

INTRODUCTION

Labour law is viewed as a branch of law which combines some elements of private autonomy and public intervention. The emergence and development of labour law may be treated as a response to the lack of equilibrium between the owners of the means of production and the workers carrying out their duties in a condition of subordination. As a result, the deepest justification for the determination of labour standards by public authorities is the protection of the employee as a weaker party to the employment relationship. The same role is in fact played by collective labour law, which establishes a legal framework for the social dialogue conducted by employers or their organizations and collective bodies representing employees. As a rule, the position of trade unions and other subjects representing workers is equal to the position of the employer. Thank to this, the legislation may leave room for free negotiations. From this perspective, collective labour law reflects the ideas of freedom and democracy. In many countries the autonomous process of shaping the conditions of work and pay constitutes one of the foundations of the socio-economic system.

In Poland, the position of collective labour law is more complicated. Before 1989 there was no room for real negotiations, bargaining and collective agreements. The state was the main owner and organizer of any and all economic activity. As a result, employment standards were determined mainly by statutory provisions. The situation changed when the transition to the new socio-economic system began. The foundation of the system should be social dialogue leading to the creation of autonomous sources of labour law. The Constitution and the legislation guarantee freedom of association and the functioning of the social partners. They are able to negotiate freely to determine employment conditions. Unfortunately, the social dialogue is undergoing a deep crisis. Trade union membership has significantly decreased, there are no alternative elected bodies and the employers' organizations are also weak. As a result, only a relatively small group of Polish employees are covered by collective agreements. This leads to two observations. Firstly, there is a huge discrepancy between the constitutional

declarations and the reality. Secondly, despite the glorious history of the Polish trade unions (the “Solidarity” movement), the main role in shaping the employment relationships is still played by legislation.

Finally, it is necessary to stress that collective labour law in Poland is undergoing a continuous evolution. The legislation is being adjusted to the changing circumstances. A very important role is being played by the economic crisis as well as by the changing structure of employment. At the moment, a large number of workers are engaged on civil law contracts (contracts for services, self-employed). Until now, the protection offered to them by collective labour law has been very limited. The majority of workers employed outside the employment relationship did not have the right to form and to join trade unions. These rights were granted to employees only (with some exceptions) while the ILO’s standards cover workers. The concept of worker is treated as a broader one than the concept of employee in a strict sense. A broader approach to the freedom of association may be also derived from constitutional provisions: the Republic of Poland shall ensure freedom for the creation and functioning of trade unions (Art. 12); the freedom of association in trade unions shall be ensured (Art. 59.1)¹. The current solution will have to be changed due to the judgment of the Constitutional Tribunal of 2 June 2015². The Tribunal stated that the provisions of the Law on Trade Unions that limit the rights of persons employed outside the employment relationship (persons performing gainful activity) are inconsistent with Art. 59(1) in conjunction with Art. 12 of the Constitution. According to the Tribunal, the legislator is not absolutely free in determining the personal scope of the freedom of association. As a result, it is necessary to reconstruct its legal framework. The Law on Trade Unions must not overlook the rights of workers who are not employees (including those engaged on civil law contracts). The ruling did not undermine the definition of the employee arising from the Labour Code. At the moment, we are awaiting the amendment to the Law on Trade Unions. We are also looking forward to another important change. The Tripartite Commission for Socio-Economic Affairs is going to be replaced by the Council of Social Dialogue. The new institution is intended to promote and to support social dialogue, which is undergoing a serious crisis (particularly at the national level). The Council will consist of representatives of employees, employers and the government. The members of the council will be designated by main (representative) trade unions and employers’ organizations. There is also a plan to establish provincial councils of social dialogue. The Law on the Council of Social Dialogue and other institutions of social dialogue was enacted on 25 June 2015. The legislative process has not been completed yet.

¹ Translation of the Constitution of the Republic of Poland on sejm.gov.pl.

² Case K 1/13.

Finally, it is necessary to explain the idea behind this volume. Over the recent years there has been no comprehensive set of texts in English that would discuss the specific features and the current situation of collective labour law in Poland. A great opportunity appeared in 2010 with the international scholarly conference commemorating the 30th anniversary of “Solidarity” that took place in Gdańsk. The scholars prepared a series of articles covering the main aspects of the contemporary collective labour law in Poland³. After this conference, we decided that there is a need to adapt these texts for foreign readers. Consequently, the texts were revised so as to enable such readers to understand the development, the legal constructions and the future prospects of collective labour law in Poland. These essays constitute the core of this volume. The articles discuss the situation of the social partners, the instruments of social dialogue (collective negotiations and bargaining, collective agreements) as well as some forms of employee engagement in company matters. We do hope that this journal may be very important for all those who want to read about the Polish collective institutions in English – for scholars, students, but also entrepreneurs and foreign companies. We believe that such a collection may play an important role in development of the Polish academia, being also a contribution to supporting the social dialogue in Poland.

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³ The texts were published in Polish: *Zbiorowe prawo pracy w XXI wieku* [Collective Labour Law in 21st Century], A. Wypych-Żywicka, M. Tomaszewska, J. Stelina (ed.), Gdańsk 2010.