

*Jan Piątkowski*

Uniwersytet Mikołaja Kopernika, Toruń

janter@umk.pl

ORCID: <https://orcid.org/0000-0001-5249-9024>

## Limitations to interpretation of the law and the principle of tripartition of powers in Poland (in the context of the reference clause of Article 300 of the Labour Code)

<http://dx.doi.org/10.12775/SIT.2018.036>

The problem of the limitations to interpretation of the law is one of the strategic issues of the widely-understood process of law application. To some extent it is also connected with the principle of the tri-partite division of authority in Poland, in particular with regard to the separation of legislative and judicial powers. At the same time, it is an issue of extraordinary legal complexity, as evidenced, for example, by many years of jurisprudence of the Polish Supreme Court in labour law cases.

In the deliberations on the limits of interpretation of law, it is particularly important to determine the context in which they are carried out. Generally what is meant is a specific point of reference, which can be, for example, the principle of correct reasoning in accordance with the rules of legal logic. In the jurisprudence of the Supreme Court and in jurisprudence, such a point of reference is constituted, inter alia, in the clause referring to the Civil Code, contained in Article 300 of the Labour Code. Pursuant to

this provision, in matters not regulated by the provisions of the Labour Law, the provisions of the Civil Code apply accordingly to labour relations, if they are not contrary to the principles of the Labour Law. The main assumption of the rational legislator<sup>1</sup> was to adopt in this provision an appropriate legislative technique<sup>2</sup>. Reference clauses are used in modern legal systems all over the world as an instrument of correct legislation. The principle of correct legislation, being one of the constitutive elements of the rule of law (Article 2 of the Constitution of the Republic of Poland)<sup>3</sup>, and the lack of significant needs as to complete and therefore comprehensive regulation of the status of parties to the employment relationship in the Labour Code, constitute a sufficient justification to use the reference clause in Article 300 of the Labour Code. In fact, one of the many rules of lawmaking is that the act must not repeat provisions contained in other acts<sup>4</sup>. The use of references is a normal legislative technique, also dictated by such reasons as the conciseness of the text or the need to ensure that legal acts regulating the same issue are not contradictory. Such a legislative technique is applied, *inter alia*, in the Labour Code, as well as in some labour pragmatics, e.g. in the Act on Higher Education and Science or in the Act on Local Government Employees. There are no legal or axiological grounds to combine with the content of Article 300 of the Labour Code other objectives other than those mentioned above.

---

<sup>1</sup> The concept of a rational legislator is analysed in particular by Z. Ziemiński, *Teoria prawa*, Warszawa-Poznań 1972 r., p. 111 et seq.

<sup>2</sup> More on the principles of legislative technique L. Morawski, *Wstęp do prawoznawstwa*, Toruń 2009, p. 103 et seq.

<sup>3</sup> Judgment of the Constitutional Tribunal of 27 February 2014, ref. no. P 31/13, and judgment of the Constitutional Tribunal of 19 February 2008, ref. no.: P 48/06, OTK ZU 2008, No. 1A, item 4.

<sup>4</sup> Cf. Sec. 4(1) of the Annex to the regulation of the President of the Council of Ministers of 20 June 2002 on the "Principles of Legislative Technique" (Journal of Laws No. 100, item 908), issued on the basis of Article 14, section 4, item 1 of the Act of 8 August 1998 on the Council of Ministers [(i.e.: Journal of Laws of 1999, No. 82, item 929, as amended)]. The President of the Council of Ministers determines the rules of legislative technique following consultation with the Legislative Council.

A disputable issue, giving rise to specific dilemmas and doubts of interpretation<sup>5</sup> is the very understanding of the clause of Article 300 of the Labour Code. The doctrine has not standardized views in this respect, although the dominant position is clearly marked and corresponds with the line of jurisprudence of the Supreme Court. In the theory of law, one may encounter a general (related to the entire law), ambiguous view on the phrase “appropriate application of the law”. It is assumed that proper application of the law may consist (depending on the specific case) in its application without any alteration (apart from changing part of the hypothesis), in its application after adequate modifications, or in the refusal to apply it<sup>6</sup>. In such a context, the reference clause from Article 300 of the Labour Code as part of an issue of broader theoretical and legal significance is interdisciplinary in nature<sup>7</sup>.

It is evident that the clause on proper application of Article 300 of the Labour Code allows the direct application of standards contained in the Civil Code, as appropriate for employment relations<sup>8</sup>.

---

<sup>5</sup> Cf. J. Nowacki, *Odpowiednie” stosowanie przepisów prawa*, „Państwo i Prawo” 1964, Vol. 3, p. 368. In the author’s opinion, this issue related to the clause of proper application of regulations is often omitted and sometimes even ignored in jurisprudence.

Ibidem, p. 367.

<sup>6</sup> In particular: L. Morawski, *Zasady wykładni prawa*, Toruń 2006, p. 215; K. Opałek, J. Wróblewski, *Zagadnienia teorii prawa*, Warszawa 1969, pp. 320–321; W. Sanetra, *Commentary to art. 300 LC*, in: *Kodeks pracy. Komentarz*, Edition 2, Warszawa 2011, pp. 1438–1439, and J. Nowacki, „Odpowiednie” stosowanie, p. 372. This possibility is also assumed by E. Maniewska, in: K. Jaśkowski, E. Maniewska, *Kodeks pracy*, v.1, commentary to art. 300 KP, p. 903.

<sup>7</sup> J. Piątkowski, *Klauzula odpowiedniego stosowania Kodeksu cywilnego do stosunków pracy. Dylematy i zagrożenia*, in: *Prawo pracy. Między gospodarką a ochroną pracy. Księga jubileuszowa Profesora Ludwika Florka*, ed. M. Latos-Miłkowska, Ł. Pisarczyk, Warszawa 2016, p. 324. See also: M. B. Cwiertniak, *Z teoretycznych zagadnień skodyfikowanego prawa pracy: kilka uwag w związku z art. 300 kodeksu pracy*, PPIPS 1977, t. 1, s. 33. and Z. Salwa, *Stosunek kodeksu pracy do prawa cywilnego*, in: *Kodeks pracy w praktyce. Pierwsze doświadczenia i problemy*, „Studia i Materiały” 1976, No. 17, p. 138.

<sup>8</sup> Cf. M. Piekarski, *Commentary to art. 300 LC*, in: A. Fliczek, W. Formański, M. Piekarski, S. Rejman, F. Rusek, Z. Salwa, K. Zieliński, *Kodeks pracy z komentarzem*, Warszawa 1979, p. 703.

The literature expresses the convincing view that the admissibility of the direct application of a civil standard results from the *a maiori ad minus* argument<sup>9</sup>. In most cases, such a mechanism is applied in practice<sup>10</sup>, as evidenced by numerous rulings of the Supreme Court, including Article 6 of the Civil Code<sup>11</sup>. On the other hand, the view on the possibility of the non-application of a provision as a whole, although adopted almost universally, seems to be, in some part, logically incoherent, unless non-application of the provision is related to lack of substance. If the legislator orders the proper application of the law, the non-application of the law for a specific reason does not express the intention of the legislator. Moreover, the norm contained in Article 300 may be perceived as devoid of normative content. The only assumption of the legislator in Article 300 of the Labour Code when it comes to non-application of the provisions of the Civil Code is their inconsistency with the principles of labour law<sup>12</sup>.

On the other hand, it is disputable whether proper application also means the possibility of a partial change of the civil law provision for the benefit of differing in character (though to some extent similar) employment relationships. According to the dominant view, such a modification of the norm's disposition is acceptable, since in the legislator's assumption the provisions of the Civil Code are applied accordingly, and not directly<sup>13</sup>. In such an understanding,

---

<sup>9</sup> K.W. Baran, in: *Kodeks pracy. Komentarz*, ed. K.W. Baran, Warszawa 2012, commentary to art. 300 LC, p. 1407.

<sup>10</sup> Cf. W. Szubert, *Zarys prawa pracy*, Warszawa 1972, p. 60.

<sup>11</sup> Cf. in particular: judgment of the Supreme Court of 23 January 1998 (I PKN 501/97, OSNAPiUS 1999, No. 1, it. 15, concerning the manner of making declarations of intent (art. 61 KC), and judgment of the Supreme Court of 29 January 1975 (III PRN 67/74), OSNC 1975, No. 7–8, it. 123, on the application of unjust enrichment provisions to the worker (art. 405 and 409 CC).

<sup>12</sup> In the opinion of W. Sanetra, in: *Kodeks pracy*, red. J. Iwulski, W. Sanetra, Warszawa 2011 (commentary to art. 300 LC, p. 1439) the provision of the Civil Code may also not be applied if it results from limitation to applying the Civil Code “accordingly”.

<sup>13</sup> Cf. in particular K.W. Baran, in: *Kodeks pracy*, commentary to art. 300 LC, p. 1407; A. Kijowski, Commentary to art. 300 LC, in: *Kodeks pracy. Ko-*

the point of reference in the search for the substance of Article 300 of the Labour Code is the clause on the proper (and not direct) application of the provisions of the Civil Code, which raises fundamental doubts from the point of view of the constitutional principle of tripartition of power. In some instances it is even emphasized that the provisions of the Civil Code are applied for the purpose of interpreting them and formulating a labour law norm with a different content than the one derived from the same provision for civil law relations<sup>14</sup>. In the resolution of 18 October 2006, in a case not related to an employment relationship, the Supreme Court ruled that the requirement of “adequacy” in the application of the law means that a provision referring to a different, clearly regulated situation needs to be adjusted (and thus, in a sense, modified) owing to differences between two abstractly, hypothetically defined factual situations. Proponents of this view argue that the modification of a provision is justified first of all by the specific characteristics of labour law, and in particular the law of the employment relationship<sup>15</sup>, the character of the employment relationship itself<sup>16</sup> and the specificity of a particular case<sup>17</sup>. They stress that owing to the differences resulting from the nature of civil law relations and employment relations, it primarily involves the application of a broadening interpretation which as a rule relates to the subject matter<sup>18</sup>. Some representatives of the doctrine even point out that

---

mentarz, R. Celeda, L. Florek, E. Gienieczko, A. Kijowski, E. Szemplińska, B. Wagner, T. Zieliński, Warszawa 2001, s. 1253–1254; W. Sanetra, *Commentary to art. 300 LC*, pp. 1438–1439; B.M. Ćwiertniak, *Z teoretycznych zagadnień*, p. 35; M. Piekarski *Commentary to art. 300 LC*, p. 703.

<sup>14</sup> B. Wagner, *Normatywne związki prawa pracy z prawem cywilnym*, in: *Księga pamiątkowa w piątą rocznicę śmierci Profesora Andrzeja Kijowskiego*, ed. Z. Niedbała, Warszawa 2010, pp. 323–324.

<sup>15</sup> Cf. in particular A. Kijowski, *Commentary to art. 300 LC*, pp. 1251–1252.

<sup>16</sup> Cf. E. Maniewska, in: *Kodeks pracy. Vol. I. Komentarz LEX. Ustawy tworzące z orzecnictwem. Europejskie prawo pracy z orzecnictwem*, K. Jaśkowski, E. Maniewska, Warszawa 2014, commentary to art. 300 LC, p. 903. *Ibidem*, p. 903.

<sup>17</sup> W. Cajsel, *Kodeks pracy. Komentarz*, Warszawa 2007, p. 560.

<sup>18</sup> K.W. Baran, *Commentary to art. 300 LC*, p. 1407.

the relevant provisions of the labour law are helpful in modifying the norm<sup>19</sup>.

Supporters of the modification of the provisions of the Civil Code for the purpose of their adjustment to labour relations do not refer to the limits of such modification, and so fundamentally weaken the strength of their argumentation. They do not take into account the seriousness of a possible change, and in particular they do not consider whether it may be only a minor change, essentially falling within the legislator's will, or whether it may also be a significant change, fundamentally changing the normative statement<sup>20</sup>. This alone calls into question the combination of the clause from Article 300 of the Labour Code with a change in the provision, especially in the scope of its disposition.

Considerations concerning the clause on the appropriate application of Article 300 of the Labour Code, based solely on the analysis of the phrase "shall apply accordingly" contained in that provision (as opposed to the application of provisions directly) are not convincing. They are conducted in isolation and with a visible violation of the core value, resulting directly from the Constitution of the Republic of Poland, i.e. the principle of tripartition of power, with particular emphasis on the independence of the legislative authority from the judiciary<sup>21</sup>. The effect of these considerations

---

<sup>19</sup> For example, it is argued that the proper application of Article 361 Sec. 2 of the Civil Code (in conjunction with Article 471 of the Civil Code) consists in limiting the amount of compensation related to the failure to issue documents to the employee up to the same amount as in the case of a certificate of employment. Cf. E. Maniewska, *Commentary to art. 300 LC*, pp. 903–904. The Supreme Court, in its judgment of 17 February 1999, takes a different view on this issue, advocating full compensation to the employee, except in cases provided for in specific provisions (I PKN 578/98, OSNAPiUS 2000, Vol. 7, it. 263).

<sup>20</sup> We can only note a general statement that the proper application of the provisions of the Civil Code cannot go too far and mean a complete change in the content of these provisions. Cf. Z. Salwa, *Stosunek Kodeksu pracy do prawa cywilnego*, „St. i Mat. IPSS” 1976, No. 17; *Kodeks pracy w praktyce. Pierwsze doświadczenia i problemy*, p. 139 and W. Piotrowski, *Zawarcie umowy o pracę – Studia nad kodeksem pracy*, Poznań 1975, p. 47 et seq.

<sup>21</sup> In the opinion of the Constitutional Tribunal (judgment of 9 November 2005, Kp2/05), a special attribute of the judiciary is the competence to admin-

also leads to a violation of the universally accepted hierarchy of legal acts, i.e. the primacy of the basic act over an ordinary act. Undoubtedly, defining the boundaries of the interpretation of law is a highly complex issue, and the potential area of interpretation is extremely vast, as can be seen in particular in some highly controversial decisions of the Supreme Court. However, there should be no doubt that the interpretation must take place within the limits of the applicable law. Although the boundaries of the interpretation of law cannot be precisely defined, in the science of law and judicature it is almost universally accepted that any interpretation, whether strict, broadening, and/or functional, should in principle remain within the dictionary (linguistic) meaning of a given expression. It is also noted that linguistic interpretation not only provides a starting point for any interpretation of the law, but also outlines its limits within the possible meaning of the words contained in a legal text<sup>22</sup>. One of the interpretative directives of the 2nd degree is expressed in the fact that when a provision interpreted according to the language interpretative directives has an obvious and clear meaning, it should constitute the basis for an interpretative decision<sup>23</sup>. Only in absolutely exceptional circumstances, taking particular care and giving detailed justification, may the interpreter depart from the literal sense of the provision<sup>24</sup>.

---

ister justice in order to exercise each person's right to a court (Article 45 of the Constitution of the Republic of Poland). More broadly, M. Serowaniec, in: *Prawo konstytucyjne*, eds. Z. Witkowski, A. Bień-Kacała, Toruń 2015, p. 460 et seq.

<sup>22</sup> Cf. L. Morawski, *Zasady wykładni prawa*, p. 26 and the cited literature and body of rulings.

<sup>23</sup> More broadly Z. Ziemiński, *Teoria prawa*, p. 109. Ibidem, *Logiczne podstawy prawoznawstwa*, Warszawa 1966, p. 223 et seq.

<sup>24</sup> J. Piątkowski, *Klauzula odpowiedniego*, pp. 330–331. Cf. also L. Morawski, *Zasady wykładni*, p. 27. The author refers to the ruling of the Constitutional Tribunal of 28 June 2000 (K 29/99, OTK 2000/5/1), in which it was stressed that exceeding the indicated boundaries of interpretation must have a strong axiological justification, referring, above all, to constitutional values. In turn, Ziemiński (*Teoria prawa*, p. 107) points out that linguistic interpretative directives by necessity constitute a starting point for interpretation, although they do not always determine the interpretative decision.

When exploring the limits of law interpretation, two obvious assumptions must be taken into account. The first concerns the fact that the interpretation of a given law, which results in a specific interpretative decision, indicating a proper understanding of a given provision, must be based on the relation of consequence. An interpreted norm must result from a specific provision<sup>25</sup>. If there is no such relationship, we are not dealing with a properly understood process of law interpretation and its desired effects. An explicit change in the text of the norm (literal change) for the purpose of a given case constitutes a contradiction of a properly understood interpretation of the law. In the judgment of 23 September 2014<sup>26</sup> the Supreme Court held that it is possible to avoid acting as a result of an error within 7 days of learning about the error, and not within one year, as provided for in Article 88 Sec. 2 of the Civil Code. Such a change of the legal text for the sake of a specific case is in fact a normative statement and not an act of law interpretation. It should also be emphasized that a given norm should be a universal norm, for any purpose. If its content is changed accordingly, we will be dealing with a parent standard (resulting from the Civil Code) and a modified standard established on its basis (derivative standard). The problem and a significant weakness of the view allowing the modification of the law is that these two norms, to a different degree, ensure the protection of the employee's subjective rights, one of which is universally applicable (the parent standard), and the other – operates in the administration of justice solely for the benefit of a specific case, without binding other law abiding entities, even if the facts of the case are the same or similar.

The second assumption concerns the rejection of the obviously flawed thesis that through the reference clause in Article 300 of the Labour Code, the legislator authorizes entities applying the law (in practice the courts) to establish law. Law making (rule-making) is reserved exclusively for statutorily defined entities, to which the courts do not belong. The divergent and autonomous areas of law

---

<sup>25</sup> Cf. T. Zieliński, *Klauzule generalne w prawie pracy*, Warszawa 1988, pp. 100–101.

<sup>26</sup> II PK 269/13, Lex no. 1541199.



enforcement and law making are guarded by the principle of separation of powers, which has its normative basis in the Constitution of the Republic of Poland. Law making<sup>27</sup> and the application of law by specific entities are two different areas which should not overlap, even to a minimal extent. This thesis is not contradicted by the fact that, in the area of the execution of law, we are dealing with an interpretation of the law influencing the shape of the legal regulation, “defined as a mental operation of reconstructing legal norms”<sup>28</sup>. Some representatives of the doctrine refer to this phenomenon as “the legal order based on case-law”<sup>29</sup>. Thus, if the reference clause in Article 300 of the Labour Code does not authorize law making, the consequence is the assumption that the reference clause must undoubtedly be associated exclusively with the field of application of the law<sup>30</sup> and its interpretation, understood as a process aimed at determining the correct meaning and scope of legal texts.

In the light of these two assumptions, the question remains whether the modification of the provisions of the Civil Code for the sake of employment relations is still within the limits of the law, or whether it is a manifestation of the interference of entities applying the law in an area not reserved for them. Of course, this concerns a different alteration of parts of a legal norm from the hypothesis<sup>31</sup>.

---

<sup>27</sup> More broadly Z. Ziemiński, *Teoria państwa i prawa. Część druga. Zagadnienia teorii prawa. Skrypt dla studentów IV i V roku studiów prawniczych*, Poznań 1969, p. 112 and 144 et seq.

<sup>28</sup> Ibidem, p. 121.

<sup>29</sup> Cf. K. Opałek, *Problemy metodologiczne nauki prawa*, Warszawa 1962, p. 33. The author quotes A. Turska, *Możliwa i rzeczywista znajomość prawa. Z problematyki publikacji aktu normatywnego i społecznej znajomości prawa*, „Państwo i Prawo” 1964, v. 1, p. 13.

<sup>30</sup> More on the relationship between law making and law application J. Wróblewski, *Stosowanie prawa w zakładzie pracy a teoria prawa*, in: J. Jończyk, J. Wróblewski, *Stosowanie prawa w zakładzie pracy*, Wrocław 1977, p. 57 et seq. In the author’s opinion, taking into account the functional constructions, law making is the development of norms that influence the decision making process of law application.

<sup>31</sup> Contrary to the generally accepted view, it can be argued that by properly applying a provision of the Civil Code we are not dealing with a change in the hypothesis of said provision, but with a procedure of bringing a similar factual state under the norm of civil law with a similar hypothesis. The authors in

With regard to the question raised above, it is important to bear in mind two fundamental criteria: the above mentioned relationship of consequence, and the assumption that only in absolutely exceptional situations, and not under the general authority of the legislator resulting from Article 300 of the Labour Code, is it possible to derogate from the literal sense of the provision. It is debatable, to say the least, that the Supreme Court, in its search for an interpretative solution in the aforementioned judgment of 23 September 2014<sup>32</sup> applied the *legis* analogy deduction based on labour law provisions. Taking into account the order of proper application of the provisions of the Civil Code, *de iure* this makes it impossible to refer to the provisions of this Act. From the point of view of the general assumptions resulting from Article 300 of the Labour Code, at the very least, it is questionable to reach an interpretation decision assuming simultaneous application of the provisions of the Civil Code (on a reference basis) and of the Labour Law (on the basis of a deduction from provisions of the Labour Law) in a specific case<sup>33</sup>.

In a normative approach, doubts related to the modification of a legal norm as a result of the implementation of the clause of an appropriate application of law result from the very structure of Article 300 of the Labour Code. This provision refers to the appropriate application of the provisions of the Civil Code to employ-

---

favour of changing, at least partially, the hypothesis of the provision are, in particular, A. Wypych-Żywicka, *Jeszcze o zasadach prawa pracy w rozumieniu art. 300 k.p.*, in: *Aktualne zagadnienia prawa pracy i polityki socjalnej (zbiór studiów)*, ed. B.M. Cwiertniak, Vol. 2, Sosnowiec 2013, p. 52. Also, in the opinion of K. Opalek and J. Wróblewski (*Zagadnienia teorii prawa*, p. 321), when applying the provision there is no direct change, except for the fact that part of the hypothesis in this provision is changed by the fact that instead of a particular characterization of the factual situation there is a different characterization.

<sup>32</sup> Being guided by the protection of the employer's legitimate interests, it was assumed that the time limit for this action is equivalent to the time limit for notifying readiness to start work after being reinstated at work (i.e. 7 days – argument from Article 48 § 1 of the Labour Code) and is counted from the moment the error is detected.

<sup>33</sup> J. Piątkowski, *Klauzula odpowiedniego*, p. 332.

ment relations which are similar in nature, while other provisions provide for the direct application of some provisions of the Labour Law to employment relations of an administrative and legal nature (instead of applying them accordingly)<sup>34</sup>.

Another aspect of the issue under consideration should also be taken into account. On the theoretical and legal level, a change of law on the basis of the clause of appropriate application of law will not constitute law making, although it will bring about effects characteristic of the law making process. Moreover, a revised legal norm (derived norm) will be the basis for a judicial decision in a given case on the same basis as in the case of a norm established in the law making process (parent norm). This revised standard for the purpose of a particular case does not fit within a set of rules of state law guaranteeing the stability and transparency of the legal order and does not have a general binding force. Nor can it be a kind of a signpost for a citizen in shaping the attitudes desired by the law, as different courts could modify the content of the same norm in a different way, and also for the use of the same case. Therefore, if one agrees with the thesis on the admissibility of changing a legal norm from the Civil Code, the obvious consequence of the above would be the adoption of an unauthorized conclusion that in the process of applying the law, as a result of unauthorized interpretation of the law, the Supreme Court creates new legal norms for use in a specific case, based on the norms of the state law, without assigning them a universally binding force. We would therefore be confronted here with a collision of competences related to law making and its interpretation, strictly separated by the legislator. In a situation where the Supreme Court, by means of the clause of appropriate application of the law, changes the content of the norm's disposition, even if only to a small extent, we are faced not so much with the achievement of objectives related to the administra-

---

<sup>34</sup> As an example, we may indicate the Act of 24 August 1991 on the State Fire Service (i.e. Journal of Laws of 2018, item 1313), which in Article 69, section 1 provides that the provisions of the Act of 26 June 1974 shall apply to firefighters. Labour Code regarding the rights of employees related to parenthood, unless the provisions of this Act provide otherwise.

tion of justice as a result of the application of a specific legal norm, but above all with an act or a statement of a normative nature<sup>35</sup>.

An important argument in favour of the presented view is also the fact that modification of a civil law norm for use in employment relations is in fact the creation of a new norm, which is not included in the set of norms of state law. Nor is it a procedure undertaken as part of the application of law, which is performed on the basis of state law.

The thesis on the inadmissibility of changes to the provisions of the Civil Code for use with respect to labour relations, which has been discussed thus far, corresponds to the view presented in the doctrine<sup>36</sup> and case law<sup>37</sup> that the interpretation of law is permissible only if it is consistent with the meaning of the Act and its strict content. In a situation where we have to deal with different views concerning the understanding of the clause relating to the proper application of the law, we should be cautious with regard to those views which are not fully in line with the aforementioned opinion, in particular when they interfere with the principle of division of powers and statutory competences of the judicial authorities. Adding to all this the principle of legal certainty (safety), it can be argued that the proper application of the Civil Code within the meaning of Article 300 of the Labour Code signifies an auxiliary application of the civil law norm to employment relations not regulated by the provisions of the Labour Law on the basis of similarity of hypotheses, with the direct application of all elements of the legal norm. The content of the clause also includes a reference to a specific civil law standard of a different conceptual apparatus applied for the purposes of employment relations. In this sense, the reference clause from Article 300 of the Labour Code does not allow for a change in the content of a civil norm for the

---

<sup>35</sup> More broadly J. Piątkowski, *Klauzula odpowiedniego*, pp. 333–334.

<sup>36</sup> Cf. in particular S. Rozmaryn, *O uchwałach Rady Państwa, ustalających wykładnię i zasady stosowania prawa*, N.Pr. 1950, No. 11.

<sup>37</sup> The resolution of the entire Criminal Chamber of the Supreme Court of 8 October 1938, 1 K 260/37, Zb.O. 256/38, which emphasizes that courts, as well as the science of law, can interpret and explain the penal law, but cannot create and supplement it.

purposes of employment relations, a change which in fact leads to the creation of an apparent “legal norm”. The binding norms, which constitute the legal basis in a specific case, are only those expressly formulated in a legal act (or interpreted from this act), and not norms which are the product of bodies applying the law or the science of law, following a modification of a borrowed norm of the Civil Code<sup>38</sup>. Such an approach is in line with the view expressed in the doctrine<sup>39</sup> and judicature<sup>40</sup>, according to which the application of a specified norm by means of a reference clause which is outside its parental scope, and therefore concerns the second scope of reference, should be performed in the manner closest to its first scope of function. This is a simple consequence of the obvious assumption that the boundaries of law interpretation should be determined first of all by the superior principle of tripartition of powers, and more precisely by the rule of separation of legislative power from judicial power, and not (as is assumed in the science of law and judicature) by the clause of proper application of the provisions of the Civil Code to labour relations. Only then can we maintain the normative purity of the above mentioned principle.

### STRESZCZENIE

#### Granice wykładni prawa a zasada trójpodziału władz w Polsce (w kontekście klauzuli odsyłającej z art. 300 Kodeksu pracy)

Problematyka granic wykładni prawa należy do strategicznych zagadnień szeroko rozumianego procesu stosowania prawa. Sporną kwestią w tym zakresie jest rozumienie klauzuli odsyłającej z art. 300 KP, która zakłada, że w sprawach nieuregulowanych przepisami prawa pracy do stosunków pracy stosuje się odpowiednio przepisy Kodeksu cywilnego, jeżeli nie są

---

<sup>38</sup> Cf. T. Zieliński, *Klauzule generalne*, p. 101.

<sup>39</sup> E. Kabza, *Problem stosowania analogii w prawie cywilnym*, „Forum Prawnicze” 2010, No. 1, p. 48.

<sup>40</sup> Resolution of the Supreme Court of 30 January 2001, I KZP 50/00, OSNKW 2002, No. 3–4, item 16.

one sprzeczne z zasadami prawa pracy. W orzecznictwie i judykaturze dominuje zapatrywanie, że zawarta w tym przepisie klauzula odpowiedniego stosowania dopuszcza możliwość modyfikacji dyspozycji normy Kodeksu cywilnego, skoro w założeniu ustawodawcy przepisy tej ustawy stosuje się do stosunków pracy odpowiednio, a nie wprost. Takie zapatrywanie, oparte wyłącznie na analizie art. 300 KP, nie przekonuje. Stoi bowiem w wyraźnej opozycji do wartości nadrzędnej, wynikającej wprost z Konstytucji RP, tj. zasady trójpodziału władz, ze szczególnym uwzględnieniem odrębności władzy ustawodawczej od władzy sądowniczej. Zaprzeczeniem właściwie rozumianej wykładni prawa jest bowiem wyraźna zmiana tekstu normy (zmiana literalna) na użytek danej sprawy. Taka zmiana jest w rzeczywistości wypowiedzią normatywną, a nie aktem wykładni prawa.

**Słowa kluczowe:** wykładnia prawa; trójpodział władz; zasady poprawnej legislacji; klauzula odpowiedniego stosowania prawa; sprawa nieuregulowana; dyspozycja normy prawnej; stosunek pracy

## SUMMARY

Limitations to interpretation of the law and the principle of tripartition of powers in Poland (in the context of the reference clause of Article 300 of the Labour Code)

The problem regarding the limits of interpretation of the law is one of the strategic issues of the broadly understood process of law application. A disputable issue in this respect is the understanding of the clause referring to Article 300 of the Labour Code, which assumes that in matters not regulated by the provisions of the Labour Law, the provisions of the Civil Code apply accordingly to labour relations, if they are not contrary to the principles of the Labour Law. In case law and judicature, the dominant view is that the clause of appropriate application of law contained in this provision allows for the possibility of modification of the disposition of the Civil Code norm, since in concord with the legislator's assumption, the provisions of this Act are applicable to employment relations accordingly, and not directly. Such a view, based solely on the analysis of Article 300 of the Labour Code seems unconvincing. In fact, it stands in a clear opposition to the superior authority resulting directly from the Constitution of the Republic of Poland, i.e. the principle of tripartition of powers, with particular emphasis on the independence of the legislative authority from the judiciary. The contradiction of a properly understood interpretation of the law is a clear change in the text of the norm (literal

change) for the purpose of a given case. Such a change is in fact a normative statement and not an act of interpretation of the law.

**Keywords:** interpretation of the law; division of powers; principles of correct legislation; clause of proper application of the law; unregulated matter; disposition of the legal norm; employment relationship

## BIBLIOGRAPHY

- Baran K.W., in: *Kodeks pracy. Komentarz*, ed. K.W. Baran, Warszawa 2012.
- Cajsel W., *Kodeks pracy. Komentarz*, Warszawa 2007.
- Ćwiertniak M.B., *Z teoretycznych zagadnień skodyfikowanego prawa pracy: kilka uwag w związku z art. 300 kodeksu pracy*, PPiPS 1977, t. 1.
- Kabza E., *Problem stosowania analogii w prawie cywilnym*, „Forum Prawnicze” 2010, No. 1.
- Maniewska E., in: K. Jaśkowski, E. Maniewska, *Kodeks pracy. Vol. I. Komentarz LEX. Ustawy towarzyszące z orzecznictwem. Europejskie prawo pracy z orzecznictwem*, Warszawa 2014.
- Morawski L., *Wstęp do prawoznawstwa*, Toruń 2009.
- Morawski L., *Zasady wykładni prawa*, Toruń 2006.
- Nowacki J., *Odpowiednie” stosowanie przepisów prawa*, „Państwo i Prawo”, 1964.
- Opałek K., *Problemy metodologiczne nauki prawa*, Warszawa 1962.
- Opałek K., Wróblewski J., *Zagadnienia teorii prawa*, Warszawa 1969.
- Piątkowski J., *Klauzula odpowiedniego stosowania Kodeksu cywilnego do stosunków pracy. Dylematy i zagrożenia*, in: *Prawo pracy. Między gospodarką a ochroną pracy. Księga jubileuszowa Profesora Ludwika Florka*, ed. M. Latos-Miłkowska, Ł. Pisarczyk, Warszawa 2016.
- Piekarski M., *Commentary to art. 300 LC*, in: A. Flicek, W. Formański, M. Piekarski, S. Rejman, F. Rusek, Z. Salwa, K. Zieliński, *Kodeks pracy z komentarzem*, Warszawa 1979.
- Piotrowski W., *Zawarcie umowy o pracę – Studia nad kodeksem pracy*, Poznań 1975.
- Rozmarny S., *O uchwałach Rady Państwa, ustalających wykładnię i zasady stosowania prawa*, N.Pr. 1950, No. 11.
- Salwa Z., *Stosunek kodeksu pracy do prawa cywilnego*, „Studia i Materiały” 1976, No. 17: *Kodeks pracy w praktyce. Pierwsze doświadczenia i problemy*.
- Sanetra W., *Commentary to art. 300 LC*, in: *Kodeks pracy. Komentarz*, Warszawa 2011.
- Sanetra W., in: *Kodeks pracy*, red. J. Iwulski, W. Sanetra, Warszawa 2011.

- Serowaniec M., in: *Prawo konstytucyjne*, red. Z. Witkowski, A. Bień-Kacała, Toruń 2015.
- Szubert W., *Zarys prawa pracy*, Warszawa 1972.
- Turska A., *Możliwa i rzeczywista znajomość prawa. Z problematyki publikacji aktu normatywnego i społecznej znajomości prawa*, „Państwo i Prawo” 1964, No. 1.
- Wagner B., *Normatywne związki prawa pracy z prawem cywilnym*, in: *Księga pamiątkowa w piątą rocznicę śmierci Profesora Andrzeja Kijowskiego*, ed. Z. Niedbała, Warszawa 2010.
- Wróblewski J., *Stosowanie prawa w zakładzie pracy a teoria prawa*, in: *Stosowanie prawa w zakładzie pracy*, J. Jończyk, J. Wróblewski, Wrocław 1977.
- Wypych-Żywicka A., *Jeszcze o zasadach prawa pracy w rozumieniu art. 300 k.p.*, in: *Aktualne zagadnienia prawa pracy i polityki socjalnej (zbiór studiów)*, ed. B.M. Ćwiertniak, Vol. 2, Sosnowiec 2013.
- Zieliński T., *Klauzule generalne w prawie pracy*, Warszawa 1988.