

TRADE UNION MONOPOLY AS THE LEGAL SOURCE OF REPRESENTATION. POLAND CASE

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Straipsnyje analizuojamas profesinių sąjungų steigimosi ir statuso teisinio reguliavimo aspektas. Autorius analizuoja Lenkijoje istoriškai susiklosčiusią situaciją, kai profesinėms sąjungoms teisės aktais buvo suteiktas darbuotojų atstovavimo kolektyviniuose darbo santykiuose monopolis. Straipsnyje taip pat keliamas civilinės teisės reguliuojamos įsisteigimo laisvės ir darbo teisės garantuojamos asociacijų laisvės santykio klausimas.

The article analyses the legal aspects of the establishment of trade unions and the legal regulation of trade unions status. The article is based on Polish legal system where monopoly of the trade unions representation is historically established. The author also tries to find the answer on the relation between civil-law regulated right to establish and the labour law right to freedom of association.

Introduction

What is characteristic for collective labour relations in contemporary Poland is a decrease in the number of trade unions, progressive decentralization of collective labour agreements concluded first of all in particular work establishments and a decreasing number of collective actions – strikes organized by trade union organizations [24, p. 181]. It is estimated that trade unions unite 10–13% of working people. The majority of members of trade unions are workers within the meaning of the Labour Code. However the above shows that a general number of workers united in trade union organizations is lower than

the statistics suggest. The above statement is of significant importance since according to labour laws decisive for obtaining the status of a representative trade union is a number of persons employed within employment relationship governed by labour laws and not a number of members of a trade union organization. A decrease in the number of members of trade unions resulted from technological change, formation of new forms of employment such as atypical employment, telework, fear of losing a job in a period of economic crisis and private employers' dislike to trade unions. Despite a small number – one of the lowest in the EU Member States – of trade

union organizations and developed trade union plurality, Polish trade unions are quite effective in representing the interests of workers' collectives. This is attested to by the percentage of workers who are subject to single-establishment collective labour agreements which is higher than the number of members of trade union organizations. Therefore, it should be considered what factors foster the processes of trade union representation of interests of workers' collectives in Poland.

The article analyses the legal aspects of the establishment of trade unions and the legal regulation of trade unions activity. In the first chapter of the article using the comparative historical method is analysed Polish legal system where monopoly of the trade unions representation is historically established. In the second chapter using such research methods as logical analysis method, synthesis method, method of systematic analysis the relation between civil-law regulated right to establish and the labour law right to freedom of association is discussed.

1. Trade union representation in historical perspective

Concepts and legal constructs of trade union representation presented in the previous parts of this paper have their theoretical and practical foundation in regulations enacted in Poland after declaration of independence in 1918. Still before convocation of the first session of the Polish Parliament – Legislative Sejm (pol. Sejm Ustawodawczy), the President of the Republic of Poland enacted the Decree on Workers' Trade Unions on 8 February 1919 [2]. The above mentioned act

recognized the workers' trade unions as organization authorized to defend and support economic and cultural interests of workers of a given industry or of similar industries [23, p. 327]. The Decree denied the right of workers of public institutions – officials – to unite in trade union organizations (Art.19). The Decree considered trade unions representatives of interests of blue collar and white collar workers who were entitled to establish and join the existing trade union organizations. From the very beginning, the concept and the construct of trade union representation was based on the principle of will of legislator, therefore a statutory representation and not on the basis of a power of attorney resulting from authorizations granted to trade union organization by workers – members of a trade union [25, p. 26]. Article 15 of the Decree explicitly entrusts trade union organizations with representation of collective interests of workers in relations with state and state authorities. A legislator decided that representatives of trade unions will be considered representatives of professional interests of “working classes”. Trade union organizations enjoyed the exclusive right to negotiate collective labour agreements (Art.68). The legislator clearly determined that only strong trade unions are able to guarantee the fulfilment of the provisions of such agreements. Therefore it established a principle of monopoly of a trade union representation to negotiate and conclude collective labour agreements.

In the first years of the independent Poland, the collective disputes between employers and workers were governed by regulations on resolution of collective dis-

putes between employers and farm workers enacted by state legislature [6]. The procedure for resolution of collective disputes in the farming industry was extended to include collective conflicts between owners of urban real properties and caretakers under the Law of 23 January 1920 [8]. The provisions referred to above by virtue of law consider the local trade unions of farm workers and caretakers a representation of workers' collective in collective labour dispute with employers. Other workers' representative bodies – delegations elected or appointed by workers' collective were entitled to represent the workers involved in collective disputes only if there were no trade union organizations or several existing trade union organizations were unable to reach an agreement to constitute a common representation or when a trade union refused to participate in the proceedings which aimed at resolution of the collective labour disputes. Under the Law of 18 July 1924 [9] the procedures for resolution of collective labour disputes introduced under agricultural laws became generally applicable. The comments concerning representation of collective labour interests of the above mentioned categories of workers are generally applicable except Upper Silesia where post-German regulations were in force [18].

In Poland there was no tradition as regards appointment of workers' representative organizations. In the work establishment where no trade union organizations were established representatives of trade unions were union men of trust. They were responsible for control of employer's compliance with collective labour agreements.

The Law on Associations of 27 October 1932 [5] limits the autonomy of trade un-

ions. It submits trade union organizations to supervision of public administration bodies. It obligates trade union authorities to provide the supervisory bodies with lists of names of members of trade unions and statutory bodies. It authorized administrative bodies to decide on suspension of activity by a trade union organization [25, p. 312]. During the two decades between World War I and World War II no regulations were enacted which would directly limit the union freedoms of workers. On the contrary, on 14 July 1937 the Law on Collective Labour Agreements was adopted [10], under which provisions of collective labour agreements were considered sources of law by the will of the legislator (statute theory), and not by the will of social partners who negotiated the collective labour agreement (contract theory) [26, p. 455]. At the same time, public authorities made efforts to limit the fundamental freedoms of workers, including the fundamental freedom to organize collective actions, in particular strikes [25, p. 345]. The provisions of the collective labour law often referred to civil-law constructs based on a concept of statutory representation of a trade union and associations of trade union organizations who were granted an exclusive, monopolist, right of trade union representation of workers' collective (Art. 3.2). According the Article 1.3 of the Law on Collective Labour Agreements makes an *expressis verbis* reference to the provisions of civil law which govern contracts, in particular to Article 445 of the Code of Obligations, except for cases regulated otherwise in the Law on Collective Labour Agreements. The title of the chapter XI "Contracts for services", section I "Em-

ployment contract” (Art. 441–477) of the Code of Obligations included labour law regulations. Article 445 of the Code of Obligations regulated the terms and conditions of conclusion and the contents of collective labour agreements. Article 445.1 of the Code of Obligations introduced a general principle of conclusion of collective labour agreements by “legally existing workers’ unions” only. However the collective labour agreements concluded under that regulation were not effective *erga omnes*. They were binding only upon the parties to the agreement and members of the union being a party to the agreement. In the J. Bloch’s commentary to the cited provision of the Code of Obligations, at first it was argued that a collective agreement within the meaning of Article 445 of the Code of Obligations regulates the terms and conditions of individual employment contracts “however only in the field of work which is represented by trade unions who conclude the agreement”, which might suggest that a trade union organization is a representative of all workers employed in work establishments of a certain industry to be covered by the collective agreements. However, further in the commentary to the analyzed regulation an opinion was presented that “a force of the collective agreement extends to cover all trade union members, irrespective of the name (actual, honourable)”. It means that a trade union who negotiates terms and conditions of individual employment contracts following from the provisions of the collective labour agreement represents solely the members of the trade union organization on whose behalf it negotiates the terms and conditions of employment

and remuneration. Such interpretation of Article 445.1 *in fine* of the Code of Obligations is supported by the arguments of the commentator who concludes that terms and conditions of the collective agreement are binding also upon a worker who left a trade union for as long as “the employer terminates such terms and conditions upon statutory notice” [25, p. 166]. The final argument to dispel doubts as to who is represented by a trade union organization negotiating the collective labour agreement – all workers or members of trade union organization only – is a conclusion presented by the quoted author according to which Article 445 of the Code of Obligations “provides neither for an extension of the force of the collective agreement to include non-united workers employed in the establishments of the same industry to which the agreement refers, nor gives a legal effect to the agreement in such a way that it would cover all establishments of a given industry” [25, p. 167]. The Law on Collective Labour Agreements repealed all the previous regulations governing collective labour agreements, including Article 445 of the Code of Obligations – a regulation which limited the trade union representation in concluding collective labour agreements to the members of a trade union. Under Article 3.2 of the Law on Collective Labour Agreements, trade union organizations conclude collective labour agreements in the name of all workers employed in a work establishment, field of work, and not only trade union members. As of the effective date of the above mentioned act, this principle is still valid since it was confirmed in Article 239.1 and Article 241² of the Labour Code [13]. The first

of the mentioned regulations stipulates that a collective labour agreement is concluded for all workers employed by employers who are subject to its provisions. The second regulation obligates the entity who initiates conclusion of the collective agreement (trade union or employer or employers' organization) to duly notify each trade union organization representing the workers for whom the agreement is to be concluded for joint conduct of negotiations by all trade unions.

Already during the World War II, on 6 February 1945, the Decree on Establishment of Works Councils was enacted [3], which appointed representative bodies (works council or workers' delegate), among other to "represent the professional interests of workers in relations with employer" (Art.3). After amendment of the Decree in 1947 the works councils and delegates were included in the organizational structures of trade union movement and were considered trade union bodies [4]. However, they did not cease to represent collectives of workers employed in particular establishments since according to Article 4.2 of the Law on Trade Unions [11] – within fulfilment of their statutory duties – represented all workers, both united and not united, in all matters relating to general workers' interests. Trade unions, supported by the state and political authorities, and considered, under this act an institution responsible for communicating directives of the authorities to the masses of workers, enjoyed extensive autonomy [19, p. 173]. Tasks, objectives and scope of activities of trade unions were regulated independently by trade union organizations only, in their internal

regulations (charters). For example, the Charter of the Polish trade unions association, adopted on VI/XII Trade unions congress on 23 June 1967 [1] stipulated in Article 3.1 that trade unions "represent interests and defend rights of blue collar and white collar workers, united or not united, care about everyday life of working men, about proper functioning of public and economic administration, eliminate all bureaucratic distortions". In the following 16 points (2–17) the Charter specifies and develops the scope of competences of trade union organizations which in the socialist political system included functions relating to management, supervision and control of public establishments and some of the public administration institutions in matters connected (directly or indirectly) with interest of workers' collective and individual members of such collective. In matters regulated by collective labour laws, a Charter confirmed the powers of trade union organizations to conclude collective labour agreements regulated under the above mentioned Law on Collective Labour Agreements [10] and specified their role, consisting in "strengthening and development of workers' self-government" in the field of the collective labour relations which involved participation of collective of workers employed in public establishments in a decision-making process of the public employer [27, p. 1414]. It is not possible to provide an unequivocal characteristic, in legal terms, of the above mentioned Charter provisions. On one hand the Charter provided unequivocal characteristics of social categories of persons authorized to form and join trade union organizations established to repre-

sent persons employed in public and cooperative work establishments as well as persons employed as cottage workers and under franchise contracts. On the other hand, very vaguely it specified responsibilities of a trade union in matters loosely connected with representation of professional, economic and social interests. In the first place it listed the tasks of trade union organizations connected with “active participation in development of socialist system in Poland”. Trade union associations which by definition are independent (non-party) organizations which fulfil the fundamental political objective specified by public authorities and political party, namely development of socialist system and promotion of one political ideology, and who confirmed in their charter their engagement to pursue such objectives, were intensively involved in fulfilment of the principles of the then existing political system. Therefore, by their very nature they could not have represented efficiently the interests of workers’ collective different from or even contrary to the interests of state government and public administration, fulfilling directives of the political party. Despite major competences specified in laws, the then existing trade union organizations were not able to exert enough pressure on state as a monopolist employer and its representatives in labour relations – directors of public enterprises, unions of enterprises and ministers responsible for administrative supervision of work establishments. The then current political doctrine was based on a false assumption that there is no conflict of professional, economic and social interests between parties to the la-

bour relations. Collective labour law regulates among others the situations based on conflicting interests of employers and workers. If it was not for the conflict of interests of the parties to the labour relations, the workers would not unite in trade unions, which are organizations established first of all to negotiate, in the name of the entire collective of workers (united and not united in trade union organizations), the terms and conditions of employment and remuneration in the collective labour agreements, to initiate and conduct collective actions, including strikes, in order to exert pressure on employers who set out the terms and conditions of employment contracts, employment and remuneration for work. A fundamental mistake of a political doctrine of real socialism was a conviction that there is no conflict of interests between parties to the collective labour relations and treating the workers’ collectives and trade unions representing their interests exclusively as social partners, strictly cooperating with public government, its institutions and public employers with the view of pursuing a primary objective – development of socialism as a new “progressive” political system.

The Law on Trade Union [14] guaranteed to workers the right to establish and unite in trade unions (Art. 1.1). It granted trade union organizations a right to represent professional interests of workers in relations with external parties: management of work establishments (employers), public and economic administration bodies, social organizations and foreign trade unions (Art.5). It specified in detail twelve categories of matters in which trade unions

represented and defended rights and interests of workers with respect to the terms and conditions of employment and remuneration and social, living and cultural conditions (Art. 6). Pursuant to the principles of the then existing political system, the Law on Trade Union put an emphasis on obligations of trade union organizations in relations with state, society and public establishments – employers. For the first time in the post-war labour legislation empowered trade union organizations to organize strikes and other forms of industrial actions [16, p. 156]. Doctrine and judicature did not question the right of trade union organizations to represent, on an exclusive (monopolist) basis, the interests of workers' collectives of specific establishments. In practice in several cases other workers' representative bodies challenged the rights of trade unions to represent the interests of workers' collective on an exclusive basis. More likely were the spontaneous actions of a part of workers' collectives, not satisfied with the representation of their rights by the existing trade union organizations, taken to establish *ad hoc* strike committees¹. By the will of the legislator, trade unions enjoyed the right to represent, on an exclusive basis, the economic, professional and social interests of workers. As from the effective date of the Law on Trade Union which regulated workers' right to strike and trade unions' rights to organize strikes, a trade union representation of interests of workers' collective was significantly enhanced.

¹ A classic example was Multi-Establishment Strike Committees established by workers in August 1981 in shipyards in Gdańsk and Szczecin and in other work establishments in Poland.

2. Statutory representation by trade unions

In the legal transactions regulated by (collective and individual) labour laws there is a permanent need to regulate an issue of representation in taking certain actions and performing legal transactions connected with the competence (obligation and right), granted by the legislator to trade unions, to represent workers' interests and to defend their rights. The above mentioned competence of trade union organizations is justified on grounds of the above mentioned provisions of the Labour Code (Art. 18¹–18³) and the Law on Trade union (Art. 1.1). Labour laws regulate neither a concept nor a legal construct of a statutory representation of workers by trade union organizations in labour relations. Therefore, in matters not regulated by the labour laws a reference should be made to the provisions of the Civil Code [12] which may apply directly or appropriately in labour relations, provided that they are not contrary to the labour law principles (Art. 300 of the Labour Code). A trade unions' competence to represent interests and defend rights of workers were considered – as I have already mentioned – to be a fundamental principle of the labour law, regulated in Article 18¹ of the Labour Code. Thus, there are formal grounds to believe that there are no restrictions as to the application of the provisions of section VI volume I of the Civil Code on representation in labour relations. A review of judicature of the Polish Supreme Court in a period from 1975 until now allows a statement that no case has been found which would prove that Civil Code provisions on

representation were applied in labour relations. So it might be concluded that either the regulation of the Labour Code regarding representation of workers' interests and rights is complete and there are no reasons to apply provisions on statutory representation in labour relations or the provisions of the Civil Code on representation cannot be applied in labour relations since they are contrary to the labour law principles. In my opinion, there is also a third, most important reason why courts do not apply the provisions of the Civil Code in labour relations. A scope of jurisdiction of common courts and labour courts in matters regulated by collective labour laws is minimal. In fact, it is limited to registration of trade union organizations (Art.17 of the Law on Trade union) and to rule on matters relating to legal compliance of trade union activity (Art. 36 of the law on Trade Union).

A problem whether provisions of the Civil Code on statutory representation and power of attorney representation by trade unions may be applied in labour relations was not broadly discussed in the labour law doctrine. Labour law academic papers usually barely confirmed statutory grounds for the competence of trade union organizations to represent interests and defend rights of all workers, not just members of trade union organizations and they emphasized that the exclusive legal basis of the above authorization of trade unions to act as official representatives of workers' interests and rights is a creation of will of a legislator [17, p. 187]. The textbooks usually do not include detailed argumentation concerning the concept and the legal construct of trade union representation. How-

ever, the mentioned textbook by J. Jończyk includes an important comment concerning the autonomy of entities represented by trade union organizations. The said author states that the "will of the represented parties plays a minor role" [17, p. 187]. The following statement rises according to the concept of statutory representation of trade unions. As I have already mentioned, as decided by the legislator, the workers' collectives employed in the same establishments do not have guaranteed competences to independently create their rights and obligations in (collective and individual) labour relations. Staff in work establishments, personnel employed in work establishments, apart from the previously mentioned exceptions, have no autonomy to regulate the contents of rights and obligations of the parties to the labour relations. On the other hand, particular entities, workers who form the above mentioned collectives (staff, personnel) have unlimited autonomy in matters relating to decisions on establishment and joining trade union organizations to whom the legislator granted an exclusive competence to represent workers' collectives in labour relations. Therefore it is not possible to accept a hypothesis presented in the labour law literature on the limited will of workers' collective to entrust representation of their interests and defence of their rights to a specific trade union organization. The arguments of J. Jończyk, that in terms of the Polish law an autonomy of workers is excluded in resolving an issue whether a representation of interests and defence of rights of workers' collectives in matters other than those relating to participation in work establishment management can be

entrusted to workers' representative organization other than a trade union, should be accepted. Because of the principle of monopoly of a trade union representation of interests and defence of rights in (collective and individual) labour relations it is impossible to make such choice in compliance with law. A history of the Polish trade union movement, mentioned events of August 1980, when in Gdańsk, Szczecin, Jastrzębie and other establishments interests of workers were represented by *ad hoc* strike committees and not the then existing trade union organizations proves that in specific circumstances workers' collectives (staff in public enterprises, personnel of specific establishments) play a primary role in taking decisions on authorizing certain entities to represent interests and defend rights of workers in collective labour relations. Presented in several studies in the field of the collective labour law [22, p. 86] examples of obtaining the status of representative trade unions, used to illustrate the hypothesis on the limited autonomy of will of the workers' collectives in selection of a representative competent to represent interests and defend rights of workers in collective labour relations in legal transactions regulated by collective labour laws, are not correct. The concept and the legal construct of representation by trade union organizations is strictly related with a freedom of establishment. Plurality of trade unions authorized to create the terms and conditions of employment and remuneration in collective labour agreements and in other collective agreements may disturb the process of management of work establishment. For this reason, in accepting the plurality of trade union organi-

zations, the legislator used the concept of representativeness understood as an objective indicator of an importance of trade union organizations in particular work establishments as viewed by workers, members of workers' collectives (staff, personnel of the establishments). Therefore it is not possible to share the view expressed in literature that particularly visible is a limitation of will of the workers' collectives in case of a representative trade union. Whether a trade union organization is representative or not depends on the decision of a legislator. However the indicators of representativeness of trade unions which compete with each other in particular establishments and on a national level are completely dependent on the will of individual workers who are members of collectives employed in particular work establishments. Trade union organizations in work establishments, statutory bodies of national trade unions, federations and confederations, enjoy unlimited freedom to promote particular trade unions and encourage the workers to join specific trade union organizations. Therefore, contrary to the author quoted above, I think that the concept and the legal construct of representativeness of trade unions in the Polish labour law is based fully on the autonomy of will of workers who are members of workers' collectives represented in collective labour relations, on an exclusive basis, by trade union organizations, subject to the competence to establish other workers' representative organizations authorized to manage national and European establishments on behalf of workers' collectives. Moreover, I do not share the conclusion that the expression used in the labour law

literature according to which trade unions hold a “statutory mandate of a representative of workers’ collective” [20, p. 16] reflects the idea of a limited autonomy of will of the represented workers’ collectives and their individual members [22, p. 86]. A paper referred to by R. Nadskakulski names a legal source of a mandate of a trade union organization to represent interests and defend rights of workers. Such source are statutes the Labour Code and the Law on Trade Union. Trade union organizations do not represent a legislator. The legislator grants them an exclusive right to represent interests of the workers’ collectives. Therefore a mandate to represent interests of workers’ collectives is granted by the legislator. However, trade unions are obliged to represent interests and defend rights of workers not interests and rights of the mandator. The meaning of the statutory mandate of trade unions to represent interests and defend rights of workers is a consequence of the fact that the legislator failed to empower the workers’ collectives in labour relations. Trade union, as a statutory representative of workers’ collectives, takes actions, performs factual and legal acts which cause consequences which directly affect the represented party workers’ collective (Art. 95.2 of the Civil Code in connection with Art. 300 of the Labour Code). There seem to be no restrictions for application in labour relations of a civil law concept of statutory representation by trade unions in matters connected with representation of interests and defence of rights of workers. Article 300 of the Labour Code allows applying the provisions of the Civil Code to labour relation. Nowadays, the above ex-

pressions refer both to individual and collective labour relations regulated by the Labour Code. The basis of the trade union representation was regulated directly in Article 18¹ of the Labour Code while the principles of formation and operation of trade union organizations are specified in the Law on Trade Union. Therefore, also from the formal and legal point of view, there are no restrictions as to the application of Article 300 of the Labour Code to labour relations governed directly by the Labour Code, a fundamental source of individual and collective labour law.

Trade union representation, to which a civil-law concept and legal construct of statutory representation may be applied in its pure form, is best reflected in trade unions’ taking of actions connected with initiation of collective disputes, organizing strikes and initiating other industrial actions. A trade union, as a statutory representative of workers’ collective has a competence to act in the name of the represented workers’ collective, as guaranteed by the Law on Resolution of Collective Disputes [15]. In making a public (though addressed to an employer) announcement on declaration of a strike, a trade union organization acts in the name of a staff (personnel) employed in an establishment. Actions taken by trade unions are within the limits of their statutory competences to initiate collective disputes and organize strikes. They are also in compliance with an intent of a part of the workers’ collective expressed in a secret voting by a majority specified in Article 20.1 of the Law on Resolution of Collective Disputes, where there is at least a 50% quorum of workers participating in such voting. Le-

gal consequences of the activities and actions taken by the unions arise in the area of interests of the workers' collective, both when the strike appears to be a sufficient lever against an employer (who accepts the demands raised by the trade union and consents for the collective agreement in which professional and/or social interests of workers will be regulated more favourably by the social partners) and also when the employer resists the pressure and fails to accept the demands raised by a trade union organization. In the first case workers' rights will be more favourable. In the second case a *status quo* will be kept. A direct effect of the actions taken by trade union organization representing the interests of the workers' collective does not limit the autonomy of will of staff (personnel) of an establishment because in the field of collective labour relations the workers' collective does not have a legal capacity, with the exception of situations connected with participation in the employers' decision-making process by workers' representative bodies other than trade unions. Individual workers as well as groups of workers and the entire workers' collective of a work establishment, in normal conditions are not empowered to negotiate collective labour agreements, to initiate collective disputes and to organize lawful strikes and other industrial actions. The legislator did not grant the workers' collective a competence to independently arrange and create legal relations governed by the collective labour laws. Therefore, a trade union organization is the only, necessary, independent entity competent to represent interests of workers' collective. Members of the workers' collective (staff, personnel) employed in a

work establishment have no influence, in legal terms, on the consequences of activities and actions taken by a trade union organization as a representative of interests of the workers' collective.

In legal relations governed by the collective labour laws there are the following types of relations between the three entities: 1) workers' collective acting as a represented entity; 2) trade union organization as a statutory representative of the workers' collective; 3) employer. Trade union, acting as a representative of interests and defending the rights of workers' collective takes independently legal actions on account of the workers' collective. Activities and actions taken by the trade union representative of workers' interests are governed by generally applicable labour law regulations. However the above provisions are not sufficient to describe the entire relation between the workers' collective and a trade union organization representing its interests. Internal regulations adopted by trade unions, which do not have a status of rightful regulations, describe the relations between workers' collective and a trade union organization representing its interests. Trade union charters and internal regulations of trade unions adopted by competent trade union bodies and instances within the autonomy guaranteed to trade union organizations under labour laws (Art. 13 of the Law on Trade Union) specify among others the objectives and tasks of trade unions and the procedures and forms of their performance, rights and obligations of members and the manner of a trade union representation. Charters and regulations are classified as sources of "trade union law" which are not considered (Art. 9.1-3

of the Labour Code) generally applicable labour laws. “Trade union laws” regulate the internal relations among members of the trade union who are an integral part of workers’ collective and sometimes between the entire workers’ collective and a trade union organization. Internal relations regulated by “trade union laws” have a significant impact on the “external” relations, usually regulated only generally and occasionally by generally applicable provisions of collective labour laws enacted by state authorities. Provisions of the Law on Resolution of Collective Disputes which define the principles and procedures for organizing strikes are the type of the norms in which the legislator regulates, to the most detailed extent, the right to strike and to organize legal strikes [LA MACCHIA, p. 161], since state authorities try not to interfere in the methods of exercising by workers and trade unions of their guaranteed rights. “Trade union laws” may be used by the members of a trade union organization to regulate and control the collective actions undertaken in the name and on behalf of staff (personnel) of an enterprise and to mitigate the negative consequences of such actions in labour relations [21, p. 732]. The quoted author presents a diagram presenting six basic legal relationships between the three above mentioned parties to legal relations: representative, represented party and a third party.

Lack of empowerment on the part of workers’ collective (staff, personnel) in collective labour relations makes it impossible to present relations between a trade union as a statutory representative of workers’ interests and rights and the represented collective in terms of a theory of

a holder of interest of Karl Savigny (*Friedrich Carl von Savigny*). Trade union organizations cannot be considered bodies, since – in matters relating to negotiation of collective labour agreements and conclusion of other normative agreements, to initiation of collective disputes and undertaking collective actions, in particular declaration of strikes – the workers’ collectives as entities represented by trade union organizations do not replace a holder of interest – workers’ collective, since it is not legally empowered and therefore cannot participate independently in legal transactions regulated by collective labour laws. Trade union organizations are not collectives’ bodies since workers’ collective – except in cases relating to participation of workers in management of public enterprises, establishments operated by entrepreneurs conducting business and community or community-wide enterprises – is not legally empowered to act independently in the field regulated by the collective labour laws. The different, however groundless opinion, represents R. Nadskakulski [22, p. 102]. A trade union, irrespective of the level of submission of trade union organization bodies to the will of the members of such organization, cannot be considered exclusively a representative of a collective will of the workers’ collective, since not all workers employed in a certain establishment are members of a trade union organization authorized by the legislator to represent the workers’ collective. In collective labour relations two other theories may be applied, depending on the method of regulation by the legislator of the statutory representation: theory of representation by Rudolf Ihering (*Ru-*

dolf von Ihering), according to which an acting entity is a trade union as a statutory representative and a mixed theory according to which acts of will of the represented party – workers’ collective together with actions and activities performed by the representative – trade union organization, may cause legal consequences – change in a legal situation of the represented parties. A theory of representation applies in collective labour relations to all actions and activities of trade union except a strike. Workers’ collective (staff, personnel) does not have a capacity to be the subject of rights and obligations governed by the collective labour laws. Entities deprived of the capacity to perform acts in law cannot participate independently in legal transactions. Therefore the legislator authorized trade unions to represent the workers’ collective. The situation is different in case of strikes. Again, by the will of the legislator, trade union organizations have a guaranteed right to organize strikes. However a condition precedent for organizing a legal strike is the collective will of the majority of workers authorized to decide on the stoppage of work and declaration of strike by the trade union organization.

Conclusion

1. A source of influence of trade union organizations in collective labour relations in the both past and the contemporary Poland is commitment of government and public authorities in supporting the trade union movement. Public authorities in Poland, in every political system, were and still are convinced that only trade unions are entitled to represent interests of workers’

collectives. Public authorities’ attitude to trade union organizations has been changeable.

2. Workers were never brought to justice only because of their attempts to establish and gain recognition for trade unions as organizations representing their professional and social interests. During a period of socialism public authorities ordered trade unions to supervise whether administrative bodies and public employers abide by the labour laws. Trade unions were taking over some duties relating to protection of employment and safety and hygiene at work normally fulfilled by public administration bodies. They also fulfilled political plans. They supervised workers’ representative organizations in public establishments.
3. After system changes in 1989, The Independent and Self-Governing Trade Union “Solidarność” (*Niezależny Samorządny Związek Zawodowy “Solidarność”*) as a mass social movement, incorporated as a nationwide trade union confederation, enjoyed significant political influences. The above contributed to strengthening the position of trade union organizations as the entities considered by the government exclusively authorized to represent interests of workers’ collective.
4. A monopoly of a trade union organization, covering the exclusive right of trade unions to negotiate collective labour agreements and to organize legal industrial actions, including strikes, is a main source of influence of trade union organizations in collective labour relations. Thanks to extensive competences of trade unions (not presented

in this paper) in matters governed by individual and collective labour law, a relatively limited trade union movement in Poland, based on commitment

of activists to matters connected with representation of interests and defence of workers' rights, is in a relatively good condition.

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PROFESINIŲ SĄJUNGŲ MONOPOLIS KAIP TEISINIS JŲ VEIKLOS PAGRINDAS. LENKIJOS ATVEJIS

Andrzej Marian Świątkowski

S a n t r a u k a

Šiame straipsnyje analizuojamas profesinių sąjungų steigimosi ir statuso teisinio reguliavimo aspektas. Pirmame straipsnio skyriuje autorius, remdamasis istoriniu lyginamuoju metodu, analizuoja profesinių sąjungų monopolinę veiklą, kuri turi galias istorines tradicijas. Antrame straipsnio skyriuje analizuojamas šiuolaikinių profesinių sąjungų teisinis statusas ir jam turintys įtakos tiek istoriniai, tiek politiniai ir teisiniai veiksniai.

Pirmuosius profesinių sąjungų steigimo ir jų veiklos teisinio reguliavimo nuostatus Lenkija priėmė iškart po nepriklausomybės paskelbimo 1918 metais. Autorius pažymi, kad šių organizacijų teisinis statusas ir jų įgaliojimai dalyvauti kolektyviniuose darbo santykiuose tiek praeityje, tiek šiuolaikinėje valstybėje buvo grindžiami valstybės valdžios pasitikėjimu ir jos reiškiama atviru profesinių sąjungų judėjimo palaikymu.

Autorius konstatuoja, kad bet kurioje politinėje santvarkoje tuometė Lenkijos valdžia laikėsi principinio požiūrio, kad tik profesinės sąjungos gali tinkamai atstovauti kolektyviniams darbuotojų in-

teresams. Straipsnyje laikomasi pozicijos, kad ši idėja būdinga ir šiuolaikiam Lenkijos politiniam elitui.

Trumpai referuodamas sovietinio laikotarpio ypatumus, autorius konstatuoja, kad tuometė valdžia profesines sąjungas traktavo kaip vieną iš valdžios institucijų ir suteikė joms įgaliojimus kontroliuoti įmonių ir įstaigų administracinius organus, o darb-daviui ir vertinti, kaip jie laikosi darbo įstatymų. Autorius teigia, kad iš esmės tuometėje santvarkoje kalbėti apie kolektyvinį darbuotojų teisių ir interesų atstovavimą nėra galimybių, nes profesinės sąjungos iš esmės vykdė politines funkcijas.

Politinei santvarkai pradėjus keistis ir visų pirma po 1989 metų protestų judėjimo, profesinių sąjungų, kaip nepriklausomų darbuotojų atstovių, poziciją gerokai sustiprėjo.

Šiuolaikinėje Lenkijoje profesinės sąjungos taip pat išsaugojo monopolines darbuotojų kolektyvinio atstovavimo teises, įskaitant išskirtines teises vesti kolektyvines derybas, organizuoti streikus ir kitas kolektyvines akcijas.

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