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# Collective accords in Polish labour law

*Preliminary remarks*

The Polish Labour Code after it was amended in 1996 recognizes as sources of labour law not only collective labour agreements, but also other collective agreements (art. 9 § 1 Labour Code – L.C.). Also the Polish Constitution as of 1997 recognizes the right of trade unions to conclude collective labour agreements and other collective agreements (art. 59.2). The latter will be further on referred to as "collective accords", in order to clearly differentiate them from collective labour agreements. Taking into consideration this differentiation the term "collective accords" can also cover Basic Agreements, as they also result from an agreement between social partners but they are not identified with collective labour agreements.

It is not easy to define the subject nor the legal character of collective accords since statutory provisions defining them have been created quite recently and they are not clear enough. Moreover the collective accords practice is not yet fully shaped and partially originates from before the above statutory provisions were created. That is why the practice as well as the legal character of collective accords are the subject of a discussion which is taking place in the Polish law doctrine. In this study we will present main issues which are the subject of this discussion as regards each type of collective accords.

*I. Basic agreements*

Basic agreements started in Poland with Social Agreements concluded in August 1981 by the communist authorities with workers' strike committees. A belief prevails that these Agreements had a character of political and social pacts, however some of their provisions without a doubt refer to collective labour relations. Also the 1989 Round Table Agreements had a character of

political and social agreements even though they also contained some important provisions concerning directly labour relations.[1]

After 1989 the most important basic agreement was the State Enterprise Pact, concluded in 1993 between the Government, trade unions and employers' organisations.[2] It aimed at obtaining the trade unions' approval for restructuring state-owned enterprises, consisting mostly in their privatisation and reduction of employment. In exchange for that, the following was agreed in the Pact: employees' participation in the shares of privatised enterprises, increase of the freedom to negotiate wages in plant agreements, guarantee of minimum welfare benefits from plant social funds as well as the creation of guarantees for employees' remuneration in case the employer loses his solvency. An important part of the Pact consisted in the government's commitment to present some drafts of new laws to the Parliament and the draft of a new regulation for collective labour agreements was among them of the greatest importance.

The Pact's provisions were implemented only partially, however it resulted in the adoption of the Act on the Protection of Employees' Claims in case of the Employer's Insolvency (1993) and of the Act on the Plant's Social Fund (1994) as well as in a thorough change of the Labour Code provisions on collective labour agreements and on safety and hygiene at work. That Pact proved that basic agreements could play a constructive role in the harmonisation of economic and social interests, in particular in a difficult process of building a market economy in Poland. It is also important that the consensus was reached by way of a dialogue with social partners, that guaranteed the social peace. The Enterprise Pact preceded the recognition of the dialogue and cooperation of social partners as one of foundations of the economic system in Poland by the new Constitution as of 1997 (Art. 20 of the Constitution).

The 1993 Enterprise Pact had another important consequence i.e. the establishment of the Tripartite Commission for Social and Economic Affairs in 1994.[3] The Pact's signatories decided that it should be created in order to supervise the enforcement of the Pact. Moreover, the Commission was to constitute a forum for a cooperation between the state administration, trade unions and employers' organisations, aiming at finding a common position as regards the government's social and economic policies.

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[1] See M. SEWERYŃSKI: Les accords de la Table ronde et les rapports de travail en Pologne. *"Revue internationale de droit compare"* 1989, no. 4, s. 1005–1015.

[2]. See J. WRATNY: Pakt o przedsiębiorstwie państwowym w trakcie przekształcania – omówienie i dokumenty *(Pact on state-owned enterprise in the period of transformation – comments and documents), Bydgoszcz 1993.*

[3] See E. SOBOTKA: Role of Tripartite Commission for Social-Economic Affairs in the development of collective labour relations in Poland, in: *Polish Labour Law and Industrial Relations in the period of Transformation*, ed.: M. Seweryński, Warsaw 1995, pp. 81–96.

With no doubt the founders of the Tripartite Commission intended to make of it not only a forum for consultations, but also for concluding basic tripartite agreements. In reality, such agreements were rarely concluded and they were not always officially called "basic agreements", but the consensus reached by the Commission's parties played such a role in practice. The typical subject of an agreement constituted mainly rules for raising wages, that the government wanted to influence this way in order to keep an economic balance. Quite often tripartite agreements referred to a legislative policy in the field of the labour law and social security. A positive opinion on a fundamental reform of the retirement pension scheme, which was conducted in Poland between 1997 and 1998, expressed by the Tripartite Commission, played a particularly important role.

In order to establish proper legal grounds for the Commission's activity and to reinforce its position, the Act on the Tripartite Commission for Social and Economic Matters and on Regional Commission for the Social Dialogue was adopted in 2001.[4] The Act made the Commission a forum for a social dialogue, conducted in order to reconcile the interests of employees and those of employers and the common good. Pursuant to the Act, the dialogue aims at keeping social peace. The dialogue can cover social and economic matters. Each of the Commission's parties may have its own standpoint for each of the deliberated issues and employees together with employers may have a common standpoint as well. Moreover, the social partners represented within the Commission may also conclude collective labour agreements, as well as other collective accords. The Act created grounds for a decentralisation of the social dialogue, entitling heads of Regions to establish Regional Commissions for the Social Dialogue. These Commissions are of a quadripartite character, as they are composed of: representatives of trade unions, employers' organisations, local self-government and the Government.

The Act of 2001 maintained the possibility for the Tripartite Commission to conclude basic agreements, however they were given a new shape. The basic change consisted in allowing only for bilateral basic agreements, to be concluded by employers' and employees' parties represented in the Commission. These can be multi-employers collective agreements, covering employers associated in organisations represented in the Tripartite Commission, as well as collective accords that do not regulate labour relations but define mutual commitments of employers and employees represented at the Commission. The 2001 Act does not contain a clear prohibition to conclude tripartite basic agreements. There are also no obstacles for tripartite basic agreements to be concluded outside the Tripartite Commission, if such is the will of the government and of social partners. Nevertheless, since the adoption of the 2001 Act no such agreement has been concluded so far. It is also possible

[4] *Journal of Laws* 2001, number 100, item 1080.

that the government will be concluding bilateral basic agreements with different confederations of trade unions or employers' organisations looking for at least a partial support of social partners for its policy.

The legal doctrine got interested in basic agreements once such first agreements were concluded in 1981 and under the influence of experiences stemming from their implementation.[5] In particular, it was underlined that these agreements allowed for reconciliation of the employees' demands with the economic situation in Poland and they could also allow for obtaining the social approval for the economic policy, granting this way social peace. The latter aspect is of a particular significance during periods of crisis and when it is necessary to make fundamental structural modifications of the economy, as it is currently happening in Poland.[6] The research on basic agreements in Poland was also inspired by experiences in this field gathered by other countries.[7]

As far as the 1981 basic agreements are concerned, as well as the Round Table Agreements of 1989, there is a common view according to which these were social and political pacts. It is true, however, that the first[8] as well as the second ones[9] contained also numerous provisions relating to labour relations, but political stipulations, which required a transposition into legal provisions, prevailed. It was possible to apply directly only some provisions as e.g. those relating to the right to strike.

As far as the position of the legal doctrine in reference to basic agreements concluded on the forum of the Tripartite Commission is concerned, it was more diversified. Some labour law scholars were inclined to see in such a basic collective agreement a regulation defining the legal frame for collective

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[5] Por. W. SZUBERT: Kierunki rozwoju zbiorowego prawa pracy (Directions of Labour Law Development), *"Państwo i Prawo"* 1981, Number 6, pp. 20–21; J. JOŃCZYK: Zbiorowe stosunki pracy (Collective Labour Relations), *"Państwo i Prawo"* 1981, Number 8, pp. 23–24; T. ZIELIŃSKI: *Podstawy rozwoju prawa pracy* (Foundations of Labour Law Development), Warszawa–Kraków 1988, pp. 125–126; M. Seweryński: La réglementation juridique de la rémuneration du travail en Pologne dans le contexte de la réforme économique, „Les Cahiers de droit", Université Laval, Québec, vol. 30, no. l; J. WRATNY: Porozumienie generalne jako instrument kształtowania polityki społeczno-gospodarczej państwa [w:]. Prawo pracy a reforma gospodarcza (Basic Agreement as an Instrument of Shaping Social and Economic Policy of the State, in: *Labour law and Economic Reform*), Poznań 1989, pp. 231–247.

[6] See J. WRATNY: supra note 5 at 237.

[7] See Selected Basic Agreements and Joint Declarations on Labour Management Relations, Geneva 1983.

[8] As far as the character of 1981 agreements is concerned see: L. GARLICKI: Refleksje nad charakterem Porozumienia Gdańskiego (Reflexions on the Character of Gdansk Agreement), *"Państwo i Prawo"* 1981, Number l; M. PLISZKIEWICZ: Porozumienia ogólnopolskie i ich znaczenie dla prawa pracy (National Agreements and their Importance for Labour Law), *"Państwo i Prawo"* 1981, Number 6; J. FRĄCKOWIAK: Prawne znaczenie Porozumienia Gdańskiego (Legal Meaning of the Gdansk Agreement), *"Państwo i Prawo"* 1981, Number 7.

[9] See M. SEWERYŃSKI: Les accords de la Table ronde et les rapports de travail en Pologne, *"Revue internationale de droit comparé"* 1989, Number 4, pp. 1005–1015.

agreements, concluded on lower levels.[10] The main argument speaking in favour of such a position was constituted by a provision from the first legal regulation of the Commission's status stating that agreements concluded on the forum of the Commission were of a binding character. It was also pointed out in favour of that opinion that the main aim of basic agreements consisted in stopping claims of trade unions as regards wages and in harmonising them with the economic situation in Poland. Thus, the easiest way to obtain such an effect consists in considering basic agreements as those that provide for a legally binding frame, addressed to trade unions and employers negotiating collective agreements on lower levels. Trade unions also supported the position on the binding character of basic agreements because they saw in it a source of the government's commitments which are favourable for employees. As regards arguments speaking against the recognition of basic agreements as legal regulations, they are reduced to the fact that agreements do not contain precise norms, but only give a direction for the government's policy or define general commitments of employers towards employees. Such stipulations are certainly of a social and political character, although they can influence the content of collective labour agreements.[11] Another argument that speaks against considering basic agreements as collective labour agreements is that this would lead to the establishment of a too strongly structured model of collective agreements and this, in consequence, would limit the possibility for trade unions to undertake collective actions towards employers and the government, limiting particularly the possibility to use the right to strike.[12]

First opinions on basic agreements stressed also that they should have a tripartite character, as a result of negotiations between the state, trade unions and employers' organisations. As far as the state is concerned, even though the Constitution clearly recognizes market economy as a basis for the economic system in Poland, the role of the state in the economy remains important. Thus, it is difficult to exclude the state as a party to a basic agreement and to limit the latter to an agreement between trade unions and employers. As far as the content of agreements is concerned, it was believed that they should, above all, define rules for wage increase and minimum wage, as well as the matters of social and employment policies.

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[10] See W. SZUBERT: supra note 5 at 20; J. JOŃCZYK, supra note 5 at 23–24; T. ZIELIŃSKI: Dyferencjacja i jedność prawa pracy [w:], Studia z prawa pracy (Differentiation and Unity of Labour Law, in : *Studies on Labour Law*), Warszawa 1990, p. 23; H. LEWANDOWSKI: Le rôle des accords collectifs dans le droit du travail polonais, in : *Les accords d 'entreprise*. Łódź 1991, p. 49; M. SEWERYŃSKI: La réglementation juridique de la rémuneration du travail en Pologne dans le contexte de la réforme économiaue, *"Les Cahiers de droit"*, Universite Laval, Québec, vol. 30, no. l, pp. 59–60.

[11] See J. WRATNY: supra note 5 at 245–246.

[12] See B. WAGNER: Kilka uwag w sprawie rokowań kolektywnych (Some Remarks on Collective Bargaining). *"Zeszyty Naukowe UJ-Prace Prawnicze"*, 1991, z. 138, p. 33–34.

The issue of the legal nature of basic agreements reappeared in the light of the 2001 Act on the Tripartite Commission. This Act not only gives basic agreements the form of bilateral agreements: employees – employers, but it also allows for concluding on the forum of Tripartite Commission regular collective labour agreements, regulating labour relations. Therefore, there is no doubt that the Act gives these agreement a regulatory character. In theory there can be no reservations towards such a regulation as it is consistent with the employees' and employers' freedom to conduct collective bargaining. However, it is doubtful whether such generalised collective agreements can play a real regulatory role, in particular in the field of wages that require a differentiation as regards the conditions of work and economic factors and not a unification covering several enterprises. Moreover there is a doubt whether particular employers' organisations will be happy with a collective agreement negotiated by their representatives in the Tripartite Commission, limiting their own bargaining power. Taking into account all arguments, it seems that it would be better to limit the rights of parties representing employees and employers in the Tripartite Commission to conclude typical basic agreements, i.e. regulating only their mutual commitments. These basic agreements correspond to the specific character of the Tripartite Commission. The collective agreements, regulating working conditions, should be negotiated outside of the Commission, mainly on branch and plant level, by proper unions and employers' organizations.

There are some reasons for allowing also for tripartite basic agreements, negotiated within the Tripartite Commission, imposing on the government the obligation to implement the labour policy agreed together with social partners and in particular to undertake proper legislative initiatives in this field. However, one has to take into account difficulties connected with the implementation of basic agreements negotiated by the Tripartite Commission and as a consequence an uncertainty of their regulatory power. Reasons for these difficulties are on the side of social partners as well as on that of the government. Representatives of trade unions and employers' organisations in the Commission have no legal means to impose the respect of provisions from the agreement on the parties to collective agreements and accords on lower levels. As far as the government is concerned the fulfilment of commitments made in the tripartite agreement, in particular consisting in adopting proper laws, depends on the favourable configuration of political forces in the Parliament, which has a legislative power.

## *II. Collective accords based on the statute*

### *1. Collective accords concerning mass dismissals and collective disputes*

Agreements concerning mass lay-offs of workers as well as agreements concluded as a result of a collective disputes are considered in Poland as typical collective accords, since each of them has clear statutory grounds, required by the art. 9§1 of the Labour Code.

The grounds for concluding collective accords as regards mass dismissal of workers is founded in the Act as of 28th December 1989 which regulates this type of lay-offs.[13] An agreement concerning mass lay-offs is concluded by the employer and a plant trade union organisation in order to regulate the terms of such lay-offs. In particular the agreement is to determine: criteria for selecting workers to be laid-off, order and dates of lay-offs as well as all obligations of the employer towards workers who are laid-off. The agreement is an important mean allowing for defending workers as even though it gives the possibility to conduct mass lay-offs, still it can diminish their negative influence on workers' interests by limiting the employer's freedom when conducting mass lay-offs. If parties do not reach an agreement then the rules on how to proceed in the case of a mass lay-off are defined by the employer unilaterally in by-laws, however the statutory obligation to initiate negotiations in order to conclude an agreement has an obviously protective nature for the workers. If the agreement is concluded, according to the art. 9 § 1 L.C. it becomes the source of law which allows workers to submit claims to the employer and pursue them before the court.

The second type of collective accords which are based on a clear statutory provision are accords which are provided for in the Act as of 23rd May 1991 on the Settlement of Collective Disputes.[14] Such accords may be concluded by the parties of a collective disputes during bargaining or a mediation procedure which follows bargaining. Although it is not said clearly by the Act, it seems that a collective accord may be concluded also during a strike in order to end the latter, since it is the most natural and effective way of ending the whole collective dispute.[15]

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[13] Unified text: *Journal of Laws* 2002, Number 112, Item 980

[14] *Journal of Laws* 1997, Number 55, Item 236

[15] This opinion is shared by B. CUDOWSKI: Porozumienia zbiorowe [w:], *Prawo pracy* – z aktualnych zagadnień, red.: W. Sanetra (Collective Accords, in: Labour Law – Current Issues), Białystok 1999, p. 40, note 14. Opposit opinion was expressed by H. LEWANDOWSKI: Komentarz do ustawy o rozwiązywaniu zbiorowych sporów zbiorowych [w:], *Prawo pracy* (Commentary to the Act on Collective Disputes, in: Labour Law), Volume 3, ed. Z. Salwa, Warszawa 1998, p. III/E/ 158-33.

The fact that collective accords which end a collective dispute have a character of a labour law source means that they can supplement and modify the content of the existing collective agreement if the subject of the dispute are matters regulated in the collective agreement. Moreover, if an accord ending a collective dispute was concluded between the parties which are not bound by a collective agreement than such an accord has the same regulatory role as a collective agreement. It can also be a starting point for concluding a regular collective labour agreement.

*2. Collective accords in the form of by-laws*

Some plant by-laws also belong to the group of collective accords based on a statute. These are remuneration and work by-laws which are authorised by the provisions of the Labour Code (art. 77.2 § 4 and 104.2 § 1) as well as the by-laws on the plant social benefits which are mentioned by the art. 8.1 of the Act as of 4th March 1994.[16] Pursuant to the quoted provisions the content of the above by-laws shall be negotiated by the employer with the plant trade union organisation. Thus, these by-laws are a result of an agreement between the employer and the trade union organisation. It must be stressed that the remuneration by-laws can be instituted only after negotiations with the trade union organisation. So, if they are not negotiated – as opposed to the two remaining by-laws – it has no legal validity. Therefore, the above by-laws may be considered as peculiar collective accords which only formally are named by the Act as "by-laws".[17]

The fact that the above by-laws are considered as peculiar collective accords or are authorised by a statute does not influence their binding character as the art. 9 § 1 L.C. enumerates by-laws as a source of the labour law which is separate from a collective accord. However when saying that an agreement between an employer and a trade union organisation is an element which constitutes by-laws, this allows for noticing the complex nature of this act. Moreover it seems justified to postulate *de lege ferenda,* that in case when an employer reaches an agreement with a trade union organisation as regards by-laws, the latter are considered as binding on the grounds of such an agreement and thus its institution by the employer unilaterally is abandoned. The latter way shall be kept only for by-laws which could not be agreed upon with a trade union organisation. This postulate is in particular justified as regards workers remuneration by-laws which are agreed with a plant trade union organisation, as these by-laws substitute plant collective labour agreements. Many employers

[16] *Journal of Laws* 1996, Number 70, Item 335.

[17] This point of view is supported by W. SANETRA: Konstytucyjne prawo do rokowań zbiorowych (Constitutional Right to Collective Bargaining), *"Praca i Zabezpieczenie Społeczne"* 1998, Number 12, p. 8. Opposite opinion was expressed by B. CUDOWSKI: supra note 15 at 38.

prefer remuneration by-laws as this way they can avoid burdensome legal procedures connected with collective labour agreements.

The art. 9§1 of the Labour Code defines as collective accords and a source of the labour law only accords based on statutory authorisation. However, it must be pointed out that the art. 59.2 of the Polish Constitution, which recognizes the right of trade unions as well as of employers and their organisations to conclude collective accords, does not require an additional statutory authorisation. Thus, it seems that the above mentioned requirement of the art. 9§1 of the Labour Code is inconsistent with the Constitution. According to the art. 8.2 of the Constitution: "The provisions of the Constitution shall apply directly, unless the Constitution provides otherwise", therefore it must be recognized that social partners, referring directly to the Constitution, may conclude collective accords also as regards matters which are not covered with a clear statutory authorisation.[18]

In the light of the art. 59.2 of the Constitution, establishing the full freedom of social partners to conclude collective accords, some doubts could rise also this part of the art. 9 § 1 L.C. recognizing only those collective accords as a source of the law which says that these accords should regulate rights and obligations of the parties to an employment relationship, as this regulation is too narrow. Or, it is clear that collective agreements and collective accords should regulate not only the content of employment relationship, but also the content of collective labour relations, since this scope of regulation is in the interest of social partners and is favourable to social peace. This is a common standpoint of the Polish legal doctrine which already trays to interpret the scope of regulation of the above mentioned Labour Code provision in the large sense.[19] However, in order to avoid any doubts it is necessary to have a provision clearly saying that collective accords can regulate individual employment relationships as well as collective labour relations.

The recognition of collective accords as a source of the labour law raises the issue of their relation to collective labour agreements. The art. 9§1 L.C. considers these two collective acts as an equivalent sources of the labour law and defines rights and obligations of parties to an employment relationship as the same subject of regulation for both of them.[20] As a consequence, there is a

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[18] Opposit opinion: L. FLOREK: Dostosowanie przepisów prawa pracy do Konstytucji (Adjustment of the Labour Law Provisions to the Constitution), *"Przegląd Sądowy"* 1998, Number 9, p. 9.

[19] See J. LWULSKI, W. SANETRA: *Kodeks pracy*. Komentarz (Labour Code. Commentary), Warszawa 1996, p. 36; L. FLOREK, T. ZIELIŃSKI: *Prawo pracy* (Labour Law). Warszawa 1997, p. 28; G. GOŹDZIEWICZ: Charakter porozumień zbiorowych w prawie pracy (Nature of Collective Agreements in Labour Law), *"Praca i Zabezpieczenie Społeczne"* 1998, Number 3, p. 19; M. GERSDORF, K. RĄCZKA, J. SKOCZYŃSKI: *Kodeks pracy*. Komentarz (Labour Code. Commentary), Warszawa 1995, pp. 24–25.

[20] See B. CUDOWSKI: supra note 15 at 42-43.

risk of a conflict or of circumventing collective agreements by means of collective accords, since the second are not subordinated to rigors relating to control of conformity with statutory provisions and registration by labour inspector. The above remarks do not cover all issues which may arise in relation between collective labour agreements and collective accords. Thus, it is necessary to regulate these relation in detailed provisions to avoid conflicts between collective accords and collective labour agreements.

### *III. Collective accords not based on statute*

#### *1. Collective accords connected with the privatisation of state-owned enterprises*

When speaking of collective accords in Poland one shall also take into consideration accords which are connected with the privatisation of state-owned enterprises. The parties to such an accord are the following: the party buying the state-owned enterprise and a trade union representation of its workers. Its content usually covers obligations of the buyer as regards the job security and wages. However, this type of collective accords are not based on a statute as none of them does not contain provisions authorising to conclude them. Nevertheless, these accords are common practice in the process of state-owned enterprise privatisation.

The key issue related to the above collective accords is their legal nature and it is a subject of interest of legal doctrine and labour courts jurisdiction. According to the legal doctrine collective accords connected with state-owned enterprise privatisation may not be considered neither as collective labour agreements nor as regular collective accords, as defined by the art. 9 §1 of the L.C, as one of the party to them is merely the future employer. As a consequence: accords connected withy privatisation have no normative power and should be called as "social accords".[21] The Supreme Court has also declared agreements connected with privatisation as devoid of normative power but as the same time defined them as "unnamed contract of collective labour law", giving the ground for individual worker claims.[22]

The view of the Supreme Court was rightly questioned by the doctrine as it is based on an erroneous assumption that the party making commitments towards the trade union in the agreement connected with the privatisation is an

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[21] See J. WRATNY: Charakter prawny porozumień socjalnych związanych z prywatyzacją przedsiębiorstw państwowych (Legal Nature of the Social Agreements Connected with State-Owned Enterprise Privatisation), *"Państwo i Prawo"* 1999, Number 6, p. 18 and B. CUDOWSKI: supra note 15 at 46 and foll.

[22] Resolution of the Supreme Court of the 24th of November 1993, case I PZP 46/93, published in "OSNCP" 1994, Number 6, Item 131.

employer. It was also rightly pointed out that the party to the privatisation agreement does not have to become an employer at all when its role is limited only to the acquisition of the majority of shares in the privatised state-owned enterprise. In this case the company arising from privatisation becomes an employer and not its different shareholders, even the majority shareholder. Nevertheless it's true that the later may oblige the employer to conclude a collective labour agreement consistent with the content of the privatisation agreement.[23]

It seems that problems related to definition of the legal nature of both: collective accords authorised and not authorised by the statute could be resolved only be further development of their status, according to the principle of freedom to bargain and to conclude collective agreements and collective accords, as clearly expressed in the art. 59.2 of the Polish. The existing statutory regulation, recognizing collective agreements and collective accords as a source of the labour law by the art. 9.1 L.C. and giving the possibility to initiate collective disputes connected to both of them, can not be considered as sufficient.

*2. Collective accords concluded by the plant staff*

Collective agreements connected with the privatisation of state-owned enterprises are a temporary phenomenon as their utility is limited to the needs of the period of privatisation. Therefore, it does not seem necessary to regulate them separately in a statute. However it is necessary to regulate the status of collective accords concluded sometimes by employer with his staff in the plant in which there is no trade union. These agreements are neither authorised by a statute, nor are concluded by a trade union, as it is required by art. 59.2 of the Polish Constitution. As a consequence they have no normative power and could be considered only as *gentlemen's agreements*. At the same time it has to be stressed that the enterprises without trade unions dominate in the Polish private sector and this sector is constantly growing. The main reason for the absence of trade unions in private sector is certainly the reluctance and even the hostility of employers towards unions. However, quite often these are also the workers who simply do not feel the need to establish or join a union. This attitude is quite characteristic for small plants predominating in the private sector in Poland. Thus, one may expect that the above mentioned *gentlemen's agreements* will become more frequent.

In order to solve the problem of *gentlemen's agreements* correctly, it shall be recognized that not only trade unions may be a party to collective accord,

[23] See J. WRATNY: supra note 21 at 22 and foll. as well as B. CUDOWSKI: Charakter prawny porozumień zbiorowych (Legal Nature of Collective Accords), *"Państwo i Prawo"* 1998, Number 8, pp. 64–65.

but also the staff of a plant as a regular collective partner to an employer. Arguing in favour of this concept, it has to pointed out that although the term of the "plant staff" originates in Poland from the legal doctrine, it was, nevertheless, later adopted by the legal provisions. The Labour Code used this term in the chapter concerning the basic rules of the Labour Code (art. 20). Even though after the amendment which took place in 1996 the term the "staff" does not appear anymore in the rules of the Code, but it is still used in some of the detailed provisions (art. $237^7$.2 and $237^8$.1 L.C.). These provisions make already the staff a subject of certain rights in plant where there is no trade union organisation. The term of the "staff" is also used by some of the separate statutes. In the first place one should mention the Act as of 1981 on the Staff Self-government in a State-owned Enterprise which makes the staff an independent subject of rights in the co-management of an enterprise. Moreover some rights are granted to the plant staff by the Act of 1989 on Collective Dismissals (art. 4.4) as well as by the Act on the Plant Social Benefits Fund (art. 8. 2).

Another argument in favour of recognition of plant staff as an autonomous subject of collective bargaining is that only than plant employees are direct beneficiaries of this right, independently from the attitude of trade unions. It shall be also taken into consideration that there may be differences between the interests of the plant employees and the internal interests of trade unions. This is even more probable when in a given plant there are several competing trade union organisations. The recognition of the staff as a subject of collective rights in a plant does not have to lead to a conflict with trade unions. It can be prevented by distinguishing the staff's rights depending on whether there is a trade union organisation in a plant or not. In the first case the staff's rights can be limited to information and consultation as regards matters concerning collective rights and interests of workers. Such a solution would be consistent with the concept adopted for European works' councils. If, however, there are no trade union organisations in a plant the rights of the staff shall be broader, not only as regards the subjective scope, but shall, above all, cover the right to conclude collective accords with the employer.

The basic arguments speaking in favour of granting the staff the right to conclude collective agreements, particularly if there's no trade union, stem from the negative trade union freedom. From this freedom stems not only the workers' right to remain outside of a trade union, but also the idea that the rights of workers who are not members of a trade union cannot be narrower and their protection cannot be weaker as it is in the case of workers who are members of a trade union. In other words, trade unions cannot hold monopoly on the protection of collective rights and interests of workers, but it also shall be possible outside of a trade union. Therefore, workers who did not establish a trade union – regardless of the reasons – shall have the possibility to protect their collective rights and interests to the same extent as it is the case when a

trade union organisation exists in the plant. Thus the staff shall be granted the right to conclude collective accord which would replace the lack of the possibility to conclude a collective labour agreement, as we assume that the latter shall be of exclusive competence of trade unions.

### *Final remarks*

The provisions on collective labour agreements and collective accords which were in force in Poland after the 2nd World War were shaped closely in relation with the principles of the communist political and economic system. Thus, until 1989 their role was limited to a large extent, as the systemic principles excluded the regulation of labour relations by way of free negotiations conducted by autonomous social partners. The systemic breakthrough which occurred in 1989 created grounds for the development of collective agreements and collective accords as well as led to their recognition *expressis verbis* as a source of the labour law.

However the legal provisions relating to collective labour agreements and collective accords in Poland are not yet satisfactory. It is necessary to improve them going in the direction of its full adjustment to the rules of democracy as well as social market economy which are adopted by the Polish Constitution of 1997. In particular the remainders of useless limitations of the bargaining freedom shall be eliminated and the legal status of collective agreements and collective accords shall be regulated comprehensively, accordingly to the nature and needs of contemporary collective labour relations.

The improvement itself of the legal condition in the field of collective agreements and accords will not guarantee their further development and thus the increase of the influence of social partners on the regulation of labour relations. The position of trade unions and employers which is being shaped under the influence of the role and of the extent to which both social partners are organised is quite important in this respect. In particular it is necessary to overcome difficulties connected with the definition of the real employer in the public sector as well as of such criteria for the trade union representativeness which would allow for a full use of the bargaining method for the regulation of labour relations. It is also necessary to give a proper answer who should be a partner to collective bargaining in the absence of trade union.

MICHAŁ SEWERYŃSKI

# KOLLEKTÍV MEGÁLLAPODÁSOK A LENGYEL MUNKAJOGBAN

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