Studia z Zakresu Prawa Pracy i Polityki Społecznej
Studies on Labour Law and Social Policy
2023, 30, nr 1: 1–7
https://doi.org/10.4467/25444654SPP.23.001.17603
www.ejournals.eu/sppips

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

THE REDISTRIBUTIVE (AND DISTRIBUTIVE) FUNCTIONS OF POLISH LABOUR LAW

Abstract

The article discusses the redistributive (distributive) function of labour law. Labour law standards are a fundamental instrument in the primary distribution of national income and are of vital importance for the quality of life of wide groups of employees. Their formation is an important factor in maintaining the homeostasis in employment relationships.

Słowa kluczowe: funkcja redystrybucyjna (rozdzielcza) prawa pracy, podział dochodu narodowego, wynagrodzenia pracowników

Keywords: redistributive (distributive) function of labour law, distribution of national income, employee salaries

ASJC: 3308, **JEL:** K31

The discussion of the issues of the redistributive (and distributive) functions of the labour law should, first of all, provide a definition of the function of labour law. This definition is necessary in the methodological aspect, as the term has several different interpretations. The starting point for further deliberations will be the assumption that, in the Polish legal doctrine, the function of law has two main meanings: the sociological and legal-teleological one (Zieliński 1986, pp. 39 ff; Ćwiertniak 2017, pp. 459–476). In the first meaning, it refers to all the consequences of the influence of labour law standards on the industrial relationships, including those of an atypical or even pathological nature. On the other hand, the second meaning defines the function of law as an *a priori* intended useful impact of labour law norms on the social reality. The dogma of labour law does not provide research instruments that would allow us to conduct a comprehensive, empirical analysis of the consequences of the binding regulations that regulate the status of employees on a national scale. This type of research is the domain of the sociology of law. Thus, in this study, I will focus solely on the legal and teleological definition of the redistributive function of labour law.

In the Polish legal system, the redistributive (or distributive) function consists in the application of the standards of this law by establishing mechanisms and procedures for the

distribution of material property and funds within the employment relationships and as part of the distribution of the national income. In economic sciences, the distribution of national income is divided into primary, secondary, and final (Marciniak 2005, *passim*). The first type of distribution consists in dividing the newly created value between the employees and the employing entity in form of widely understood remuneration and the accumulation of the funds of the enterprise. The second type takes place though the system of mandatory taxes and other public levies and the distribution of various types of benefits. Finally, the final distribution of the national income includes both the primary and secondary distribution. In this context, the question arises whether labour law norms are an instrument of the primary or secondary type of distribution? In general terms, the answer to the question formulated in this way should state that they are an instrument of both types. However, the proportions between them still require clarification. It seems that in industrial relationships, the labour norms more often realise the primary distribution of national income, in particular through the widely understood system of remunerations paid by the employers. However, their participation in the secondary distribution should not be underestimated, either, due to the scope of financial benefits paid in the budgetary sphere.

The issue that should be analysed in terms of the redistributive function of labour law is the problem of sources of labour law that are its instrument. One may start with the statement that all types of labour law sources realise this function, to a wider or narrower extent. Here, I mean in particular the statutory, contractual, and regulatory sources. In this context, one must not forget about the role of employment contracts in the redistribution of remunerations and other goods in employment relationships, although these contracts (Tomaszewska 2022, p. 365) as obligatory acts do not have the status of labour law sources in the Polish labour law system. Here, it is worth noting that in the practice of employment relationships, the redistributive function is realised simultaneously with help of various labour law sources, because they are subject to a specific interference or even diffusion in individual employment relationships. As a result, we are confronted with a plurality of labour law sources that shape the level of remunerations, and are frequently applied in form of a cascade, starting from the act, through collective arrangements, to various remuneration by-laws implemented by various employers both in the public and private sector.

Following the methodological directive of sequential dogma analyses, I will start the discussion of the redistributive function from statutory sources. In this aspect, the provisions of the Labour Code are at the forefront. The general directive in this matter is established in Art. 13 of the Code (Perdeus 2022, pp. 154 ff), with the principle of decent remuneration, but the specific conditions for the realisation of this law are defined in other provisions of labour law and government policy. The analysed standard has the status of a principle of labour law, yet its nature is not that of a claim, so the employee cannot demand higher remuneration from the employer solely on this legal basis. This provision is of a subsidiary nature, which means that it may be applied in a supplementary way in employment relationships. A more precise version of this principle can be found in Art. 78 of the Labour Code (Prusinowski 2022, pp. 980 ff). It states that the amount of remuneration for work should correspond in particular to the nature of work and professional qualifications necessary to perform that work, as well as to

the workload and quality of work. However, this regulation is only a general guideline for the parties to the employment relationship. It determines the amount of remuneration only indirectly, leaving the detailed calculation to the parties and to the influence of market factors. Law enforcement authorities, including labour law courts, do not have the competences to determine the amount of remunerations.

In the Polish legal system, the employee is entitled to remuneration for work performed. There are numerous exceptions from this rule, in particular if it is foreseen in regulations on statutory level. Some of the examples may include the situation when the employee undergoes mandatory medical check-up during working hours or uses special holiday due to fortuitous events. The employee is also entitled to remuneration for downtime, provided that he or she was ready to perform work. However, if the downtime was caused by default of the employee, no remuneration is due.

An important aspect of the redistributive function of labour law is the minimum wage. In the Polish legal system, it is grounded both in the Constitution (Art. 65 item 4 of the Constitution of the Republic of Poland), and in statutory regulations (Art. 13 of the Labour Code). In Poland, it has been determined regularly since 1956, and its role has been subject to frequent changes as various social, economic, and political transformations took place. It has, however, always been the category that defines the minimum income from remuneration guaranteed to the employee by the state. Currently, this issue is regulated in detail by the Act on Minimum Salary of the 2 October 2002. It defines not only the minimum wage of workers who are employed on a monthly full-time basis, but also to those who are employed on a part-time basis and to the minimum hourly rates for this category of employees. These provisions also apply to persons who perform work pursuant to various types of civil law contracts.

Apart from the statutory regulations that are commonly binding in the Polish legal system, there are also some industrial provisions that are regulated in various types of pragmatics. They may be divided into official and non-official pragmatics. It would be impossible to present all the binding statutory acts that are binding in this matter here, so, for the purposes of this article, I will focus only on some of them that are of particular social importance.

Let me start the discussion from self-government employees, who are the largest group of public officials in Poland. From the point of view of remunerations of this category of workers, the most important is the fact that the source of their financing is the local budget (e.g. of a municipality or poviat) that is separate from the state budget. As a result, the remunerations of self-government employees are often of a particular nature, depending on the decision of local authorities and, obviously, on the financial situation of the given self-government. The Act on Self-Government Employees foresees a wide range of various additional financial benefits apart from the base remuneration (Walczak 2021a, pp. 262 ff). Some of them are obligatory (e.g. special allowances for mayors or presidents of cities and heads of municipalities—Art. 36 item 4 of the Act on Self-Government Employees), while others are optional (e.g. bonuses and awards—Art. 39 item 2 of the referenced Act) (Walczak 2021a, pp. 295 ff). Thus, in practice, the remunerations in local self-government structures are highly differentiated. In the labour law doctrine, this model evokes certain doubts, so

postulates are formulated that the remunerations should be unified at least to a certain extent. This would doubtlessly contribute to limiting the voluntary aspect in shaping the remunerations of self-government employees.

On the other hand, the situation of civil servants is completely different (Walczak 2021b, pp. 536 ff). Regardless of whether they are employed based on appointment or an employment contract, the level of their remunerations is highly standardised. It is subject to multiplication by multipliers of the base amount specified in the Budget Act. In practice, the scope in which the employer may shape the remuneration policy at a public office is considerably limited.

Continuing the analysis of the redistributive function of labour law, it is worth mentioning also other industrial regulations that apply to remunerations in the public sector. These apply to persons who do not have the status of public officials. Classical examples are the statutory regulations for academic teachers who are employed at higher education facilities. The Act on Science and Higher Education regulates not only the elements of remuneration of persons who are employed in public higher education institutions (Art. 136) (Cudowski 2012, pp. 680 ff; Sierocka 2019, pp. 219 ff, but also the amount of the minimum base remuneration of an academic teacher. For example, one may notice that an assistant professor should receive a base remuneration that is not lower than 73% of the remuneration of a professor. The base remuneration of a professor is defined in an ordinance of the competent Minister. Obviously, by virtue of law, scientists and academic employees also receive other elements of remuneration that are regulated at the statutory level. This refers, first of all, to the length of service allowance in the amount of 1% for each year of employment at the higher education institution, although it cannot exceed 20% of the base remuneration. The law on higher education also foresees other types of benefits, such as function allowance or task allowance.

Similar redistributive mechanisms also apply to school teachers, whose status was regulated in the Act of the 26 January 1982—the Teachers' Charter. Art. 32 of this Act defines the elements of a teacher's remuneration in detail. The amount of the base remuneration of the teacher depends on the professional degree, the qualifications and the number of hours of mandatory classes conducted at the school. The funds for the remuneration of this group of employees are guaranteed by the state in the income of territorial self-government units (e.g. municipalities).

Other important factors in the redistribution of remunerations are labour law sources of a collective nature. This refers both to collective arrangements (Piątkowski 2022, pp. 1974–1976) and to other collective agreements. Although they do not have the universal quality in Polish industrial relationships, they constitute an essential redistribution mechanism in certain sectors. Provisions concerning remunerations often constitute the most important part of collective labour arrangements, both in internal and inter-company agreements. One may state that they may refer even to the remuneration system as a whole. Sometimes they define the pay scales and hourly rates. These are usually defined in form of ranges in the salary table. The normative sections of such arrangements also contain salary redactors, i.e. legal regulations that give the employer the right to lower remuneration in the event of extraordinary circumstances (e.g. downtime). In the conditions of high inflation rate, so-called indexation clauses are also important, as they enable to increase the salaries periodically, proportionally

to the increase in prices. The contractual regulations that function in the Polish employment relationships confirm the differentiation of the remuneration rights of employees, which is natural in market economy.

The redistributive function is also performed by the agreements concluded between trade unions and employers during collective disputes. *De lege lata* they may be signed both in the reconciliation and mediation phases, but also during the strike (Baran 2009, pp. 452 ff). Their subjects are usually pay raises and increasing other social benefits that are paid by the employer. If the provisions of such agreements are sufficiently precise, employees may pursue their rights in court. Similar mechanisms also function in collective disputes that are ultimately closed by a verdict of social arbitration collegiums (Baran 2019, pp. 461 ff). In its decisions, the collegium often follows economic criteria, such as the purchasing power of wages or their amount in comparison to the minimum wage or the national average salary.

Further elements that play an important role in the redistribution of funds are the so-called crisis agreements (Baran 2022, pp. 101 ff). They are concluded on the work establishment level if the economic and financial standing of the employer deteriorates. Their subject are the provisions on introducing less beneficial conditions of employment than those provided in the employment contracts or on limiting the social benefits. However, it is worth mentioning here that such arrangements must not result in conditions, including financial conditions that are worse than those foreseen in statutory and sub-statutory regulations.

Social arrangements, which are concluded at the national or regional level between public authorities and trade unions and employers, also perform a distributive function in the employment relationships. Although they do not affect the individual employment conditions directly, they shape them indirectly by means of general guidelines and mechanisms of redistributing the funds in industrial relations. *Natura rerum*, their provisions cannot be pursued in court by individual employees.

To continue the discussion of the distributive function of Polish labour law, one should mention the regulations of a strictly internal nature. Instruments that are particularly important in this matter in the practice of industrial relations are the rules of remuneration and the rules of granting bonuses and awards. The subject of the remuneration rules are provisions that regulate the remuneration system, personal payment grades, amount of allowances for working at night-time or overtime work (Prusinowski 2022, pp. 965 ff). On the other hand, the rules of granting awards and bonuses define the additional elements of remuneration to which employees of the given work establishment are entitled. Bonuses are of an obligatory nature if the employee meets the specified conditions, while awards are discretionary. The employer may freely define the manner of granting such awards, although only to such extent, to which they do not result in direct or indirect discrimination. As a result, the employee may pursue a claim for the payment of the award in labour court if the employer has violated the principle of equal treatment of employees.

In Polish labour law system, the protection of remuneration is an essential element of the redistributive function. The employee must not waiver this right or transfer it to another person. These bans are of an unconditional nature and their scope encompasses all statements

of will of the employee in this respect. Even if such statement of will has been made, it is invalid *ex lege* and thus does not cause any legal consequences.

The realisation of the distributive function is guaranteed by the provisions of the Labour Code which define the principles for the payment of remuneration (Prusinowski 2022, pp. 1019 ff). The employer should fulfil this obligation by cash payment (Pisarczyk 2002, pp. 32 ff). Other forms of fulfilling this obligation are acceptable only if the statutory regulation or collective arrangement foresee it. Limitations also apply to the deductions from the remuneration made by the employer. In the Polish legal system, the legislator has defined a *numerus clausus* of the liabilities that may be deducted from remuneration. Moreover, they may be deducted only pursuant to a court enforcement order or upon the consent of the employee. Maintenance obligations (alimony) awarded by court to the family, in particular children, have special priority.

To conclude the discussion of the redistributive (distributive) function of labour law, it seems justified to claim that it is vital for the quality of life of wide groups of employees. At the same time, it should be emphasised that the regulations on the remuneration of employees also perform certain other functions, which include, first of all, the protective and organisational function. This multifunctional nature of regulations on remunerations allows maintaining a homeostasis in the employment relationships.

References

Baran K.W. (2009) *Porozumienia zawierane w sporach zbiorowych jako źródła prawa pracy*, "Monitor Prawa Pracy," No. 9.

Baran K.W. (2019) [in:] K.W. Baran (ed.), *Zbiorowe prawo zatrudnienia. Komentarz*, Warszawa.

Baran K.W. (2022) [in:] K.W. Baran (ed.), *Kodeks pracy. Komentarz. Projekty nowelizacji Kodeksu pracy z komentarzem*, Vol. 1, Warszawa.

Cudowski B. (2012) *Kilka refleksji w sprawie wynagrodzenia nauczycieli akademickich zatrudnionych w uczelniach publicznych* [in:] J. Bieluk, A. Doliwa, A. Malarewicz-Jakubów, T. Mróz (eds.), *Księga jubileuszowa Profesora Stanisława Prutisa*, Białystok.

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

Marciniak S. (ed.) (2005) *Makro- i mikroekonomia. Podstawowe problemy*, Warszawa.

Perdeus W. (2022) [in:] K.W. Baran (ed.), *Kodeks pracy. Komentarz. Projekty nowelizacji Kodeksu pracy z komentarzem*, Vol. 1, Warszawa.

Piątkowski J. (2022) [in:] K.W. Baran (ed.), *Kodeks pracy. Komentarz. Projekty nowelizacji Kodeksu pracy z komentarzem*, Vol. 2, Warszawa.

Pisarczyk Ł. (2002) *Obowiązek prawidłowej i terminowej wypłaty wynagrodzenia*, "Praca i Zabezpieczenie Społeczne," No. 10.

Prusinowski P. (2022) [in:] K.W. Baran (ed.), *Kodeks pracy. Komentarz. Projekty nowelizacji Kodeksu pracy z komentarzem*, Vol. 1, Warszawa.

Sierocka I. (2019) [in:] K.W. Baran (ed.), *Akademickie prawo zatrudnienia, Komentarz*, Warszawa.

Tomaszewska M. (2022) [in:] K.W. Baran (ed.), *Kodeks pracy. Komentarz. Projekty nowelizacji Kodeksu pracy z komentarzem*, Vol. 1, Warszawa.

Walczak K. (2021a) [in:] K.W. Baran (ed.), *Ustawa o pracownikach samorządowych. Komentarz*, Warszawa.

Walczak K. (2021b) [in:] K.W. Baran (ed.), *Ustawa o służbie cywilnej. Komentarz*, Warszawa.

Zieliński T. (1986) *Prawo pracy. Zarys systemu*, Vol. 1, Warszawa, Kraków.