Abstract

The topic of this dissertation focuses on the use of mediation as an alternative method of settling labour law disputes to the judicial route and other solutions employed for collective disputes. The paper begins with the issue of conflicts in the workplace that can develop into disputes and can begin, in this form, their juridical existence. Therefore, it becomes essential to attempt to define and distinguish the notions of a conflict and a dispute on the grounds of labour law. In this respect, it is helpful to distinguish the conflict-related phases and typology as well as the conditions and causes of their emergence in the workplace, which, if no attempt is made to resolve them, become a dispute. The most frequently used method of resolving individual labour law disputes in Poland is submitting them to arbitrary court rulings, while out-of-court alternative forms of dispute settlement, including mediation, are used very rarely. On the other hand, mediation in collective disputes, although it constitutes an obligatory stage of the procedure of dispute resolution in Poland, seems to be a method underestimated by both the source literature and practitioners.

The dissertation aims at systematizing the issue of mediation in Polish labour law. The following stage of considerations shows mediation as an alternative and faster way of solving labour law disputes, which can enable the parties to enforce their claims or rights while maintaining other means of legal protection to which the parties are entitled. Bearing in mind the recommendations as to the integration of national solutions into the European legal culture, it can be observed that the currently binding national legal regulations concerning mediation in individual labour law seem to be insufficient, as they do not aim at effective implementation of the postulate of relieving the state judicature and accelerating the enforcement of labour law claims. In turn, in cases concerning collective disputes, the aspect of mediation, although it seems to be properly regulated in Polish legal provisions, often remains outside the common consciousness of the collective workforce, which can use this method not only on a compulsory basis in the course of an ongoing collective dispute, but also outside the dispute when the level of dissatisfaction of the workforce still remains at the stage of conflict with the employer. Therefore, an indispensable aspect of this paper is an attempt to answer the question concerning the effectiveness of legal regulation and the practical use of the potential of the institution of mediation in Polish labour law.

The realization of the assumed research objectives has been undertaken through the application of the theoretical-descriptive method, which permeates the entire work. Nevertheless, in some individual fragments of the dissertation the following methods have also

been used: formal-dogmatic, theoretical-legal, axiological, sociological and historical. The historical method was reflected in the chapter concerning the history of the origin of mediation. The application of the formal-dogmatic method was manifested by identifying and defining the concept of mediation. The theoretical-legal method was shown through the prism of possible changes in the Labour Code, such as the introduction to the Polish Labour Code of provisions concerning the institution of mediation as a method of resolving individual disputes with employers; the use of modified provisions concerning conciliation commissions as an instrument of the mediation procedure; the creation of intra-company rules of procedure in the case of individual disputes and the conduct of mediation; the assumption that the cooperation of employers with mediation centres will have positive effects in the form of relieving the national court system.

The axiological method was presented through the values underlying certain legal solutions, including the functions of mediation. The sociological method was applied through the analysis of the holistic dimension of the labour law dispute, which determines, by its nature, the need to use the institution of mediation as a method that identifies the justice system "with the human face of the essence of the dispute". This allows the participants in the dispute to regain their psychological balance, the dignity inherent to human beings, the protection of their personal rights, the understanding of the mechanisms of conflict and dispute in the workplace, which is of vital importance in further interpersonal relations.

The title of the thesis determines the direction and scope of the considerations undertaken in this paper. An in-depth analysis of mediation-related legal regulations in Polish labour law induces further reflections and a quest for an answer to the question to what extent the institution of mediation is present in Polish labour law.

After analysing the origins of the institution of mediation as well as its treatment in European and international law, it was necessary to compare the Polish legal regulations on mediation, as provided for in the Act on the Resolution of Collective Disputes, with the different regulation of mediation operating in individual disputes with employers that could be resolved by means of that procedure. Unfortunately, the scope of provisions referring to mediation in individual disputes within the scope of labour law is still found only outside the Labour Code, in provisions concerning general civil proceedings, which remains in this respect the only and not always fully compatible with the nature of employee disputes source of applying mediation in the said type of disputes.

When comparing the regulation of mediation in individual and collective disputes in Polish labour law, there emerges a basic difference between them. The difference consists in

differentiating the principle of voluntariness of mediation in these two types of disputes. At this point, another question arises as to the reason for the marginal use of the method in question in individual disputes, namely - whether the slow development of mediation in this field is not a result of allowing the parties too much freedom to choose a solution to their dispute, without imposing a greater rigour in the application of mediation even in a specific type of disputes from the scope of individual labour law. What is particularly noticeable is the lack of comprehensive legal regulations on the application of mediation procedures dedicated to individual labour law disputes and the legislator's inconsistency in this respect, which has led the author to formulate research tasks constituting the considerations included in this dissertation and to formulate *de lege ferenda* conclusions and remarks.