

CONCEPT OF 'REGULAR REMUNERATION' AND 'EMPLOYEE REMUNERATION' RESULTING FROM THEIR PERSONAL WAGE CLASSIFICATION BASED ON AN HOURLY OR MONTHLY RATE WITHIN THE MEANING OF ARTICLE 151¹ §§ 1 AND 3 LC IN THE LIGHT OF THE SUPREME COURT CASE LAW AND EMPLOYMENT LAW DOCTRINE

MAGDALENA RYCAK*

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ABSTRACT

The article discusses the principles of calculating remuneration for overtime work under the Polish Labour Code and in light of recent Supreme Court case law. The author analyses the dual structure of compensation for overtime work: regular remuneration and the overtime supplement, highlighting their distinct legal and economic functions. Particular attention is paid to the question of which remuneration components may be included as part of 'regular remuneration' within the meaning of Article 151¹ § 1 of the Labour Code. The article also includes *de lege ferenda* proposals, advocating for a statutory definition of 'regular remuneration' to enhance transparency and ensure the adequacy of the remuneration system.

Key words: overtime work, overtime compensation, remuneration for overtime work, regular remuneration, overtime supplement

* LLD, Assistant Professor, Faculty of Law and Administration of Lazarski University in Warsaw (Poland), e-mail: magdalena.rycak@lazarski.edu.pl, ORCID: 0000-0002-2849-4511



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INTRODUCTION

Compensation for overtime work constitutes an important element in the implementation of the principle of consideration for work. In accordance with current law, an employer may compensate employees for work performed beyond standard working hours by paying additional remuneration as specified in the Labour Code or, alternatively, by granting time off. If overtime work is performed on a day off within an average five-day working week, or on a Sunday or public holiday, the employer is obliged first to provide the employee with a day off at another time.

Attention is drawn in the doctrine to the current legislative trend towards the liberalisation of regulations regarding additional remuneration for overtime work. As Ł. Pisarczyk rightly points out, there is a gradual shift towards promoting an alternative form of compensation for overtime work, namely granting employees time off without monetary compensation.¹

The rules for determining monetary compensation for overtime work are laid down in Article 151¹ of the Labour Code (LC). Basically, an employee is entitled to overtime pay composed of regular remuneration plus a relevant supplement (of 50% or 100%). Exceptionally, for employees who regularly work outside their company premises, the legislator provides for the introduction of compensation in the form of a lump sum.

Remuneration for overtime work does not only serve as pay for extra work but also plays an important compensatory and preventive role. In addition to reciprocating work performed beyond the obligatory level, it compensates for the employee's increased physical and mental effort and the burden of disrupting the established work–rest balance. At the same time, it serves as a systematic mechanism preventing the overuse of overtime work by employers and constitutes an economic incentive to adhere to permissible working time standards.

In this context, remuneration for overtime work can also play the role of an indirect instrument for protecting employees, discouraging employers from permanently overloading employees and encouraging decisions to increase employment in situations requiring greater productivity or production. Therefore, it is an important element in balancing the employer's economic interests with the protection of employees' health, life and well-being.

The main thesis of this paper is that the regular remuneration constituting the basis for calculating a supplement for overtime work should include only those elements of remuneration that are causally related to the actual performance of work in terms of both quantity (time) and quality (function).

The article uses a dogmatic-legal method based on the analysis of the provisions of employment law, in particular Articles 151¹ and 151¹ § 3 LC, as well as the Supreme Court case law and the output of the employment law doctrine.

¹ See Ł. Pisarczyk, in: Florek L. (ed.), *Prawo Pracy. Komentarz*, Warszawa, 2017, p. 893.

INTERPRETATION OF THE CONCEPT OF 'REGULAR REMUNERATION' IN THE LIGHT OF THE SUPREME COURT CASE LAW

Remuneration for overtime work is complex in nature and comprises two basic elements: the regular remuneration reflecting the pay for the mere fact of performing work beyond the working time standards, and a supplement serving as a compensatory and preventive function.

The rules of monetary compensation for overtime work are thoroughly regulated in Article 151¹ §§ 1 and 2 LC, in accordance with which, apart from regular remuneration, overtime work is subject to a supplement of 100% or 50% (depending on the day or time the work was performed), and its interpretation has been the subject of numerous judgments of the Supreme Court. The interpretation of the concept of 'regular remuneration' is especially important, as its scope is crucial for the proper calculation of pay for overtime work in practice.

The concept of 'regular remuneration' referred to in Article 151¹ § 1 LC has raised interpretation difficulties for years, primarily due to the lack of a legal definition in the provisions of law and the linguistic imprecision of the word 'regular' itself. As a result, the interpretation of the concept in case law and the doctrine is not uniform. Therefore, it is necessary to apply the principles of legal interpretation, including teleological and systemic interpretation, taking into account the protective function of the norms (*pro tutela legis laboris*).

In a situation where an employer compensates an employee for overtime work in monetary form, the employee is entitled to the so-called 'regular remuneration', i.e. the pay received permanently and systematically. In particular, it includes basic pay based on personal wage classification, as well as other fixed remuneration components to which employees are entitled under the wage regulations applicable in the workplace.²

The concept of 'regular remuneration' also includes other fixed remuneration components, such as bonuses, provided that they are fixed and do not depend on achieving above-standard work effects that do not result from the fulfilment of duties overtime.³

In the light of established case law, the concept of 'fixed' additional remuneration components should be understood as their regular and predictable occurrence in the structure of employees' remuneration. This is not limited to components paid monthly, but may also entail benefits paid in other time cycles, for example annually, provided they are recurring and constitute a characteristic element of the employment relationship, and employees can reasonably assume they will receive them under standard terms of employment. Therefore, the category of 'regular remuneration' may also include an annual bonus or profit bonus paid once a year, provided they are awarded regularly and regardless of whether employees have met additional extraordinary conditions.

² Cf. the Supreme Court judgments of 3 June 1986, I PRN 40/86, *OSNCP*, 1987, No. 9, item 140, of 22 June 2011, II PK 3/11, *OSNP*, 2012, No. 15–16, item 191 with a gloss by P. Prusinowski, *OSP*, 2013 No. 3, item 24 and of 19 March 2019, III PK 32/18, *LEX* No. 2644631.

³ Cf. the Supreme Court ruling of 15 February 2012, I PK 156/11, *LEX* No. 1215264.

According to case law, such fixed remuneration components that may be taken into account when calculating overtime pay include, *inter alia*, a seniority bonus, provided it is derived from statutory or implementing provisions or company sources of law (e.g. collective agreements or remuneration regulations); a function-related responsibility benefit; a benefit for working in harmful conditions; or a fixed non-discretionary bonus.⁴ Such components also include a benefit for working at night.

It is assumed in case law that the 'permanence' of a given component is determined not so much by the cyclicity of monthly payments, but by its repeatability, predictability and lack of arbitrariness in its granting. However, when determining additional components of 'regular remuneration', it is irrelevant whether a given component is paid for work actually performed or not. When determining additional components of 'regular remuneration', it is essential that they are characteristic of the employee's regular and systematic remuneration, paid under standard working conditions. This means that a component may be considered part of 'regular remuneration' even if it depends on the amount of work performed, provided that it is paid regularly and the employee can rely on it as a fixed element of their remuneration.

This means that 'regular remuneration' may include not only fixed supplements independent of hours worked (e.g. seniority bonus), but also other components that are regularly awarded and constitute a stable element of the employee's remuneration. It is important that they are predictable and paid at regular intervals, which allows for their classification as 'regular remuneration'.

However, remuneration components that are paid sporadically, irregularly, or depend on meeting specific requirements by an employee (e.g. bonuses for achieving specific sales targets that are not paid regularly) are not included in 'regular remuneration'. The basis for including a given component in 'regular remuneration' is its stability, regularity and predictability in the context of the employee's standard working conditions.

BONUSES AND AWARDS AS ELEMENTS OF 'REGULAR REMUNERATION': QUALIFICATION CRITERIA

For the purpose of including a bonus in regular remuneration for overtime, it is necessary to understand the permanent nature of the bonus as one paid regularly, for example monthly, quarterly, etc., which means that it is not a one-off or occasional benefit. Nor can the bonus depend on meeting particular specific goals or achievements that go beyond the employee's standard duties, especially those performed overtime.

In practice, this means that if a bonus is awarded regularly and is not directly linked to the employee's additional specific achievements, it may be treated as an element of regular remuneration. However, bonuses depending on the employee's

⁴ Cf., e.g. the Supreme Court judgment of 26 July 2017, I PK 218/16, LEX No. 2382445.

achievement of specific results, especially those that go beyond standard duties, are not included in regular remuneration within the meaning of the concept.

A bonus is a right – its payment can be claimed before a court. Proper establishment of the bonus system should be done in the remuneration and bonus regulations or in a collective agreement (or possibly in an employment contract). Those documents should include the requirements for obtaining bonuses (specific, verifiable and measurable), bonus reduction factors, circumstances resulting in the termination of bonuses, and bonus amounts.

The difference between an award and a bonus consists in the fact that an award does not depend on meeting any specific conditions and is granted at an employer's absolute discretion. The decisive factor is whether the relevant legal acts (employment contract) provide for specific and objective (verifiable) conditions for acquiring the right to the benefit or conditions leading to its loss or reduction (the so-called reducers). If the conditions (criteria) for granting a benefit are determined in a manner detailed enough to be reviewed, the benefit constitutes a bonus, and meeting them constitutes the employee's right to the bonus.⁵

A long-service award is a benefit that is, by nature, remuneration and a right. Therefore, in fact, it is a bonus the employee is entitled to, not an award.⁶ If it has already been granted (and communicated to the employee), it can be claimed before a court. However, this type of award is not part of regular overtime pay, because it is not permanent or regular in nature, but is a one-off or occasional benefit.

In turn, the so-called discretionary bonus is not included in regular (or additional) overtime pay if its payment actually depends on the employer's discretion (and is not, in fact, a statutory bonus).

A discretionary bonus is an optional benefit. An employer independently decides whom to award this bonus to, what for, and in what amount. The decision does not depend on any formal conditions and is not subject to review by employment tribunals. An employee has no right to claim this award despite the fact that the Labour Code specifies general criteria for granting awards. Employees who, through exemplary performance of their duties, by showing initiative at work and improving productivity and quality of work, significantly contribute to the achievement of the company's objectives may be given awards and distinctions (Article 105 LC). However, if a company's internal regulations stipulate that an employee is entitled to a benefit upon meeting specific criteria, then such a benefit is a bonus even if it is called an award.

The Labour Code provides for only two methods of payment for overtime: additional remuneration in accordance with general rules or, in strictly determined cases, a lump sum. Overtime cannot be paid under any other title. An agreement with an employee on overtime compensation in the form of a discretionary bonus does not exempt an employer from the obligation to pay for work actually performed overtime.⁷

⁵ See the Supreme Court judgment of 21 June 2007, I PK 3/07.

⁶ See the Supreme Court judgment of 14 May 2012, I PK 174/11.

⁷ See the Supreme Court judgment of 18 July 2006, I PK 40/06, *OSNP*, 2007/15-16/212.

INTERPRETATION OF THE CONCEPT OF 'REGULAR REMUNERATION' IN THE LIGHT OF THE DOCTRINE OF EMPLOYMENT LAW

In the context of the concept of 'regular remuneration' under analysis, it should be noted that employment law doctrine has consistently emphasised the limitations arising from an overly formalistic interpretation of the term 'regular remuneration', reduced solely to the criterion of permanence. This perspective, although pragmatic from the point of view of calculation techniques, does not consider the actual function that overtime remuneration should fulfil in the employment law system or the axiological foundations of this benefit. The authors representing the functional-systemic interpretation call for a broader and more adequate understanding of this concept, taking into account not only the regularity of payments, but above all their relationship with the actual workload and the specific nature of duties performed.

The Supreme Court case law on the concept of regular remuneration may lead to simplifications that fail to take into account the actual role a given remuneration component plays in the employment relationship. A critical stance in this regard was presented, *inter alia*, by A. Kijowski, who drew attention to the need for a broader perspective on the essence of overtime pay, arguing that

'The concept of regular overtime pay includes the basic remuneration resulting from the individual's wage classification, as well as payments constituting an actual increase in that rate, i.e. the function-related responsibility benefit (foreman's supplement), a supplement for working at night, a supplement for working in unhealthy conditions (in accordance with Article 133¹ LC, overtime in such conditions, except for rescue operations or repairing breakdowns, is absolutely impermissible), as well as the so-called bonus for disciplined and active attendance at work. All payments that constitute a hidden increase in basic remuneration should be treated in the same way. However, the afore-mentioned concept of 'regular remuneration' does not include payments under the employment relationship that are determined at a fixed (annual, monthly or daily) amount, and thus in isolation from hours worked (e.g. seniority benefit, in-kind benefits or their monetary equivalents), regardless of their name and legal nature.'⁸

In contract, P. Prusinowski argues that this definition should be based not only on the criterion of permanence, but also on the actual nature of the component as part of the benefit due for work performed.⁹ For this reason, the inclusion of a seniority benefit, which, as a loyalty-related one, is not dependent on the number of hours worked, is questioned.

It is argued in the literature that 'regular remuneration' is a periodic and right-related one that constitutes a fixed benchmark for employees, regardless of the variability of their monthly workload. P. Prusinowski criticises the Supreme Court's stance, which treats remuneration as a monolith composed of recurring elements.

⁸ See A. Kijowski, 'Pojęcie normalnego wynagrodzenia za pracę w godzinach nadliczbowych', *Praca i Zabezpieczenie Społeczne*, 1996, No. 10, p. 32.

⁹ See P. Prusinowski, 'Normalne wynagrodzenie za pracę w godzinach nadliczbowych', *Praca i Zabezpieczenie Społeczne*, 2013, No. 5, pp. 28–33.

He argues that it is more appropriate to consider the function of Article 151¹ § 1 LC in the system of working time settlement rather than the evaluation of individual remuneration components. He advocates a functional and systemic interpretation of the concept of 'regular remuneration', departing from its simple identification with basic pay or 'fixed' benefits. In his opinion, the concept of 'regularity' does not refer to the recurrence of payment or its fixed nature, but to the proportion between the agreed remuneration and the basic working time. This means that 'regular remuneration' should be understood as *the equivalent of a number of working hours in standard conditions*, regardless of the form of remuneration (monthly pay, commission or piece work rates).¹⁰

In the employment law doctrine, attention is also drawn to the lack of connection between some remuneration components, such as seniority or family separation benefits, and the actual incidental work performed. They are paid at a fixed rate, regardless of the number of hours worked in a given settlement period. Therefore, it is argued in the literature that these components should be excluded from the basis for calculating the so-called 'regular remuneration' due for overtime, as they are unrelated to the actual workload in a given period.¹¹

At the same time, however, the judicature did not revise the previously adopted line of interpretation, maintaining the former one, assuming that the 'permanence' of a given remuneration component is determined not so much by the cyclicity of monthly payment, but by its repeatability, predictability, and lack of arbitrariness in awarding it.

Summing up, the difference in positions presented by the judiciary and employment law scholars is essentially methodological in nature. The doctrine focuses on the functional features of remuneration for work as an equivalent benefit constituting a direct payment for work done at a specific time and place. This approach allows for the formulation of a conclusion that compensation for overtime work, as an extraordinary form of work, cannot be calculated based on remuneration components that are neutral or ambivalent in relation to its time dimension. In other words, these components, due to their lack of connection with the amount of overtime work, should not form the basis for determining the so-called regular remuneration referred to in Article 151¹ § 1 LC.

Doctrinal interpretation finds solid support in the principle of *interpretatio functionalis*, in accordance with which legal concepts should be understood in a way that ensures their consistency with the function they are intended to perform in the legal system. Overtime pay, as a form of compensation for increased workload, should be calculated based on those elements of remuneration that are closely related to the time and conditions of work performed. Otherwise, the compensatory and protective function of Article 151¹ § 1 LC is violated and its interpretation leads to consequences that are inconsistent with the axiology of employment law.

¹⁰ Ibidem.

¹¹ See A. Kosut, 'Praca w godzinach nadliczbowych i jej wynagradzanie', *Praca i Zabezpieczenie Społeczne*, 1998, No. 5, pp. 31–32.

It is also justified to invoke the principle of *lex non cogit ad inutilia*, which assumes that legal provisions should not be interpreted in a way that leads to unnecessary or superficial effects. The inclusion of components unrelated to working time, such as a seniority bonus, in regular remuneration leads to remuneration fiction: an employee receives overtime pay with benefits that are not dependent on whether such work has actually been performed. Such an approach poses a threat to the coherence of the remuneration system and violates the fundamental principle of equivalence of benefits in the employment relationship.

In accordance with Article 78 § 1 LC, an employee is entitled to remuneration corresponding to the type of work performed and the qualifications required to do it, as well as taking into account the quantity and quality of work done. This provision confirms the principle of equivalence of work and remuneration, leading to the conclusion that any benefits that are purely loyalty-related in nature, unrelated to work input (e.g. seniority bonuses, long-service anniversary benefits or in-kind ones), cannot constitute the basis for determining the regular remuneration referred to in Article 151¹ § 1 LC.

To sum up, the doctrine's stance is more consistent with the systemic and axiological assumptions of employment law. It addresses the actual purpose of the provision, i.e. compensation for an employee's extra effort, and respects the principle of fair remuneration for work.

CONCEPT OF 'EMPLOYEES' REMUNERATION RESULTING FROM THEIR PERSONAL WAGE CLASSIFICATION DETERMINED BY AN HOURLY OR MONTHLY RATE' REFERRED TO IN ARTICLE 151¹ § 3 LC

Apart from their regular remuneration, employees are entitled to overtime pay. The amount of this supplement varies depending on the circumstances of the work performed:

- 100% of the regular remuneration for each overtime hour of work at night, on Sunday, and on a public holiday that is not a working day for employees in accordance with the applicable work schedule, as well as on a day off granted in exchange for work on a Sunday or public holiday;
- 50% of the regular remuneration for overtime work done on other days (Article 151¹ § 1 LC).

The 100% extra pay is also due for every hour of overtime work that results in exceeding the average weekly working time standard in the adopted settlement period, unless the excess was due to overtime work for which an employee is already entitled to the supplement of 50% or 100% (Article 151¹ § 2 LC).

The basis for calculating overtime pay is usually significantly lower than the basis for calculating regular remuneration. The basis for calculating a supplement for overtime work is employees' remuneration resulting from their personal wage classification determined by an hourly or monthly rate and, in the case where such a remuneration component is not determined in the remuneration terms, 60% of

the remuneration calculated in accordance with the rules for determining annual leave pay.¹²

A supplement for overtime is usually calculated based on the employee's personal wage classification determined by an hourly or monthly rate, and if such a remuneration component is not separated in the remuneration conditions, 60% of the remuneration (Article 151¹ § 3 LC).

The concept of 'employees' remuneration resulting from their personal wage classification determined by an hourly or monthly rate' may raise doubts in its practical application. These result, *inter alia*, from the fact that the Labour Code uses it as an established concept, the content of which cannot be fully reconstructed based on the provisions of the Labour Code itself, without reference to the remuneration determination techniques laid down in pay regulations specified in Chapter 1, Section 3 of the Labour Code (Articles 77–77³ LC), such as collective agreements, remuneration rules and regulations, or statute implementation regulations.

The concept of an employee's wage classification is associated with the so-called qualification scales, which may also occur under other names (e.g. 'tables of posts', 'qualifications and wage classification'), in which a position or type of work, and the professional qualifications required to perform a specific type of work or hold a specific post, are specified (Article 102 LC), and are assigned a wage category, usually within a determined wage range. Next, in accordance with Article 78 § 2 LC, the so-called tables of basic pay rates specify – also most often within a determined range – monthly or hourly rates of basic pay to which employees assigned to specific categories in the qualification scale are entitled. On the other hand, personal classification of an employee involves establishing the remuneration corresponding to the type of work in an employment contract (or another document constituting the basis of the employment relationship), i.e. indicating the so-called personal classification category, which, in the case of non-ranged remuneration rates in the table of pay rates, results in determining a specific hourly or monthly wage or agreeing on a remuneration rate within a given range.¹³

Until 2007, the personal classification included basic pay and a function-related responsibility supplement. This was confirmed by the Supreme Court rulings (III PZP 42/86 and I PRN 28/85). The Court emphasised that personal wage classification also includes other components, provided they are closely related to the terms and conditions of employment.

In its resolution of 30 December 1986, the Supreme Court stated that 'the employee's remuneration resulting from their personal wage classification referred to in Article 81 §§ 1–3, Article 134 § 1 and Article 144 § 2 LC, apart from the basic pay, also includes a function-related responsibility benefit'.

According to the Supreme Court, the 'personal wage classification' should be understood as remuneration that is fixed and directly related to the employee's function or position held, and not remuneration that is dependent on additional

¹² See Article 151(1) § 3 LC.

¹³ See the justification for the Supreme Court resolution of 3 April 2007, II PZP 4/07.

conditions met by the employee, e.g. period of employment, working in harmful conditions, etc.¹⁴

In its judgment of 16 November 2000,¹⁵ the Supreme Court stated that the phrase 'employee's remuneration resulting from their personal wage classification determined by an hourly or monthly rate' used in the amended provisions of the Labour Code means an hourly or monthly rate of remuneration for work of a specific type or a specific position held. The Supreme Court also indicated that the guaranteed remuneration provided for in Article 81 § 1 LC, to which an employee is entitled in the amount resulting from the employee's personal wage classification determined by an hourly or monthly rate, cannot include any components other than those resulting from the employee's wage classification and that are determined by an hourly or monthly rate. In this regard, the Supreme Court found that both these supplements are not a consequence of the employee's 'personal wage classification', but of a specific job classification. A service supplement depends on the nature, complexity, and results of work. However, the seniority benefit depends on a sufficiently long period of employment, which cannot be treated as related to the employee's personal wage classification.

In its resolution of 3 April 2007,¹⁶ the Supreme Court reinterpreted the concept of personal wage classification rate and ruled that it includes only basic pay. In its stance, the Court held that the concept of an employee's remuneration resulting from their personal classification determined by an hourly or monthly rate, within the meaning of Article 134 § 12 LC, refers to the basic pay agreed on by the parties in the employment contract or another document that is a basis of the employment relationship. Basic pay is the only necessary equivalent of work done by an employee, and is included in every employee's remuneration. It is the main component of remuneration, but can also be its exclusive component. Basic pay is most closely linked to the type of work performed (i.e. work of a specific type or a position held), constituting direct payment for this work and the qualifications required to perform it.

In the judgment of 23 May 2012,¹⁷ the Supreme Court confirmed that a function-related responsibility benefit based on a percentage of the basic pay does not constitute an employee's remuneration resulting from the personal wage classification determined by an hourly or monthly rate within the meaning of Article 151 § 3 LC.

Finally, it should be noted that although case law allows for the replacement of a specific benefit (overtime supplement) with another one, this benefit must correspond to the expected workload during this time. A benefit that significantly deviates from the benefit due under general rules is improper, which, consequently, does not deprive the employee of the right to claim compensation.¹⁸

¹⁴ See the Supreme Court judgment of 25 April 1985, I PRN 28/85, *OSNCP*, 1986, No. 1–2, item 19.

¹⁵ I PKN 455/00, *OSNAPILIS*, 2002, No. 11, item 268.

¹⁶ II PZP 4/07, *OSNP*, 2007/21–22/307.

¹⁷ I PK 175/11, *OSNP*, 2013, No. 11–12, item 126.

¹⁸ Cf. the Supreme Court judgment of 24 April 1979, I PRN 42/79, *OSNPG*, 1971, No. 11, item 58, p. 21; the Supreme Court judgment of 12 January 1977, I PRN 107/76, *OSNCP*, 1977,

The method of calculating remuneration for overtime work results from the provisions of the Labour Code and the Regulation of the Minister of Labour and Social Policy of 29 May 1996 on the methods of determining remuneration for the period of inactivity and remuneration constituting the basis for calculating compensation, severance pay, compensation supplements to remuneration, and other benefits provided for in the Labour Code.¹⁹

The provisions of collective agreements, remuneration regulations, or employment contracts may define overtime pay rules that are more favourable to employees than the provisions of the Labour Code. In such cases, the more favourable standards are applicable when calculating employees' remuneration.

CONCLUSIONS

The analysis of the legal nature of benefits to which employees are entitled for work performed beyond the applicable standard working time indicates their dual nature. On the one hand, employees are entitled to the so-called 'regular remuneration', which serves as consideration for work performed. On the other hand, the aim of overtime pay is not only to compensate for the employees' effort but also to prevent abuse of overtime work.

These benefits, although they result from the same factual situation, i.e. overtime work, play different functions. Regular remuneration constitutes payment for work actually performed, and is directly related to the principle of paid employment. However, supplements for overtime work also play a protective function aimed at reducing employees' overload and ensuring an appropriate level of occupational health and safety.²⁰

The judiciary focuses on the predictability and regularity of payments and adopts a broad definition of 'regular remuneration', which also includes components that are not related to actual workload, such as seniority benefits, family separation supplements, or in-kind benefit equivalents. This interpretation can lead to a disconnection of the basis for overtime pay from its actual equivalent function, which results in the weakening of employee protection and a flattening of the relationship between working time and the benefits due.

De lege lata, in the light of the stance of employment law scholars, the concept of 'regular remuneration' should cover only those components of remuneration that are causally related to the actual workload. Therefore, benefits that do not depend on the amount of work performed, such as seniority benefits, separation supplements, or in-kind benefit equivalents, should be excluded from this category. These are loyalty-related bonuses and not consideration for work, which means they cannot constitute benchmarks for overtime pay calculation. Employers cannot grant (let alone compensate) remuneration for additional working time based on

No. 9, item 171; judgment of the Appellate Court in Warsaw of 29 December 1995, III APr 71/95, OSA, 1996, No. 11–12, item 34.

¹⁹ Consolidated text, Journal of Laws of 2017, item 927.

²⁰ See P. Prusinowski, 'Normalne wynagrodzenie...', *op. cit.*, p. 29.

components that do not depend on actual working time. In other words, benefits unrelated to employees' working time and effort cannot constitute the basis for calculating pay under Article 151¹ § 1 LC, because this would violate both the principle of equivalence of benefits in an employment relationship and the transparency of the remuneration system.

The system of overtime pay should maintain a close relationship with employees' actual workload, both in quantitative and qualitative terms. The current lack of a legal definition of 'regular remuneration' poses a risk of arbitrary interpretation.

De lege ferenda, in light of the above-presented analysis, it seems justified to introduce a statutory definition of 'regular remuneration' in Article 151¹ § 1 LC, in order to increase the transparency of the overtime pay system and to unambiguously exclude components that are not related to the actual workload from the basis for this pay calculation, as they are loyalty-related, social, and compensatory in nature.

In turn, the analysis of the regulation laid down in Article 151¹ § 3 LC indicates that the basis for calculating overtime pay is the remuneration resulting from the employee's personal wage classification determined by an hourly or monthly rate. The judiciary has interpreted this formulation – lacking a legal definition – many times. Initially, the Supreme Court allowed for a broad understanding of this category, including, apart from basic pay, also other components directly related to the function performed or position held (such as a function-related responsibility supplement). However, in the later case law, the dominant view became one that limits this basis exclusively to the basic pay specified in the employment contract or in a document establishing the employment relationship.

BIBLIOGRAPHY

- Kijowski A., 'Pojęcie normalnego wynagrodzenia za pracę w godzinach nadliczbowych', *Praca i Zabezpieczenie Społeczne*, 1996, No. 10.
- Kosut A., 'Praca w godzinach nadliczbowych i jej wynagradzanie', *Praca i Zabezpieczenie Społeczne*, 1998, No. 5.
- Pisarczyk Ł., in: Florek L. (ed.), *Prawo pracy. Komentarz*, Warszawa, 2017.
- Prusinowski P., 'Normalne wynagrodzenie za pracę w godzinach nadliczbowych', *Praca i Zabezpieczenie Społeczne*, 2013, No. 5.

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