

Łukasz Sztych

*„Uprawnienia kontrolno-nadzorcze Państwowej Inspekcji Pracy dotyczące przestrzegania przepisów prawa pracy o wynagrodzeniu za pracę”*

*(„Powers of control and supervision of the National Labour Inspectorate regarding compliance with the provisions of labour law on remuneration for work”)*

## **SUMMARY**

Doctoral dissertation prepared  
at the Department of Labour Law  
under supervision of Dr Habilit. Teresa Wyka,  
Associate Professor of the University of Łódź

Łódź 2019

The National Labour Inspectorate (NLI) is a state body appointed to supervise and control compliance with labour law. Currently, it operates on the basis of the provisions of the Act of April 13, 2007 on the *National Labour Inspectorate*. One of the tasks that have been set out in this Act is to supervise and control compliance with the provisions on remuneration for work and other benefits resulting from the employment relationship.

The right to remuneration for work, to receive it in a correct amount in a timely manner, is the basic right of employees arising from the employment relationship. Due to its maintenance nature, remuneration for work benefits from special legal protection. This protection is expressed in the formulation of general principles regarding its formation in the legal provisions, in imposing a number of obligations on the employer to ensure timely and correct payment of remuneration, as well as in introducing responsibility for failure to perform these obligations.

The legislator entrusted the NLI to control compliance with these obligations as well as to take actions aimed at removing irregularities found during inspections, granting a number of powers to them for this purpose. These powers determine the effectiveness of the NLI's activities in protecting the rights of employees to receive remuneration for work timely and correctly.

In connection with the issues outlined in this manner, the purpose of this dissertation is quite clear. It is the presentation and analysis of legal regulations regarding the powers of control and supervision of the NLI, in terms of their suitability for supervision and control of compliance with the provisions on remuneration for work. Based on the above objective, the main research problem was determined, which focuses on explaining whether the powers of the NLI give them the ability to discipline the employer to comply with the provisions on remuneration for work and, in case of their violation - to remove unlawful practices. The solution to this problem required an examination of the legal instruments available to the Inspectorate in reviewing the state of affairs in the scope of compliance with provisions relating to remuneration for work; as well as at the stage of applying legal measures aimed at removing the irregularities found, and finally at the stage of enforcement of the implementation of recommendations resulting from the legal measures applied by the employer. It was also necessary to determine what a provision of labour law (regarding remuneration for work) is, the compliance with which is subject to the assessment of the NLI's bodies.

The presented research topic determined the structure of the dissertation, which was divided into six chapters. In Chapter I, for a better illustration of the issues under

consideration, a historical outline of the Polish Labour Inspectorate is presented. The historical conditions of legal institutions imply their contemporary features and - as in the case of the NLI - the purpose of its establishment. The tasks faced by the Labour Inspectorate, from the beginning of its existence, were aimed at counteracting violations of provisions protecting employees' rights, and its activity was one of the main guarantees that employers would comply with these provisions. Since the NLI is a state body, therefore, considering the constitutional principle of legalism, each of its activities must be based on a provision of law and be carried out within the limits set by this provision. Having this principle in mind, chapter I presents the sources from which the NLI can derive its control and supervisory powers. The main source of these powers is the aforementioned Act on the *National Labour Inspectorate*, but this is not the only source. It was indicated that they also include international sources, i.e. conventions of the International Labour Organization, in particular Convention No. 81 of July 11, 1947 regarding labour inspectorates in industry and commerce, and Convention No. 129 of June 25, 1969 regarding the labour inspectorate in agriculture. Both conventions oblige the states that have ratified them to organize and maintain the labour inspectorate system, while setting the principles upon which the inspectorate should operate, its tasks and minimum powers. Poland has ratified both conventions, hence - in the light of the Constitution of the Republic of Poland - they form part of the national legal order and should be directly applicable, and in the case of collision of the standards contained in them with the provisions of the Act, they have priority of application.

In Chapter I, attention was also drawn to art. 24 of the Constitution, which imposes the obligation to protect work and to supervise the conditions for its performance on the state. This provision should be treated as the legal basis for work performed by the NLI in the field of labour supervision and protection of employees' rights. The resulting obligation to supervise the conditions of performing work by the state means that there must be state bodies with legal instruments to exercise this supervision. These instruments are, among others, to protect employees' rights, including those relating to remuneration for work.

Chapter II is devoted to determining what the control and supervision powers of the NLI are and what their scope is. For this purpose, the key concepts of 'supervision' and 'control' were analysed. The result of the analyses performed is the conclusion that the essence of control is checking whether the activity of employers and other entities employing people who perform work is consistent with the provisions of labour law and, upon finding discrepancies in this scope - presenting conclusions and suggestions used to eliminate such discrepancies, i.e. adaptation of the existing state of affairs to the binding legal norm in this

respect. On the other hand, supervision means control extended with the possibility of imperious insight into the activity of the controlled employer, in order to restore the state of affairs compliant with the law in the employment relationship.

The subject of considerations in Chapter II is also the scope of control and supervisory powers of the NLI, both in the subjective and objective aspect. Definition of the subjective boundaries required analysing the concept of the employer, as it is the most important for the identification of the entity subject to control and supervision competences of the Inspectorate in the area of remuneration for work. On the other hand, when determining the objective scope of their powers, attention was focused on the determination of what a provision of labour law is (under the Act on the NLI), the compliance with which is subject to control. Since it was established that competences of the NLI include all sources of labour law listed in art. 9 § 1 of the Labour law, not only the Labour Code and other acts and executive regulations, but also the provisions of the so-called specific (autonomous) sources, i.e. collective labour agreements, collective agreements, regulations and statutes, if they regulate issues related to remuneration for work or other benefits due to employees. The considerations led to the conclusion that not all provisions regarding remuneration for work fall within control and supervisory competences of the NLI, and their compliance is subject to assessment.

Chapter III was devoted to the issue of remuneration for work. Considerations regarding this issue begin with an attempt to explain the concept of remuneration for work, proper understanding of which is necessary to determine the content of the right to remuneration, to indicate what its elements are and to use special protection. Difficulties in the identification of remuneration for work appear especially in connection with the complex structure of remuneration and extensive payroll regulations of some employers. Particular attention was paid to regulations concerning protection of remuneration for work, the compliance with which is at the centre of attention of labour inspectors while controlling the correctness of remuneration for work. The subject of the analysis in Chapter III also involves benefits other than remuneration for work resulting from the employment relationship and the issue of their legal protection.

Chapter IV of the dissertation was devoted to the procedure of conducting control activities. It seeks to answer the question of whether *legal instruments* available to the NLI allow them to determine the actual condition of the employer's compliance with the provisions on remuneration for work. Therefore, the principles of conducting control and the powers of the labour inspector during its conduct were examined. Considerations in this



matter were preceded by the attention paid to the relationship between the control procedure and the administrative procedure. It was necessary to determine whether the Inspectorate bodies are obliged to apply the provisions of the *Code of Administrative Procedure* during controls. These considerations led to the conclusion that the legal solutions included in this *Code* are to be used in the control procedure only as an aid to fill the gaps in the regulations contained in the Act on the NLI. There is no doubt, however, that in this procedure the general principles of the administrative procedure should be applied, since they determine the desired model of operation of the public administration body and specify the catalogue of necessary standards of the conduct of officials (including the labour inspector). Among these principles, the principle of law (legalism), which obliges the body to act on the basis of legal provisions, has an extremely important place. Acting in accordance with this principle means, among others, having a legal capacity to conduct proceedings in a given case. Therefore, in the further part of Chapter IV, the issue of the local and factual competence of the NLI's bodies to carry out control activities was analysed.

The review of powers that can be used by a labour inspector in the field of remuneration for work, made in Chapter IV, allowed us to identify those powers that are most useful in determining the actual state of affairs in this area. It is the right to demand presentation of documents related to the performance of work, to inspect these documents and to make copies and excerpts from them; the right to request information and explanations on matters controlled, as well as the right to freely access the place of control, which determines the commencement and conduct of each control by the NLI's body.

An important issue considered in this chapter is the specificity of control of an entrepreneur and restrictions on the control powers resulting from the regulations included in the Act of March 6, 2018 on the Rights of Entrepreneurs. These restrictions have been confronted with the standards of control set out in Convention No. 81, which establishes the minimum control powers of labour inspectors. Considerations conducted in this part of the dissertation revealed the incompatibility of some solutions of the *Rights of Entrepreneurs* with the regulations of the said convention, causing doubts as to the obligation to comply with the control restrictions included in this Act by the NLI, especially when controlling employers from the non-trade services sector.

Chapter IV is completed with considerations concerning the penal law protection of conducting control ensured by the provisions of art. 283 §2 item 8 of the Labour Code and art. 225 §2 of the Code of Criminal Procedure, penalizing the conduct of hindering or thwarting control activities of the NLI.

Chapter V analyses the legal means available to the labour inspector when he/she finds a breach of labour law regarding remuneration for work. Assuming that the task of the NLI is to protect employees, their rights and interests, the most important role is played by corrective measures that are to ensure the restoration of a lawful state of affairs in the employment relationship. These measures may be of sovereign nature and constitute an instrument of supervision exercised by the NLI or of a non-sovereign nature - proper for the control function. A sovereign legal measure possible to apply towards the employer who violates the provisions concerning remuneration for work, is an order to pay due remuneration or other benefit to an employee, called a payment order. This is the most effective, but also the most controversial legal measure the NLI has. The subject of this chapter's considerations also includes the non-sovereign post-control measures that the labour inspector can apply when the issuance of a payment order is unacceptable. These measures include an improvement notice, an order and an oral instruction. The analysis involved, among others, their legal nature, which determines the binding force of a legal measure and, consequently, the obligation to perform it or the lack of such an obligation. In addition to the corrective legal measures that directly aim at removing the identified irregularities in the area of remuneration, penal law measures resulting from the labour inspector's reaction to violation of the provisions on remuneration for work were also presented. The presentation of these measures was concluded with considerations regarding the possibility of accumulating administrative, penal or misdemeanour liability and, consequently, the possibility of simultaneous application of administrative sanctions provided for in the Act on the NLI and penal sanctions included in the *Labour Code*.

Chapter VI is a presentation and evaluation of the legal tools available to the NLI to motivate the employer to implement the recommendations contained in the legal measures applied to remove violations of the provisions of labour law regarding remuneration for work. Particular attention was paid to measures mobilizing to enforce payment orders, which are secured by state coercion and enforced in the course of administrative execution of non-pecuniary benefits (the subject of enforcement is not remuneration of an employee, but the act the execution of which is ordered). The analysis involved the enforcement measure in the form of a fine to enforce the execution of a decision, as well as other instruments to discipline an employer to execute a payment order, namely the immediate legal enforceability of the order and penal sanctions that may be imposed on an employer for the failure to execute the order. This chapter also includes an analysis of legal possibilities to influence the employer to implement the notice addressed to them and the order issued. This allowed us to show that the

NLI does not have effective tools to discipline an employer to comply with recommendations contained in non-sovereign measures and force them to remove irregularities in the sphere of remuneration for work.

To illustrate the assumptions adopted in the dissertation and to implement the delineated objectives, statistical data of the NLI was used to illustrate how control and supervisory powers of the NLI are used in practice, i.e. when undertaking control activities regarding compliance with the provisions regarding remuneration for work, when applying legal measures aimed to remove the irregularities found and when enforcing their implementation.

*Lukasz Stępień*  
*5.03.2019 r.*