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THE ORGANIZATIONAL FUNCTION OF LABOR LAW

ORGANIZATORSKA FUNKCJA PRAWA PRACY

Summary: The organizational function of labor law in terms of law and teleology consists in the operation of the norms of this law in a way that ensures the proper and uninterrupted course of broadly understood labor processes. *Natura rerum* legal norms do not organize anything at the employer, but some of them serve the proper organization of work and maintaining order in work processes, thus respecting the employer's interests in labor relations. This remark applies to both individual and collective labor law. In the study, I will present in a synthetic approach the institutions and legal mechanisms that perform this function.

Keywords: labor law, organizational function, employer's interests

Streszczenie: Funkcja organizatorska prawa pracy w ujęciu prawnoteleologicznym polega na działaniu norm tego prawa w sposób zapewniający właściwy i niezakłócony przebieg szeroko pojmowanych procesów pracy. *Natura rerum* normy prawne niczego nie organizują u pracodawcy, ale niektóre z nich służą właściwej organizacji pracy i zachowaniu porządku w procesach pracy, tym samym respektowaniu jego interesów w stosunkach pracy. Uwaga ta dotyczy zarówno indywidualnego, jak i zbiorowego prawa pracy. W opracowaniu zostaną przedstawione w ujęciu syntetycznym instytucje i mechanizmy prawne realizujące tę funkcję.

Słowa kluczowe: prawo pracy, funkcja organizatorska, interesy pracodawcy

The issue of the function of labor law is of great importance in the general theoretical plane. Different views are expressed in this matter in the doctrine. Therefore, before proceeding to the merits, I would like to define in what sense I will use the concept of the function of law. The starting point will be the statement that the

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function of law – in a certain simplification – can be understood in two ways. In a broader sense, it means all social effects of the operation of legal norms in the work environment, including those of atypical nature. On the other hand, in the narrow sense, the function of labor law is a useful impact of labor law planned in advance on the reality of labor relations[1]. This kind of legal and teleological approach will be the substantive basis of my considerations in this study.

The starting point for further analysis will be the assumption that the organizational[2] function consists in the operation of legal norms in a way that ensures the proper and undisturbed course of broadly understood work processes. *Natura rerum* legal norms do not organize anything at the employer, but some of them serve to respect the proper organization and order in the work process, thus respecting the employer's interests in labor relations. This remark applies to both individual and collective labor law. I will begin the analysis of the organizational function with individual labor law. Central to its implementation is the employee's obligation to comply with the employer's instructions[3]. The instructions themselves may concern only the work specified in the employment contract. They can be formalized as well as informal. Statutory regulations do not require a specific form in this matter. Failure to comply with the employer's instructions exposes the employee to various sanctions, ranging from disciplinary penalties to termination of employment. As for the first sanctions, they belong to the basic elements of organization and order at the workplace by cataloging employee misconduct. The basis for imposing a disciplinary penalty[4] on an employee may be the non-performance or improper execution of the employer's order, because it is a violation of the organizational order established in the plant. Order penalties are an important mechanism for implementing the organizational function of labor law. Disciplinary sanctions[5] play a similar role in public administration. They allow the employer to severely punish civil servants for various types of offenses that undermine the established organization and order in the public service.

Another type of sanction that performs organizational functions is the termination of the employment relationship without notice by the employer due to the fault of the employee caused by a serious violation of his/her basic duties[6]. This applies

[1] Cf. T. Zieliński, *Prawo pracy. Zarys systemu*, Warszawa – Kraków 1986, vol. 1, p. 39 ff.; W. Muszalski, *Przemiany funkcji organizatorskiej i ochronnej w prawie pracy*, PiZS 1995, no. 3, p. 11 ff; B.M. Ćwiertniak, *Funkcje prawa pracy. Uwagi wstępne*, [in:] *System prawa pracy. Część ogólna*, ed. K.W. Baran, vol. 1, Warszawa 2017, p. 459 ff.

[2] Cf. Z. Salwa, *Organizacyjna funkcja prawa pracy. Studia prawnicze* 1986 no. 3-4 passim; idem, *Organizacyjna funkcja prawa pracy*, [in:] *System prawa …*, vol. 1, p. 500 ff.

[3] Cf. eg. Z. Góral [in:] *Kodeks pracy. Komentarz*, ed. K.W. Baran, Warszawa 2020, vol. 1, p. 847 ff.

[4] Cf. eg. I. Sierocka, *Odpowiedzialność porządkowa pracowników – od kodyfikacji do współczesności* [in:] *Księga jubileuszowa dedykowana Profesor Teresie Liszcz*, ed. A. Kosut, W. Perdeus, „Studia Iurudica Lublinensia" 2015, p. 211 ff.

[5] Cf. R. Giętkowski, *Odpowiedzialność dyscyplinarna w prawie polskim*, Gdańsk 2013, p. 24 ff.

[6] Cf. eg. A. Sobczyk, *Rozwiązanie umowy o pracę bez wypowiedzenia*, Gdańsk 2010, p. 15; P. Prusinowski [in:] *System prawa pracy. Indywidualne prawo pracy. Część ogólna*, ed. G. Goździewicz, Warszawa 2017, vol. 2, p. 606 ff.

to a situation where the employee wants to cause an adverse effect for the employer with his/her behavior, or he/she agrees to it. His/her act should result in a serious threat to the employer's interests, both material and non-material. The consequence of the employee's behavior does not have to be actual damage, it is enough that there is a potential threat to the uninterrupted functioning of the workplace. In particular, a breach of labor discipline has the character of a serious breach of duty[7]. This applies in particular to disturbances of order and peace in the workplace. Improper performance of duties may refer to objective patterns of due diligence in employment relationships. An example of such a situation is the arbitrary use of professional powers and exceeding competence. Conducting commercial activities of a non-professional nature by an employee on the premises of the workplace or conducting political or religious agitation should be treated analogously.

The organizational function in individual labor law is also fulfilled by the provisions providing for the possibility of termination of the employment relationship by the employer without notice due to long-term justified absence of the employee from work. Depending on the length of service and the reason for the absence, these periods range from six or nine months to a month. In practice, this applies to a long-term disease which causes dysfunctional functioning of work processes[8]. Also, the norms regulating the termination of the employment[9] contract perform an organizing function. They make it possible to terminate the employment relationship with an employee whose work does not meet the qualitative or quantitative requirements set by the employer, or who has lost confidence in him/her. However, the abuse of trust must be related to the behavior of the employee, which may be assessed as reprehensible in the perspective of the standards applicable at the employer. An exemplification of such a situation is, for example, repeated unjustified contesting by a person in a managerial position of the decision of the president of the company or the use of the position for private purposes contrary to the interests of the employer. Also, the lack of cooperation within the company structures justifies the termination of the employment relationship as part of the organizational function.

Significant elements of the organizational function are present in a number of other institutions of individual labor law. I mean, for example, regulations determining the use of working time systems[10], especially those regarding equivalent, interrupted or task-based working time. Similar legal mechanisms operate in relation to holiday leaves or remote work. It is impossible to enumerate all the legal mechanisms operating in the system of individual labor law, aimed at securing the

[7] Cf. eg. K.W. Baran [in:] *Kodeks pracy. Komentarz*…, vol. 1, p. 471 ff.
[8] Cf. eg. M. Podgórska, *Rozwiązanie umowy o pracę w trakcie choroby*, „Służba Pracownicza" 2010, no. 1, p. 7 ff.
[9] Cf. eg. A. Wypych-Żywicka [in:] *System prawa pracy*…, vol. 2, p. 532 ff.
[10] Cf. eg. K. Stefański [in:] *Kodeks pracy*…, vol. 2, p. 1088 ff.

uninterrupted course of work processes. Therefore, in this study I focused on the most important of them.

Guided by the directive of comprehensiveness of dogmatic research, in the course of further considerations, I would also like to present an analysis of this function through the prism of collective labor law provisions. The provisions regulating the functioning of trade unions are of particular importance in this matter. To limit the dysfunctionalization of work processes by various employee representatives, the provisions of the Act on Trade Unions subjected their functioning in the work environment to various legal rigors, ranging from court registration[11] to precise definition of a number of their competences[12]. However, in its broadest dimension, the organizational function manifests itself in the norms regulating the course of collective labor disputes. Legal mechanisms limiting the right to strike stand out in this matter. It is worth emphasizing here that a legal strike can only be organized by a trade union[13]. For this reason, any strike actions inspired by non-union entities, including protest and strike committees, are illegal. The adoption of such restrictions is aimed at preventing the processes of anarchization of labor relations through spontaneous, and therefore hardly controllable, protests by employees. Another mechanism that performs organizational functions is the prohibition of collective disputes[14]. In particular, a collective dispute in support of an employee's individual demands is unacceptable if their resolution is possible before a labor court. This applies to all claims arising from the employment relationship and directly related to it. In the collective labor law system, collective disputes concerning the content of a collective labor agreement are also illegal if it has not been terminated[15]. This type of mechanism prevents dysfunctional work processes and is an important element of stabilizing the bonds between social partners.

In collective disputes, the most important tool of trade unions is the strike. *De lege lata*, it is legal only after negotiations and mediation[16]. In addition, when deciding to announce a strike, the trade union is to consider all the circumstances related to the reported demands, especially their commensurability that a strike may cause for the employer and the functioning of the workplace. Under no circumstances may the purpose of a strike be to ruin the economy of the employer or to cause as much damage as possible. Therefore, the organizer of the strike should abandon it if it is known in advance that the implementation of the employees' demands is economically unrealistic or will cause

[11] Cf. A. Tomanek [in:] *Zbiorowe prawo zatrudnienia. Komentarz*, ed. K.W. Baran, Warszawa 2019, p. 80 ff.
[12] Cf. K.W. Baran [in:] *Zbiorowe prawo…*, p. 159 ff.
[13] Cf. eg. J. Żołyński, *Aksjologiczne, normatywne i społeczne podstawy rozwiązywania sporów zbiorowych*, Gdańsk 2016, p. 276 ff.
[14] Cf. eg. K.W. Baran [in:] *Zbiorowe prawo…*, p. 470 ff.
[15] Cf. B. Wypchło-Grymek, *Prawne uregulowania w przedmiocie sporów zbiorowych a zasada zachowania pokoju społecznego. Studia z zakresu prawa pracy i polityki społecznej*, 1996, p. 21 ff.
[16] Cf. K.W. Baran, *Zbiorowe prawo…*, p. 464 ff.

irreparable damage to the employer, preventing the continuation of economic activity. In addition, a trade union declaring a strike is legally obliged to inform the employer about it. This warning should be given by announcing the strike five days before its commencement. The period between the declaration of a strike and its commencement is referred to as the strike alert. It does not limit any rights of the employer towards employees, nor does it create any special obligations for him/her.

The organizing function in the collective labor law is also performed by the prohibition of stopping work as a result of strike action at positions, devices and installations were giving up work poses a threat to human health and life[17]. This allows for uninterrupted operation of the plant and thus respect for organization and order in the work process. In addition, it is worth emphasizing that the employer may not be limited during a strike in the performance of duties and the exercise of rights with regard to employees who do not participate in the strike[18]. The strikers, especially during a sit-in strike, are to tolerate all actions of the employer and persons acting on his/her behalf, taken in order to maintain the functioning of the workplace, and to respect instructions and orders aimed at maintaining order and safety. For this reason, actions and, in some cases, also omissions by strikers that hinder the movement of the employer and its representatives around the workplace should be classified as illegal. It is illegal to limit the freedom of these people in any way. The use of direct coercion against them by the strikers is also a gross violation of the law. Even during a sit-in strike, employers should have free access to workstations where work is performed by persons not participating in the strike. He/she retains full managerial powers over them. What's more, as part of the organizing function, he/she may issue binding instructions to the participants of the strike in terms of protection of life and health and property.

Under the Polish collective labor law, the strike organizer is obliged to cooperate with the employer to the extent necessary to protect property and uninterrupted operation of facilities, equipment and installations, the immobilization of which may pose a threat to human life or health or prevent the restoration of normal operation of the plant. Therefore, it can be informal in nature – which seems to be the rule in Polish industrial relations, but also formalized. In the latter case, the social partners conclude an agreement on all organizational aspects related to the functioning of the workplace in the conditions of strike action.

When analyzing the organizational function of collective labor law, it is worth pointing out that it is also guaranteed by sanctions against an employee who takes part in an illegal strike[19]. This includes not only disciplinary penalties, but even ter-

[17] Cf. J. Żołyński, *Aksjologiczne…*, p. 383 ff.
[18] Cf. eg. K.W. Baran, D. Książek [in:] *Zbiorowe…*, p. 482.
[19] Cf. A. Chabrowska, *Odpowiedzialność pracownika za zorganizowanie i udział w nielegalnym strajku*, PPiPs 1994, no. 11, p. 39; M. Kurzynoga, *Odpowiedzialność prawna za strajk i inne formy protestu pracowniczego*, Warszawa 2018, *passim*.

mination of employment without notice due to a serious breach of basic employee duties. Participation in an illegal strike deprives the employee of all employment rights, including the right to remuneration.

Elements characteristic of the organizational function are also present in legal regulations other than the strike of protest actions[20] undertaken in collective disputes by employees. What I mean here is that industrial action, other than a strike, is illegal if started before the end of the negotiations. Such action should always be in accordance with the applicable legal order and may not limit the personal freedom of the employer or persons acting on its behalf. If it takes place on the premises of the workplace, then, as in the case of a strike, the trade union organizing it is obliged to cooperate with the persons managing the employer's structures.

From the point of view of the organizational function of collective labor law, sanctions that may be imposed on a trade union conducting an illegal strike or industrial action are of great importance[21]. First of all, it should be pointed out that the applicable legal norms penalize the management of an illegal strike or other protest action. In practice, this means that any person, not only a trade union activist, who disfunctionalizes the activity of the workplace with a protest organized against the law can be prosecuted. In particular, this applies to a situation where the strike was organized by a non-union strike committee, or the protest action threatens the life or health of employees.

The guarantee of the organizing function in collective labor law is also the civil liability of the organizer of an illegal strike or industrial action[22]. It is of a compensatory nature. In practice, the pecuniary aspect of the compensation is particularly important, specifically whether it covers the full loss or only the actual loss. Guided by the *lege non distinguente* directive, I conclude that both categories of damage are included. However, in practice, the actual loss is most often the result of an illegal strike or other industrial action. It can take various forms, most often it consists in the loss of the employer's property because of destruction or damage to his property. On the other hand, a typical *damnum emergens* is the necessity to pay a contractual penalty by the employer to his/her contractor as a result of failure to perform the contract on time as a result of an illegal strike. At this point, it is also worth emphasizing that the civil liability of the strike organizer also includes personal injury. This means that if there was a bodily injury, health disorder or even death because of an illegal strike or other protest, its organizer bears full financial liability towards the employer, but also third parties.

[20] Cf. B. Cudowski, *Pozastrajkowe środki prowadzenia sporów zbiorowych*, „Monitor Prawa Pracy" 2009, no. 4, p. 173 ff.

[21] Cf. M. Kurzynoga, *Odpowiedzialność prawna za strajk i inne formy protestu pracowniczego*, Warszawa 2018, *passim*.

[22] Cf. K.W. Baran, *Zbiorowe prawo…*, p. 504 ff; M. Kurzynoga, *Odpowiedzialność prawna za strajk i inne formy protestu pracowniczego*, Warszawa 2018, p. 424 ff.

Another level of performance of the organizing function are the mechanisms protecting the employer's interests during arrangement negotiations. One of them is the statutory obligation not to disclose information obtained from the employer that constitutes a trade secret[23]. Similar legal mechanisms apply to works councils and other participatory bodies at company level. Anti-crisis agreements, which may be concluded with trade unions in the event of the employer's financial situation deteriorating, are an important instrument for the performance of the organizational function[24]. They allow for the limitation of some employee rights, which will enable the company to reduce social costs and thus improve its financial condition. There are several agreements of this type known in the Polish collective labor law system. They also include the suspension of the company's collective bargaining agreement.

Summing up the considerations on the organizational function of labor law, I conclude that it is an important dimension in labor relations. It allows us to balance normative relations in the context of the protective function[25], which guarantees the interests of employees. Appropriate shaping of both functions in the normative sphere allows for maintaining homeostasis in labor relations, resulting in their sustainable development.

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[23] Cf. J. Piątkowski [in:] *Kodeks pracy…*, vol. 2, p. 1598 ff.
[24] Cf. K. Rączka, *Porozumienia zawieszające przepisy prawa pracy*, PiZS 2002, no. 11, p. 26 ff.
[25] Cf. A. Skąpski, *Ochronna funkcja prawa pracy w gospodarce rynkowej*, Kraków 2006, p. 80 ff.

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