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Book review "Philosophical and sociological reflections on labour law in times of crisis" (E. von Adamovich, M. Zernikow eds.)

Recenzja książki „Philosophical and sociological reflections on labour law in times of crisis” (E. von Adamovich, M. Zernikow red.)

Abstract

The Covid-19 pandemic shook the foundations of labour law, making it legitimate to reevaluate whether the hitherto accepted standards remain valid not only in times of crisis but also beyond. The book under review was written at the very beginning of the global pandemic. The analyses conducted in it seem, however, to be relevant not only from the point of view of the development of the pandemic reality but also from the possibility of applying the analyses presented in it to post-crisis periods.

Keywords

Crisis, interdisciplinary research, labour law

JEL: K31

Streszczenie

Pandemia Covid-19 wstrząsnęła podwalinami prawa pracy, czyniąc zasadnym ponowne zweryfikowanie, czy dotychczas przyjęte standardy pozostają aktualne nie tylko w czasach kryzysu, ale również poza nim. Recenzowana książka powstawała na samym początku globalnej pandemii. Przeprowadzone w niej analizy wydają się być jednak trafne nie tylko z punktu widzenia rozwoju pandemicznej rzeczywistości, ale również możliwości aplikowania analiz w niej zaprezentowanych na okresy post-kryzysowe.

Słowa kluczowe

Kryzys, badania interdyscyplinarne, prawo pracy

The general scope of the book

Philosophical and sociological reflections on labour law in times of crisis was published in 2022 by Cambridge Scholars. As its editors — Eduardo von Adamovich (an Associate Professor in the Faculty of Law at the University of the State of Rio de Janeiro, Brazil) and Marcel Zernikow (a Lecturer at the Université Bretagne Sud, France, and a Research Associate at the Institut de recherche juridique de la Sorbonne, France) indicated in the introduction, the book was created with an initial assumption that crisis forms essential part of labour law. The book presents this international compendium of

essays written by labour law researchers from different countries — mostly in English (19 chapters), with three chapters in Spanish¹.

It must be noted that Covid-19 was only in its beginning stages when the call for contributions to the present book was launched — as the Editors point out, yet it was clear that this crisis would have further social and economic consequences in all countries. The editors assumed that the connecting point between all of the contributions collected within the publication was that they draw reflections from other disciplines (mainly philosophy, sociology or economy) to demonstrate what characterises labour law as a legal branch.

In 438 pages, the book offers an interdisciplinary analysis covering a very broad field of questions, which the editors have aptly centred around four broader areas:

□ Part 1: Theoretical Bases for Reflecting on Labour Law: Lessons from Philosophy and the Sociology of Law

□ Part 2: The Essence of Labour Law: On Universal Principles and Diverging Legal Rules

□ Part 3: New Parameters for the Evolution of Labour Law

□ Part 4: The Future of Labour Law: Reflections on the Role of Labour Law in Future Scenarios

In what follows, each of these parts will be discussed separately.

Theoretical Bases for Reflecting on Labour Law: Lessons from Philosophy and the Sociology of Law

The first part of the book – Theoretical Bases for Reflecting on Labour Law: Lessons from Philosophy and the Sociology of Law – consist of 5 chapters (out of which four are prepared in English). According to the editors' assumption, this part was about the theoretical bases from philosophy and sociology which are required for reflecting on labour law.

The first chapter *Some Reflections on the Philosophy of Law and Labour Law* (by Giuseppe Casale). In his arguments, the author discusses how various developments in the philosophy of law have influenced (and continue to influence) labour law. He refers to (i. e.) analytical jurisprudence (whose influence he sees in the common law tradition), normative jurisprudence, critical theories of law, women's jurisprudence or feminist jurisprudence. This chapter should be considered valuable in referring to the axiological basis of labour law, which is often forgotten in analysing the phenomena that occur globally in the world of work.

Leonor Suárez Llanos, the Author of the second chapter (*The Critical Concept of Work as a Key to Justice*) focuses his analyses on an investigation of a critical concept and justification of what work is: its reifying, redistributive and recognition scope, through deconstruction and a reconstruction of the complexity of the concept and the need to reasonably manage its conditions, objectives and consequences, without "occurrences." The author perfectly meets the accepted assumptions, while introducing an interesting stylistic manoeuvre in the text 'The three R's'. The letter refers to a critical look at three issues: 1) R-ecognise who works; 2) R-edistribution (from the perspective of the phenomena of universal income, alienation, and labour slavery); 3) R-epresentation.

The third chapter in this part is written by Eduardo Henrique Raymundo von Adamovich and is titled *Re-Constituting Labour Law: How Different is it to Think Labour Rights and Improving them in*

Post-Modernity? In his reflections, the author points out the obstacles that lie at the heart of the creation of a good labour law. In doing so, he leaves no doubt that most of them are politically motivated and are associated with decisions regarding the value systems adopted.

The final English-language chapter in this section (*The Advent of Labour Law: Rereading Philosophers and Sociologists*) was prepared by Marcel Zernikow. The author aptly demonstrates how philosophical and sociological tools of analysis can be used in the study of labour law. Understanding labour law from a sociological point of view, according to the author, can be particularly relevant in times of crisis, as could be observed during the Covid-19 pandemic.

The first part of the book, for obvious reasons, presents only selected aspects of the intrinsically complex relationship of labour law with sociology and philosophy. It nonetheless provides a very good starting point for the analysis of the further topics presented, allowing the reader to look at them in a broader/multi-contextual manner.

The Essence of Labour Law: On Universal Principles and Diverging Legal Rules

The second part of the book provides an outline of how the legal discipline has mobilised institutions and concepts to combat the widening social inequalities resulting from social change. This part consists of two sub-parts: 1) *Regional or Country-Specific Reports*; 2) *Universal Principles*.

Four chapters contribute to the *Regional or Country-Specific Reports* subpart. The first one (*The Socialisation of Economic Risk and the Redistribution of Liabilities*) by Nicole Maggi-German focuses mainly on the body of French literature. The author considers, in a universally applicable manner, to what extent traditionally created labour law mechanisms should coexist with the employee protection guaranteed by companies, as embedded in public employment policies.

The next chapter by Eva Kocher (*Individual Rights as a Critique of Labour Law Collectivity: Looking at Labour Law from the Perspective of its Outsiders*) focuses on the interdependence of individual rights/interests of workers in the context of collective rights/interests. The author demonstrates that very often the desire to realise an individual right does not go hand in hand with the general interest, although they often cannot be realised outside the collective support that the individual receives.

Vincenzo Pietrogiovanni in his chapter *The Carrot Rather than the Stick! An Italian Introduction to Promotional Labour Law*, draws attention to positive sanctions in Italian labour law. By describing the mechanisms of positive and negative sanctions, the author comes to the rational conclusion that their coexistence is not only possible but above all necessary.

The last chapter in the first sub-part was written by Monika Uhlerová and Marek Švec (Collective Labour Law and Trade Union Paradoxes in the Slovak Republic). In describing the peculiarities of the functioning of Slovak collective labour law, the authors draw attention to the decline in trade unionism, the regulatory stability of collective labour regulations (that is contrary to the real need for change), and the provisional nature of the actual protection of employee representation.

The chapter which opens the second sub-part of the second part of the book is *Collectivity – An Original Feature of Labour Law* by Mirosław Włodarczyk. In his reflections, the author proves the existence of one of the original features of labour law – its collectivity, which, when organised in the right way, has a positive impact not only on the situation of the direct beneficiaries of the actions of the collective representation of employees.

The next chapter (*The Importance of Trade Unions and Their Role in Social Protection at Times of Crisis*) by Nelson Mannrich and Alessandra Barichello Boskovic continues to reflect on the necessity of systemic solutions of a collective support nature, operating at a time when workers' rights are particularly at risk (the Covid-19 pandemic was such a time).

The last of the English language chapter – *The Right to Laziness: The Missing Link in Terms of the Development of the Basic Income* by Alexander De Becker and Flore Claus addresses the very relevant issue of basic income in the current discourse, confronting the right to it with the right to rest and even the right to laziness. The authors focus their reflections on changing the currently accepted capitalist paradigm: I live to work, to I work to live, or even (simply): I live. In the latter view, work is a mere element of life, rather than its primary actor.

The second part of the book focused on subjectively selected essential aspects of labour law that require special protection in times of crisis. In doing so, it remains clear that the singling out of particular values as 'essence' is linked to the axiology and value system adopted.

New Parameters for the Evolution of Labour Law

The subsequent part of the book consists of four chapters which illustrate recent economic (fragmentation and flexibility), societal (minorities and migration) and technological (online platforms and new kinds of work relationships) evolutions.

The first chapter – *Changes in employment relations due to digital platforms* – by Jordi Garcia Vina discusses one of the phenomena that has influenced the labour law discussion the most in the last decade. The author demonstrates that the introduction of platform work has caused people to think about employment from

completely different perspectives, expanding its conception.

The Fundamental Right to Strike: Replacing Humans with Machines as a Result of Technological Development and the Virtual Strike – by Claudio Teixeira Damilano and Gilberto Stürmer demonstrates how strikes can be used as a mechanism to ensure equality and to help workers negotiate their rights when they are replaced by machines or lose their livelihood due to economic crisis. The chapter looks ahead in its reflections, but, as experience shows, not far into the future.

Alfredo Sánchez Castaneda is the author of the next chapter – *A Labour Reality in Constant Transformation: The Need for New*. The latter concentrates on inequalities in the labour market caused by globalisation, and trends in the evolution of labour law (including its disappearance/marginalisation) highlighting that the contemporary philosophy of labour law is different from that which underpinned its creation.

Last chapter in this part of the book – by Martin Štefko – *The Key Task of Labour Law in the Post-Covid Period: How Do We Provide for Employees' Health and Help the Affected?* identifies which elements of the Czech system for providing workers' health will need special attention after the pandemic. The author suggests that special attention should be given to the functioning of critical infrastructure, mechanisms to enforce testing and vaccination, and voluntary participation of employees in emergency operations.

The analysis presented in the relevant part of the book aptly responds to the book's ambitions to go beyond the examinations of labour law of pandemic times. The chapters provide a compelling illustration of a variety of current phenomena in the world of work.

The Future of Labour Law: Reflections on the Role of Labour Law in Future Scenarios

The last part of the book intends to remind the reader that, if we take previously analysed facts seriously, we can shape the future of work. In its first chapter (*Challenges for Labour Law*) Manfred Weiss elaborates on the goals of labour law (i. e., the concept that 'labour is not a commodity' and adaptation of new conditions (i. e., demarcation between employment and self-employment) realising that the instruments of labour law must be adapted to an ever-changing reality.

Rulaca Dimitriu in the chapter *The Worker within the New Paradigm of Labour Law: Between Solidarity and Loneliness*, argues that despite the many opportunities for collective representation of workers' interests, often the worker is alone. Phenomena such as digitalisation, human resource management methods, internal and external competition and Covid-19 have contributed to/caused this loneliness.

'Beyond the Fence' – Re-Thinking, Re-Shaping, Re-Commodifying by Calogero Massimo Cammalleri bases its reflections on the idea that the employment contract/relationship is a fence that, among other roles, functions as a regulator of rights and protections. Changing legal realities and economic conditions have meant that the way in which this fence fulfils its defensive role must be re-defined.

Last but not least important contribution – Capitalism, Doughnut Economics, Eldorica and the Role of Labour Law by Beryl Ter Haar points to the inequalities occurring in the world of work that are worsening due to the Covid-19 pandemic. For this reason, the author looks for the key to the fight for better standards in the world of work in various socio-economic concepts.

The outlined supra part of the book might be treated as a kind of signpost, a road map for the further development of labour law institutions. Not so much in times of crisis, but after the crisis and during important transformations in the world of work.

Conclusions

The book ends with Conclusions, compiled by its editors. The summary was intended to carry out a rather breakneck search for the common contexts of the individual chapters.

When analysing the relevant publication, it must be firmly stated that it is a valuable work and, in many

respects, due to the importance and novelty of the topics dealt with, of a precursor character. What remains somewhat inconsistent is the failure to fulfil the assumption initiating the publication – basing it on the experience resulting from a crisis – the Covid-19 pandemic. This does not mean that the phenomena described in the book and the manner of their analysis are wrong/unnecessary. Quite the contrary. Still, one cannot agree that phenomena such as platform work or robotisation are directly related to the pandemic. For sure they may have exacerbated nonetheless to some extent certain developments.

The above, however, does not alter the fact that the book is a very timely and thought-provoking contribution to the already abundant literature on the contemporary challenges facing labour law. In doing so, it gives a good dose of analyses on the philosophy of labour law and its sociological aspects, in order to contemplate the mechanisms of labour law while not forgetting about charting its new paths. The true strength of the book constitutes its structure. It encourages the reader to venture, according to his curiosity, through the different trajectories proposed, without imposing a demonstration closed on itself. In summary, the book allows everyone to become aware of the end of a legal order perceived as a static equilibrium', in the sense that labour law which, until now, would have been designed for straight lines, should now reinvent itself to project itself onto rather uncertain trajectories.

Notes/Przypisy

¹ The Spanish-language chapters of the book are not analysed in this review.

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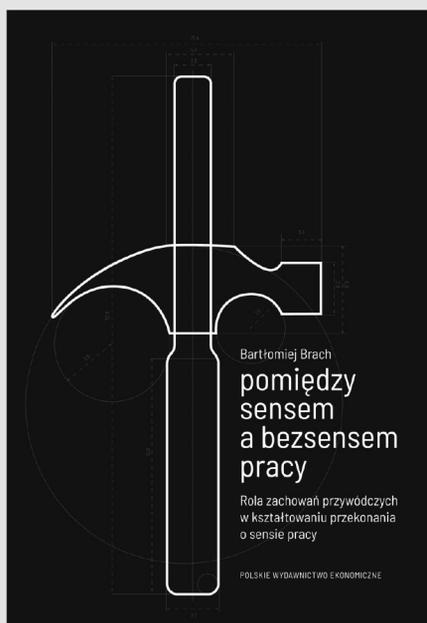
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Bartłomiej Brach

POMIĘDZY SENSEM A BEZSENSEM PRACY. ROLA ZACHOWAŃ PRZYWÓDCZYCH W KSZTAŁTOWANIU PRZEKONANIA O SENSIE PRACY

Jak słyszę „poczucie sensu”, to nie mam w głowie konkretnego obrazka, ale jakąś ideę. Praca, która ma sens, to taka, która wywołuje zmianę. Jestem jej elementem, mam na nią wpływ, a nie dzieje się obok mnie albo pomimo mnie. Tylko jakoś jestem nią w stanie albo zarządzić, albo współzarządzać. Uczestniczyć w niej. No i ta zmiana dotyczy społeczności albo społeczeństwa, czyli nie jest to zmiana korporacyjna, typu: zmiana postrzegania marki...

Kiedy badani opowiadali mi o sensie wykonywanej pracy, wskazywali na jego bardzo różne źródła, między innymi przekonanie o pozytywnym wpływie wykonywanej pracy na otoczenie, co dość dobrze ilustruje powyższy cytat – słowa pracowniczki z miasta średniej wielkości. Choć badani wskazywali na różne źródła sensu, łączyło ich kilka wspólnych cech, których nie byli świadomi. Wszyscy byli silnie zaangażowani w pracę, mocno przywiązani do organizacji i ponadprzeciętnie zadowoleni z pracy. Niestety, to przekonanie o sensie pracy zazwyczaj nie trwało długo. W książce pokazuję, jak menedżerowie, często nieświadomie, zamiast przyczynić się do wzmocnienia poczucia sensu u podwładnych, swoimi działaniami prowadzili do sytuacji, w których praca sens traciła, a nawet zaczynała być przez badanych określana jako „bezsensowna”. Wówczas zamiast zaangażowania pojawiał się cynizm, przywiązanie zamieniało się w chęć odejścia, a satysfakcja – w żal. Dlatego jest to książka pisana ku rozwadze. Przełożonym pomoże tego negatywnego wpływu na sens pracy unikać. Pracownikom pozwoli przed utratą sensu się zabezpieczyć. Wszystkim, mam nadzieję, uświadomi, że pytanie o sens pracy nie powinno być tylko domeną filozofów. Powinno towarzyszyć każdemu z nas, pomagając w pracy zobaczyć to, co wartościowe i ważne.

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