Labour law disputes in Polish legal system

edited by Krzysztof W. Baran

Wydawnictwo C.H.Beck

Labour law disputes in Polish legal system

Labour law disputes in Polish legal system

Krzysztof W. Baran
Justyna Czerniak-Swędzioł
Daniel Książek
Marcin Wujczyk

WYDAWNICTWO C.H.BECK
WARSZAWA 2017

Wydawca/Publisher: Anna Kamińska

Recenzent/Reviewer: dr hab. Krzysztof Stefański

Wydawnictwo C.H.Beck Sp. z o.o.
ul. Bonifraterska 17, 00-203 Warszawa

Skład i łamanie: DTP Service
Druk i oprawa: Elpil, Siedlce

ISBN 978-83-812-8098-3

ISBN e-book 978-83-812-8099-0

Table of contents

Chapter 1. Labour disputes

K.W. Baran

§ 1. Overall characteristics of labour disputes

The labour disputes are intrinsic characteristics of labour relations in the states of industrial civilization. The starting point for further deliberations will be an observation that the essence of a labour dispute[1] is a conflict[2] which means specific interactions of negative cooperation between at least two actors in the labour and employment relations, where one of the parties raises certain demands or takes other actions which result in resistance on the part of the opponent who refuses or otherwise opposes such demands or actions.

In sociology there is no consensus regarding the assessment of the social consequences of conflicts. In particular, it remains controversial whether these conflicts – and this refers also to the conflicts in labour and employment relations – should be considered pathologies. In functional terms, a conflict is considered a dysfunctional factor in a system which destroys the system from within and which cannot be explained by the needs of the system as a whole[3]. It undermines the stability of the system which is maintained through its internal mechanisms of adaptation and social control. It seems that this sociological theory was a point of reference for the ideologies prevailing in the totalitarian regimes of the 20th century which did not recognize pluralism of collective interests in the labour relations[4]. An example illustrating that view may be a theory of non-conflicting

---

[1] See: *J. Wróblewski*, Prawo i homeostaza społeczna *[Law and social homeostasis]*, PiP 1982, No. 12, p. 38; *J. Kurczewski*, Spór i sądy *[Dispute and courts]*, Warsaw 1982, p. 47–49.

[2] See in particular: *M. Magowska*, Społeczno-kulturowe podłoże konfliktów prawnych *[Social and cultural grounds of legal conflicts]*, PAN 1991, p. 10–13 and literature referenced there.

[3] See in particular *J. Szacki*, Historia myśli socjologicznej *[History of sociological thought]*, vol. 2, Warsaw 1983, p. 788–789.

[4] See in particular: *I. Suhij, V. Lepekhin*, Evolution of Interest Representation and Development of Labour Relation in Russia, [in:] *J. Hausner, O.K. Pedevsen, K. Ronit* (eds), Evolution of Interest Representation and Development of the Labour Market in Post-Socialist Countries, Cracow 1995,

socialism[5] widespread in the former socialist countries of the central and eastern Europe. It was founded on the false assumption that in the labour relations all objective antagonisms between labour and capital had been overcome through socialisation of the means of production. As a consequence, the party authorities treated the labour disputes, in particular the collective labour disputes, as acts of social disobedience against the regime inspired by the „class" enemy and recommended that the state security bodies should fight them without tolerance. Such approach to the collective disputes often resulted in progressive escalation of protests at work, and in Poland in the 80s the strikes were almost permanent and were participated by large numbers of workers.

According to the sociological theory of conflict, any disputes and conflicts are considered phenomena which are almost naturally connected with the development of the civilization, from its very outset. They are not considered a dividing factor but a driving force for development changing the *status quo* established in the society. This applies also to the disputes in the workplace, in particular in the countries with free market economy. The disagreements between workers and employers are settled by the parties themselves, usually with the use of irenic methods[6], without resorting to state coercion.

In describing the labour disputes I would like to show how a conflict arising in the workplace transforms into a dispute resolved in accordance with the methods prescribed by law. That process[7] of transformation is universal and applies both to individual and collective disputes. It starts when a person or a group of persons becomes aware that harm was done (naming). At the next stage the harm is attributed to the behaviour of a specific party (blaming). That is where the process of „revitalisation" of law occurs in the mind of a party to a dispute, manifested by the sense of violation of rights, and consequently the conflict is interpreted through the applicable legal norms. Specifically, this means „adjustment" of the claims raised by the active party to a dispute to the procedural rules,

p. 197–201. See also *B. Wypchło-Grymek*, Prawne uregulowania w przedmiocie sporów zbiorowych pracy a zasada zachowania pokoju społecznego *[Legal regulation of collective disputes and the principle of social peace]*, Studia z zakresu prawa pracy i polityki społecznej 1996, p. 21.

[5] See in particular: *T. Zieliński*, Prawo pracy. Zarys systemu *[Labour law. An outline of the system]*, vol. 3, Warsaw–Cracow 1986, p. 124–125. See also *A. Kovzik, O. Zagorulskaya*, Evolution of Interest Representation in Belarus, [in:] *J. Hausner, O.K. Pedevsen, K. Ronit* (eds), Evolution..., p. 253–260.

[6] Such approach to the issue refers to the theory of „balance" formulated by *R. Dahrendorf* (Teoria konfliktu w społeczeństwie przemysłowym *[Theory of conflict in the industrial society]*, [in:] *W. Derczyński*, *A. Jasińska-Kania*, *J. Szacki* (eds), Elementy teorii socjologicznych *[Elements of sociological theories]*, Warsaw 1975, p. 433) who expressed the view that neither the theory of conflict nor the functional theory can be accepted as the only right one since the society „has two faces of equal reality: one of stability, harmony and consensus and one of change, conflict and constraint".

[7] See in particular: *W. Felstiner, R. Abel, A. Sarat*, The Emergence and Transformation of Disputes: Naming, Blaming, Claiming, vol. 15, Law and Society Review 1980–1981, No. 3–4, p. 635–636.

adequate for resolution of the conflict. A direct consequence of such a process is typification of roles of the parties. It should be borne in mind that the role expectations of the opponents in a dispute are expressed in the procedural norms. The norms deprive the opponents of their individual characteristics[8] and this leads to institutionalisation[9] of the conflict and transformation of the latter into a formalised legal dispute[10]. In this study I will focus solely on the conflicts arising in the labour and employment relations which were transformed into legal disputes – the labour disputes.

§ 2. Delimitation of individual and collective labour disputes

The starting point for further deliberations should be a clear definition of labour disputes according to which these are disputes between parties governed by labour law, the subject-matter of which falls within the scope of labour law. It is obvious that with such a general definition the category is not uniform. It may be organised on the basis of various criteria. According to a classic formula[11] adopted already in the 19th century, as regards labour disputes a distinction can be made between conflicts regarding establishment of a new norm and conflicts regarding interpretation or application of the already existing norm. The former refer to the workers as a collectivity and the latter refer to an individual employee. The idea presented here has given rise to the classification of labour disputes into individual and collective labour disputes[12].

A relation between individual and collective labour disputes causes certain difficulties, also in the Polish legislation. They arise as early as the stage of definition of both categories of disputes. The point is that, *de lege lata*, there is no legal definition of an individual labour dispute. The labour law scholars are

[8] *G. Skąpska*, Prawo a dynamika społecznych przemian *[Law and dynamics of social transformations]*, Cracow 1991, p. 69.

[9] See: *W. Pańkow*, Instytucje prawa pracy w procesach transformacji *[Institutions of labour law in the processes of transformation]*, Warsaw 1993, p. 135–136.

[10] As regards the state's pursuit of formalisation of social conflicts, see in particular: *A. Gryniuk*, Przymus prawny jako środek rozwiązywania konfliktów społecznych w dużych i wielkich grupach społecznych *[Legal coercion as a measure for resolution of social conflicts in large and very large social groups]*, Acta Universitatis Nicolai Copernici, Prawo XXVII, Toruń 1990, p. 51–53.

[11] *S.* and *B. Webb*, Industrial Democracy, vol. 1, London 1897, p. 182 ff.

[12] Comparative law aspect: *K.W. Baran*, Spór indywidualny a zbiorowy w prawie pracy *[Individual vs. collective dispute in labour law]*, [in:] *G. Goździewicz* (ed.), Zbiorowe prawo pracy w społecznej gospodarce rynkowej *[Collective labour law in the social market economy]*, Toruń 2000, p. 223–224.

seeking to fill this gap and a predominant approach is that individual labour disputes are recognised in substantive categories which refer mainly to the area of obligations. Some authors emphasize the procedural aspect and invoke a category of a procedural claim *(roszczenie procesowe)*. A specific disproportion of opinions exists also with regard to the matter in dispute. The prevailing view is that the latter means rights and obligations of the parties to a legal relationship where some authors focus mainly on the employment relationship. However, all of them, with no exception, either directly or indirectly, identify an employee and an employer as the parties to an individual labour dispute. It must be stressed that each of them may be either a plaintiff or a defendant in the legal proceedings.

Therefore, it is reasonable to consider that an individual labour dispute is a difference of opinions of the parties to a specific legal relationship – most likely the employment relationship – governed by labour law in a large sense, regarding the existence or non-existence of a legal relationship or creation or modification of the legal relationship or the scope of the rights and obligations arising from that legal relationship.

Having characterised the individual labour disputes, now I would like to discuss the collective labour disputes. According to a definition adopted in Art. 1 of the Act on resolution of collective disputes *(*collective disputes act – *ustawa o rozwiązywaniu sporów zbiorowych)* these mean disputes between workers and employer or employers in relation to working conditions, wages or social benefits and trade union rights and freedoms of workers or other groups who enjoy the freedom of association in trade unions. This refers to two basic criteria for differentiation of labour disputes, namely the personal *(ratione personae)* and material *(ratione materiae)* criterion[13].

I should start the analysis with the personal aspect. The starting point will be an observation that the range of actors in both categories of disputes is varied, however, this refers mainly to the „workers' part". A participant in an individual dispute is a single person while the participant in a collective dispute is a group of persons. The labour law literature sometimes presents a simplistic opinion

[13] See in particular: *G. Goździewicz,* Spory zbiorowe *[Collective disputes]*, Toruń 1991, *passim*; *W. Masewicz*, Ustawa o związkach zawodowych. Ustawa o rozwiązywaniu sporów zbiorowych *[Act on trade unions. Act on resolution of collective disputes]*, Warsaw 1998, p. 124; *H. Lewandowski*, Spory zbiorowe pracy *[Collective labour disputes]*, Studia z zakresu prawa pracy i polityki społecznej 1997–1998, vol. 4, p. 127 ff.; *B. Cudowski*, Spory zbiorowe w polskim prawie pracy *[Collective disputes in the Polish labour law]*, Białystok 1998, *passim*; *Z. Salwa*, Nowa regulacja rozwiązywania sporów zbiorowych *[New regulations on resolution of collective disputes]*, PiZS 1991, No. 8–9, p. 50; *A. Świątkowski*, Rozwiązywanie sporów zbiorowych pracy *[Resolution of collective labour disputes]*, Studia z zakresu prawa pracy i polityki społecznej 1994, vol. 1, p. 292 ff.; *K.W. Baran*, Zbiorowe prawo pracy. Komentarz *[Collective labour law. Commentary]*, Warsaw 2010, p. 392–394.

according to which in both categories of disputes these are exclusively workers. This refers to both categories of labour disputes. As regards individual labour disputes, under Art. 476 § 5 (1) of the Code of Civil Procedure (*KPC*) a party to a dispute shall be workers within the meaning of substantive law as well as former workers and members of agricultural production cooperatives *(rolnicze spółdzielnie produkcyjne)*, persons who perform work under a home-based work contract *(umowa o pracę nakładczą)* as well as members of the family and heirs of workers, of members of production cooperatives, of persons performing cottage work as well as other persons who may raise labour law claims under separate laws. In practice, this means that a party to an individual labour dispute may be even a person who performs work within an administrative service relationship[14] (for example a Police or Border Guard officer pursuing pregnancy and maternity claims before labour courts)[15].

As regards collective disputes, the question who is a party to a dispute on the workers' part is more complex than in the case of individual disputes. A literal interpretation of Art. 1 of the Act on resolution of collective disputes indicates only workers. Only a reference to the provisions of Art. 2 of that act which, as part of institutionalization of the collective conflicts, authorizes trade unions to represent rights and interests of workers, justifies extension of the personal scope of the parties to a dispute to include other categories of working men[16]. Specifically, these include: members of agricultural production cooperatives, persons performing work under agency contract or a home-based work contract *(umowa o pracę nakładczą)*, officers of the Police, Border Guard, Prison Service, National Customs and Treasury Service, pensioners and the unemployed. This means that collective disputes may be initiated even by some officers of uniformed services, except professional soldiers and officers of ABW *(Internal Security Agency)*, BOR *(Government Protection Bureau)* and CBA *(Central Anti-Corruption Bureau)*.

In the context of a normative regulation adopted in Art. 1 and 2 of the Act on resolution of collective disputes, it seems reasonable to differentiate between the workers' part in a material sense and in a formal sense. A party in a material sense means all persons listed above for whom and on whose behalf a dispute is initiated. On the other hand, a party in a formal sense in a collective dispute

[14] See: *T. Kuczyński*, Właściwość sądu administracyjnego w sprawach stosunków służbowych *[Jurisdiction of administrative courts in cases based on service relationship]*, Wrocław 2000, p. 16.

[15] For more detail see: *K.W. Baran*, Sądowy wymiar sprawiedliwości w sprawach z zakresu prawa pracy *[Court jurisdiction in labour law matters]*, Warsaw 1996, p. 201–202; *M. Mędrala*, Funkcja ochronna cywilnego postępowania sądowego w sprawach z zakresu prawa pracy *[The protective function of civil-law proceedings in labour law matters]*, Warsaw 2011, p. 142 ff.

[16] See Art. 2 of the Act on trade unions *[ustawa o związkach zawodowych]*. For more see in particular: *B. Cudowski*, Spory... *[Collective disputes...]*, p. 56–63.

means trade unions representing the rights and interests of workers and other working people. It seems that an exception to the principle is a situation where the subject-matter of a collective dispute are trade union freedoms and a trade union organisation initiates such dispute directly for the protection of its own respective interests.

Under provisions of Art. 2 of the Act on resolution of collective disputes this may be taken as a specific obligatory statutory representation. Consequently, that provision may be the basis for an opinion that trade unions have a specific monopoly on conducting collective disputes on the workers' part[17]. Therefore, any disputes of that kind inspired by non-trade union entities, such as protest committees appointed *ad hoc* by the personnel, are illegal. Adoption on such restrictive normative regulations is questionable in view of a directive of negative trade union freedom. However, on the other hand, in the free market economy, it reduces the threat of anarchy in labour relations.

In some sense the statutory monopoly is toned up by the fact that as regards the collective rights and interests, the trade unions represent in a collective dispute all workers, regardless of their trade union membership. It is worth noting that such „collective procedural capacity" is granted to every trade union which unites at least 10 members (Art. 25^1(1) of the Act on trade unions).

It should be emphasized that also the employees of an establishment at which there are no trade unions may bargain collectively with an employer, provided that they are represented by an external trade union organisation[18]. This means that they will be a party to a dispute in a material sense. Also in this case, the respective laws do not specify the number of workers required for the workers' collectivity to be considered representative. In such case a trade union organisation to which the group of interested workers filed a request for representation in the collective dispute should assess whether it is reasonable and appropriate to initiate such dispute.

As regards the employer in the collective disputes, it is similarly possible to differentiate, under Art. 1 and 2 (2) of the Act on resolution of collective disputes, between a party in a material sense and a party in a formal sense. Under Art. 5 of the said act, a party in a material sense means any organisational unit, even this without a legal personality and natural persons employing workers[19].

---

[17] See: *B. Cudowski*, Reprezentacja zatrudnionych w sporach zbiorowych pracy (*de lege lata* i *de lege ferenda*) *[Representation of workers in collective labour disputes (de lege lata and de lege ferenda)]*, [in:] *A. Wypych-Żywicka, M. Tomaszewska, J. Stelina* (eds), Zbiorowe prawo pracy w XXI wieku *[Collective labour law in the 21st century]*, Gdańsk 2010, p. 245 ff.

[18] See: *K.W. Baran*, Zbiorowe… *[Collective...]*, p. 261.

[19] More on the concept of the employer in the Act on resolution of collective disputes, see in particular: *B. Cudowski*, Spory... *[Collective disputes...]*, p. 76–85.

On the other hand, a status of a party in a formal sense is granted to employers' organisations[20]. However, unlike in the case of workers, the latter is an optional representation. This follows from a literal interpretation of Art. 2 (2) of the Act on resolution of collective disputes. In the practice of industrial relations a situation may occur where a party to a collective dispute in a material sense will be several employers. That will be the case where in a supra-company dispute the demands of trade unions relate to rights or interests which are common to the employers concerned. In such event they can bargain collectively within common organisational structures[21].

An inherent characteristic of collective labour disputes, in particular on the workers' part, is multiplicity of actors in a material sense. However, the problem is that sometimes this occurs also in individual disputes, which in practice causes delimitation difficulties. A normative recognition of such a situation in the Code of Civil Procedure is a construct of joint participation in the proceedings *(współuczestnictwo procesowe)* where there are several plaintiffs or several defendants in the judicial process. This is a consequence of a substantive legal bond between each of the joint participants and the opposite party. However, in the labour relations a predominant construct is a formal joint participation in the proceedings based on homogeneity of claims and similarity of the factual basis. For example, this is the case where several or a few dozen of employees pursue claims against their employer for payment of outstanding remuneration for work. In such a situation there are separate proceedings between one defendant and several plaintiffs within one case. Such a mechanism of accumulation of claims *(kumulacja roszczeń)* is designed mainly to save funds pursuant to the principle of procedural economy. Consequently, even where the workers bring a „joint" action in the labour court, they do not do that as representatives of a collectivity. It is expressly confirmed by Art. 73 of the Code of Civil Procedure (*KPC*). It provides that each joint participant acts on his own behalf. He is also entitled to independently support the case before court.

The multiplicity of actors in the labour disputes results in delimitation problems which are difficult to overcome; therefore the material (ratione materiae) criterion is used alternatively for the classification of such disputes. The Polish legislative provisions in force define explicitly the subject-matter of both an individual and a collective labour dispute.

---

[20] More on the status of employers' organisations: *Z. Hajn*, Status prawny organizacji pracodawców *[Legal status of employers' organisations]*, Warsaw 1999, p. 111–118 and the literature referenced there.

[21] *W. Masewicz*, Zatarg zbiorowy pracy *[Collective labour dispute]*, Bydgoszcz 1994, p. 90.

As regards individual labour disputes, it seems that Art. 72 KPC is of key importance. It provides that a subject-matter of a dispute before a court – at the substantive legal level – are rights and obligations of the parties. In this context, the jurisprudence of civil procedure has formulated a more general view[22] according to which a subject-matter of judicial proceedings is the „disputed legal relationship". The specific legal relationships which fall within an individual labour dispute category were listed in Art. 476 § 1 KPC on the occasion of definition of a labour law matter concept[23]. Apart from the matters involving claims arising out of employment relationship and the employment-related claims, it applies also to matters involving claims arising out of other legal relationships to which provisions of labour law apply under separate laws. Consequently, the material scope of individual labour disputes includes also disputes arising from the so-called non-employee employment relationships *(niepracownicze stosunki zatrudnienia)*, both civil and administrative ones. In the light of the above, there can be no doubt that as regards the material scope, the individual labour disputes should be classified as disputes concerning interpretation or application of a legal norm.

As regards the subject-matter of collective labour disputes, according to Art. 1 of the Act on resolution of collective disputes, a collective labour dispute may relate [24] to working conditions, wages or social benefits and trade union rights and freedoms of workers or other groups who enjoy the freedom of association in trade unions[25]. A starting point for further deliberations is an observation

[22] *J. Jodłowski, J. Lapierre, T. Misiuk-Jodłowska*, Postępowanie cywilne *[Civil procedure]*, Warsaw 1996, p. 234.

[23] The individual labour disputes include also matters regarding declaration of existence or non-existence *(sprawy o ustalenie stosunku prawnego lub prawa)* or creation or modification of a legal relationship or right *(sprawy o ukształtowanie stosunku prawnego lub prawa)* arising from labour laws. For more see: *K.W. Baran*, Sądowy... *[Judicial...]*, p. 34.

[24] According to Art. 1 of the Act on resolution of collective disputes, the disputes between trade unions and staff management bodies of a state-owned enterprise *(organy zarządu załogi przedsiębiorstwa państwowego)* cannot be included in this category of conflicts. See in particular: *J. Jończyk*, Prawo pracy *[Labour law]*, Warsaw 1995, p. 233–243; *idem*, Konflikty organizacyjne i zatargi zbiorowe w stosunkach pracy *[Organisational conflicts and collective disputes in labour relations]*, PiZS 1982, No. 7, p. 3 ff.

[25] For more on the subject-matter of a collective dispute – see in particular: *G. Goździewicz*, Spory zbiorowe. Strajk *[Collective disputes. Strike]*, Toruń 1991, p. 8–9; *H. Lewandowski*, Spory... *[Disputes...]*, p. 131–136; *B. Cudowski*, Spory... *[Collective disputes...]*, p. 33 ff.; *W. Masewicz*, Ustawa... *[The act...]*, p. 133 ff.; *J. Piątkowski*, Uprawnienia zakładowej organizacji związkowej *[Rights of a workplace trade union organisation]*, Toruń 1997, p. 122 ff; *K.W. Baran*, Zbiorowe prawo pracy. Komentarz *[Collective labour law. Commentary]*, Warsaw 2010, p. 390–393; *E. Wronikowska*, Problemy prawnej regulacji rozwiązywania sporów zbiorowych na tle praktyki *[Legal regulations on resolution of collective disputes – practical aspects]*, [in:] *A. Patulski, K. Walczak* (eds), Jedność w różnorodności. Studia z zakresu prawa pracy, zabezpieczenia społecznego i polityki społecznej. Księga pamiątkowa dedykowana Pro-

that according to the Polish labour law – at the objective level – these may be both rights disputes and interests disputes. Such view is supported not only by the material scope of collective disputes set out in the quoted Art. 1 of the act but also by other provisions of collective labour law. I am thinking here in particular of Art. 37 (1) of the Act on trade unions which makes an explicit reference to the employee's interests as a condition for initiation of a collective dispute. Also Art. 3 (1) and Art. 7 (1) of the Act on resolution of collective disputes makes a direct reference to the workers' interests. On the other hand, Art. 2 of the said act explicitly provides that the subject-matter of a collective dispute may be not only interests but also rights of employees. In the industrial relations, at the functional level, they are usually strictly correlated[26]. An example illustrating such a situation is a dispute[27] where the workers demand, first, compliance by the employer with the obligations laid down in the Act on the company social benefits fund *(ustawa o zakładowym funduszu świadczeń socjalnych)* (a rights dispute), and second, they demand payment of interest on the outstanding contributions to the social benefits fund (an interests dispute).

The division between the rights disputes and interests disputes was laid down *implicite* in Art. 262 § 2 of the Labour Code (*KP*)[28]. In paragraph 1 of that provision the legislature pointed out the disputes concerning establishment of new wage and working conditions. The essence of such disputes is a difference of opinions regarding not previously existing rights or obligations[29]. The literal formula of that provision clearly indicates that it regards setting out new wage and working conditions and not these already existing in the labour laws, including in the collective agreements. For that reason, the disputes regarding creation or modification of right *(spory o ukształtowanie prawa)* may be classified only as interests disputes.

A delimiting norm in the case of labour disputes is Art. 4 (1) of the Act on resolution of collective disputes. According to this provision, a collective dispute cannot be initiated to support individual demands of employees if they can be

---

fesorowi Wojciechowi Muszalskiemu *[Uniformity in diversity. Labour law, social security and social policy studies. Memorial book dedicated to professor Wojciech Muszalski]*, Warsaw 2009, p. 280–282.

[26] This is pointed out by *W. Sanetra*, Kilka uwag o pojęciu znaczeniu i zróżnicowaniu interesów w prawie pracy *[Several remarks on the concept, meaning and diversity of interests in labour law]*, PiZS 1988, No. 6, p. 4 ff.

[27] See a decision of the Social Arbitration Panel *(Kolegium Arbitrażu Społecznego – KAS)* attached to the Polish Supreme Court (SN) of 17.10.1996 published in OSNAPiUS 1997, No. 10, item 180 with a commentary of *B. Cudowski* (OSP 1997, No. 6, item 124).

[28] As regards the function of this provision, see: *K.W. Baran,* Sądowy... *[Judicial...]*, p. 134.

[29] See in particular: *S. Mateja*, Zatarg zbiorowy a spór indywidualny *[Collective dispute versus individual dispute]*, Przegląd Prawa Pracy 1938, No. 1, p. 12 and *T. Zieliński*, Prawo pracy... *[Labour Law…]*, vol. 3, p. 165.

resolved in a procedure before an authority resolving disputes over employees' claims. This raises certain questions concerning the interpretation[30]. In particular, a problem arises in a situation where an individual labour dispute cannot be resolved before a labour court, for example due to procedural reasons. It seems that a literal interpretation of Art. 4 (1) of the said act allows for such a possibility[31]. However, I personally take the view that teleological considerations plead against legalisation of such collective disputes since this would result in anarchy in workplace relations. Under the democratic rule of law, it seems impossible to accept – at a normative level – a collective labour dispute where the subject-matter of such dispute is, for example, a time-barred claim or a valid and final judgment of a labour court.

In the light of the above considerations concerning the individual and collective labour disputes, I think that there are no objective, universal and at the same time reliable delimitation criteria allowing conclusive classification of a dispute arising in the labour relations. *A natura rerum*, the personal criterion does not satisfactorily fulfil this function. Also the material criterion, because of complexity of workplace disputes, is not always sufficiently clear. Recourse to the methods of resolution of disputes also seems inadequate since some of them, such as for example conciliation or mediation, are applicable to resolution of both individual[32] and collective disputes[33]. Therefore, it seems impossible to indisputably and definitively declare in each particular case whether a conflict concerned is collective or individual. This is an example of a specific normative interference. It results from the fact that disputes in the workplace often have multiple dimensions[34]. In practice, many times it is a decision of the parties, in particular the employees, which determines the procedure for resolution of a dispute and hence

[30] See also: *B. Skulimowska*, Tryb i procedury rozwiązywania zatargów w Polsce na tle porównawczym *[Procedures for resolution of disputes in Poland – a comparative approach]*, Warsaw 1992, p. 7.

[31] See: *K. Kolasiński*, Prawo pracy i zabezpieczenia społecznego *[Labour law and social security law]*, Toruń 1999, p. 310.

[32] See: *K.W. Baran*, Ugodowe likwidowanie sporów o roszczenia ze stosunku pracy *[Amicable resolution of disputes arising out of employment relationship]*, Cracow 1992, p. 158 ff.

[33] See: *K.W. Baran*, Model polubownego likwidowania zbiorowych sporów pracy w systemie prawa polskiego *[A model of amicable resolution of labour disputes in the Polish legal system]*, PiZS 1992, No. 3, p. 18 ff; *A. Świątkowski*, *M. Wujczyk*, Zgodność polskich przepisów o rozwiązywaniu sporów zbiorowych ze standardami europejskimi *[Compliance of Polish laws on resolution of collective disputes with the European standards]*, [in:] *A. Wypych-Żywicka, M. Tomaszewska, J. Stelina* (eds), Zbiorowe prawo pracy w XXI wieku *[Collective labour law in the 21st century]*, Gdańsk 2010, p. 275.

[34] As rightly pointed out by *W. Szubert* (Kierunki rozwoju zbiorowego prawa pracy *[Directions of development of collective labour law]*, PiP 1981, No. 6, p. 17), in particular the course and effects of collective disputes are dependent not only on the legal regulation but also on other factors such as the actual system of social relations, the real strength of trade unions, the nature of matters in dispute or even the degree of support from the public.

its legal nature. Therefore, in practice a precise delimitation between individual and collective labour disputes may be difficult since such division artificially interferes with the „natural" uniformity of the social reality which is subject to the regulation.

Chapter 2. Organisation of the system of legal protection in labour disputes

K.W. Baran

§ 1. Models of legal protection in individual labour disputes

1.1. Legal protection bodies and the judiciary in individual labour disputes

I should start the analysis of legal protection and the judiciary in individual labour disputes with definition of these two concepts. The starting point for further deliberations will be an observation that these concepts are not identical, neither at the objective nor at the subjective level.

According to a prevailing view[1], a legal protection means a sustained and organised activity undertaken for the compliance with law. It means implementation of applicable normative regulations, starting with conciliation and mediation, through jurisdiction, and ending with legal assistance.

The situation is completely different as regards the concept of the judiciary[2]. In the jurisprudence this term has different definitions, despite unequivocal colloquial connotations. In schematic terms, there are three basic approaches: material, personal and heterogeneous one.

[1] See: *S. Włodyka*, Ustrój organów ochrony prawnej *[System of the legal protection bodies],* Warsaw 1975, *passim*.

[2] See: *K. Lubiński*, Pojęcie i zakres wymiaru sprawiedliwości *[The concept and scope of the judiciary]*, Studia Prawnicze 1987, No. 4, p. 3 ff; *M. Mędrala*, Funkcja ochronna… *[The protective function…]*, p. 111 and the literature referenced there.

According to a material approach[3], a judiciary means an activity which consists in binding resolution of conflicts arising from legal relationships or even any activity which consists in resolution of disputes in compliance with law, on behalf of the state. On the other hand, according to a personal approach[4] the judiciary means the activity of courts which consists in concretisation and implementation of legal norms. This is governed by the constitutional provisions[5], in particular Art. 175 of the Constitution of the Republic of Poland.

According to a heterogeneous approach, the judiciary means the activity of courts limited to resolution of civil law or criminal law disputes or other disputes if these were referred under law for resolution by the courts. At a more detailed level[6] this means an imperative activity of courts which consists in imposition of penalties or resolution of legal conflicts or non-conflicting matters relating to fundamental rights and freedoms of citizens in order to secure compliance with applicable laws.

Despite major differences[7] between the above concepts of the judiciary, they have one thing in common. Each of the three presented approaches refers directly (the material and heterogeneous approach) or indirectly (the personal approach) to the jurisdiction as a method of activity of the judiciary. Such standpoint is supported also by the legislation in force. I am thinking here of Art. 2 § 1 of the Law on the system of general courts *(prawo o ustroju sądów powszechnych)*. It provides that the tasks of the judiciary are performed by judges only. Also, the differentiation of the status of courts and tribunals introduced by Art. 175 of the Constitution of the Republic of Poland is a strong argument in support of this view.

---

[3] See: *C. Jackowiak*, Zakładowe organy wymiaru sprawiedliwości *[Law enforcement bodies in the workplace]*, Poznań 1965; *J. Skupiński*, Gwarancje orzekania na tle sporu o pojęcie wymiaru sprawiedliwości *[Guarantees of jurisdiction in the context of a dispute over the concept of judiciary]*, PiP 1972, No. 8–9, p. 89; *J. Stelina* [in:] *K.W. Baran* (ed.), Zarys systemu prawa pracy. Część ogólna prawa pracy *[An outline of labour law system. General part of labour law.]*, vol. 1, Warsaw 2010, p. 128 ff.

[4] See: *K. Korzan*, Wykonywanie orzeczeń w sprawach o roszczenia pracowników ze stosunku pracy (Studium teoretyczno-procesowe) *[Enforcement of judgements in matters involving employment-related claims (Theoretical and procedural aspects)]*, Katowice 1985, p. 51–52; *T. Ereciński*, Aktualne problemy ustroju sądownictwa *[Current problems of the judicial system]*, PiP 1981, No. 5, p. 19.

[5] See: *A. Wasilewski*, Władza sądownicza w Konstytucji Rzeczpospolitej Polskiej *[Courts in the Constitution of the Republic of Poland]*, PiP 1998, No. 7, p. 6–7; *P. Sarnecki*, Władza sądownicza w Konstytucji RP z 2.4.1997 *[The court system according to the Constitution of the Republic of Poland of 2.4.1997]*, Rejent 1997, No. 5 (73), p. 136 ff.

[6] *K. Lubiński*, Pojęcie… *[The concept...]*, p. 27.

[7] In the jurisprudence there are also opinions according to which in order to discontinue the disputes over the concept of the „judiciary", it would be desirable that this term is no longer used. See: *H. Suchocka, L. Kański*, Zmiany konstytucyjnej regulacji sądownictwa i prokuratury w roku 1989 *[Changes in the constitutional regulation of the judicial and prosecution system in 1989]*, PiP 1991, No. 1, p. 28.