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**LEGAL DEFINITIONS.  
AN OUTLINE OF THE PROBLEM BASED ON  
CHOSEN EXAMPLES OF POLISH LEGISLATION**

**Introduction**

The problem of defining terms is one of the basic characteristics of language. In everyday life we can observe many negative occurrences in the use of ordinary language. I especially mean the improper use of certain notions (expressions) which very often is the result of the incorrect understanding of their meaning. The chaotic, often inconsistent, application of names to such public spaces as: square, roundabout, or plaza can be given as one of numerous examples. Improper use of expressions unfavorably affects the state of social awareness, introducing unnecessary confusion and impairing the basic function of language, that of interpersonal communication. Additionally, it has a destructive effect on language itself.

The language of legislation (language of the law) is also not free from definition problems. Furthermore, as a specialized language, it includes numerous notions (expressions) whose explanation demands not only the analysis of individual legal system solutions and application of different methods of interpreting regulations, but especially the necessity to make explanations using common language. Incorrect understanding of certain legal language expressions can lead to erroneous subsumption of the legal norm.

Various situations occur in Polish legislature: sometimes there is no simply stated legal definition of an expression (a definition of a certain institution or mechanism of the law). Often the legislator makes a decision to create a definition of the law himself. At other times, within the regulations of the law exist scattered elements which, when collected into a whole, form the basis of a definition. It also occurs that within regulations there is no definition of the law; however, the characteristics of a certain institution or its role (responsibilities) are mentioned.

The subject of this work consists of chosen key threads connected with the definitions of notions and expressions occurring within normative acts. The interpretive function of the organs of court authority should be underlined within the scope of this matter, especially that of The Supreme Court, which has been granted by the Constitution of the Republic of Poland<sup>1</sup> the privilege to safeguard the uniformity of case law in courts of general jurisdiction and in military courts.<sup>2</sup> When it comes to the interpretation of the regulations of the Constitution it is worthwhile to present case law of the Constitutional Tribunal of the Republic of Poland. An indispensable complement to the inferences dealing with definitions in legislature is the presentation of doctrine positions.

This text, in accordance with the author's intentions, is to have a more practical quality. Therefore, strictly theoretical issues are only mentioned.<sup>3</sup> It was also not the author's intention, primarily due to the character of this work, to solve all the complicated issues dealing with the problem of defining notions and expressions existing in the language of law.

The examples upon which the analysis was based serve the purpose of illustrating the problem of defining in law and are only a contribution for further in-depth study. The doubts connected with the following expressions: "incapacity to work", "obligation of compulsory national insurance for non-agricultural business activity", "farmer", "close person", "personal right", and "freelance profession" will be considered.

## General information about legal definitions

In the beginning we must state that the problem of legal definitions also concerns the definitions themselves, since an explanation of the meaning of this expression does not exist within Polish law. It is, however,

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<sup>1</sup> Dz.U. from 16 July of 1997, No. 78, item 483.

<sup>2</sup> Regulations of article 183, sections 1 and 2 of the Constitution stipulate that the Supreme Court oversees the activity of courts of general jurisdiction and military courts within case law, as well as performing other tasks described in the Constitution and statutes.

<sup>3</sup> More about the problem of the legal definition with the inclusion of the theoretical and legal aspects see for example: A. Malinowski [in:] *Zarys metodyki pracy legislatora*, edited by A. Malinowski, Warszawa 2009, pp. 295–309; L. Nowak, *Spór o definicje legalne a sposób pojmowania „prawodawcy”*, Państwo i Prawo 1969, vol. 3, pp. 510–515; J. Wróblewski, *Zasady tworzenia prawa*, Warszawa 1989 (especially chapter 8); L. Morawski, *Zasady wykładni prawa*, Toruń 2010 (especially chapters VI and X). See also: P. Saługa, *Sposoby wyodrębniania definicji legalnych*, Państwo i Prawo 2008, vol. 5, pp. 76–86.

stated that the legal definition is the definition contained within the text of a law-making act, usually at its beginning.<sup>4</sup> Since it takes the form of a regulation, it is forbidden to formulate a meaning of the expressions which is contradictory to the meaning established by the legal definition because that would result in violating the law. We can indicate, among others, different types of legal norms by assuming as a criterion their essence: authorizing, material, procedural and competence norms. The character of regulations stipulating legal definitions is different, however, since they concern themselves with the meanings of the words used within the text of a legislative act and not with behaviors regulated by the norm.<sup>5</sup> Nevertheless, in this case also, the regulation containing the definition (or regulations upon which it could be constructed) has a prescriptive meaning.<sup>6</sup>

The legal definition primarily designates a definite way of understanding of expressions used within a legal text.<sup>7</sup> Regulations which are in the form of a legal definition have a supporting nature: they define the sense of the words and expressions used within the text of a legislative act, while the determination of the definition can generally assume two forms: clear, meaning a directly expressed definition, or through using a word in parentheses. They constitute a supplement, modification or limitation of the content of basic (classic) norms.<sup>8</sup>

Legal definitions can adopt different forms: a) a clear definition, when within a legal article the *definiendum* and *definiens* of a given term are directly stated; b) a context definition, when there is a lack of a direct specifying of meaning of the term in one regulation, but it can be inferred from the way it has been used in various regulations, of which every one can be used to reconstruct the meaning of the term being defined; c) an enumerative (range) definition, when the legislator defines the range of a defined notion by enumerating the objects which create that range.<sup>9</sup>

That being so we can distinguish, depending on the method of edition of definitional regulations, several types of legal definitions: a) when within

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<sup>4</sup> S. Kaźmierczyk, *Wprowadzenie do nauk prawnych. Leksykon tematyczny* (edited by A. Bator), Warszawa 2010, p. 202.

<sup>5</sup> *Ibid*, pp. 202–203.

<sup>6</sup> It is not a common opinion. The positions within this subject were examined by J. Gregorowicz. See, *idem*, *Definicje w prawie i w nauce prawa*, Łódź 1962, pp. 22–25 and 39–52.

<sup>7</sup> Z. Ziemiński, *Wykładnia prawa i wnioski prawnicze*, (in:) *Zarys teorii prawa*, S. Wronkowska, Z. Ziemiński, Poznań 2001, p. 148.

<sup>8</sup> *Ibid*, p. 153.

<sup>9</sup> See more L. Morawski, *Zasady wykładni prawa*, Toruń 2010, p. 104–106.

one editorial unit (an article for example) a few terms are defined; b) when a separate editorial unit of a legal text is devoted to defining one term; c) when the definition of a term is an element of the content of a given editorial unit of a legal text; d) if one term is defined in a few separate elements of a legal text (articles).<sup>10</sup>

Language forms of legal definitions also vary. Type “A is B” definitions have the simplest form. We also encounter other formulas “A equals B” and “A is ABC”, “A within the understanding of the given act is B”, “A is considered to be B”, “the term A means B”, “by A is understood B”, “A includes B”, “A defines B”, however the problem lies in that not all of the formulations of this type have a definitional quality.<sup>11</sup>

## **1. Incapacity to work**

In accordance to article 12 of the statute from 17 December of 1998 about retirement pensions and disability pensions from the National Insurance Fund<sup>12</sup>, a person who is incapable of working, as understood within the law, is a person who has fully or partially lost the ability to be gainfully employed because of an injury to the body and who does not show any prospects of regaining the ability to work after retraining. A person who is fully unable to work is a person who has lost the ability to do any kind of work. A person who is partially unable to work is a person who, to a large degree, lost the ability to work consistent to the level of qualifications possessed. The above definition of incapacity to work, as well as the level of incapacity to work (full or partial), in practice creates many interpretational problems.

First of all, it should be stated that, within the scope of the above definition of incapacity to work, it was within case law that the elements which contribute to the meaning were revealed – the biological element, meaning the injury to the body, and the economic element, or the loss of the ability to be gainfully employed. According to the current legal position the injury to the body is evaluated from the point of view of the possibility of returning function to the body as a result of treatment and rehabilitation (article 13, section 1, point 1 of the above statute). Injury to the body,

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<sup>10</sup> Z. Pulka, *Podstawy prawa. Podstawowe pojęcia prawa i prawoznawstwa*, Poznań 2008, p. 66.

<sup>11</sup> See more: J. Gregorowicz, *Definicje w prawie...*, op. cit., pp. 32–36.

<sup>12</sup> Consolidated text: Dz.U. from 2009, No. 153, item 1227 with revisions.

depending on the level, causes partial incapacity to work (loss of ability to work consistent with the level of qualifications), full incapacity to work (loss of the ability to do any kind of work) or the incapacity to remain self-reliant. The incapacity to work caused by other reasons than injury to the body to the level causing incapacity to be gainfully employed is not incapacity to work within the understanding of article 12, section 1 of the above statute.<sup>13</sup>

Taking into account the elements making up the definition of incapacity to work, we should also consider the phrase “expectancy of regaining the ability to work after retraining”. In the event of positive “expectancy of regaining the ability to work after retraining”, recognizing a given person as incapable of working is ruled out. The inconsistency of such a legislative regulation with the remaining regulations of the statute from 17 December of 1998 about retirement pensions and disability pensions from the National Insurance Fund has been pointed out in doctrine.<sup>14</sup> In the regulation of article 14, section 1, point 5 of this statute it has been stated that the assessment of incapacity to work, its level and appropriateness of professional retraining, is completed, in a form of a medical certificate, by the certifying physician of the National Insurance System. Since the legal definition of the incapacity to work rules out regaining the ability to work through retraining, then it is impossible to qualify a person as unable to work and at the same time to recommend his retraining for work in a different field, with a decision of the certifying physician of the National Insurance System that a person is unable to work, it is aimless to perform the assessment of the possibility of professional retraining.

Similarly, in article 60 of the above mentioned statute, it has been stated that a person who fulfills the requirements defined in article 57 of said statute (including, among others, incapacity to work), and with whom it has been determined that he/she should be retrained because of incapacity to work in their current occupation, is entitled to a six month training allowance, withholding statutes 2 and 4. In this event it should also be said that since the notion of incapacity to work is separated from the ability to retrain to a different profession, then there is no possibility to simultaneously qualify this person as unable to work and to have any expectations of regaining this ability after retraining. The above interpretational dilemmas

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<sup>13</sup> Supreme Court ruling from 28 January of 2004, II UK 167/03 (OSNPUSiSP 2004, no. 18, item 320).

<sup>14</sup> Compare M. Bartnicki, B. Suchacki, *Komentarz do art. 12, [in:] Ustawa o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych – commentary*, ed. K. Antonowa, Wolters Kluwer Polska 2009, p. 101 and following and cited literature.

require the involvement of the legislator and the unification of the legal definition of incapacity to work within the scope of that legislative act – the statute from 17 December of 1998 about retirement pensions and disability pensions from the National Insurance Fund.

This involvement is even more necessary because within case law it is shown that the incapacity to perform the tasks of a position currently being held is not enough to determine incapacity to work, if the age, level of education and psychophysical predispositions justify expectations that, despite disability of the body, the person will obtain other work, weather within the same profession or through retraining.<sup>15</sup> Furthermore, in the event when the person in question has lost the ability to work in accordance with his/her qualifications, obtaining any work does not mean retraining resulting in regaining the ability to be gainfully employed, as mentioned in article 12, section 1 of the above stated statute.<sup>16</sup> The ability to retrain is understood in case law as retraining of basic qualifications or obtaining a completely new profession.<sup>17</sup>

In the judiciary a person who is partially unable to work is understood to be a person, who due to injury to the body, is not able to correctly perform the tasks connected to their profession<sup>18</sup>, has retained the ability to perform some sort of work (for example one requiring lower or no qualifications), but at the same time has lost to a great degree the ability to perform work for which he/she possessed qualifications, whereas, in order to judge the level of these qualifications, we must consider weather real abilities have been obtained, ones which influence the person's professional career, for example, ones which would decide: about gaining a higher salary than workers formally possessing the same qualifications, about obtaining promotions or the ability to find new places of employment.<sup>19</sup> Also, performing

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<sup>15</sup> See Supreme Court ruling from 11 January of 2007, II UK 156/06 (OSNPUSiSP 2008, no. 3–4, item 45); Appellate Court in Katowice ruling from 14 August of 2007, III AUa 1300/06 (Lex no. 339737); Appellate Court in Białystok ruling from 27 April of 2011 regarding III AUa 933/10 (unpublished).

<sup>16</sup> Compare Appellate Court ruling in Lodz from 14 November of 2000 about III AUa 836/2000 (OSA 2001/6 item 26, p. 83).

<sup>17</sup> Compare Supreme Court ruling from 15 September of 2006, I UK 103/06 (OSNPU-SISP 2007, no. 17–18, item 261) with gloss of U. Jackowiak.

<sup>18</sup> Compare Supreme Court ruling from 2 February of 2006, I UK 188/2005 (LexPolonica no. 2422990).

<sup>19</sup> Compare Supreme Court ruling from 17 November of 2000, II UKN 59/2000 (OSNA-PiUS 2001/10 item 8); Supreme Court ruling from 15 September of 2006, I UK 103/2006 (OSNP 2007/17–18 item 261); Supreme Court ruling from 17 April of 2008, II UK 192/2007 (OSNP 2009/15–16 item 206); Supreme Court ruling from 25 January of 2010, I UK 215/2009 (LexPolonica no. 2439905).

work at a position specifically adapted to the abilities of the worker cannot be treated as gaining new qualifications and does not mean that the person has regained the ability to work.<sup>20</sup>

## **2. Obligation of compulsory national insurance for non-agricultural business activity**

According to article 6, section 1, point 5 of the statute from 13 October of 1998 about the national insurance system<sup>21</sup>, persons who, within the boundaries of the Republic of Poland, conduct non-agricultural business activity as well as those who cooperate with them, are subject to compulsory retirement pension and disability pension insurance.

The term “non-agricultural business activity” has not been defined for the needs of the statute from 13 October of 1998 about national insurance system. The content of article 6, section 1, point 5 is correlated with article 8, section 6 of that statute in which have been listed the entities and the conditions under which these entities are subject to national insurance. Within the scope of being subject to national insurance the notion of conducting non-agricultural business activity is a wider notion than those defined in article 2 of the statute from 2 July of 2004 about freedom of business activity<sup>22</sup>, like manufacturing, construction, sales, service, or prospecting, recognizing and exploitation of mineral deposits with consideration of professional activity, and which are carried out in an organized and uninterrupted manner.<sup>23</sup> The systemic act refers to the definition included in article 2 of the statute from 2 July of 2004, about business activity freedom only in article 8, section 6, point 1, while in the remaining points it refers to persons conducting business activity in various organizational and legal forms with only a part of them conducting business activity in the strict sense of the meaning. In many cases the legislator, sometimes in an arbitrary manner, decides about qualifying a given activity as business activity, which has been noted

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<sup>20</sup> See Supreme Court rulings from 7 October of 2003, II UK 79/03 (OSNPUSiSP 2004, no. 13, item 234); from 8 May of 2007, II UK 192/06 (OSNPUSiSP 2008, no. 11–12, item 173); compare also Appellate Court ruling in Warsaw from 21 October of 2009, III AUa 458/2009 (LexPolonica no. 2348154).

<sup>21</sup> Consolidated text: Dz.U. from 2009, No. 205, item 1585 with revisions.

<sup>22</sup> Consolidated text: Dz.U. from 2010, No. 220, item 1447 with revisions.

<sup>23</sup> B. Gudowska, *Komentarz do art. 6, [in:] Ustawa o systemie ubezpieczeń społecznych. Commentary*, edited by B. Gudowska, J. Strusińska-Żukowska, C. H. Beck, Warszawa 2011, p. 105 and following.

*in fine* in article 8, section 6, point 1 by identifying the insured persons as conducting non-agricultural business activity on the basis of regulations about conducting business activity or special ruling.<sup>24</sup>

The essence of conducting business activity in the light of regulations of the statute from 2 July of 2004 about business activity freedom is its professional, constant nature, its recurrent activity, adhering to the rule of rational activity and participation in the economic turnover. Business activity should be conducted in a constant and organized manner, with the owner using his/her own funds and assuming the risks. However, this concerns only natural persons – entrepreneurs. Other business entities such as partnerships are not legal entities and do not conduct business activity in the light of regulations of the statute from 13 October of 1998 about national insurance system; however, partners of these are subject to it individually. The partners are entitled to national insurance as individuals and this is dependent upon conducting personal non-agricultural business activity within the partnership.<sup>25</sup> Since conducting business activity in an organized and uninterrupted manner is one of the indispensable attributes of conducting business activity, then being a part of a civil law partnership, not connected with the activity of this partnership, is not enough for obligatory national insurance, established by article 13 point 4 of the statute from 13 October of 1998 about national insurance system.<sup>26</sup> Beyond the scope of this paper is the thread of obligatory national insurance for authors, artists, freelance professionals, persons conducting a non-public school, facility or a group based on regulations about education system.

It should be emphasized that conducting business activity encompasses not only the periods of generating profits from such activity, but also all other periods, including intervals of awaiting freelance agreements or repairing equipment. It is commonly regarded that a person conducting business activity is not subject to anyone else's authority, therefore can freely decide how to manage his/her schedule. In practice, during a period of fewer freelance agreements, entrepreneurs take care of other necessary tasks – they search for new clients, take care of administrative matters, and through these activities attempt to continue their business activity. This

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<sup>24</sup> *Ibid*, p. 106.

<sup>25</sup> See Supreme Court ruling from 26 March of 2008, I UK 251/2007 (OSNP 2009/13–14 item 179).

<sup>26</sup> Compare Supreme Court ruling from 12 May of 2005, I UK 275/2004 (OSNP 2006/3–4 item 59) and Supreme Court ruling from 21 May of 2008, III UK 112/2007 (LexPolonica no. 2143301).

*Legal definitions. An outline of the problem based on chosen examples...*

method of understanding of conducting business activity, and hence being subject to national insurance, is established by case law.<sup>27</sup> According to article 13 point 4 of the statute from 13 October of 1998 about the national insurance system, persons subject to mandatory retirement, disability, health and accidental insurance are natural persons who conduct non-agricultural business activity – from the day of starting this activity to the day of ending it. Since, according to article 6, section 1, point 5 and article 12, section 1, being read in connection to article 8, section 6, point 1 of the above quoted statute, persons subject to obligatory national insurance are persons conducting business activity on the basis of the regulations about business activity, the time boundaries of conducting this activity, and the compulsion to have national insurance are determined by the Entry into the Business Activity Register, performed and defined according to the rules provided by the, at times disputed, regulations of the statute from 19 November of 1999 – The Business Activity Act.<sup>28</sup> The decision whether business activity is being conducted (as well as whether there has been an interruption of business activity) should be made based on facts, hence, whether there has been an entry into the business register does not determine whether business activity is actually being conducted. However, such an entry leads to a legal presumption according to which the person entered into the register who has not reported the interruption of business activity is treated as someone conducting it. As a consequence, it is presumed that since there has not been a striking from the register, then business activity is actually being carried out and there is an obligation to make contributions for national insurance.<sup>29</sup>

The presumption can be overturned if the assertions of the presumption are disproved. Since neither the Business Activity Act nor the regulations of the act about national insurance system foresee for the suspension or interruption in conducting business activity, then registering such an interruption with the titling jurisdiction, or especially only with the pension authority, does not apply the legal presumption from which the temporary interruption of business activity would result. As a result, the responsibility of evidence of premises that there is no need to carry national insurance

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<sup>27</sup> Compare, for example, the Supreme Court ruling from 15 March of 2007, I UK 300/2006 (LexPolonica no. 1390819) and the Appellate Court in Warsaw ruling from 7 February of 2007, III AUa 39/2007 (LexPolonica no. 2013072).

<sup>28</sup> Dz.U. from 1999, No. 101, item 1178 with revisions.

<sup>29</sup> Compare Supreme Court rulings from: 11 January of 2005, I UK 105/2004 (OSNP 2005/13 item 198); 25 November of 2005, I UK 80/2005 (OSNP 2006/19–20 item 309) and 30 November of 2005, I UK 95/2005 (OSNP 2006/19–20 item 311).

(actual interruption in business activity) belongs to the side which derives legal effects regarding responsibility to carry such insurance.

According to article 8, section 11 of the statute from 13 October of 1998 about national insurance system, a person who cooperates with persons conducting non-agricultural business activity and contractors, mentioned in article 6, section 1, points 4 and 5 of the statute, is a spouse, biological children, children of the other spouse and adopted children, parents, step-mother and stepfather and adoptive parents if they remain with this person in the household and participate in conducting business activity or in fulfilling an agency agreement or contract of mandate; this does not concern persons with whom a work agreement has been signed as a part of professional training. In the definition of the collaborator stated above the legislator has shown that the circle of cooperators generally includes relatives and persons distantly related. This, then, concerns close family relationships. These persons must remain with the person conducting non-agricultural business activity in a common household, a fact which is an essential element of the definition. Remaining in the common household should be understood as living together, and mutual fulfillment of current needs connected to everyday life, as well as being fully or partially supported by the person with whom the household is maintained. These elements should be constant. The element of living together under the same address seems to be insufficient to classify a person as a collaborator, especially since, very often, separate families live together.<sup>30</sup>

Another premise of the definition above is collaboration in conducting business activity. It should be stressed that the term “collaborate” gives this activity an element of being constant and prolonged, which means that only occasional involvement in business activity of the relative will not be understood as collaboration. This should rather be classified as family help.<sup>31</sup>

### **3. Farmer**

According to article 6, point 1 of the statute from 20 December of 1990 about national insurance for farmers<sup>32</sup>, whenever the term farmer is used it

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<sup>30</sup> Supreme Court ruling from 2 February of 1996, II URN 56/95 (OSNP from 1996, no. 16, item 240).

<sup>31</sup> Compare K. Dziwota, *Komentarz do art. 8, [in:] Ustawa o systemie ubezpieczeń społecznych. Commentary*, edited by J. Wantoch-Rekowski, Toruń – Warszawa 2007, pp. 74–75.

<sup>32</sup> Consolidated text: Dz.U. from 2008, No. 50, item 291 with revisions.

is understood as an adult natural person living and personally conducting agricultural activity using his own funds within the borders of the Republic of Poland, on a farm being in his/her possession, this including also being a part of a group of agricultural producers, as well as a person who has allocated the lands of their farming business for reforestation.

A person who fits the above definition will fulfill two conditions. One of them is the ownership of a property which is a farm, or actual management of this property (article 336 of the civil code).<sup>33</sup> The other condition is to personally conduct and use own funds in agricultural activity. In accordance with article 6, point 3 of the statute about national insurance for farmers as agricultural activity is understood plant or animal production, including horticulture, fruit-growing, bee keeping and fish farming. The regulation of article 6, point 1 of the statute does not require that the farmer make on the farm the place of his permanent residence, and this requirement, with some exceptions, only applies to the householder (article 6, point 2 of the statute). The only condition which pertains to the farmer is that he reside within the territory of the Republic of Poland. However, it is required that the person personally and as a principal carries out production in accordance to the profile of his farm. This signifies personal management, or decision making, about the type and size of production, bearing the financial burden and reaping the benefits. The tasks leading to the production of agricultural products do not have to be performed personally by the farmer and he/she can employ the help of family members or hired workers. The presence of the farmer on the farm is necessary because of the need of performing or overseeing the work, incurring necessary expenditures and reacting in matters requiring immediate decisions. This need is created by the specific character of agricultural production but is not a statutory requirement. Task organization on the farm is the responsibility of the farmer and he can perform this task in such a manner that it functions even during his/her absence. Hence a holder of the farm does not cease to be farmer, as understood within article 6, point 1 of the statute about national insurance of farmers, as a result of temporary absence from this farm, if he/she has not lost possession of it and had not caused the interruption of agricultural activity within the scope organized by him/her. The farmer ceases to be a farmer when the possession of the farm has been transferred to a different person; the current holder has been deprived of its possession, or when the farm is not used by the holder for agricultural activity. The

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<sup>33</sup> Dz.U. from 1964, No. 16, item 93 with revisions.

requirement of personal management is also not fulfilled when the farm holder hands over its management to a different person, allows this person to make the decisions regarding production and only takes advantage of potential profits.

According to the position, confirmed by the Supreme Court, conducting agricultural activity as understood within the above regulation means conducting by the holder of the farm professional agricultural activity as a principal connected to that farm, constant and personal, and having the character of employment, or of other common tasks connected with its management.<sup>34</sup> Telephone contacts and occasional visits, even ones connected with making decisions about some matters dealing with the farm, cannot be regarded as conducting professional, constant and personal activity of such a farm. They especially cannot be qualified as employment or as other common duties connected with its management. These behaviors can be at best regarded as a form of owner supervision, which cannot be identified as performing common duties connected with running a farm. At the same time it should be stressed that the holder of a farm does not cease to be a farmer within the understanding of the above regulation as a result of a temporary absence from the farm if he has not lost possession of it and did not cause it to stop performing agricultural activity within the scope established by him/her.<sup>35</sup>

Possession of a farm, as understood within the above regulation, is not limited to formal ownership, regulated by law. Also possession without legal title and management of such a farm results in being subject to national insurance for farmers<sup>36</sup> if the person conducting agricultural activity on this farm meets the other premises resulting from article 6, point 1 of the above mentioned statute. During establishing whether a person is subject to national insurance for farmers it is assumed that the owner of properties regarded as farm land, or the lessee of such properties if the lease is registered within the Land and Property Register, conducts agricultural activity on these properties.<sup>37</sup> The above interpretation results directly from the wording of article 6, point 1 and article 38, point 1 of the statute. In case law it is also stressed that managing a farm should have a personal

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<sup>34</sup> Supreme Court ruling from 29 September of 2005, I UK 16/2005 (OSNP 2006/17–18, item 278).

<sup>35</sup> Supreme Court ruling from 6 December of 2007, I UK 139/2007 (OSNP 2009/1–2, item 24).

<sup>36</sup> Supreme Court ruling from 28 May of 2008, II UK 303/2007.

<sup>37</sup> Appellate Court in Kraków ruling from 8 November of 2005, III AUa 2385/2004 (LexPolonica no. 394995).

nature, hence management of a farm owned by a non-adult child by the parents of this child who is under their parental supervision (article 101 § 1 of the family and guardianship code)<sup>38</sup> does not qualify as personal and as a principal managing of agricultural activity of the insured within the understanding of article 6, point 1 of the statute about national insurance for farmers.<sup>39</sup>

#### **4. Close person**

The civil code refers to the notion of a close person, closest person or the closest family member. However, it should be pointed out that within the regulations of the civil code as well as within the family and guardianship code legal definitions of these terms do not exist.<sup>40</sup> However, the legislator does use, within the content of some regulations of the civil code, the notion of a close person (with possible modifications): this concerns the following regulations: article 446 § 2–4 of the civil code (the right to apply for disability pension is granted to the close person of the deceased, whom the deceased voluntarily supported, if the circumstances show that it is mandated by the rules of cohabitation, while in § 3 and 4 of article 446 the legislator uses the term closest family members who can receive appropriate compensation if, as a result of the death, their life situation has significantly deteriorated (§ 3), or financial compensation for harm done (§ 4)) article 527 § 3 of the civil code (if, as a result of a legal action performed by the debtor with harm done to the creditor, a person having a close relationship with the debtor benefited, then it is assumed that this person was aware that the debtor was acting with the intention to harm the creditors); article 832 § 2 of the civil code (if at the time of death of the insured there is no beneficiary, then the benefit is transferred to the closest family of the insured in order established by the general conditions of the insurance unless other arrangements were made); art. 923 § 1 of the civil code (the spouse and other close persons of the bequeather, who have lived with him until the day of his death are entitled to use the dwelling for three months under current conditions);

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<sup>38</sup> Dz.U. from 1964, No. 9, item 59 with revisions.

<sup>39</sup> Supreme Court ruling from 25 January of 2000, II UKN 341/99 (OSNAPiUS 2001/11 item 397).

<sup>40</sup> A definition of a “close person” is included in the penal code in article 115 § 11 (Dz.U. from 1997, No. 88, item 553). This definition, however, can only be applied within penal law. It is quite narrow and correct application of it within civil law is impossible.

article 1008, point 2 of the civil code (the legislator allows for disinheriting in an event of premeditated crime perpetrated against the life, health, freedom or the blatant dishonoring of the bequeather or one of the persons closest to him). The entity defined in article 691 § 1 *in fine* of the civil code should be mentioned meaning a cohabitating person who after an amendment act replaced the close person with regard to rental agreements in the event of the death of a lessee of living premises.

In regards to the regulation covered by the family and guardianship code the following should be considered: article 149 § 2 of the family and guardianship code (if a person designated by the father or mother did not become the guardian, a guardian should be chosen from the relatives or other close persons of the child under guardianship or his/her parents) and article 617 of the family and guardianship code (relatives in direct line are persons who are directly descended from the other; lateral relatives are persons who have a common ancestor but are not relatives in direct line). The lack of a legal definition of a close person creates the necessity to refer to the position of legal doctrine. Fitting to the decisions of its majority it should be added that clearly determining within its scope a list of persons who should be counted among close persons is not possible.<sup>41</sup> For the use of individual regulations mentioned above a wide range of persons is accepted who are entitled to the rights established by the legislator at a given circumstance.<sup>42</sup>

## 5. Personal rights

Within Polish legislature there is also a lack of a legal definition of the term “personal rights”. However, judicature and doctrine interpret this term as a certain value of a non-material nature, to which every man is entitled to, and which refers to moral values.<sup>43</sup> It is an individual value, inalienable, non-transferable. It exists as an absolute right – it applies to everyone. It is also defined as an individual and subjective understanding of value of feelings and the psychological state of a particular man.

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<sup>41</sup> H. Dolecki, [in:] *Kodeks rodzinny i opiekuńczy. Komentarz*, edited H. Dolecki, T. Sołowski, Warszawa 2010, p. 801.

<sup>42</sup> J. Haberko, *Pojęcie osoby bliskiej w prawie cywilnym*, *Przeгляд Sądowy* 2011, no. 3, p. 65 and following.

<sup>43</sup> S. Dmowski, S. Rudnicki, *Komentarz do kodeksu cywilnego. Księga pierwsza. Część ogólna*, Warszawa 2009, p. 106 and following.

*Legal definitions. An outline of the problem based on chosen examples...*

In article 23 of the civil code there is an open catalogue which includes especially personal rights such as: health, freedom, honor, freedom of conscience, name or nickname, image, privacy of correspondence, immunity of residence, scientific, artistic, inventive and rational creativity. However, case law has additionally established many personal rights which are legally protected.

While distinguishing them the emotional sphere of man was taken into consideration, assigning great value to the non-material right, often solely sentimental. For example, apart from the catalogue in article 23 of the civil code, such things like: violation of the right of the employee to rest<sup>44</sup>, veneration of the deceased<sup>45</sup>, the right of a pregnant woman to information about the fetus, its possible diseases or defects and their treatment options during pregnancy<sup>46</sup>, the login name of an internet service user<sup>47</sup>, the right to be married, have offspring, have a father, the right to be part of a family in which the husband of the mother is the father of the children are taken to be personal rights.<sup>48</sup>

However, the article 24 of the civil code introduces the presumption of unlawfulness<sup>49</sup> of those who violate the legal right of others, which means that the violator is obliged to show circumstances which exclude the unlawfulness of his behavior (the burden of proof is his). The victim must only demonstrate the behavior of the perpetrator and identify the damage or possible wrongdoing and show the causation between them.<sup>50</sup>

Also with the term “personal right” the content of its meaning is determined by case law and doctrine.

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<sup>44</sup> Supreme Court ruling from 18 August of 2010, II PK 228/2009 (LexPolonica no. 2359661).

<sup>45</sup> Compare Supreme Court ruling from 23 September of 2009, I CSK 346/2008 (OSNC 2010/3 item 48); Supreme Court ruling from 6 February of 2008, II CSK 474/2007 (LexPolonica no. 2136365); Supreme Court ruling from 20 September of 2007, II CSK 237/2007 (OSNC 2008/C item 71).

<sup>46</sup> Article 19, section 1, points 1 and 2 of the statute from 30 September of 1991 about health care facilities (Dz.U. No 91, item 408 with revisions); and Supreme Court ruling from 12 June of 2008, III CSK 16/2008 (OSNC 2009/3 item 48).

<sup>47</sup> Supreme Court ruling from 11 March of 2008, II CSK 539/2007 (OSNC 2008/D item 125).

<sup>48</sup> Appellate Court in Gdansk ruling from 14 December of 2007, I ACa 1137/2007 (Przegląd Orzecznictwa Sądu Apelacyjnego w Gdańsku 2008/1 item 6 p. 50). See also: A. S. Tokarz, *Zdrada małżeńska. Zadośćuczynienie za zerwanie więzi rodzinnych*, Przegląd Sądowy 2011, no. 4, p. 102 and following.

<sup>49</sup> Compare Supreme Court ruling from 12 September of 2007, I CSK 211/07 (LexPolonica no. 1574861).

<sup>50</sup> Compare Appellate Court in Warsaw ruling from 9 January of 2007, VI ACa 659/06 (LexPolonica 1491637).

## 6. Freelance profession

Within regulations there is also no statutory definition of the term freelance profession. Doctrine representatives show that the essence of a freelance profession is performing services which are essential from the standpoint of the basic rights of an individual, such as health, protection of personal property, personal rights and others; intrusting information vital for his/her rights by the person for whom the service is being performed; the responsibility of official secret; special requirements as to professional qualifications, including different forms of professional training; functioning of a disciplinary judiciary within the profession and the existence of a self-government acting upon mandatory union and equipped with ruling instruments to exact its authority with its members, including the right to exclude from the business function. These elements of the self-government's power are to be used to ensure the proper practice of the profession.<sup>51</sup>

Similarly, the Constitutional Tribunal, while defining the essence of professions in this category, isolated three of their elements: free access of every person to perform the profession, conditioned only by their talents and qualifications; real possibility of performing this profession; and the lack of subjection to the rigors of subordination which characterize performing work.<sup>52</sup>

The rule accepted in the process of regulating the rules of performing a freelance profession is that the legislator directly defines the scope (subject) of a given profession, in this manner creating its legal definition. For example, in accordance with the statute from 11 April of 2001 about patent agents,<sup>53</sup> this profession basically consists in granting legal and technical aid in matters of industrial property to natural persons, corporate bodies, and organized entities which do not possess a legal personality.<sup>54</sup> An essential characteristic differentiating professional activities performed within the

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<sup>51</sup> Compare *Konstytucja Rzeczypospolitej Polskiej – komentarz encyklopedyczny*, edited by W. Skrzydło, S. Grabowska, R. Grabowski, Warszawa 2009, p. 530; B. Banaszak, *Prawo konstytucyjne*, Warszawa 2008, p. 759 and following; D. Dudek (ed.), *Zasady ustroju III Rzeczypospolitej Polskiej*, Warszawa 2009, p. 361 and following, P. Sarnecki, *Pojęcie zawodu zaufania publicznego (art. 17 section. 1 Konstytucji) na przykładzie adwokatury*, [in:] *Konstytucja. Wybory. Parlament*, edited by L. Garlicki, Warszawa 2000, p. 149 and following.

<sup>52</sup> See justifications to the ruling of the Constitutional Tribunal from: 19 October of 1999, SK 4/99 (OTK ZU 1999, no. 6, item 119) and 2 July of 2007, K 41/05 (OTK ZU 2007, no. 7A, item 72).

<sup>53</sup> Dz.U. No. 49, item 509 with revisions.

<sup>54</sup> J. Borowicz, *Wykonujący wolny zawód jako pracodawca w rozumieniu art. 3 kp*, *Praca i Zabezpieczenie Społeczne* 2011, no. 3, p. 17 and following.

scope of a freelance profession is substantial independence. This especially signifies freeing the person performing the so called freelance profession within the scope of professional activity, from the authority of another entity, for example, an employer who uses orders, instruction, and guidelines and so forth, in case of performing a profession in a form of employment.

The term “freelance profession” corresponds to the constitutional expression “professions of public trust” (article 17, section 1). It is worth mentioning that basic law, besides general indications: “being responsible for the proper performance of these professions” and activity which should be directed at securing “public interest”, does not specify the premises which would make it possible to differentiate these types of professions from others. Furthermore, the Constitution of the Republic of Poland does not, even through examples, indicate a catalogue of professions of public trust.<sup>55</sup> In the opinion of P. Sarnecki behind classifying certain professions as “professions of public trust” are such supporting premises as: the fact of entrusting to the people performing such professions information regarding the private lives of people using their services, closely connected with releasing them from responsibility of not disclosing them; having very high professional qualifications; diligence of adhering to ethical standards during performing the duties of the profession.<sup>56</sup>

## **A few summarizing remarks**

Based on the examples presented above it is worth making a few summarizing remarks.

Foremost, the fact that, during drawing up legal regulations, the legislator relatively often does not exploit the possibility of explaining terms or expressions, or does not make the decision to formulate the so called legal definitions, should not be surprising. J. Wróblewski stresses that they are

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<sup>55</sup> “This trust consists of a number of factors, of which the most important seem to be: conviction that the person performing this profession retains goodwill, proper motivation, and adequate professional care as well as belief in keeping to the values essential to the make-up of the given profession. When it comes to practicing of the legal professions of public trust, then the essential values include also full and integral respect of the law, especially – keeping to the constitutional values (within their hierarchy) and conduct directives (this especially pertains to the profession of lawyer)”. See substantiation in the matter P 21/02 (OTK ZU 2004, no. 8A, item 90).

<sup>56</sup> P. Sarnecki, *Pojęcie zawodu zaufania...*, op. cit., pp. 155–157. This author aptly stated that the meaning of the term “profession of public trust” cannot be determined by statutory regulations; however, the statutes can become a supporting material in deliberations whether the certain profession should be so qualified.

not an ideal means of specifying the meaning of the expressions being used since it is not permitted by the considerations of legislative technique, and additionally it is not possible to define all terms mostly because the words which we employ also may not possess a sufficiently precise meaning.<sup>57</sup> The legislator should make use of the possibility of determining a legal definition if it is necessary.<sup>58</sup> The Polish legal system is of course familiar with many examples contrary to this, for instance, the employment by statutes of the so called dictionaries which explain the most important notions or expressions. Introducing dictionaries into legal texts is the most classic method of clarifying notions. The clearer legal regulations are, the easier it is to base upon them the construction of legal norms and, which follows, the easier it is to understand them by the entities who mean to use them.

Legal definitions serve to define the meaning of the expressions seen in legislative acts and it can be said that the legislator has priority in this matter, but not exclusive right to it. Undoubtedly, in specifying the meaning of legal notions the leading role is that of the authorities which execute the law. The absence of legal definitions particularly affects the decisions of some of these authorities, especially that of the Supreme Court, and that of law doctrine. It can be said that the more doubts are connected with the interpretation of a regulation, the greater the area of operation for courts and jurisprudence within the matter.

The usefulness of legal definitions is decided by – in my opinion – primarily their general aim. This aim is the uniformity of the understanding of regulations and, as a result, uniformity of their application. It should be expected from the legislator that he employ precise expressions within legislative acts. The greater the precision of the expressions used in language of the law, the lesser is the freedom for the authority (person) who interprets them. However, even in the event of an existence of a legal definition (this is illustrated by the examples of “incapacity to work”, “conducting non-agricultural business activity”, “farmer”), it becomes necessary to call upon judicial decisions and case law to make the “decoding” of the legal norm possible. In this way a very large superstructure based on the interpretation

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<sup>57</sup> J. Wróblewski [in:] K. Opalek, J. Wróblewski, *Zagadnienia teorii prawa*, Warszawa 1969, p. 43.

<sup>58</sup> In § 146, section 1 of the Ordinance of the Prime Minister of Poland from 20 June of 2002 about “Rules of legal technique” (Dz.U. from 2002, No. 100, item 908) designates the following reasons to establish legal definitions: a) if a given expression is ambiguous; b) if a given expression is unclear and it is necessary to limit this lack of clarity; c) if the meaning of a given expression is not commonly understood, d) because of the field of addressed cases, there is a need to establish a new meaning for the given expression.

of the regulation, formulated upon definite factual states, is constructed. Despite the fact that a statutory definition of the term “farmer” does exist, it has become necessary to explain the expressions which form this definition. A farmer must conduct constant business activity on the farm. The statute however does not specify what this activity should consist in.

There does exist a different way of approximating the meaning of terms and expressions being employed. Sometimes, when there is a lack of a definition, then within the statutes a catalogue which serves to explain them is indicated. This situation can be illustrated by the term “personal right” from article 23 of the civil code, or another, defined in article 32, section 3 of the statute from 17 December of 1998 about retirement pensions and disability pensions from the National Insurance Fund, where a list of employees hired under special conditions was established.

Very important is the fact that the interpretation of specific notions and expressions performed by the courts (Supreme Court, appellate courts) very often deviates from the terms used within the definition itself (from that which is included within the definition). The solution of approximating their meanings by using common language (colloquial) does not, in this case, seem to be the correct one. However, it is acceptable by the entity to recall in an individual matter a specific interpretation of a term or expression performed by the courts. The meanings of legal terms can, however, be the same as corresponding expressions in common language but can also be different. There is a possibility of a situation occurring where the meaning of a certain term existing in one branch of law is not identical with the meaning used in another branch.<sup>59</sup>

Functioning within the structures of the European Union also provides many new experiences connected with establishing the meaning of terms used in legislative acts, since the aim becomes the uniform execution of regulations issued by European Union authorities in different member countries. For example, recently there have been doubts about the meaning of the term “entrepreneur”.

In the end it is worth pointing out that also the Constitution partially includes the definitions of certain institutions (such as for example “marriage”, which is – according to article 18 – a relationship between a man and a woman). There are, however, many examples of differences in the wording of constitutional regulations, meaning those in which there is a lack of directly expressed definition: professions of public trust (article 17, section 1),

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<sup>59</sup> J. Wróblewski [in:] K. Opalek, J. Wróblewski, *Zagadnienia teorii...*, op. cit., pp. 42–43.

local government (article 16), decentralization (article 15), administration of justice (article 177), direct application of the constitution (article 8, section 2), and many others. In presented cases the legislator included only those characteristics by which a certain mechanism, institution, structure (for example in referring to a local government), or tasks which it is supposed to fulfill (for example in referring to the administration of justice), or aims which it is to reach (for example when referring to decentralization), are characterized. Through the angle of these characteristics, tasks or aims, the definition of the institution (mechanism, structure) can be constructed, but it is not a definition which is directly stated within the regulation.

#### S U M M A R Y

The problem of defining terms is one of the basic characteristics of language. The language of legislative acts (language of the law) is not free from definitional problems. Various situations occur in Polish legislature: sometimes there is no simply stated legal definition of an expression (a definition of a certain institution or legal mechanism), at other times within the regulations of the law exist scattered elements which, when collected into a whole, form the basis of the definition. Often within regulations there is no legal definition, but instead the characteristics of a certain institution or its roles (tasks) are defined. The subject matter of this work consists of chosen key threads connected with definitions of the notions and expressions occurring within texts of normative laws using as examples such statutory expressions as: “incapacity to work”, “obligation of compulsory national insurance for non-agricultural business activity”, “farmer”, “close person”, “personal right”, and “freelance profession”. The article discussed the interpretative function of judicial organs (especially that of the Supreme Court) within the scope of explaining notions and expressions included in normative acts. On the basis of the examples given the output of case law also has been presented.