, as literature is full of such publications, e.g. a book of mine *Legal Ethics Commandments. A book of thoughts, maxims and prints,* which includes a detailed Index of entries that makes it easier to look up a suitable quotation or a maxim, which might appear relevant to people professionally engaged in various legal norms and standards.

I will take into consideration **Jarosław Łukasz Ferdyn's** remarks on the improvements of the content of the book. I will think over his point on "whether indicating all the criteria for division of the provisions of law would improve the values of the work." Whether to devote separate chapters to legal subjects and the interpretation of the law. Taking into account **Jarosław** and **Agata Danuta Koziarska**'s remarks on discussing the sources of law in the book. I will incline to doubt the irrefutability of cognitive values of the definition of life gathered from Wikipedia. I will clearly separate social and human studies, in accordance with the relevant legislation, which I was made aware of by **Natalia Ewa Przybylska.** Because of my liking for learning English, in turn, I will not translate into Polish the letter by Aleksey Vlasov, a Russian researcher into biojurisprudence, included on page 396 of the book in English. I will probably follow **Katarzyna Renata Looze-Grzesik's** advice to add some quick-tests or questions after every chapter. Kasia says, that she would "become convinced that she understood a given chapter correctly." Her suggestion that "the course of this subject should last at least one year" is addressed to the authorities of the "Humanitas" University. As far as my opinion is concerned, I can work with "Humanitas" Students 24 hours a day, all year round.

Finally, to close the casual remarks on the reviews I want to point out that many of them (in this way I become a reviewer of the Reviewers) contain a number of slip-ups and funny parts. I will quote, however, only a couple of them. As I consider myself to be a tactful person, I will not reveal the names of their authors. They are available in the reviews, but only with the agreement of the authors and available only for some. One of the Authors confessed that the author of the book, which is me – Roman Andrzej Tokarczyk, is her "so called hobbyhorse." Another Lady must have fought "continuous perplexities." Yet another Author liked "undoubtedly braiding (sic!) well-known quotations to support some philosophical theses." For another Author a monograph is synonymous to a monogram. A Reviewer, while complementing on the Author's

knowledge, put it in the following way: "The Professor, despite of his knowledge (sic!), writes very clearly so a single recipient understands." The next author, undoubtedly an expert in medicine and confectionery, introduced the disciplines into her review; she wrote: " One might say that every sick person would rather have some sweets than to take medicine to recover. »The Principles of Jurisprudence, the Theory and Philosophy of Law« is like the sweets for those who crave for knowledge. It contains everything, which, in comparison with bulky volumes of other scientific works, makes it sweet and tasty, using the confectioner's nomenclature." Completely seriously, on the other hand, I will encourage everyone using the very word "interdisciplinary" to replace it with "transdisciplinary," or similar. (They did not read footnote number 454!) For "interdisciplinary" consists of two Latin words: *inter* – between and *disciplina* – discipline, as a separate discipline of knowledge. Therefore, the word means something in between the disciplines, not the disciplines themselves, or a combination of some of them. In the spaces the disciplines there might be even complete void. I will refer to a true story of a scientist who slipped severely in his career after having used the word "interdisciplinary" in the title of his postdoctoral dissertation. The National Committee for Academic Appointments and Promotions did not accept it because of the very word. They rejected the dissertation because of the lack of a scientific discipline among other disciplines, and "interdisciplinarity" as a discipline simply does not exist. Anyway, I try to carefully avoid the tricky word and kindly recommend others to resign from its unfounded use.

## THE DESIGN OF THE BOOK

*How they see you,*
*that's how they perceive you.* a saying

The Authors of the reviews also evaluated the layout of the book, in particular its cover. **Izabela Brzeska** noticed that „The cover is the most significant visual aspect of each book." **Aleksandra Tomczak** developed the thought: "As a Polish proverb says »don't judge the book by the cover«, a book should not be criticized because of the way it looks, the truth is, however, that many of us choose books by their covers." **Olimpia Anna Nowak** shares the opinion: "In my opinion, an interesting cover appeals to people. While looking for a book in a shop it is often the cover that we notice first. It might seem banal, but people often pay attention to the packaging first, and then the content."

The cover of the handbook is one of three designs prepared by Mr Bartłomiej Dudek, leaving the final decision to the author of the book. Obviously, there is no accounting for taste, so that all tastes are respected, but the cover I chose seemed the

most suitable for me. The cover was similarly evaluated by a dozen or so of the Reviewers. **Dagmara Ewa Pukowiec,** for instance, said that the cover „is eye-catching, esthetic, smooth and soft... sturdily glued, with blue as the dominant color, and the figure of Themis – the symbol of justice and eternal order." However, according to **Natalia Karolina Rozwadowska,** „the book could be thread-stitched, not glued. I think that glued books are less durable, especially when you tent to go back to your favorite publication." **Ewa Fedowicz** noticed that the laminated cover of the book has a fault: "after a few days of using it starts to foliate." Unfortunately, I observed the same.

**Paulina Katarzyna Wrzosek** also formulated a favorable opinion of the cover: „The cover by Bartłomiej Dudek attracts attention. The *ombre* effect is extremely impressive – well known, appeals both to the mature readers and the youth." **Angelika Katarzyna Baryła** also belongs to the group of supporters of the present design of the cover. She writes: "The colour of the book is really well-matched as blue calms down, but also stimulates imagination, leads to creative and intensive thinking. It is quite significant as far as the handbook is concerned since the subject matter is relatively demanding and sophisticated."

However, a few Authors of the reviews criticized the cover of the book. **Kaja Maria Pająk** expressed her criticism the most pointedly. She almost shouts out: „It is hard to find a more biased cover, which seems to be completed in a rush. The blue background and Themis on it do not compensate for the impression of pettiness. Do all the covers of books devoted to law must be served by Themis – as innocent as a lamb?... why has the question of esthetics been neglected? Why hasn't anyone made an effort to create something original, pleasing the eye?... Not to mention the lack of hardcover... I think the layout is the biggest weakness of the book." **Łukasz Marcin Lisowski** also turns out to be bored with Themis on the covers of legal books. **Marzena Teresa Dudczak** thinks that „The cover is gloomy. It suggests the obscure and heartless side of law and the philosophy of law, whereas it is known that they also have their bright sides. Especially that philosophy, as the love of wisdom, thus (as I suppose) open-mindedness and an enlightened mind, is not compatible with the austerity."

As the author of the book, I will do my best to make sure that the new project of the cover is less receptive to criticism, or even not receptive to the criticism of the most demanding esthetes at all. Because of the ambitious goals of the book emphasized by the subtitle „A critical reinterpretation," I have been encouraged many times to highlight the very image of the author, even on the front cover. To be sure, that would be a good starting point, not only for those who disapprove of me, which I do not believe is the case, to reproach the author, i.e. me, for too big stardom and megalomania. Although it has been known since the times of Ignacy Krasicki that "genuine virtue does not fear criticism," it would be an abuse to judge the author's lack of virtue only on the basis of his image.

All of the aforementioned constitute some of my hesitations as far as the project of the second edition of my book is concerned. I will try to convince the Publishing House to edit a hardcover, on good quality paper, with diversified fonts, prints, tables and other visual forms. Just like in case of the first edition, I will reject the royalties. The publisher will be requested to make sure that the edition of the paper book is sufficient, as it is appreciated more by a number of readers, who do not approve of e-book versions, which end up in a trash bin after being printed out.

## GENERAL OPINIONS ON THE BOOK

*The man who does not read has no*
*advantage over the man who cannot read*
Mark Twain

I quoted the motto following what a pro-reading review by **Joanna Beata Poźniak** said. The general implication of the motto can be referred to the students of law and administration and their reading. Those students of law and administration who do not read books on law and administration, if there are such students, have no advantage over the ignoramuses within the scope of the literature on law and administration. **Joanna Beata Poźniak** has no liking, however, for forcing to read any books, even handbooks, which definitely would not appeal to professors, especially the authors of handbooks. This time, however, it seems that the obligatory reading did not turn out to be the cause of her bad mood, as she wrote: „After reading the book I am really impressed by the author's knowledge and the diligence of the publication, which will definitely become an excellent compendium for those who want to broaden their knowledge concerning law and philosophy. The book is both fascinating and tough at the same time, therefore it will certainly divide the readers – some will love it... some will hate it." The author of the book, craving for improving his work, appreciates more the manifestations of criticism, even if they are closer to hatred, than any expressions of love. I looked up and collected all the manifestations of criticism in my Students' reviews of the book, which I included in suitable places in the text, and I will make use of them while editing the second edition of my handbook. In her review, **Aleksandra Tomczak** did not omit even the very title of the book. What "riveted her attention was the subtitle »A critical reinterpretation«, which introduces the element of mystery, as if behind the theory and philosophy of law there was a secret to be discovered by the reader." Not falling under the spell of this adorable literary association I will notice that probably each and every book, before reading it, hides some kind of mystery behind its cover. My intentions contained in the phrase "A critical reinterpretation" were revealed in the second paragraph of the *Introduction* of the a handbook, which is a monograph at

the same time. A number of Students-Reviewers interpreted it correctly. As there are frequently discrepancies between people's thoughts and statements, as well as both of the aforementioned and their actions, the Reviewers of my book put me through their paces. My evaluation of their Reviews ranged from the extreme naive acceptance of all the opinions, especially the favorable ones, to the extreme abnegation of rejecting all of them. Between those two extremes there are more moderate opinions of mine. The real intentions of the reviewers are, however, difficult to recognize, as it is only them – the Reviewers, who know it. According to the *In dubio pro reo* principle (Latin for "[when] in doubt, for the accused"), followed not only by lawyers, while presuming the honesty of the opinions I rejected the extreme intentions. Citing here somebody's opinion I quote it literally, putting it in between quotation marks. I would like to mention that any evaluation might be and happen to be assessed further. Therefore, the layers of assessment stratify like multi-story buildings, reaching the levels of, I guess, skyscrapers. After the author's exposition aiming to provide his security, let us go back to quoting the Reviewers' opinions.

**Wiktoria Anna Szczurowska** emphasized that "professor Roman Tokarczyk belongs to the authors who can write about difficult issues in an interesting and accessible way. His latest monograph constitutes an incredible intellectual adventure... It seems possible to elaborate on the exceedingly important issues concerning law and philosophy in an accessible way, interesting even to an ordinary reader." **Iwona Agnieszka Karbowska** noticed a couple of advantages of the monograph: it constitutes the essence of what is the most important from the legal point of view, as for its reception, the book is very accessible... an excellent source of knowledge... it is an excellent way for students to revise; it helps future lawyers tackle the gist of law; instead of three different publications, more or less accessible, I guarantee, this one is enough...; it can be directed at different readers... *Chapeau bas* to the Author." **Marzena Teresa Dudczak** claimed that *The Principles of Jurisprudence, the Theory and Philosophy of Law. A critical reinterpretation is* "a very rich work, which includes a wide range of information, from the historical data up until now, along with the emerging" biojurisprudence. **Rafał Czesław Rygielski:** "It seems that all the objectives, i.e. the creation of a monograph, the use of a possibly simple language, innovation and reaching a wide group of scholars, have been achieved. What is astounding is the author's erudition, confirmed by smooth movement among different areas of knowledge... The author's easy style also deserves approval." **Dorota Iwona Młodzianowska** penetratingly described one of the author's assumptions concerning the "critical reinterpretation." According to her, the book "touches upon extremely timely areas of law, which intermingle with one another and yet each of them, as functioning separately, has a colossal contribution into the development of the legal culture of societies. Reading the publication constitutes an amazing intellectual adventure, broadening one's horizons, enriching cognition and, at the same

time, making the reader realize how fragile we are, despite of the anthropocentric attitude to the world." **Karolina Aleksandra Radlak** noticed that "Professor Roman Tokarczyk's publication has a original, pioneering and innovative character... it has big cognitive value... Referring to the book as a great work will not be an exaggeration. It is a work of passion, ease, nimbleness and wisdom." For **Robert Mariusz Majewski** "reading the book is not an unpleasant necessity, but a fascinating journey for a mong eager for knowledge." According to **Łukasz Sebastian Stefan**, "the book is a result of detailed research by a lawyer and a philosopher, but most importantly a man aware of his knowledge and sensible to human life." As an author focused on the value of life, I really appreciate such thought-provoking comments stimulating a contemplation of life. "Personally, I was delighted by the book," **Gabriela Maria Jachimowska** wrote, "and it made me think about the value of life." Similarly, **Joanna Wilczek,** confessed: "It is a publication on the highest level... it is in my bestseller list, it is really the only type of book which, after reading it, makes you stop and think for a while. Now I realized the meaning of life." The perception of the content of the book by my Humanitas University Students confirms how differently they understand what seems to be obvious. While the majority regarded the content of the book as clear, or very clear, there were some who did not, nevertheless. **Agata Anna Mędrygał** confessed that "the book does not belong to the light ones." **Magdalena Małgorzata Rembek** admitted, in turn, that: "the issues discussed are not easy for a student of administration," which could imply that the book is easier to understand for students of other majors, especially law. In her casual review, **Anna Weronika Jurasz** turned out to be ruthless in her opinion of most of the content of the book. She wrote bravely, though irritated, which did not influence, however, my opinion of their review, "that most of the content has been compiled in a harsh way, which does not help a contemporary student acquire such a vast amount of knowledge." Some reviewers, e.g. **Karolina Milena Morawska,** had to "reread some fragments in order to understand them." They did not suffer a loss, however, as it is known that revision, next to understanding, is crucial to memorize things. While reading such discrepant opinions of a publication targeted at a relatively small group of readers, with a similar level of formal education, there arises a general remark. It should be noticed how big, or even indescribable the difficulties of the legislators must be when it comes to expressing clearly the laws addressed to millions of diverse recipients with different levels of awareness.

**Małgorzata Izabela Brzeska** classified the reviewed book as of those "which have a big influence on our worldview... Such publications, containing a number of wise thoughts, are unforgettable, as they help us enrich our vocabulary." **Małgorzata Anna Szczęśniak,** after mentioning numerous mistakes in the decision-making process of the Polish government, does not have any doubts that the book should be on the »obligatory reading list« of the members of parliament, senators and politicians, as well as

the members of various commissions, i.e. people who should take care of obeying the law on a regular basis." I will probably incur the displeasure of my scholar colleagues if I quote **Katarzyna Jadwiga Borowiec's** suggestion. "In my humble opinion," she says, "the book should also be read by the university teachers who lecture on the basics of jurisprudence or the theory of law, as they would improve their skills as lecturers. Speaking a language similar to the one the author of the book uses, they would get through to the minds of students-laymen much faster." Therefore, **Małgorzata Ewelina Stępień** could admit that "the book convinced me of the subject matter of philosophy, it proved that the content can be presented in a simple yet pleasant way."

So as to recover from the acrid remarks referring to the difficulties in the perception of the book by some of my Humanitas Students, I will quote a completely opposite opinion. **Anna Maria Kurzawa-Dyrcz** claim s that "the book is written in such a way that even for the fledgling in the subject it is clear and understood... It is a diversified lecture... an excellent publication that broadened many cognitive horizons... it is not a traditional academic handbook, but a magnificent monograph... on an exceedingly sophisticated subject. Therefore, it passes on the author's vast knowledge and rich experience." "Every thought written on the pages of the book," stated **Andżela Jurga,** "is somehow a discovery for me." For **Karolina Prażnowska,** the book is "a repository of knowledge when it comes to both legal and philosophical issues." According to **Ewa Adelajda Jachimowska,** in turn, "the author did not resign from the high level and profoundness of his ruminations, which are numerous in the book." **Dominik Maciej Błoniarczyk** added that "the book is a remarkable piece of work." **Karolina Anna Jędrzejak** definitely knows a lot, but this time she stated: "I know one thing for sure, the book is excellent." It is difficult not to be overwhelmed by the coquetry of the catchy, charming and probably to some extent a bit deceptive words by **Andrzej Janus.** "I will start from saying that my life is not going to be boring anymore. You gave me a work which my mind is not capable of embracing till today. Your book is not just meant to be read, but to keep coming back to it. It is full of humor and contrariness. It is excellent to read. My wife, who is a Doctor of Medicine, frequently pilfers the book from my briefcase and immerses in reading, too. We often talk in the evening, especially about the third part of the handbook. The way in which you describe the philosophy of law is really fascinating to both of us." For **Milena Karolina Plaza** "What makes the reviewed book extraordinary is: the importance of the subject matter, especially introducing the new trend in legal studies... intelligent division into parts, as well as an interesting part of particular texts... It is beyond all doubt that Professor Tokarczyk's latest book constitutes significant contribution to contemporary studies of the theory and philosophy of law." "In my opinion," says **Natalia Teresa Goik,** "the reviewed work is »a pill« of knowledge on the three disciplines, and it might well serve student as a handbook – a register of cases."

**Wirginia Wróbel** wrote: Reading the book gave me a lot of pleasure; "I read the

book with great enthusiasm and »eager for knowledge«." Since, according to **Martyna Małgorzata Kałat**, "every chapter makes it possible to understand a given question thoroughly. "I am full of admiration for the Professor," admits **Anna Teresa Kotas** elegantly, "who provides knowledge in a very comprehensible and detailed way in all three parts of the book." **Ksenia Dela** stated: "I think that professor Roman Andrzej Tokarczyk's publication might be an excellent inspiration to further discovering and broadening one's knowledge on the philosophy of law." **Aleksandra Natalia Polis** says: "I am certain that Roman Tokarczyk's book will always find interested readers among the students of law, administration, political studies, philosophy etc." **Marlena Kucza** sums up: "To recap, the book contains above-average values... important contribution into the development of legal and philosophical studies." Numerous reviewers," among others **Anna Kantor**, **Karolina Beata Koterwa**, **Mateusz Nowakowski,** acknowledge that they admire and respect the author for taking up such difficult job." **Izabela Szczęsny** emphasizes in a lofty manner: "It is a wonderful publication by a wonderful person, who I fortunately had the pleasure to meet, therefore I am able to say objectively that the dilemmas are fully substantiated." Summing up his review, **Krzysztof Wojtasiak** highlighted that "the reviewed book constitutes an extremely significant publication on the legal book market and every practicing lawyer's bookcase should have the book on its shelf. What makes the book different from other publications of this type is the synthetical approach towards the basic issues relating to jurisprudence, the theory and philosophy of law." Among many thanks addressed to the author, **Ewa Grażyna Strug's** words stand out: "I would like to express my gratitude for such a publication... which leads the reader »by the hand« from the basics of jurisprudence to the profundity and vastness of the ambiguity of notions and perspectives in order to build up wisdom, for philosophy is the love of wisdom." **Marzena Grażyna Libera**, on the other hand, while expressing her gratitude for "the possibility to read a book by such prominent author as Professor Roman Andrzej Tokarczyk," admitted that "it takes pride of place in my bookcase."

## ABOUT THE AUTHOR

*It isn't what they say about you,*
*it's what they whisper behind your back.*
Eroll Flynn

I was endowed by the authors of the reviews – my Students with so many adjectives that I will introduce myself as Roman Andrzej Tokarczyk. I am currently using my middle name – Andrzej, too, so as not to be confused with a couple of other people also called Roman Tokarczyk, living in Poland and abroad. For instance, next to my profile photographs on the Internet there is a picture of Roman Tokarczyk – a notary public from Warsaw. It is difficult to confuse us, however, as he is definitely richer

than me in the material dimension, but I seem to be the richer one as far as our hair is concerned. There is much more information about the very surname Tokarczyk on the already mentioned Internet. For example, in the United States there is a book titled *The Tokarczyk Name in History.*

My Students from Humanitas University know how to spell my surname. Only three of them, male, because of the lack of proofreading of their reviews, wrote sporadically Tokarczuk instead of Tokarczyk. I forgive them and do not bear a grudge for it, as my surname has been numerously confused with the names of other very honorable People – Ignacy Tokarczuk, the bishop of Przemyśl, and Olga Tokarczuk, a well-known author. Associating my name with such prominent People brings credit to my surname, but I am not sure whether it goes both ways. I will make one more remark upon the times of telephone directories. Then, while travelling the world, whenever I arrive in a new place, I used to start my stay there from looking up my name (or at least the surname) in a telephone book. In Canada, for instance, there was a Roman Tokarczyk from Ontario, an established prosecuting attorney. Because of the coincidence of our names and surnames he had me as his guest. So as not to confuse each other, we spent some time in front of a mirror next to each other.

In the reviews it was clearly visible that the Authors were very diversified when it came to being familiar with and obeying the academic etiquette. Those who the notion of etiquette is foreign to completely or partially will be mentioned. I will also distinguish the names of those Students whose sense of tact and finesse is on a very high level when it comes to writing about others or addressing them directly, especially a professor. These are the praiseworthy names (in an alphabetical order): **Małgorzata Izabela Brzeska**, **Jarosław Łukasz Ferdyn**, **Beata Stanisława Grzelec**, **Karolina Kentnowska**, **Irena Zofia Kucharek**, **Marzena Grażyna Libera**, **Rafał Czesław Rygielski** and **Sylwia Uścimiak**. As a person teaching legal, moral and even etiquette norms, I will say that in the hierarchy of their subtlety and the quality of cultural level it is not the legal or moral norms that make all the running, but it is the etiquette that leads the way, which is best visible in the normative cultures of the Far East. Thus what I dream about is that the situation is similar concerning the normative cultures of the West, including Poland. Some Students, before they wrote the review, got acquainted with my biography, whether necessarily or not – I do not know. **Anna Maria Kurzawa-Dyrcz** wrote as follows: "While preparing to wrote my first review, I familiarized myself with the biography of the highly respectable man of vast knowledge, basking in esteem in the academic community and enjoying prestige among students. I am delighted by the knowledge and rich scholarly experience of the author." In order to group the numerous opinions on myself expressed by my Humanitas Students, I will make use of the modifiers they used, which are as follows: a person, a lawyer, a philosopher, a professor, a scholar, a scientist, a researcher, an author, a writer, a publicist, a specialist, a university

teacher, a speaker, an authority. Nearly all of the opinions tend to use more than one of the aforementioned modifiers at the same time. **Monika Anna Urbanik** wrote a review in the form of a letter addressed to me, in which she used numerous attributes which made me abashed. She wrote: "Dear Professor, I am full of admiration for you. What commands respect is the incredible number of publications, occupying high positions, a number of state distinctions and prizes, as well as cherishing friendship, tradition and your own interests such as dancing or skiing. If being kind, open-minded and serene is added up to the aforementioned qualities, there appears an image of an eminent scholar, a world-class specialist of impeccable manners." According to **Iwona Agnieszka Karbowska's** opinion, "Professor Tokarczyk is an exceedingly interesting person – with his rich personality, impeccable looks, extremely rich experience and great achievements... I am proud to be his student. Such a great person, a big authority in the area of the philosophy of law and other fields, made me – a common student – review his book; I am afraid my knowledge is too scant to evaluate it, but I will try and do my best." Iwona's attempt turned out to be successful, not because of her opinion of me, but considering very good form and content of the review she submitted to me. Although we have not known each other for long, **Aleksandra Monika Trebuniak** managed to notice that "Professor is an extraordinary person... he is a pioneer when it comes to the new trend in jurisprudence – biojurisprudence, as well as... legal proxemics... he has a big influence on shaping the interest of the legal »world« in legal comparative studies and the philosophy of law. It was the energy that he emanates and his *dossier* that encouraged me to get acquainted with the publication." **Marcin Krzysztof Skuza** stated with conviction: "As it can be seen through his achievements, Professor is an open-minded and enlightened person, actively engaged in a number of areas significant for us as a society, while being partial to ordinary or amusing issues at the same time. **Anita Lucyna Cugowska** somehow noticed: "Scholars write about the Professor beautifully." **Irena Zofia Kucharek's** review is full of beauty and coquetry. She says: "I admit that I was pleasantly surprised that such a prominent person in a kind and open way shares the story of his and his family... On the Internet you might see that Professor loves animals, and it is common knowledge that a person who loves animals is a good person. At this point, allow me to refer to my personal reflection on the fact that Professor, in his kindness, will turn out to be understanding, too, as my knowledge is too scarce and I must admit that, in spite of my best intentions, I was not able to comprehend the vastness of knowledge included in the book... Dear Professor, I admire your knowledge included in the book, but, most of all, I do admire your extraordinary personality." After getting familiar with Irena's work I did not have any doubts that it was very good, and the self-assessment of her knowledge was an expression of her charming humbleness.

In the light of the aforementioned opinions, what can I say about myself as I person. I belong to the so called larks, i.e. people who are up at dawn. Taking only this fact into consideration, I cannot consider myself to be great, as some owls who sleep long do and they see their greatness in the length of their shadow by the sunset. I have never been overly rich therefore my idea of wealth includes a smile, a kind gesture, a good word, good will and high expectations towards yourself. Such expenditures are relatively inexpensive for such a person like me, but they constitute the easiest and the most effective ways leading directly to another person. Trying to act this way, I please some people, whereas numerous others are become surprised or even astonished.

**Angelika Katarzyna Baryła** has no doubts that „Professor Roman Tokarczyk is a prominent lawyer, philosopher and a specialist in the fields of legal ethics, the philosophy of law, as well as political and legal doctrines. It is also worth mentioning that he is the founder of a new trend in the area of jurisprudence, i.e. biojurisprudence... and he aims at its development." **Justyna Magdalena Osuch** knows that the professor "belongs to the group of the most active and dynamic scholar lawyers in the country. He also enjoys prestige in the international scientific circles on several continents." In her review, **Aleksandra Tomczak** did not forget to include "a few words about professor Tokarczyk – a great lawyer and philosopher, the author of numerous books and publications which enabled many lawyers and students to perceive law from a new perspective." Taking into account the reasons mentioned above, in the eyes of **Karolina Anna Jędrzejak** "Professor Roman Andrzej Tokarczyk is a prominent lawyer and philosopher." A few authors of the reviews referred to me as a "scholar," a title both honorable and obliging. For **Iwona Jolanta Sobstel** "Professor Roman Tokarczyk is a great scholar, recognized in literature, an expert in politics, law and philosophy, the author of many works in different areas of legal studies." With no pathos, in turn, **Dominik Maciej Błoniarczyk** wrote: "It is visible that Professor has a good grasp of the whole subject of philosophy" (sic!). **Anna Kantor** stated: "I am full of admiration for professor Roman Tokarczyk, a great scholar... Looking at his biography it can be assumed that he deserves to be referred to as an authority... he commands even greater respect." **Wiktoria Anna Szczurowska** shared the opinion: "I would like to express my appreciation for professor Roman Andrzej Tokarczyk, a prominent scholar and a great authority in the field of the philosophy of law." Too modestly, to be sure, **Agnieszka Katarzyna Jańta** wtites about herself: "I put a lot of effort into reading the book and writing its review as I am far from being such a prominent scholar. The more so, I am full of admiration for the author... professor Roman Tokarczyk."

Obviously, I accept all the flattery with both satisfaction and common sense. Following my Great Master and Friend, professor Grzegorz Leopold Seidler, I have an invariable opinion of myself. To be sure, I am not as wise as I sometimes happen

to think, but I am also not as foolish as some of my opponents believe. Since I have suffered from creative anxiety for years, I know that anxiety leads to achievements, whereas too much satisfaction with self leads to nothing but defeat. I think highly of Descartes and his thought that thinking is the essence of being. I think even higher, however, of Pascal's thought about the advantage of doubt over certainty. Hence, I will address Descartes and Pascal *post mortem* to say that even for the most ideal thinking it is not possible to go beyond the boundary of the highest value which is experience. It was Locke who used to say so, but it is life in particular that teaches us about that. It teaches us that it is impossible to climb the ladder of success with your hands in the pockets. In order to avert three great miseries – as Voltaire used to emphasize – boredom, vice and poverty, one must work, work, work.

The Authors of the reviews included opinions on both my all scholarly achievements and the one particular book. **Daria Magdalena Całka** stated: „In my opinion professor Tokarczyk's book is a remarkably creative publication. I congratulate Professor on such considerable scholarly output. I am full of admiration for him, his works and great talent." **Zofia Słomska** wrote about me, as an author: he is „one of the best known, both in Poland and abroad, philosophers and theoreticians of law, who had significant influence on the development of the European and world-wide philosophy of law... an award-winning scholar, a great authority... he can be proud of impressive scholarly output of fundamental works in different areas of legal sciences, published in a couple of languages at home and abroad." My achievements "made enormous impression" on **Małgorzata Kuberska**, whereas **Dorota Pośpiech** found it "impressive." She "bows and scrapes to the AUTHOR for his huge knowledge of so many different fields, extraordinary culture of word, innovation, setting up new frameworks." I would like to thank **Joanna Anna Feliksik** for her wishes: "I wish you, Professor, a multitude of readers, as well as further interesting scholarly works, as they constitute a source of inspiration, which I do believe will come true."

In a number of the reviews the author is mentioned only in the context of the aforesaid handbook. According to **Dominika Olga Kozera**: "Professor R. Tokarczyk can write about difficult issues in an interesting and approachable way. Therefore, becoming absorbed in the book, the reader feels like going on to the next chapter... because it touches upon questions which are exceedingly important for people." **Elżbieta Justyna Kubica-Węgrzyn** expressed her opinion in a similar vein: many thanks to the author who, apart from great erudition, proved to have literary talent, which very few authors of scientific works might boast of... I am full of admiration for his sense of a great scholar in the sphere of the philosophy of law and I am full of praise for professor Roman Tokarczyk." **Angelika Katarzyna Baryła** stated: "I would like to mention that I am full of admiration for Professor Tokarczyk as he made the effort to describe three such broad problems in the handbook; I also admire his remarkable knowledge." In **Joanna Katarzyna Gidek**'s opinion "The author's expertise is astonishing,

exceptional and in-depth, which results in the style and vocabulary of the book." Thus, **Beata Stanisława Grzelec** in a way sums up all the opinions: The author himself is an extraordinary and multidimensional personality." **Karolina Anna Jędrzejak** makes "my obeisance to Professor for creating the work."

For a professor to become an author, it is necessary to be a researcher first. He must search for truth as a touchstone of the scientific knowledge so after announcing it others, especially students, could acquire it, too. The position of a researcher who announces the results of his work depends on their originality and cognitive or (and) practical utility. "It is better to suffer defeat – Herman Melville believed – being original that achieve success thanks to imitation." Being well-thought of because of its originality, biojurisprudence encourages a contemporary person to consider not only the meaning of their own life but also their relationships with other manifestations of life. Biojurisprudence, in its transdisciplinarity, has the advantage over the specialized narrow-mindedness of those who call themselves experts. As Nicholas Butler ironically summed it up "An expert is someone who knows more and more, until finally they know everything about nothing." In order to avoid that, my life's philosophy is different; it can be found on my website.

**Olimpia Anna Nowak** noticed accurately that an author should, most of all, convince the recipients to his opinions, not forcing the reader to accept them. She says: „By so doing the author proves that he does not treat the reader as a puppet, who must agree with his every word. Not at all. The author, through his monodrama (sic!) teaches us that we must think ourselves and understand." **Marlena Barbara Noworyta** wrote: "I would like to express my admiration for the author, Professor Roman Tokarczyk, who I had the pleasure to meet during lectures... Professor proved himself as a prominent lawyer and philosopher with vast knowledge and experience, being able to arouse the students' interest in the field of philosophy; he is, at the same time, an extremely kind and warm person." In this way, almost imperceptibly, we have reached opinions on the author of the reviewed book as a university teacher.

In his moving review **Andrzej Janus** addressed me as a university teacher. He wrote: "Dear Professor, the way how you run your lectures, how fabulously you play with words, how good you feel in the lecture hall as a speaker talking about such sophisticated questions as the theory of law is completely impossible to understand to me. When I happen to read the book I can see you in front of my eyes as if you were there. This shows how much of yourself you put in that book." **Dorota Joanna Skuza wrote:** "Tokarczyk, the Scholar, has a very interesting biography, which emanates with incredible experience of a wonderful lawyer and philosopher. The knowledge which Professor passes on to students during lectures is really impressive. Professor transmits knowledge to students in an extremely accessible way – I left the lecture hall delighted by the wisdom and professionalism of the Scholar." **Marcin Krzysztof Skuza**, in turn, noticed that the professor "During classes he proved to be a man

who gives away a lot of knowledge and is able to pass even the toughest issues in a very easy way." "He is one of few lecturers who let the students speak and allow to ask questions," added **Damian Paweł Sęga**.

"I wish we had more classes with Professor," writes sorrowful **Marzena Grażyna Libera**, "as he can both present the image of the three fields of knowledge and run classes in an absorbing way, full of flair, humor and interesting associations. The very possibility of asking questions on the first lecture proved that Professor Tokarczyk is not a boring teacher but one who is open to cooperation with students and expects remarks and discussion." **Magdalena Leśniak** suggests: "Professor has great passion for his academic teaching. He is a man of great caliber – a prominent scholar and erudite. His publications constitute an event for those interested in the field of the philosophy and the theory of law. Professor is an unquestionable authority in this field." **Anna Maria Jedlińska** shared a similar opinion. Again, sensitive and curious **Dorota Joanna Skuza**: " I have never met such a person. I have never met such an authority, who made me think of the sense and meaning of existence. In the review of my book, **Mateusz Nerka**, next to his opinion on me, included beautiful wishes: "I am happy to have the chance to attend your lectures – you sensationally complete the book with yourself. It is one of those Works which splendidly show your personal attitude to the world, your sophisticated sense of humor and extraordinary intelligence... I wish you joy, which sees beauty in small things. Hope, which does not fade away, when dreams seem too far. Peace, which calms when everything else throws you off balance. Faith, which gives support when you feel helpless. And, what is most significant, I wish you to stay Yourself." Well, I thank Mateusz very much indeed for wise wishes and, from the bottom of my heart, I wish the same to him. I am glad that my Students perceive the great value of good education, even for the sake of the education itself, since it is property which cannot be taken away from an educated person. Those who grumble about the high costs of higher education should realize that the price of ignorance is much higher. As a teacher I know that while teaching others I do learn myself, too. I realize that admonishing others is much easier than yourself. I know that being aware of the fact that our knowledge is limited constitutes the most certain constituent of the knowledge. I realize that a thing well-done is of greater value than a well-said or well-written one. I know that, most of all, it is the deeds that are evaluated and judged, not the offices held. I know that we all crave for perfection, but it could be achieved, however unfeasible, if there was no possibility of subtracting or adding anything. For there must not be any predefined or imposed limits to people's aspirations. With no grumbling about my fate I will finally mention that teachers, since time immemorial, have been given too big trust and too little remuneration (even at private universities). But it is not an opinion of mine!

As the author of *Academic Anecdote Anthology*, published threefold, I will emphasize that only those who can laugh at themselves do not suffer from the lack of

entertainment. „Nothing reveals the real character of a man more than a joke that touches himself" - noticed Georg Christoph Lichtenberg right on the mark. An indication of a serene soul is the ability to laugh at yourself. In this ability I see joy and strength to respect others. However, I do not mention here any anecdotes about myself, as some of the Reviewers suggested, as they will be found in the already mentioned *Anthology*. Obviously, the reviewed book of mine, just as any other publication, does not exhaust the subject. I hereby share **Mateusza Grot**'s opinion, who, in his very good review, quotes Montesquieu's words: „When writing, one shall not exhaust the subject so there is nothing left for the reader Thus, it is not about the people reading only, it is about them thinking."

Roman Andrzej Tokarczyk