Studia z Zakresu Prawa Pracy i Polityki Społecznej
Studies on Labour Law and Social Policy
2022, 29, nr 4: 387–393
doi:10.4467/25444654SPP.22.032.16577
www.ejournals.eu/sppips

Krzysztof Baran https://orcid.org/0000-0001-5165-8265
Jagiellonian University

THE EIRENIC FUNCTION OF LABOUR LAW

Abstract

The essence of the irenic function of labor law is the amicable settlement of disputes in the work environment. It applies to both individual and collective disputes. In the system of Polish labor law, there are not only settlements but also other collective agreements. Scrutinizing this problem is the crucial issue of the given paper.

Słowa kluczowe: irenic function of labor law, settlements in individual labor disputes, collective agreements

Keywords: ireniczna funkcja prawa pracy, polubowne likwidowanie indywidualnych sporów pracy, porozumienia zbiorowe

ASJC: 3308, **JEL:** K31

On the theoretical plane, the issue of the function of labour law is extremely important. These functions are interpreted in various ways in legal sciences. Thus, before I address the substance of the issue, I would like to define the notion of function that I will use for the purposes of this study. The starting point will be the statement that this notion has a variety of interpretations. To simplify, one may point to two meanings. In a broader approach, the function of the law refers to all social consequences of the influence of legal norms on the labour relationships, including those of an atypical or even pathological nature. On the other hand, according to the narrow interpretation, a function of the law is a beneficial impact of labour law standards on the social reality that has been planned in advance. For the purposes of this study, I will focus on the legal and teleological approach to the eirenic function of labour law (Ćwiertniak 2017, pp. 459 ff, and the subject literature referenced therein). The essence of this function consists in the peace-making influence of labour law standards on the employment relationships. The aim of these standards is to prevent the arising of disputes in

the work environment and their potential amicable (non-forcible) elimination with the use of formal procedures. This refers both to the individual and collective aspects.

Let me start my discussion of the eirenic function from the collective aspect. As it seems, its main dimension in practice is social dialogue. It is the main instrument that may maintain or restore social peace. It also fosters the care for the common good. In the light of the Constitution of the Republic of Poland of 2 April 1997 (Dz.U. 1997, No. 78, item 483 as amended), the planes for dialogue are not limited, and thus they leave the social partners a wide range of freedom. Constitutional norms do not stipulate any significant limits for the social partners (Baran 2017, pp. 1166 ff). It is only the provisions of ordinary acts that restrict certain eirenic procedures within the framework in which the social dialogue is conducted within a strong corset of regulations, which does not foster the amicable dissolution of conflicts in the work environment.

Based on the objective criterion as part of the eirenic procedures in collective labour law, one may distinguish three fundamental negotiation procedures, i.e. conciliation, organisational and transfer, and dispute procedures. In the labour systems, the first ones are characterised by a particularly high level of formality. This applies to a slightly lesser extent to the two other categories of negotiations, which should unambiguously be assessed critically. Here, it is worth noting that collective negotiation procedures have a differential nature in the labour law system, as some of them are obligatory for the parties of social dialogue (e.g. the conciliation or mediation procedure in a collective dispute), while others are semi-obligatory, where only one of the parties is obliged to participate (e.g. arrangement procedures). Finally, the legislation also foresees facultative procedures.

A classic example of collective eirenic negotiations of an obligatory nature are the conciliation and mediation procedures in collective disputes. The aim of both these types of procedures is to end a collective dispute in form of a strike or another protest action in a peaceful way, without the use of force (e.g. economic pressure). In the Polish legislation system, reporting a collective dispute gives rise to the obligation to immediately start negotiations with trade unions on part of the employer (Tomanek 2019, pp. 422 ff). Such negotiations should each time commence immediately, i.e. as soon as possible in the given circumstances. The *ratio legis* for such regulation is the realisation of the eirenic function, as it refers to a mechanism that will prevent the aggravation of the dispute as a result of its prolonged duration. Normative solutions that are similar in their essence also exist for mediation in collective disputes. Its essence consists in the mediation of a third party, whose aim is to resolve the conflict peacefully. In the course of the mediation procedure the mediator should persistently, but not obtrusively, encourage the parties involved to propose an end to the dispute and seek approval for the compromise solutions suggested by the mediator. From the point of view of the eirenic function of labour law, concluding "conciliation" or "mediation" agreements is of great importance. In practice, this type of solutions is based on the formula of consensus developed in the course of the negotiations or mediation, where each of the parties makes certain concessions to the other party. In the system of Polish labour law, these agreements have the status of sources of labour law if they regulate the rights and obligations of the parties to the employment relationship (Baran 2020, pp. 85 ff). Thus, the employees may pursue the execution of their

provisions in court. Here, we are dealing with a public law mechanism that guarantees that the eirenic function is respected in employment relationships.

The parties may also enter into a collective agreement similar in its nature as a result of an arbitration procedure conducted before social arbitration collegiums. The verdicts of these bodies also perform the eirenic function, as they prevent the trade unions from starting a protest or strike. Thus, they create a field for preventive reactions in situations when conciliation or mediation were unsuccessful. The decisions of arbitration collegiums is based on the mechanisms of evaluating the interests of the parties according to widely understood directives of equity, social justice, and rationality (Baran 1994, pp. 15 ff). In settling collective disputes, the collegiums also take into consideration the public interest; the respect for public interest is also an indirect realisation of the eirenic function, as it ensures social peace in widely understood employment relationships.

To continue the discussion on the eirenic function of labour law, it is worth pointing to the role of collective labour agreements. They are an important instrument that mitigates the conflicts that arise in the work environment. The freedom of agreement allows each of the social partners to come forward with the initiative to negotiate or modify a collective agreement. In the Polish legal system, such negotiations are of a relatively obligatory nature, which is not compatible with the principle adopted in international legislation. In situations defined by law, the employer cannot refuse to commence conciliation negotiations. This mechanism directly serves the purpose of maintaining social peace, and thus fulfils the eirenic function. This idea also includes the negotiations conducted between trade unions and employers on such issues as collective redundancies or transfer of the enterprise. The first ones usually refer to crisis situations, which are rather common in the third decade of the twenty first century. More and more "black swans" (Taleb 2007) as the pandemic or the war in Ukraine have a negative impact on the functioning of employment relationships, in particular on the level of employment. The consultation procedure as part of collective redundancies is obligatory for the employers and, as such, must not be omitted. Its aim is to limit the social anxiety connected with collective redundancies. The notification of the Employment Office about collective redundancies serves the same purpose. The agreement on collective redundancy plays a particularly significant role from the point of view of the eirenic function. It has the status of a source of labour law, and its provisions may be pursued in court proceedings. Similar mechanisms apply to transfer agreements when the workplace is transferred to another employer.

"Crisis" agreements also play a major eirenic role in employment relationships (Rączka 2002, pp. 26 ff). They may be concluded if the financial standing of the employer has deteriorated. Entering into such agreements prevents a dramatic worsening of the status of employees, which in turn mitigates the threat of a collective dispute and thus a social conflict. They allow for a temporary suspension of the application of certain provisions of labour law. However, it must be emphasised that this does not refer to the application of statutory and sub-statutory standards, i.e. generally binding regulations.

The institutions whose aim is to mitigate social conflicts in the work environment are multilateral social dialogue entities. On the national level, the central role in this respect is

played by the Social Dialogue Council, while on the voivodeship level the function is performed by voivodeship social dialogue councils (Męcina 2016, p. 488). According to its statutory objectives, the task of the Social Dialogue Council is to build social agreement by means of conducting a transparent, substantive, and systematic dialogue between the organisations of employees and employers and the government. In the conditions of the pandemic and war crises that have led to strong antagonisms between social partners, this task is particularly difficult. Analysing the importance of the Social Dialogue Council for the eirenic function of labour law, it is worth noting that it operates in two main organisational formats: in one of them it is a forum for direct negotiations between representatives of trade unions and employers, while in the other it is a forum for trilateral dialogue with the participation of the government. The factor that is particularly important in the context of its eirenic function is the fact that it is authorised to define the economic indices that determine the functioning of employment relationships, e.g. with respect to the minimum wage. The general powers of the Social Dialogue Council that serve the purpose of maintaining social peace include the right to enter into agreements and to formulate joint statements of social partners on issues that are vital for social cohesion and maintaining social peace.

On the local level, the bodies that are important for the realisation of the eirenic function are the voivodeship social dialogue councils. They operate based on a quadrilateral formula: apart from trade union organisations, associations of employers, and government representatives, the fourth party that participates in their works are representatives of local territorial self-government. The marshal of the voivodeship who chairs the works of the council also plays an essential role. The competences of the voivodeship social dialogue councils include, among others, expressing opinions on issues that are included in the scope of tasks of the trade unions and employee organisations if they are important for maintaining social peace in the voivodeship. They may become the forum for collective agreements of a local reach. Moreover, in the event of arising disputes in the work environment, the competent body of the council may appoint a person whose mission will be to conduct mediation activities in good will. The described mechanism directly realises the eirenic function of the labour law.

The analysis of this function should emphasise the fact that it has a universal nature in the labour law system, as it refers not only to the collective labour law, but also to the individual and collective labour law. In this matter, the main guideline is provided in Art. 243 of the Labour Code Act of 26 June 1974 (Dz.U. 2020, item 1320 consolidated text, as amended, hereinafter referred to as: "the Labour Code") which states that the employee and the employer shall make every effort to settle a dispute arising from an employment relationship out of court (Piątkowski 2020, p. 1709). It provides the main directive for the actions of entities that are involved in an individual labour law dispute. The fact that this provision has been included in the general regulations, according to the *a rubrica* argument, means that it applies to all procedures conducted by legal protection authorities, not only labour courts. On the organisational plane, it is applicable to arbitration committees, mediators in individual labour law cases, and arbitration courts.

In Polish procedural labour law, individual labour disputes are settled with the use of mediation. Among eirenic procedures, two main models of a homological nature may be

distinguished: the court model and the non-judiciary model. In the first model, mediation is conducted by labour courts. Pursuant to Art. 10 of the Civil Procedure Code Act of 17 November 1964 (Dz.U. 2021, item 1805 consolidated text, as amended, hereinafter referred to as: "Civil Procedure Code"), they may take actions to settle disputes amicably in court proceedings. Apart from this mechanism, the provisions of the Civil Procedure Code also foresee an independent pre-trial procedure in form of a special voluntary procedure. In practice, this means that the entity (e.g. the employee) that is called by court to settle the case amicably does not have to participate in the procedure if it is not willing to enter into a settlement. The provisions of the Civil Procedure Code do not grant the courts any measures that they might use to force the party to appear at the settlement hearing. The eirenic court procedure discussed here may be applied only in situations when the court proceedings have not started yet, i.e. before a claim has been filed in the case. Thus, in the functional aspect it postpones the commencement of civil proceedings, and, as a result, its nature is completely independent.

The second homological model of amicable settlement of individual disputes in the Polish labour law system functions outside the court. The status of mediators is assigned to bodies that function outside the judiciary system, in work establishments. Such powers are granted to arbitration committees whose only task is to attempt to settle the dispute between the employee and the employer (Baran 2021, pp. 50 ff). Unfortunately, a disadvantage of the code provisions is the fact that they are optional. As a result, few employers have appointed such committees.

Analysing the eirenic function, it is also worth noting that the Polish legal system also foresees heterogeneous settlement procedures. They are conducted with the participation of both courts and non-judiciary bodies. This refers to the mediation procedure defined in Art. 183(1)–(15) of the Civil Procedure Code and the proceedings in arbitration court. The first one may either be of an out-of-court nature, if the parties have entered into a mediation agreement, but it may also take place in court, if it is the labour court that has referred the case to a mediator by its decision. As far as proceedings before arbitration court are concerned, their nature is that of mediation and arbitration. Here, it is worth noting that *de lege lata* in Polish labour law the arbitration court clause may be introduced only after a specific dispute has arisen between the employee and the employer. The heterogeneous nature of the procedure in arbitration court results from the fact that labour courts as the public judiciary authorities have substantive supervision over the amicable settlements of arbitration courts. As a result, we are witnessing a process of the differentiation and pluralisation of eirenic procedures in the Polish labour law system, which, in certain cases, hinders their transparency and quick resolution.

The main aim of all eirenic procedures is to achieve a settlement between the employee and the employer. As I have mentioned before, it may be achieved at various stages of the specific dispute and before various legal protection authorities. In general theoretical terms, they may be divided into court or pre-trial proceedings (Baran 2021, pp. 78 ff). The first ones are conducted before labour court, while the latter before arbitration committees, arbitration courts, or mediators. The most important aspect is the legal nature of these settlements. In terms of material law, these are agreements of a determining nature, whose aim is to transform

an uncertain or disputable employment relationship into a certain or undisputable relationship. The essence of each settlement are mutual concessions of the parties (Piekarski 1973, pp. 131–132). In disputes between the employee and the employer they may consist not only in limiting the material rights (e.g. the amount of compensation for unjustified or unlawful termination of the employment relationship), but also in the waiver of its procedural rights by a party. The latter case refers to the waiver of obtaining a judgment based on the seriousness of *res iudicata*. Possessing a subjective right, even if the same, but based on a stronger legal title, is already a material benefit for the party. By entering into a settlement, the party waivers this right. Here it should also be emphasised that the mutual concessions made by the parties in the settlement do not have to be objectively equivalent. Subjective equivalency is sufficient for the validity of the settlement. In the sphere of material law, the essence of mutual concessions consists in reducing the rights granted to a party to the dispute or in acknowledging the enhanced rights of the other party. In practice, the settlement is quite often concluded because the employee withdraws from pursuing claims that were excessively high. Such situations often occur in disputes that concern remuneration. Another large category of settlements are those, where the employee receives an alternative consideration in return for withdrawing from the original claim. An example might be the situation when the settlement grants the employee financial compensation instead of the originally demanded return to work. In practice, settlements concluded between employees and employers very often contain a clause that states that the settlement satisfies all claims of the petitioner pursued in the proceedings. It also performs an eirenic function.

In conclusion, the analysis of the eirenic function in the Polish labour law system reveals that it is a multi-faceted phenomenon. It refers to all planes of functioning of employment relationships. Unfortunately, it does not always function in the optimum way as assumed by the legislator or social partners. However, this does not change the fact that it plays a vital role in mitigating various types of conflicts in the work environment.

References

Baran K.W. (1994) *Z problematyki charakteru orzecznictwa kolegiów arbitrażu społecznego* [*On the Problems of the Nature of Decisions of Arbitration Collegiums*], "Praca i Zabezpieczenie Społeczne," No. 2.

Baran K.W. (2017) [in:] K.W. Baran (ed.), *System prawa pracy*, t. 1: *Część ogólna* [*The Labour Law System*, Vol. 1: *General Outline*], Warszawa.

Baran K.W. (ed.) (2020) *Kodeks pracy. Komentarz* [*The Labour Code. Commentary*], Warszawa.

Baran K.W. (2021) [in:] K.W. Baran (ed.), *Postępowanie w sprawach z zakresu prawa pracy* [*Proceedings in Labour Law Cases*], Warszawa.

Ćwiertniak B.M. (2017) [in:] K.W. Baran (ed.), *System prawa pracy*, t. 1: *Część ogólna* [*The Labour Law System*, Vol. 1: *General Outline*], Warszawa.

Męcina J. (2016) [in:] K.W. Baran (ed.), *Zbiorowe prawo pracy. Komentarz* [*Collective Employment Law. Commentary*], Warszawa.

Piątkowski J. (2020) [in:] K.W. Baran (ed.), *Kodeks pracy. Komentarz* [*The Labour Code. Commentary*], Warszawa.

Piekarski M. (1973) *Czynności materialnoprawne a czynności procesowe w sprawach cywilnych (Wybrane zagadnienia)* [*Material Law Actions and Procedural Actions in Civil Cases (Selected Aspects)*], "Studia Prawnicze," No. 37.

Rączka K. (2002) *Porozumienia zawieszające przepisy prawa pracy* [*Agreements that Suspend Labour Law Regulations*], "Praca i Zabezpieczenie Społeczne," No. 11.

Taleb N.N. (2007) *The Black Swan: The Impact of the Highly Improbable*, New York.

Tomanek A. (2019) [in:] K.W. Baran (ed.), *Zbiorowe prawo pracy. Komentarz* [*Collective Employment Law. Commentary*], Warszawa.

Legal acts

The Constitution of the Republic of Poland of 2 April 1997, Dz.U. 1997, No. 78, item 483, as amended.

The Civil Procedure Code Act of 17 November 1964, Dz.U. 2021, item 1805 consolidated text, as amended.

The Labour Code Act of 26 June 1974, Dz.U. 2020, item 1320 consolidated text, as amended.