

PRINCIPLES OF POLISH LABOUR LAW IN THE MULTI-LEVEL LEGAL FRAMEWORK

Principios del derecho del trabajo polaco en el marco legal multinivel

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Abstract

Basic principles of Polish Labour law appear both in the Constitution and in a separate chapter of the Labour Code. As norms of more general character they may (and do) serve as an important tool in interpreting specific provisions of this branch of law. Many of them have their counterparts in the fundamental rights or standards regulated in various international and European conventions. This article is presenting these principles and also shows, on the basis of two examples referring to the right to strike and freedom of association, that given a broad international context, their interpretation may be broadened or modified. At the same time existence of various systems of protection of worker's rights present a challenge for national systems and for employers and workers themselves.

Key words: Poland, labour law, principles of labour law, freedom of association, right to strike

Resumen

Los principios básicos de la legislación polaca del trabajo aparecen en la Constitución y en un capítulo aparte del Código del Trabajo. Como normas de carácter general pueden ser una herramienta importante en la interpretación de las disposiciones específicas de esta rama del derecho. Algunas tienen sus contrapartes en los derechos o normas fundamentales reguladas en diversos convenios internacionales y europeos. En este artículo se presentan estos principios y también se muestra, sobre la base de dos ejemplos que se refieren al derecho a la huelga y a la libertad sindical, que desde un contexto internacional más amplio, su interpretación puede amplificarse o modificarse. Al mismo tiempo, la existencia de diferentes sistemas de protección de los derechos de los trabajadores supone un reto para los sistemas nacionales así como para los empleadores y los propios trabajadores.

Palabras clave: Polonia, la legislación laboral, los principios del derecho del trabajo, la libertad sindical, derecho de huelga

SUMMARY

1. The basic principles of the polish labour law.- 1.1. Introductory remarks.- 1.2. The principle of freedom of work.- 1.3. The principle of remuneration for work.- 1.4. The principles of hierarchy of labour law sources and privilege of an employee.- 1.5. The principle of respect for human dignity and other personal interests of employee.- 1.6. The principle of equal treatment of workers.- 1.7. Employee's right to rest.- 1.8. The principle of ensuring safe and healthy working conditions.- 1.9. The principle of meeting the needs of social and living conditions of employees- 1.10. The principle of facilitation upgrading of skills by employee. - 1.11. The principle of freedom of association and the principle worker participation in the management of workplace.- 1.12. The principle of full and productive employment.- 2. Principles of the labour law in the international context.- 2.1. International standards. - 2.2. Charter of Fundamental Rights and the Protocol No 30.- 3. Multi-level protection system.- 3.1 Fundamental freedoms and social rights.- 3.2. National law vs. the ILO: refining the standards.- 4. Concluding remarks.- 5. Bibliography.

1. THE BASIC PRINCIPLES OF THE POLISH LABOUR LAW**1.1. Introductory remarks**

The aim of this paper is to present basic principles of the Polish labour law. However, instead of dwelling on their content and definition, I would like to reflect, on the basis of two recent examples to reflect to what extent is their content and interpretation determined by the multi-level international legal framework? Does the variety of mechanisms and instruments (such as Court of Justice of European Union, European Court of Human Rights and Committee of Experts on the Application of Conventions and Recommendations in the ILO) facilitate enforcement of fundamental workers rights? Does it lead to concurrence or appearance co-operative structure and dialogue between the courts and quasi-judicial bodies? The question is of vital importance since each of the mentioned above legal orders (national, European and international) is strongly related to the others all of them creating a multi-level legal framework within a multi-level network of courts and actors. Workers and employers in a specific situation are governed by legal standards deriving from distinct legal orders. These can be associated with "levels" of governance. Whereas each legal order can establish a hierarchy of legal sources, it is impossible to base a hierarchy of legal orders, instead the notion of a "network", in which each legal order determines the "level" at which distinct legal orders need to be situated in the hierarchy of legal orders.

The very notion of the principles can be variously interpreted. We can refer to phenomena which occur regularly, but also to certain standards, or directives. So the term principles of labour law will be applied in the latter

meaning¹. To begin with, it is important to briefly present the principles of labour law because they not only reflect general values but also help to interpret the provisions of labour law, by drawing attention to the general assumptions underlying this branch of the law.

In case of labour law such fundamental rights are provided explicitly in the Constitution. Many of them are also repeated in the Labour Code (LC), which, unlike any other Code in the Polish legal system, contains a separate chapter entitled "Basic principles of the labour law. This does not mean that the Chapter II Heading 1 LC contains an exhaustive catalogue of the principles of labour law. Even its title proves otherwise. Other principles of labour law can be derived from the further provisions of the LC and other legal acts. One example is a principle of protection of stability of employment relation, which can be reconstructed based on the provisions regulating dismissals procedures and prohibitions in this area.

Below I will present only these principles which are of a normative character and are explicitly mentioned in the Chapter II Heading 1 LC.

1.2. The principle of freedom of work

The catalogue of basic principles of labour law starts with the principle of freedom of work. It should be understood as a directive, according to which everyone has the right to choose the work they perform, as well as their employer and place of work. The principle of freedom of work is also expressed in art. 65 of the Constitution, according to which each shall have the freedom of choice of profession and employment selection, and the obligation to work may be imposed only by statute. At the same time, this provision sets a prohibition of forced labour in line with Article 4, paragraph 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 4 ILO Convention No. 29 concerning Forced or Compulsory Labour in 1930, (OJ , 1959, No. 20, item. 122). However, there are some exceptions from this rule. One of them is the obligation to perform unpaid work ordered by the court during 20 to 40 hours a month is part of the penalty of restriction of liberty (Article 34 and 35 § 1 of the Penal Code). In relation to an employed person instead of performing specific work (usually for the benefit of the community) the court may order withdrawal of 10-25% of the monthly salary for a social purpose. In such case, while serving a sentence a convicted person may terminate the employment relationship only with the consent of the court (Article 35 § 2 of the Criminal Code), which of course also limits the freedom to dissolve employment relationship. Work done by prisoners may also be part of their rehabilitation.

Another limitations concerns the pursuit of certain professions (e.g., a judge, a doctor, a driver) is associated with the obligation to comply with the

¹S. WRONKOWSKA, Z. ZIEMBIŃSKI, *Zarys teorii prawa*, Ars Boni et Aequi, Poznań 2001, s. 187.

conditions specified in the law, in particular to obtain specific qualification, in some cases clean criminal record, or even Polish citizenship. On the other hand if an offender has been sentenced for an offence related to specific business activity, the court may decide to disqualify him or her from performing this activity, if certain legally-protected essential interests would otherwise be threatened. Similarly if the offender has abused his post or profession when committing the offence, or has shown that certain essential interests protected by law would be threatened if he or she continues in the present post or profession, the court may decide to disqualify the offender from holding specific posts or performing specific professions (Article 41 of the Penal Code). Performance of a certain profession can also be excluded or limited under the ruling of an administrative or disciplinary committee, as well as in connection with the medical statement of lack of ability to perform specified work².

The principle of freedom of work is supplemented by the principle of freedom of establishment of the employment relationship set out in Article. 11 LC. This is a directive, according to which the establishment of an employment relationship and determining the wages and working conditions requires a unanimous declaration of the employer and the employee, regardless of the legal basis of this relationship. There are also more detailed provisions regulating the content of the employment contract and legal prerequisites to conclude and dissolve it. The employee and the employer entering into an employment undertake to comply not only the conditions set out in it directly, but also other labour legislation³.

1.3. The principle of remuneration for work

The principle of remuneration for work is a directive, according to which the employees should receive decent remuneration for their work, not less than the minimum wage. This principle is expressed in the art. 10 § 2 LC, according to which the state sets the minimum wage for work, and art. 13 LC establishing an employee's right to a fair wage.

Provisions of an employment contract or arrangements of the social partners made during the negotiations on the collective agreement or the rules set in a remuneration regulation must not lead to the determination of the remuneration for individual job below the minimum wage. This principle is also contained in the Articles. 65 paragraph 4 of the Constitution. The right of an employee to paid work can be considered one of the most important elements of the employment relationship. In many cases this remuneration is in fact the only source of income for the employee and his family⁴. Also the

²U. JACKOWIAK, W. UZIAK, A. WYPYCH-ŻYWICKA, *Prawo pracy. Podręcznik dla studentów prawa*, LEX a Wolters Kluwer business, Warszawa 2012, s. 44.

³Z. SALWA, *Podstawy prawa pracy*, Wydawnictwa Prawnicze PWN, Warszawa 2001, s. 30.

⁴W. JAŚKIEWICZ, C. JACKOWIAK, W. PIOTROWSKI, *Prawo pracy. Zarys wykładu*, Państwowe Wydawnictwo Naukowe, Warszawa 1985, s. 170; M. SEWERYŃSKI,

content of art. 84 LC, which includes the norm prohibiting employee the renounce the salary proves the importance of this rule. The concept of decent remuneration is modelled on art. 4 § 1 of the European Social Charter of 1961⁵, which defines a fair wage as one which ensures that workers and their families maintain a decent standard of living, or one that allows for covering basic needs not only of an economic, but also of social and cultural character⁶. However, the doctrine and jurisprudence usually translates the principle of decent remuneration for work as the right to protection against any deductions other than those specified in the Labour Code and to payment of wages within established standards⁷. Even though the principle expressed in art. 13 LC refers to decent wages and not minimum wage as stipulated by the law or other agreements, it is rather as a demand directed to the employer than the provision that can form the basis of the specific claims of the employee.

1.4. The principles of hierarchy of labour law sources and privilege of an employee

The next principle is often referred to as the principle of hierarchy of labour law sources and privilege of an employee. The norms shaping the content of an employment relationship in a concrete and individual case are included in the contract of employment or any other act under which refers to the employment relationship (e.g., the act of appointment, or nomination). The principle privilege of an employee is a directive addressed to the contracting parties obliging them to construct the provisions of employment contract in such a way that they were not less favourable than the provisions of the labour law. The notion of "labour law" is wider than just the legal provisions set by the national or international legislator. Labour laws in the light of Article. 9 LC, not only includes the provisions of the Labour Code and the provisions of other laws and subordinate legislation setting out the rights and duties of employees and employers, but also provisions of collective labour agreements and of other collective agreements, regulations and statutes based on the law and determining the rights and duties of the parties to an employment relationship. Assessment whether the provisions of the contract are more favourable to the employee

Wynagrodzenie za pracę. Pojęcie, regulacja i ustalanie, Państwowe Wydawnictwo Naukowe, Warszawa 1981 s. 64, M. ŚWIĘCICKI, *Prawo wynagrodzenia za pracę*, Państwowe Wydawnictwo Naukowe, Warszawa 1963, s. 24.

⁵Jornal of law sof 1999 r., No 8, item 67.

⁶U. JACKOWIAK [w:] U. JACKOWIAK M. PIANKOWSKI, J. STELINA, W. UZIĄK, A. WYPYCH-ŻYWICKA, M. ZIELENIECKI, *Kodeks pracy z komentarzem*, Fundacja Gospodarcza, Gdynia 2004, s. 45, U. JACKOWIAK, W. UZIĄK, A. WYPYCH-ŻYWICKA, *Prawo pracy. Podręcznik dla studentów prawa...*, s. 346.

⁷A. M. ŚWIĄTKOWSKI, *Polskie prawo pracy*, Wydawnictwo Prawnicze LexisNexis, Warszawa 2003, s. 49.

must be based on objective criteria (and therefore those that can be considered reliable for all workers)⁸.

The efficiency of the principle of the employee's privilege is guaranteed by the principle of legal automatism, which requires considering void a provision less favourable to the employee than the provisions of the labour law, and instead applying the relevant provisions of the labour law. This does not mean that the entire contract or any other act, which was established on the basis of the employment relationship is not valid. The sanction of nullity only covers less favourable provision (i.e. stipulating remuneration lower than one resulting from a collective agreement). Instead a relevant standard (such as a salary corresponding to the position of the employee in accordance with the collective agreement), should be applied from the date of conclusion of the contract.

In the hierarchy of legal sources of labour law is higher than the collective agreements and other agreements of social partners, these are followed by e regulations and statutes defining the rights and obligations employers and employees. The provisions of collective labour agreements and collective agreements, as well as of regulations and statutes, may not disadvantage employees more than the provisions of the Labour Code and other laws and subordinate legislation. Agreements and collective agreements are in fact in the hierarchy of sources of law above the rules and statutes. It is also an expression of preference of the legislator as to the type of legal acts should be applied in a particular company. Then the provisions of regulations and statutes may not disadvantage employees more than the provisions of collective labour agreements and collective agreements. Moreover, the provisions of collective labour agreements and other collective agreements, regulations and statutes based on the law and determining the rights and duties of the parties to an employment relationship, are not binding if they violate the principle of equal treatment in employment.

The Labour Code does not define explicitly sanctions if an act hierarchically lower contains provisions less favourable to the employee than the provisions of a higher one. But it is universally acknowledged, that they are not binding (again, only specific provisions and not the whole act). Instead, relevant provisions of the Labour Code and other laws and regulations or any other act higher in the hierarchy of labour law sources⁹.

⁸Resolution of the Supreme Court of 9.11.1994, I PZP 46/94, OSNCP 1995, No 7, item. 87 . See also: T. ZIELIŃSKI, G. GOŹDZIEWICZ [w:] R. CELEDA, E. CHMIELEK-ŁUBIŃSKA, L. FLOREK, G. GOŹDZIEWICZ, A. HINTZ, A. KIJOWSKI, Ł. PISARCZYK, J. SKOCZYŃSKI, B. WAGNER, T. ZIELIŃSKI, *Kodeks pracy. Komentarz*, Wolters Kluwer Polska, Warszawa 2009, s. 116-117.

⁹T. ZIELIŃSKI, G. GOŹDZIEWICZ, *op.cit.* s. 70-71.

1.5. The principle of respect for human dignity and other personal interests of employee

The principle of respect for human dignity and other personal interests of employee stems from the article 11(1) LC, which stipulates that employee has the right to respect for his dignity and other personal interests. The concept of personal interests is derived from the civil law. In the article 23 of the Civil Code there is a catalogue of examples of personal interests, which include: health, freedom, dignity, freedom of conscience, the name or pseudonym, image, secrecy of correspondence, inviolability of the home, scientific or artistic work, inventions and improvements. The right to protection of honour and good name was also mentioned in the Article. 47 of the Constitution.

In the civil law, dignity is regarded as one of the elements of human honour, which is manifested in two aspects: external, meaning the good name of the man, connected to the opinion his or her value to other people, and dignity, which is understood as the image of man himself (interior dignity)¹⁰. One of the most distinguished examples of breaches of personal dignity of an employee is harassment or sexual harassment at work, which is at the same time is a violation of the prohibition of discrimination on the grounds of the employee's sex.

The employer may also violating dignity of employee by imposing on him or her an disciplinary penalty other than one provided in the Labour Code, or by transferring of an employee to other work in accordance with Art. 42 § 4 LC when the task entrusted requires much lower qualifications and skills than those of a worker, and also is situated much lower in the hierarchy of positions in the company. Infringement of personal interests detrimental to employee's honour can also be manifested by giving employee the reasons for termination of employment or termination without notice which are false or formulated in an improper, offensive manner. The Supreme Court pointed out that when evaluating defamation one must bear in mind not only the subjective impression of the person requesting legal protection, but also an objective response in the public opinion. Neither can we limit our assessment to the analysis of a certain phrase in the abstract, but one must consider the context of the entire statement of the person accused of defamation. This position was met with widespread approval¹¹.

Also personal data are included in the catalogue of various aspects of worker's dignity. The demand for disclosure or disclosure of personal information other than those referred to in Article. 22(1) LC during recruitment process or in the work certificate is also in breach of this

¹⁰I. BORUTA, *Godność człowieka – kategorią prawa pracy*, Praca i Zabezpieczenie Społeczne of 2001 r. , No 8, p. 2. Por także A. SZPUNAR *Ochrona dóbr osobistych*, Państwowe Wydawnictwo Naukowe, Warszawa 1969, s. 106.

¹¹Judgement of the Supreme Court of 16. 01 1976 (II CR 692/75, OSNC of 1976 r. No 11, item 251).

principle.

1.6. The principle of equal treatment of workers

The principle of equal treatment of workers and prohibition of discrimination in employment is formulated in in general terms in the article 11(2) LC, and then developed in Chapter IIa LC. The principle of equal treatment of employees is a directive, according to which the employer is required to equal (which does not always mean "the same") treatment of employees for performing the same duties. Equal treatment means first and foremost requirement to not discriminate directly or indirectly in the establishment, duration and termination of employment relationship¹². The catalogue of prohibited grounds of discrimination is open and includes: gender, age, disability, race, religion, nationality, political views, trade union membership, ethnic origin, creed, sexual orientation or in respect of the conditions of employment for a definite or an indefinite period of time or full or part time, are prohibited. Specific provisions also add employment in the form of telework, employment by the temporary employment agency, membership in a works council, EWC and SNB and others.

1.7. Employee's right to rest

Pursuant to Art. 14 LC and art. 66.1 of the Constitution, one can formulate a principle granting the employee the right to rest. This principle is realised by stipulating the rules on working time, days off work and on holiday leave. The rules fulfil a dual function: in the sphere of health and safety, they allowing for regeneration of physical and mental health, on the other hand, the increase in leisure time resource employee helps reconcile family and professional life, allowing it to cover the needs of a social, or cultural. The employee is entitled, therefore to daily, weekly rest and annual holidays¹³. The principle of ensuring employee time off from work is one of the fundamental aspects of the protective function of labour law.

1.8. The principle of ensuring safe and healthy working conditions

The principle of ensuring safe and healthy working conditions to all persons performing work is a directive, according to which the employer is obliged to provide a safe and healthy working conditions not only to employees but also to persons performing work on a different basis or present in the workplace. This includes individuals performing work on a basis other than an employment relationship in a work establishment or in a place designated by the employer, as well as to anyone conducting business activity on their own account in the work establishment or in a place

¹²U. JACKOWIAK in. U. JACKOWIAK, W. UZIAK, A. WYPYCH-ŻYWICKA, *Prawo pracy. Podręcznik dla studentów prawa*, ... s. 53.

¹³W. JAŚKIEWICZ, C. JACKOWIAK, W. PIOTROWSKI, *Prawo pracy...*, s. 363; Z. SALWA, *Podstawy...*, s. 46.

designated by the employer (self-employed) as well as students and pupils who are not employees of the employer and other persons who do not participate in the work process. This principle was established in the art. 15 LC and paragraph 66.1 of the Constitution. Implementation of the provisions is made by provisions of the Labour Code relating to occupational health and safety, and other more detailed regulations issued in view of the various groups of workers, both women and young workers, as well as individual professional groups.

1.9. The principle of meeting the needs of social and living conditions of employees

This is a directive requiring that the employer according to his ability and conditions, meet the social and welfare needs of workers and it is largely aspirational one in nature. This means that the employee cannot formulate a claim on the basis of art. 16 LC demanding that the employer establishes specific benefits for workers. Realization of this principle are the provisions of the Act on Company Social Benefits Fund¹⁴ setting out rules for the establishment, the amount of fees, and a breakdown of the fund. Creating such fund is not obligatory for employers. It should be noted that the fulfilment of this obligation, and the degree of satisfaction of the needs of workers depends on the possibilities and conditions of the employer, and thus on the (variable) economic condition¹⁵.

1.10. The principle of facilitation upgrading of skills by employee

This principle formulated in the Article 17 LC establishes a requirement to enable employees to develop their professional qualifications. Duties of employers in this field are determined in the art. 102 – 103(6) LC. Improving professional qualifications means acquiring and implementing the knowledge and skills by the employee, by the employer's initiative or by his consent. The employer may conclude with an employee improving his professional qualifications an agreement determining bilateral rights and obligations of the parties. This agreement may, in addition to the award of study leave and time off work for the duration of classes also include other benefits such as payment of fees for training, travel costs, accommodation and textbooks. In return, the employee agrees not to unreasonably interrupt the learning process and remain in employment, except in specific cases or to reimburse expenses incurred by the employer in whole or in part.

1.11. The principle of freedom of association and the principle worker participation in the management of workplace

¹⁴Ustawa z dnia 4 marca 1994 r. o zakładowym funduszu świadczeń socjalnych (t. jedn. Dz. U. z 1996 r. Nr 70, poz. 335).

¹⁵U. JACKOWIAK [in:] U. JACKOWIAK, *Kodeks pracy z komentarzem...*, s. 48.

The two principles apply to the realm of collective labour law. The principle of freedom of association, as defined in the article. 18 (1) LC and 59.1 of the Constitution, is the directive granting permission for employees and employers to organize in respectively trade unions and employers' organizations to defend their rights.

The principle worker participation in the management of workplace laid down in Article. 18(2) LC relates to various forms of workers' participation in management of the workplace, which includes trade union rights in this sphere (e.g. participation in the process of creating work and remuneration regulations, or in the process of collective dismissals) and the right of workers to information and consultation through work councils or EWCs.

1.12. The principle of full and productive employment

The principle of full and productive employment and state support in this area is enshrined in Article. 10 § 3 LC and art. 65 paragraph 5 of the Constitution. Its implementation is ensured mainly by the provisions of the Act on employment and labour market institutions¹⁶, which concern the type of benefits and the rules for granting aid to the unemployed to facilitate their reintegration into the labour market. This rule, however, does not constitute grounds for a claim for the establishment of a contract of employment with a particular employer.

2. PRINCIPLES OF THE LABOUR LAW IN THE INTERNATIONAL CONTEXT

Social and political changes which have taken place over the past few years, in particular the process of globalization on the one hand and integration within the European Union (EU) on the other hand, encourage to reflect not only on the sources and the shape of the labour standards, but also over their interpretation.

Globalization encourages employers to become more competitive by reducing labour costs, and legislators to make labour law more flexible¹⁷. Mobility of companies and workers can contribute to conflict between different legal systems, and even the implementation of various standards of protection for the worker¹⁸. The existence of minimum international standards may limit these negative trends from the perspective of employees, however, these standards need to evolve in response to

¹⁶Ustawa z dnia 20 kwietnia 2004 r. o promocji zatrudnienia i instytucjach rynku pracy (t. jedn., Dz. U. z 2008 r. Nr 69, poz. 415).

¹⁷T. NOVITZ, C. FENWICK, *The application of human rights discourse to labour relations: translation of theory into practice* [w:] T. NOVITZ, C. FENWICK (eds.) *Human rights at work, Perspectives on law and regulations*, Hart Publishing, Oxford 2010, s. 1-2.

¹⁸S. SCIARRA, *Collective exit strategies: New idea sin Transnational Labour Law* [in:] G. DAVIDOV, B. LANGILLE, *The idea of labour law*, Oxford University Press, 2011 s. 406.

economic change¹⁹. These phenomena put a new light on the function of labour law. In addition to the traditionally considered protective function, referred to the relationship between employer and employee, the labour law has another important role in the relationship between groups of workers and workers in a broad, social sense, by preventing unjustified differentiation of the situation of persons working on different legal bases, or subject to different legal regimes (as is for example the case of the posting of workers), or whose ability to bargain collectively is limited²⁰.

In one of the most important judgements relating to the process Poland's accession to the EU, the Constitutional Court noted that "*the concept and model of European law created a new situation in which various autonomous legal orders exist next to each other. Their interaction cannot be described fully by traditional concepts of monism and dualism in the system: the national law - international law. The occurrence of the relative autonomy of the legal systems, based on their own internal rules of hierarchy, does not mean that there is no interaction between them*"²¹. The coexistence and interaction of standards created by different entities is particularly evident in the labour law, where apart from generally binding legal provisions also specific autonomous legal norms apply. These are created without the participation of the state or other international organizations, often taking the form of an agreement of the social partners. In workplaces next to the collective agreements and other agreements referred to in Art. 9 LC, coexist other documents, such as transnational agreements concluded by the European Works Council.

This state of affairs, sometimes referred to as multi-centrism²² or pluralism of the legal system, encourages the search for links between different sub-systems, in which an important role is played by the standards of particular importance, reflecting the core values of the legal subsystem or its components, called principles, fundamental rights or standards. It is also interesting to look at the relationship between different systems to protect the rights of workers in the field of labour law, constitutional law, international law, European or "soft" measures, such as trans-national

¹⁹S. DEAKIN, *Labour law as market regulation: the economic foundations of european social policy* [in:] P. DAVIES, A. LYON-CAEN, S. SCIARRA, S. SMITHS (eds.) *European Community law. Principles and perspectives. Liber Amicorum Lord Wedderburn*, Clarendon Press, Oxford, 1996, s. 91.

²⁰G. MUDLANK, *The third function of labour law: distributing labour market opportunities among workers* [in:] G. DAVIDOV, B. LANGILLE, *The idea of labour law*, Oxford University Press, 2011 s. 314-317.

²¹The judgement of the Constitutional Court of 11.05. 2005 (K 18/04, OTK-A of 2005, No 5, item 49).

²²E. ŁĘTOWSKA „Multicentryczność” systemu prawa i wykładnia jej przyjazna, [w:] *Rozprawy prawnicze. Księga pamiątkowa Profesora maksymiliana Pazdana*, Zakamycze 2005, s.

agreements or codes of good practice. S. Sciarra refers to the co-existence of these multiple standards as "transnational juridization"²³.

2.1. International standards

After the Constitution of 1997 was enacted the Constitutional Tribunal and Supreme Court does not limit itself to the principles of labour law enshrined in the Labour Code, but it also more often refers to international conventions, which since late 80's have influenced strongly the shape of Polish labour law in general, but in particular collective labour law. Labour rights can be found on the banners of modern human rights movement, starting with the campaign against slavery, forced labour, child labour, recognition of trade union rights and limiting the number of working hours²⁴. Many of the principles of labour law correspond to human rights included the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and in particular the European Convention on Human Rights. In this context, an important role is attributed to the ILO, especially because of the possibility of independent creation of standards in response to the specific challenges of the labour market and the tripartite nature of the organization²⁵. Not to be underestimated is the concept of decent work, occupying a central place in the activities of the ILO²⁶.

2.2. Charter of Fundamental Rights and the Protocol No 30

In this multi-level system of particular importance is given to however fundamental rights of the EU²⁷ and the Charter of Fundamental Rights, as current Article 6 of the Treaty gives the Charter "the same legal value" that have the Treaties. Moreover, the fundamental rights guaranteed by the European Convention on Human Rights and Fundamental Freedoms the rights resulting from the constitutional traditions common to the Member

²³S. SCIARRA, *Collective exit strategies...*, s. 407.

²⁴S. JOSEPH, *UN Convenents and labour rights*, [w:] T. NOVITZ I C. FENWICK (red.) *Human rights at work*, ..., s. 331 i nast. H. COLLINS, reveals the specific context of the inclusion of the rights of workers to the Universal Declaration of Human Rights (1948) and suggests that the name of human rights asługuja rather individual workers (*Theories of rights as justifications for labour law* [w:] G. DAVIDOV I B. LANGILLE (red.) *The idea of labour law...* s. 140-143.

²⁵J. MURRAY, *Taking social rights seriously: Is there a case for institutional reform of the ILO?* [w:] T. Novitz i C. Fenwick (red.) *Human rights at work...*s. 376.

²⁶INTERNATIONAL LABOUR OFFICE (ILO). *Decent work, Report of the Director-General to the International Labour Conference, 87th Session*, Geneva 1999, s. 4.

²⁷This concept is not synonymous with the term "human rights" they may occur as a Community economic law, international human rights standards arising from the common practice of the Member States, social rights protected by EU law, economic and social cohesion, consumer protection and environmental protection (J. SOZANSKI, *Prawa zasadnicze a prawa człowieka we wspólnotowym systemie prawnym*, Polskie Wydawnictwo Prawnicze, Warszawa-Poznań, 2003, s. 311-312).

States are a part of EU law as general principles of law (paragraph 3). The Charter contains no direct reference to the ILO, but the ILO Constitution, like the Declaration of Philadelphia, is one of the important aspects of "international obligations of the Member States". This does not preclude, however, a conflict between the standards of the ILO and the discretion of Fundamental Rights of the EU as exemplified by a issue of the right to strike discussed below²⁸.

The Treaty of Lisbon changes the place of fundamental rights in the legal order²⁹. So far, fundamental rights were respected as the general principles of law, both under the Maastricht Treaty and ECJ case law developed (in particular, since the judgments in *Nold* and *Hauer*). Fundamental rights can be derived from the objectives and structure of Community law on the one hand, on the other hand the constitutional traditions common to the Member States and international agreements concerning protection of human rights (especially the ECHR). Now, the Charter is a part of the EU primary law, which should facilitate litigation of worker's rights before the national courts and the TJEU directly on the basis of the Charter provisions.

rozwinąć, ale krótko

Assessment of the situation is though more difficult because of the content of the Protocol (No 30) on the application of the charter of fundamental rights of the European Union to Poland and to the United Kingdom. This protocol is the international agreement and the entry into force of the Treaty of Lisbon became the EU primary law³⁰. A. Bodnar points out that each situation will be evaluated *ad casu*. Inability to invoke before the courts on the Charter limited to cases where the same rights can not be deduced from the other legal basis. However, the opportunism on the side of national courts may make them refuse the application or taking into account the Charter, citing as an argument the Polish-British Protocol³¹.

²⁸P. O'HIGGINS, *The interaction of the ILO, the Council of Europe and the European Union standards*, [in:] B. HEPPLÉ (ed.) *Social rights in a global context. International and comparative perspectives*, Cambridge University Press, 2002, s. 61-63.

²⁹A. WYROZUMSKA *Umocnienie ochrony praw podstawowych* [in:] J. BARCZ (ed.) *Traktat z Lizbony. Główne reformy ustrojowe Unii Europejskiej*, Urząd Komitetu Integracji Europejskiej, Warszawa 2008, s. 183; J. BARCZ, *Zasadnicze reformy strukturalne ustroju Unii Europejskiej*, [in:] J. BARCZ (ed.) *Traktat z Lizbony. Główne reformy ustrojowe Unii Europejskiej*, Urząd Komitetu Integracji Europejskiej, Warszawa 2008, s. 70-72.

³⁰A. WYROZUMSKA, *op.cit.* s. 188. Zob. także C. MIK, *Znaczenie postanowień EKPCz dla ochrony praw podstawowych jako ogólnych zasad prawa w UE* [in:] J. BARCZ (ed.) *Traktat z Lizbony. Główne reformy ustrojowe Unii Europejskiej*, Urząd Komitetu Integracji Europejskiej, Warszawa 2008, s. 213 and 192. K. KOWALIK- BAŃCZYK, *Konsekwencje przyjęcia protokołu polsko-brytyjskiego dotyczącego stosowania Karty Praw Podstawowych* [in:] A. Wróbel (ed.) *Karta Praw Podstawowych w europejskim i krajowym porządku prawnym*, Wolters Kluwer Polska, Warszawa 2009;

³¹A. BODNAR, *Karta Praw podstawowych. Zróżnicowany charakter prawny postanowień Karty oraz ich skutki dla jednostek, sądów oraz ustawodawcy* [in:] J. BARCZ, *Ochrona Praw podstawowych w Unii Europejskiej*, CH Beck, Warszawa 2008, s. 163 i 164.

Nevertheless, the content of the Protocol does not mean derogation of the provisions of Title IV of the Charter in relation to the Poland and United Kingdom. It should also be borne in mind that most of the rights catalogued in the Charter can be found in other acts of international law, as the ECHR, which Poland has already ratified, as well as in numerous national standards, and the Constitution. In addition, the content of the Protocol does not change the fact that the fundamental rights enshrined in the Charter shall be protected as general principles of law, shall be so maintained for at least the *status quo*.

The picture becomes even more confusing because of the content of Declaration no 62, according to which Poland declares that, it fully respects social and labour rights, as established by European Union law, and in particular those reaffirmed in Title IV of the Charter of Fundamental Rights of the European Union. The term "respects" in reference to rights should mean that these rights are observed, so the content of protocol and Declaration are contradictory.

Changes are expected however after UE accession to the Convention on Human Rights. The rights protected by it under the jurisdiction of the ECHR, which most likely will not consider whether the implementation of fundamental rights preclude the exercise of fundamental freedoms, but rather whether the implementation of fundamental freedoms do not lead to restrictions on fundamental rights.

The Lisbon Treaty also creates a legal basis for the EU's accession to the ECHR (Article 6, paragraph 2 of the TEU), the procedural conditions of this action³²

The Treaty facilitates the harmonization of the two systems of protection when it comes to the content of individual fundamental rights contained in both files and interpreted by the ECHR and the CJEU. Meaning and scope of the rights specified in the CPP, which correspond to rights guaranteed by the ECHR are the same as the rights conferred by the Convention, which not prevent Union law providing more extensive protection (Article 52,

³²See also: J. BARCZ, *Traktat z Lizbony. Wybrane aspekty prawne działań implementacyjnych*, LexisNexis, Warszawa 2012, s. 333, D. KORNOBIS-ROMANOWSKA, *Umocnienie statusu jednostek w UE po przystąpieniu UE do EKPCz. Konsekwencje dla ustawodawcy i sądów krajowych- następstwa praktyczne*, [in:] J. BARCZ, *Ochrona Praw podstawowych w Unii Europejskiej*, CH Beck, Warszawa 2008, s. 291. Before starting negotiations on EU accession to the ECHR it has been proposed, among others, that in case of dispute about the rights, which had been subject of the judgment of the ECtHR, ECtHR judgement should be considered as binding on the CJEU. If a similar case did not appear, the CJEU could ask to the ECHR for a preliminary ruling. (M. WEISS, *The politics of the EU Charter of Fundamental Rights*, [w:] B. HEPPLER (red.) *Social rights in a global context. International and comparative perspectives*, Cambridge University Press, Cambridge 2002, s. 93) Now the co-respondant mechanism is discussed. J. BARCZ, *Traktat z Lizbony...*, s. 354.

paragraph. 3 CFR, Art. 6 paragraph. 1 sentence. 3 TEU). The provisions of the CPP and should not be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognized, among others the constitutional traditions of the Member States and the ECHR (Article 53 CFR). Otherwise, entities which in the judgment the CJEU see restriction of their rights and freedoms of the EU will be able to accuse violation of the Convention. Especially in Poland and the United Kingdom, to the contents of Protocol 30, the accession to the ECHR, rather than just giving the provisions of the CPP the same value as the Treaties will provide the fullest protection to guarantee the fundamental rights of workers³³.

3. MULTI-LEVEL PROTECTION SYSTEM

3.1. Fundamental freedoms and social rights

One example of interesting interactions between various legal systems are the cases touching upon a vital issues in the sphere of collective labour law such as the right to strike and to bargain collectively.

A good example of the complex relationship between the CJEU and the ECtHR's case-law of the courts relating to the right to bargain and strike (the Polish law recognized in the art. Paragraph 59. 2 and 3 of the Constitution). Viking³⁴ and Laval³⁵ cases settled in 2007 by the CJEU, related to collective bargaining, collective action, including the organization of strikes by trade unions.

One of the major problems reflect in these decisions is the issue of the relationship between existing EU fundamental freedoms (free movement of goods, services, capital and labour) and fundamental rights, which will be the freedom of association and the right to negotiate and collective action. The Court, requires that entities claiming the realization of these rights present reasons for applying them, especially in cases where the exercise of fundamental rights may conflict with the fundamental economic freedoms contained in the Treaty³⁶. This means, in practice, the limits to the exercise of fundamental rights, in particular, that, according to the Viking, the collective action proportionality test should be applied, and in the light of the judgment in the Laval case, the legality of actions depends on whether its purpose is to defend the standards set in the Directive on the posting of

³³T. NOVITZ, P. SYRPIS, *Giving with one hand and taking with the other: protection of workers' human rights in the European Union*, [w:] T. NOVITZ I C. FENWICK (eds.) *Human rights at work*, ... s. 482-483.

³⁴Case C-438/05: International Transport Workers' Federation v Viking Line ABP, Ou Viking Line Eesti, 2007 r., ECR 2007, s. I-10779.

³⁵Case C-341/05: Laval un Partneri Ltd v. Svenska Byg. i inni, wyrok z 18.12.2007 r., ECR 2007, s. I-000.

³⁶B. BERCUSSON, *European labour law*, Cambridge University Press, Cambridge 2009, s. 394.

workers³⁷. These standards are becoming maximum ones, although as a general rule directives should establish minimum standards³⁸.

The jurisprudence of the ECHR on the right to form trade unions, the right to collective bargaining and the right to strike seems to evolve at a different direction. At the same time, when the CJEU issued a judgment in the Viking and Laval, ECtHR in its judgment in Case Demir and Baykara v. Turkey³⁹ has interpreted the concept of "the right to form trade unions and join them 'in art. 11 of the ECHR, in a manner so broad, that it includes the right to collective bargaining, including the conclusion of collective agreements. W. Sanetra draws attention to the special significance of this judgment from the Polish perspective, due to the limited right to enter into collective agreements for local government employees employed under the selection, nomination and appointment (Article 139 § 3 of the Code)⁴⁰. While in the case Enerji Yapi-Yol Sen v. Turkey the Court, referring to the earlier judgment in Demir and Baykara, noted that, although the right to strike is not absolute and may be restricted, recognized by both the ILO Conventions No. 87 and by the CPP as an effective means for implementation by the unions right to collective bargaining⁴¹.

3.2. National law vs. the ILO: refining the standards

Another example is of more national character and concerns the right of coalition in the national law and in the ILO interpretation.

Freedom coalition is mentioned in the Constitution twice: the first time in the art. 12, according to which the Poland shall ensure freedom for the creation and functioning of trade unions. The next provision is the art. 59 contained in the chapter on freedom and political rights. The principle of freedom of association is also defined in Art. 18(1) LC. This is a directive providing workers and employers with the right to organize in trade unions respectively and employers' organizations to defend their rights. Personal scope of the right to form and join trade unions referred to in art. 2, paragraph 1 of the Act on Trade Unions⁴², according to which the right to form and join trade unions is granted to employees regardless of the basis of the employment relationship, members of agricultural cooperatives and individuals performing work under the contract of agency if they are not

³⁷B. BERCUSSON, *Labour law and social Europe. Selected writings of Brian Bercusson*, European Trade Union Institute, Brussels 2009, s. 464.

³⁸F. DORSSEMONT, *Values and objectives* [in:] N. BRUUN, K. LÖRCHNER, I SCHÖMANN, *Lisbon Treaty and social Europe*, Hart Publishing, Oxford 2012, s. 53.

³⁹Wyrok Europejskiego Trybunału Praw Człowieka z dnia 21 listopada 2006 r. w sprawie nr 34503/97 Demir i Baykara v. Turcja.

⁴⁰W. SANETRA, *Wyrok przeciwko Turcji a sprawa Polska*, Praca i Zabezpieczenie Społeczne of 2009 no 5.

⁴¹Judgement of the ECtHR of 21.04.2009 case 68959/01 Enerji Yapi-Yol Sen v. Turkey.

⁴²The Act of 23.05 1991 on trade unions (consolidated text of Dz. U. of 2001 , No 79, item 854 with further amendments.)

employers. At the same time persons performing outwork have the right to join trade unions in the workplace, which established a tolling agreement. This means that they can only join a specific trade union organization, but not create their own. Other categories of persons performing paid work, are thus deprived of the freedom of association. This applies to persons employed under civil law contracts (the service contract, contract for work), the self-employed and some categories of persons performing paid work as craftsmen and taxi drivers⁴³.

Personal scope of the right to organize in trade unions is therefore narrower in the Law on Trade Unions and the laws governing the rights of certain groups of employees and encounters more far-reaching subjective restrictions than those permitted by international agreements granting the right to all working people, not just employees within the meaning of Labour Code. In this context it is interesting to note that the limitations concerning joining and forming trade unions based on the character of employment do not arise directly from the articles 12 and 59 of the Constitution, which do not introduce such restrictions. Moreover the art. 59, paragraph 4 of the Constitution states that the scope of freedom of association in trade unions and employers' organizations and other trade unions rights may be subject only to such statutory limitations as those permissible under the international agreements binding the Republic of Poland. Z. Hajn postulates to acknowledge that the provisions of international agreements take precedence over art. 2 of the Law on Trade Unions and should be applied instead⁴⁴. Not only because they are placed higher in the hierarchical order of norms, but also because the constitutional legislator refers in the article 59 of the Constitution to "binding international agreements", unlike art. 87 of the Constitution, which contains the basic catalogue of the sources of universally binding law, which refers to "ratified international agreements". This means, in relation to the obligation to respect the freedom of association

⁴³M. KAZIMIERCZUK, *Wolność zrzeszania się w związkach zawodowych* [in:] M. CHMAJ (ed.), *Wolność zrzeszania się w Polsce*, WARSZAWA 2008s. 146. It happens, however, that the trade union statute regulates the issues differently, such as § 5. 1 Statute of the "Solidarity": "Trade Union associates members employed under a contract of employment (including cooperative contract of employment), and agricultural production cooperatives employed on the basis of membership (the selection, appointment), as well as in-plant vocational school students working on the the establishment or receiving vocational training, outworkers, those working on the basis of an agency, and those drawing means of subsistence from work done on a different legal basis than the service. Members of the Union may also be unemployed, pensioners and those on alternative military service. The loss of jobs and the call to serve military service does not mean the loss of membership".

⁴⁴Z. HAJN, *Prawo zrzeszania się w związkach zawodowych – prawo pracowników czy prawo ludzi pracy?* [in:] A. Wypych-Żywickia, M. Tomaszewska, J. Steliny (eds.) *Zbiorowe prawo pracy w XXI wieku : międzynarodowa konferencja naukowa z okazji trzydziestej rocznicy powstania NSZZ "Solidarność"*, Fundacja Rozwoju Uniwersytetu Gdańskiego, Gdańsk, 2010, s. 183.)

enshrined in all signed and not only ratified international agreements⁴⁵.

The ILO standards play very important role in this regard. The Convention No. 87 of 1948 concerning Freedom of Association and Protection of the Right to Organise⁴⁶ provides the ability to disable the freedom of the coalition in relation to the armed forces and the police⁴⁷. Additionally, according to art. 1, paragraph 2 of the Convention No. 151 of 1978 ILO concerning the protection of the right to organize and procedures for determining conditions of employment in the public service⁴⁸ acceptable restrictions apply to "high-level employees whose functions are normally considered as policy-making or managerial, or to employees whose duties are of a highly confidential nature". Obviously these exceptions are much narrower than those formulated in the Trade Union Act.

The right to organize in trade unions has also been recognized in other instruments of international law. International Covenant on Civil and Political Rights (ICCPR)⁴⁹ in the art. 22 grants everyone the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests⁵⁰. International Covenant on Social and Cultural Rights⁵¹ in the art. 8 is more detailed and ensures in particular anyone the right to form and join trade unions of their choice, for the promotion and protection of his economic and social interests, subject only to the rules of the organization concerned. Here, too, we find the same as the ICCPR acceptable grounds for restricting this right, and also provides for the right of trade unions to establish national federations or confederations and the right of the latter to form international trade union organizations or to

⁴⁵L. FLOREK, *Wpływ konwencji i zaleceń Międzynarodowej Organizacji Pracy na prawo polskie* [in:] *Prawo polskie i zbiorowe stosunki pracy w okresie transformacji* (red. M. SEWERYŃSKI, Warszawa 1995, s. 54; M. KAZIMIERCZUK, *Wolność zrzeszania się w związkach zawodowych* [in:] M. CHMAJ (ed.), *Wolność zrzeszania się w Polsce*, WARSZAWA 2008, S. 142-144.

⁴⁶Konwencja Nr 87 Międzynarodowej Organizacji Pracy dotycząca wolności związkowej i ochrony praw związkowych przyjęta w San Francisco dnia 9 lipca 1948 r. (Journal of Laws of 1959 No. 29, item. 125).

⁴⁷Art. 9 paragraph 1 of the ILO Convention No. 87 of 1948 concerning Freedom of Association and Protection of the Right to Organise (Journal of Laws of 1959 No. 29, item. 125).

⁴⁸Konwencja Nr 151 Międzynarodowej Organizacji Pracy dotycząca ochrony prawa organizowania się i procedury określania warunków zatrudnienia w służbie publicznej, przyjęta w Genewie dnia 27 czerwca 1978 r. (Journal of Laws of 1994 No. 22, item. 78)

⁴⁹Międzynarodowy Pakt Praw Obywatelskich i Politycznych otwarty do podpisu w Nowym Jorku dnia 16 grudnia 1966 r. (Journal of Law of 1977, No 38, item 167).

⁵⁰In the second paragraph lists the acceptable reasons for restricting this right: limit may only be effected in the law and necessary in a democratic society in the interests of national security or public order or for the protection of public health or morals or the rights and freedoms of others.

⁵¹Międzynarodowy Pakt Praw Społecznych i Kulturalnych otwarty do podpisu w Nowym Jorku dnia 16 grudnia 1966 r. (Journal of Law of 1977 No 38, item 169).

join them, the right of trade unions to function freely, no limitations other than those prescribed by law and necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others and the right to strike, provided that it is exercised in accordance with the laws of the country.

As part of the regional European system of human rights protection freedom of assembly and association is addressed in Article 11, paragraph 1 of the European Convention on Human Rights, according to which everyone has the right to freedom of peaceful assembly and to freedom of association, including the right to form trade and to join unions for the protection of his interests⁵². The second paragraph of this article also refers to possible restrictions on the right to freedom of association, including the admissibility of their regulation by law and only if it is necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. The Convention also permits to impose lawful restrictions on the exercise of these rights by members of the armed forces, the police or the state administration. Under the case law of the Court the following essential elements of the right to associate in trade unions can be derived: the right to form and join trade unions, prohibition of closed-shop agreements, the right of a union to make efforts to convince the employer to listen to his arguments, which are presented in the interest of their members. The Court emphasized that this list is not exhaustive. On the contrary, is evolving in response to changes in labour relations⁵³.

In addition, Poland has ratified the European Social Charter of 1961⁵⁴ and signed the Revised European Social Charter of 1996, which regulates social rights in Europe. Both treaties provide employees with the right to organize in trade unions, the term "workers" and "travailleurs" used respectively in the English and French versions of the document have a wider scope than the one used on the basis of Polish law, the term "employee".

The Charter of Fundamental Rights of the art. 12 of Title II of the Charter "freedom" the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civil rights have been awarded to everyone. This right implies the right of everyone to form and to join trade unions for the protection of their interests.

⁵²Konwencja o ochronie praw człowieka i podstawowych wolności (Journal of Laws of 1993 No 61, item 60).

⁵³M.A. NOWICKI, *Komentarz do art. 11 Konwencji o ochronie praw człowieka i podstawowych wolności* [in:] M.A. NOWICKI, *Wokół Konwencji Europejskiej. Komentarz do Europejskiej Konwencji Praw Człowieka* LEX, 2010, nr 110309.

⁵⁴Oświadczenie Rządowe z dnia 30 listopada 1998 r. w sprawie ratyfikacji przez Rzeczpospolitą Polską Europejskiej Karty Społecznej, sporządzonej w Turynie dnia 18 października 1961 r. (Dz.U. z 1999 r. Nr 8, poz. 68).

Doubts presented in this context in the literature, especially by Z. Hajn⁵⁵ are confirmed by recent recommendations of the Committee on Freedom of Association of the Administrative Council of the International Labour Organisation (CFA), included in the report of 2012⁵⁶.

The Committee having taken note of the content of the submitted complaint and the position of the government points out that restricting the formation of such an organization applies only to the armed forces and the police, and therefore can not rely on the existence of an employment relationship, which often does not occur, in particular in respect of farmers, self-employed and independent professionals⁵⁷. The fact that such categories of employees, such as ones performing work on the basis of the civil law and the self-employed have the right to create their own organizations or join existing professional organizations is not the comparable with the freedom of association referred to in Convention No. 87. The role and competences of trade unions and other professional organisations are different, especially in the area of concluding collective agreements and collective bargaining trade unions have a monopoly. Freedom of Association Committee urges the Polish Government to take the necessary measures to ensure that all workers, without distinction whatsoever, including self-employed and those employed under civil law contracts, as well as outworkers can exercise their right to form and join the organization of their choosing, within the meaning of Convention No. 87⁵⁸. Similarly, all employees in the broad sense should be granted protection against acts of discrimination based on union membership.

4. CONCLUDING REMARKS

The first example illustrates the duality of protection of fundamental rights in the Convention, which is subject to the jurisdiction of the ECHR and the Charter. We can also see that the doubts and concerns about the consistency of the positions of these institutions are not unreasonable, nor exceptional. They may and will occur until the institutional relationships, and cooperation between the two courts on the one hand and the national courts on the other, will be regulated with the EU accession to the ECHR⁵⁹. The

⁵⁵Z. HAJN, *Prawo zrzeszania się w związkach zawodowych ...* s. 175-183.

⁵⁶363rd Report of the Committee on Freedom of Association 313th Session, Geneva, 15–30 March 2012, para 1081-1087.

⁵⁷363rd Report of the Committee on Freedom of Association 313th Session, Geneva, 15–30 March 2012, para 1084.

⁵⁸Por. Freedom of Association, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Geneva 2006, pkt 216, s. 46.

⁵⁹S. SANZ CABALLERO, *La contribución del Consejo de Europa al acervo de la Unión Europea en materia de derechos fundamentales: sinergias y divergencias de ambos sistemas* [in:] N. FERNANDEZ SOLA (red.) *Unión Europea y derechos fundamentales en perspectiva constitucional*, Madrid 2004, s. 77.; Y. SHANY, *Regulating Jurisdictional Relations between National and International Courts*, Oxford University Press, Oxford 2009, s. 89.

maintenance of a multi-level system of protection of fundamental rights in the EU provides the necessary flexibility and reflects the dynamics of the EU's regulatory scope, the internal market, the EU's internal affairs by intervening heavily in the areas of human rights⁶⁰. Hopefully the relationship between the ECJ and the ECtHR will be develop in the way to avoid competition, towards co-operation based to model. Especially that the traditional, hierarchical perception of the legal system can encourage workers and employers to initiate at the same time a number of disputes before the various authorities (such as the ECHR, the CJEU and in addition the ILO Committee on Freedom of Association), which, needless to say, would result in a different outcome⁶¹.

Reading the content of the principles of labour law can not be done outside the broad legal context: many of them, as has been mentioned at the beginning have their counterparts in the human rights and fundamental rights contained in international conventions and EU law, which in turn are subject to interpretation by the relevant judicial and quasi-judicial authorities. Pluralism prevailing in the modern world requires methodological changes. Instead of trying to create a hierarchy of norms it is necessary to build a culture of dialogue and mutual adaptation⁶². This is particularly important in case of the principles of labour law described as normative ones. Their existence is a significant challenge for the study of labour law, because of the basis of a strong structure created by them, the values present in the previous socialist system can be transformed into new democratic values⁶³. This in turn encourages to reflect on a new reading of principles of labour law in the broad legal environment, attempts to create a new classification of the rules and read them function as a tool for theoretical synthesis⁶⁴.

All these remarks lead to a conclusion that the content, possible interpretation and enforcement procedures of the principles of Polish labour law depend on the European and international legal context. The issue is of

⁶⁰J. BARCZ, *Traktat z Lizbony...* s. 332.

⁶¹Szerzej nt. relacji pomiędzy ETPC i ETZ zob. A. TORRES PEREZ, *op.cit.* s. 31-34; zob. także A. WENTKOWSKA, *Europejski Trybunał Sprawiedliwości a Europejski Trybunał Praw Człowieka – konkurencyjność kompetencji czy współdziałanie?* [in:] *Konstytucja dla Europy – przyszły fundament Unii Europejskiej*, Zakamycze 2005 oraz Z. BRODECKI, T.T. KONCEWICZ, *Karta Praw Podstawowych i zasady ogólne prawa wspólnotowego* [in:] A. WRÓBEL (ed.) *Karta Praw Podstawowych w europejskim i krajowym porządku prawnym*, Warszawa 2009, s. 34.

⁶²A.L. PAULUS, *The emergence of the international community and the divide between international and domestic law* [w:] J. NIJMAN, A. NOLLKAEMPER (red.) . *New perspectives on the divide between national and international law*, Oxford University Press, 2007, s. 217.

⁶³M.A. MOREAU, *Normes sociales, droit du travail et mondialisation. Confrontations et mutations*, Dalloz, 2006, s. 238 .

⁶⁴M. CIEŚLAK, *Polska procedura karna. Podstawowe założenia teoretyczne*, Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków 2011 (na podstawie wydania z 1984 r.), s. 157.

vital importance since each of the mentioned above legal orders (national, European and international) is strongly related to the others all of them creating a multi-level legal framework within a multi-level network of courts and actors. Workers and employers in a concrete situation are governed by legal standards deriving from distinct legal orders. These can be associated with "levels" of governance. Whereas each legal order can establish a hierarchy of legal sources, it is impossible to base a hierarchy of legal orders, instead the notion of a "network", in which each legal order determines the "level" at which distinct legal orders need to be situated in the hierarchy of legal orders.

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