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Wydawnictwa Uniwersytetu Warszawskiego
00-497 Warszawa, ul. Nowy Świat 4
www.wuw.pl; e-mail: wuw@uw.edu.pl

Dział Handlowy WUW: tel. (48 22) 55 31 333; e-mail: dz.handlowy@uw.edu.pl
Księgarnia internetowa: www.wuw.pl/ksiegarnia

Skład i łamanie
Ryszard Obrębski

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SPIS TREŚCI

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 2015[2]. 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 Poland[3]. 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.

Jakub Stelina
Łukasz Pisarczyk

[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.

Krzysztof Baran
Jagiellonian University in Cracow

THE AUTONOMOUS LABOUR LAW – *DE LEGE LATA* AND *DE LEGE FERENDA*

1. The notion of autonomous labour law is a highly ambiguous one and happens to be understood differently by the labour law doctrine[1]. More than often the notion is used to cover all[2] sources of law not enumerated in Art. 87 of the Constitution of the Republic of Poland, viz.:

– company-level acts of non-individual nature, established by the employer, at times with the participation of bodies representing employees (e.g. regulations, articles)[3];

– corporative non-individual acts established by organisations associating employees or employers (e.g. articles)[4];

– accords of non-individual nature concluded by entities representing employees and the employer(s).

[1] Cf. E. Chmielek-Łubińska, *Szczególne właściwości źródeł prawa pracy. (Zagadnienia wybrane)*, (in:) *Studia z zakresu prawa pracy i polityki społecznej*, [Particular Features of Labour Law Sources – Selected Issues, (in:) Studies in Labour Law and Social Policy], A. Świątkowski (ed.), Kraków 1999/2000, p. 31–32, 40 *et seq.*; L. Florek, *Autonomiczne (pozaustawowe) źródła prawa pracy*, (in:) *Księga pamiątkowa poświęcona Czesławowi Jackowiakowi* [Autonomous (Non Statutory) Sources of Labour Law, (in:) Commemorative Book in Honour of Prof. Czesław Jackowiak], Warszawa 1999, p. 91 *et seq.*

[2] Cf. for instance. Z. Kubot, T. Kuczyński, Z. Masternak, H. Szurgacz, *Prawo pracy. Zarys wykładu* [Outline of Labour Law], Warszawa 2008, p. 47–48.

[3] Cf. E. Chmielek, *Wewnątrzzakładowe normy prawa pracy* [Company Labour Law Regulations], ZNUJ, Vol. 83, Kraków 1979, p. 147 *et seq.*

[4] Cf. e.g. Z. Hajn, *Status prawny organizacji pracodawców* [The Legal Status of Employer Organisations], Warszawa 1999, p. 47; K. W. Baran, *Zbiorowe prawo pracy* [Collective Labour Law], Kraków 2002.

The author believes that all the above mentioned categories of non-individual acts have the feature of special[5] or specific[6] sources of labour law. In his opinion the notion of autonomous labour law should be reserved, though, only to the last group of sources, based on the idea of an autonomous dialogue of social partners held under industrial relations. The core of the law is collective agreements[7] concluded by all subjects authorised to represent the employees in industrial relations[8]. Viewed in the functional plane, they are all based on the principle of freedom of decision, mutual recognition of partners' interests and the common good.

2. From the normative point of view, of particular importance for the characteristics of the autonomous labour law is Art. 59 par. 2 of the Constitution of the Republic of Poland. It proclaims so-called freedom of collective baragining in employment relationships authorizing trade unions and employers as well as their organizations to conclude collective labour agreements[9] and other accords (atypical collective agreements)[10]. As regards its objective aspect, it does not limit conclusion of the said other collective accords. And thus, in view of the *in dubio pro libertate* rule there exists, according to the said provision, an open catalogue which, under the freedom of collective bargaining scheme, can be filled with contents by social partners at their full discretion.

Those other accords mentioned above have differentiated normative nature. The criteria for their differentiation are specified in Art. 9 par. 1 of the Labour Code (hereinafter referred to also, in short, as L.C.). The said does not mean, though, that non-individual agreements which do not meet the conditions speci-

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[5] See for instance M. Włodarczyk, *„Swoiste" źródła prawa pracy – kilka refleksji na temat ich genezy i funkcji*, (in:) *Z zagadnień współczesnego prawa pracy. Księga jubileuszowa Profesora Henryka Lewandowskiego* [The „Autonomous" Sources of Labour Law – A Few Remarks Concerning Their Origins and Function, (in:) Commemorative Book in Honour of Professor Henryk Lewandowski], Z. Góral (ed.), Warszawa 2009, p. 107 *et seq.*; J. Wratny, *Regulacja prawna swoistych źródeł prawa pracy. Uwagi de lege lata i de lege ferenda* [Legal Rules Concerning the Autonomous Labour Law Sources. Remarks *de lege lata* and *de lege ferenda*], PiZS 2002, Vol. 12, p. 4 *et seq.*

[6] See, for instance, L. Kaczyński, *Wpływ art. 87 Konstytucji na swoiste źródła prawa pracy* [The Impact of Art. 87 of the Constitution on Autonomous Sources of Labour Law], „Przegląd Sądowy" 1997, Vol. 8, p. 65–66; W. Uziak, *Specyficzne źródła prawa pracy (Uwagi do dyskusji)* [The Autonomous Labour Law Sources (Remarks to the Discussion)], GSP 2007, Vol. VI, p. 29–30.

[7] Cf. J. Jończyk, *Prawo pracy* [*Labour Law*], Warszawa 1992, p. 39; G. Goździewicz, *Charakter prawny porozumień zbiorowych w prawie pracy* [Legal Nature of Collective Agreements in Labour Law], PiZS 1988, Vol. 3, p. 18–20; B. Cudowski, *Charakter prawny porozumień zbiorowych* [Legal Nature of Collective Agreements], PiP 1998, Vol. 8, p. 65 *et seq.*

[8] They do not have to provide for rights and obligations of parties to the employment relationship.

[9] Peculiar features of collective agreement rules are discussed by G. Goździewicz, *Szczególny charakter norm prawa pracy* [Peculiar Features of Labour Law Rules], Toruń 1998, s. 46 *et seq.*

[10] Cf. B. Cudowski, *Charakter prawny porozumień*…, p. 59 *et seq.*

fied in the provision do not have the feature of autonomous labour law. They do also, directly or indirectly, provide for the functioning of employment relationships[11]. The same remark can be referred to agreements concluded between non-trade union employee representations and the employers[12].

It is against that background that there arises a problem of admissibility of agreements of that kind in the context of subjective limitations stated by Art. 59 par. 2 of the Constitution of the Republic of Poland. I share the view[13] accepted in the labour law doctrine that the provision in question does not make a normative hindrance to agreements concluded between employers and non-trade union entities representing the employees. Such an inference is based on the principle of admissibility of intensive interpretation of permit- or competence-giving norms. The said does not mean complete demonopolisation of agreements whereby the autonomous labour law is formed on the employee side, as *de lege lata* (under the law as it is) the monopoly of trade unions is established by norms of ordinary (non-constitutional) legislation. An example of that is provisions regulating the concluding of collective labour agreements. They explicitly authorize only the relevant body of a supra-national trade union organization[14] to conclude multi-establishment collective labour agreements, and as far as company-level CLAs are concerned – the relevant company (Art. 241^{23} of Labour Code) or inter-company (Art. 241^{30} of the Labour Code) trade union organization. A monopolistic legal scheme like that that raises doubts under conditions of market economy[15], while pushing masses of employees out of the area of CLA regulations. The author takes

[11] Cf. for instance M. Seweryński, *Porozumienia generalne*, (in:) *Księga jubileuszowa Profesora Henryka Lewandowskiego* [General Agreements, (in:) Commemorative Book in Honour of Professor Henryk Lewandowski], Warszawa 2009, p. 79 *et seq.*

[12] Cf. B. Wagner, *Porozumienia zawierane na gruncie ustawy o informowaniu pracowników i prowadzeniu z nimi konsultacji*, (in:) *Informowanie i konsultacja pracowników w polskim prawie pracy* [Agreements Concluded under the Act on Employee Information and Consultation, (in:) Informing and Consulting Employees in Polish Labour Law], A. Sobczyk (ed.), Kraków 2008, p. 114 *et seq*.; L. Florek, *Porozumienia zbiorowe dotyczące informacji i konsultacji pracowniczej*, (in:) *Księga jubileuszowa Profesora Henryka Lewandowskiego* [Collective Agreements Concerning Informing and Consulting Employees, (in:) Commemorative Book in Honour of Professor Henryk Lewandowski], Warszawa 2009, p. 67 *et seq.*

[13] Cf. W. Sanetra, *Konstytucyjne prawo do rokowań zbiorowych* [The Constitutional Right to Collective Bargaining], PiZS 1998, Vol. 12, p. 8.

[14] Cf. for instance J. Sierocka, *Reprezentacja praw i interesów pracowniczych w układach oraz innych porozumieniach zbiorowych*,(in:) *Reprezentacja praw i interesów pracowniczych* [Representation of Employee Rights and Interests in Collective Labour Agreements and Other Collective Accords, (in:) Representation of Employee Rights and Interests], G. Goździewicz (ed.), Toruń 2001, p. 150 *et seq*.; Z. Hajn, *Nowa regulacja prawna zdolności układowej związków zawodowych* [New Legal Rules Concerning Trade Union Capacity to Conclude CLAs], PiZS 2001, Vol. 4, p. 2 *et seq*.

[15] Cf. e.g. Z. Hajn, *Związkowa reprezentacja praw i interesów pracowniczych a zasada negatywnej wolności związkowe*, (in:) *Reprezentacja praw i interesów pracowniczych* [Trade Union Representation of Employee Rights and Interests and the Rule of Negative Trade Union

a moderate approach to the issue, believing that where there are no trade unions at specific employers, concluding CLAs on the company level should be available to bodies of worker participation[16] (for instance works councils[17]). Implementing the scheme in the law would definitely favour extension of the practice of concluding collective labour agreements in industrial relations, a thing most important given permanent reduction of trade union density rate.

The proposal to extend the CLA-related freedom in the subjective scope, as presented above, does not violate trade union rights in any material way. Actually, more radical solutions in the field are possible. For instance, concluding of a company CLA by a worker participation body could be allowed in a situation where there is no a representative trade union organization within the meaning of Art. 241^{25a} par. 1 of the Labour Code[18]. In such a situation the works council definitely has a stronger legitimacy to appear for the staff, being a body appointed under a general election scheme. In addition, a similar solution would reduce the threat that CLAs could include biased schemes, providing preferential solutions to employees associated in trade union organisations being the parties to the CLA. Should, however, the option be accepted, normative mechanisms supporting cooperation of trade unions with the participation bodies would be necessary to introduce. It could be assumed, for instance, that a refusal to take up cooperation under a joint representation scheme within a specified time-limit would result in a temporary loss of the capacity to represent employees in collective bargaining aimed at conclusion of a CLA. A regulation like that would sufficiently secure interests of trade union organizations, at the same time meeting the requirements set in Art. 3 par. 2 of the ILO Convention No. 154 which prohibits using collective bargaining with worker representation bodies to undermine the position of trade unions.

3. An important aspect of the freedom to bargain collectively with the view of concluding a CLA is the subjective scope of the freedom, viewed from the side of its beneficiaries[19]. *De lege lata* (under the law in force) the use of the tool of collective labour agreements is limited in the public sector by Art. 239 par. 3 of

Freedom, (in:) Representation of Employee Rights and Interests], G. Goździewicz (ed.), Toruń 2001, p. 74.

[16] Such a practice is approved by ILO. Cf., in particular, Sec. II.2.1. of recommendation No. 91 concerning collective labour agreements and cases quoted by A. Świątkowski, *Międzynarodowe prawo pracy. Międzynarodowe publiczne prawo pracy – standardy międzynarodowe* [International Labour Law. Public International Labour Law – International Standards], Vol. 1, part 2, Warszawa 2008, pp. 59–60.

[17] For the ILO detailed requirements In that respect cf. A. Świątkowski, *Międzynarodowe prawo*..., p. 64.

[18] With at least one representative trade union organisation operating at the employer's, the principle of the trade union monopoly to conclude CLAs would stay in force.

[19] Cf. W. Sanetra, *Strony i uczestnicy układów zbiorowych* [Parties to and Participants of Collective Labour Agreements], „Przegląd Sądowy" 1993, Vol. 6, p. 34 *et seq.*; J. Piątkowski,

the Labour Code[20]. Although the limitation established there is one of enumerative nature and may not be put to extensive interpretation, the range of groups of employees to whom it pertains is, in my opinion, definitely too broad. This holds particularly true as regards limitations imposed in item 3 of the article onto employees of the local government entities. Proposed solutions of Art. 110 of the drafted Collective Labour Code developed in April 2007 by the Labour Law Reform Committee deserve credit. The drafted Code has considerably extended the subjective scope of CLAs, limitations being retained only as regards judges, public prosecutors and those whose employment relationship is based on appointment. Statutorily determined exclusions were admitted as regards the latter case, though. As opposed to them, any limitations concerning local government employees were repealed. Considering that dimension, the drafted law does keep both the spirit and letter of Convention No. 151. Liberalisation going that deep raises doubts as to the situation of those employed in local government units as elected employees. Given their special position within structure of the local government and the fact that it is themselves that have the powers to decide in processes of collective bargaining I would find it reasonable to include that category of employees into the negative catalogue contained in Art. 110. A preventive mechanism should thus be established, to avert pathologies that could arise in the sphere of remuneration and other benefits to those co-determining the contents of CLAs.

An essential element regarding the subjective scope of the existing legal schemes is the issue of concluding multi-establishment CLAs in the entities of the public (governmental) sector. I believe that under the law in force it is allowed to conclude both single- and multi-establishment collective labour agreements there. The statement can be corroborated by the *lege non distinguente* argument, as applied to provisions of Art.77^3 § 1 of the Labour Code. The provision explicitly allows for concluding a CLA, without specifying whether it could be a single- or a multi-establishment one. Inferring from that argument, it is thus justified to state that for employees of the governmental sector entities either a single- or a multi-establishment CLS can be concluded, depending on the scope of the bargaining. There are no legal barriers for concluding both, either. The directive of competence for them will be provided by Art. 241^{26} § 1 of the Labour Code.

When providing reasons to the above presented standpoint as to both categories of CLAs being available to employees of public (governmental) entities

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Uprawnienia zakładowej organizacji związkowej [Powers of the Company Trade Union Organisation], Toruń 2005, pp. 116–123.

[20] Cf. J. Skoczyński, *Reprezentacja praw i interesów pracowników służby publicznej*, (in:) *Reprezentacja praw i interesów pracowniczych* [Representation of Rights and Interests of Public Sector Employees, (in:) Representation of Employee Rights and Interests], G. Goździewicz (ed.), Toruń 2001, pp. 271–274.

norms of the Constitution should be mentioned in the first place[21]. Art. 59 par. 2 of the Constitution, when providing for the right to bargain collectively, explicitly oriented activities of social partners towards concluding collective accords, collective labour agreements in particular. Within that context no legal rule, including that of Art. 77^3 § 1 of the Labour Code should be interpreted restrictively, as one reducing the constitutional freedom to bargain collectively. It is thus obvious that provisions of Art. 59 par. 2 of the Constitution of the Republic of Poland are applicable also to employees of the public (governmental) sector entities. Any doubts in that respect, following the *in dubio pro libertate* rule should be dispelled in favour of the freedom to conclude CLAs. The conclusion stems from the *a completudine* argument assuming comprehensiveness of law interpretation covering legal norms of various position in the hierarchy.

Discussing the issue of CLA as the basic source of the autonomous labour law it is worthwhile to devote some space to its subjective aspect. *De lege lata* the scope of the freedom to bargain collectively does not raise doubts. Amendments to the Labour Code of November 2000 lifted last[22] barriers[23] in that respect, standards established in international law being thus met.

4. Under Polish conditions the issue of implementation of CLA provisions is a vital issue. While there is no doubt that CLA provisions of normative nature can be enforced through court without any obstacles, implementation of the welfare provisions[24], where it is the entire staff as a collective that is the beneficiary, has not been provided for by law. There thus exists an objective loophole in Polish legislation regarding the enforcement of collective rights through court. For trade unions being a party to the CLA, the only efficient way of forcing the employer(s) to implement social provisions lies, *de lege lata*, in institution of a collective dispute, just like the procedures specified in the CLA itself provide.

Considering the said, I *de lege ferenda* suggest that recourse to law should be open to trade unions being a party to the CLA, when asserting the staff's welfare

[21] Essential arguments for the admissibility of concluding CLAs for public sector employees are provided by norms of international law. I have in mind, in that respect, Art. 6 of the European Social Charter (Journal of Laws of 1999, No. 8, item 67) and rules of ILO Convention No. 98 (Journal of Laws of 1958 , No. 29, item 126).

[22] Cf. J. Wratny, *Zakres przedmiotowy układów zbiorowych pracy w świetle przepisów prawa pracy*, (in:) *Układy zbiorowe w demokratycznym ustroju pracy* [The Objective Scope of CLAs in the Light of Labour Law Provisions, (in:) Collective Labour Agreements under the Democratic Labour System], J. Wratny (ed.), Warszawa 1997, pp. 28–31.

[23] Certainly enough, imperative norms will be retained within the labour law system.

[24] For a more detailed discussion cf. G. Goździewicz, (in:) *Kodeks pracy. Komentarz* [The Labour Code. A Commentary], W. Muszalski (ed.), Warszawa 2009, p. 1096–1098; G. Uścińska, *Działalność socjalna w postanowieniach układów zbiorowych pracy*, (in:) *Układy zbiorowe w demokratycznym ustroju pracy* [Company Welfare Activities in Provisions of Collective Labour Agreements, (in:) Collective Labour Agreements under the Democratic Labour System], J. Wratny (ed.), Warszawa 1997, p. 141 *et seq.*

rights. Provisions of Art. 8 par. 3 of the Act of 4 April, 1994 on Company Welfare Fund can set an example in that respect. In my opinion also in case of other categories of collective rights (like, for instance, that of subsidizing commercial insurance) there should exist a legal possibility for the trade union being a party to the CLA to file a suit against the employer to labour court . Such a solution would considerably reduce the threat of a break of collective dispute, which move invariably brings about a dysfunctionality within the industrial relations.

5. When analysing the objective aspect of collective labour agreements one meets with the problem whether trade unions are allowed to renounce their right to strike[25]. Given the dual nature of the right, in practical terms it is renouncement of the right to organize a strike that is concerned. It is quite obvious that trade unions being a party to the CLA may not renounce, on behalf of the employees, the right to participate in the strike if the latter is organized by a trade union not being a party to the CLA.

Under the law in force it is thus allowable to the trade union party to renounce, in the obligational part of the CLA, the right to organize a strike. The right is not an absolute one, hence it is possible to waive it temporarily. Such interpretation is seconded by provisions of Art. 4 par. 2 of the Act on Settlement of Collective Disputes. The latter provides that where it is the contents of the collective labour agreement (to which agreement the trade union organization is a party), that is the object of the dispute, institution and conducting of a dispute over amending the CLA may take place no sooner than as on the date of the notice to terminate. From the *a maiori ad minus* argument I infere that once it is not allowed to institute a collective dispute, it is even more not acceptable to conduct a strike. I do not see any normative barriers for a trade union to renounce, for the time of the collective labour agreement staying in force, the right to organize a strike also as regards matters not covered by the CLA[26]. The above said pertains, *mutatis mutandis*, also to protest actions other than strike. In the obligational part of the CLS the parties may even enumerate the types of non-strike protest that will not be allowed. What is more, admit payment of indemnities for losses sustained by the employer owing to a strike or protest action organized in violation of the CLA provisions.

6. Talking about the rules of the Labour Code providing for collective labour agreements, attention should be paid to the issue of freedom to bargain collectively. *De lege lata* it is considerably limited, as parties are obligated, under Art. 241^1 § 3 of the Labour Code, to take up negotiations. The provision is not

[25] Cf. T. Zieliński, *Strajk. Aspekty polityczno-prawne* [The Strike. Political and legal Aspects], PiP 1981, Vol. 4, p. 5 *et seq.*; B. Paździor, *Strajk w orzecznictwie organów kontrolnych Międzynarodowej Organizacji Pracy* [Strike in Judicial Decisions of ILO Control Bodies], PiP 2002, Vol. 1, p. 45 *et seq.*

[26] For a closer discussion cf. L. Florek, *Ustawa i umowa w prawie pracy* [The Legislation and the Contract of Employment in Labour Law], Warszawa 2010, p. 261.

correlated with ILO standards, as freedom is explicitly required by Art. 4 of Convention No. 98 in that respect. Meanwhile, the letter of Art. 241^2 § 3 of the Labour Code highly restricts social partners. Whereas items 1 and 3 of Art. 241^1 § 3 of the Labour Code are specific enough, and thus acceptable[27], item 2 of the norm leaves the active party excessive freedom in assessing whether there is a need to bargain. The legislator has used highly vague notions in it, such as an"essential change of the situation" and "deterioration of financial standing". The said can result, in practical terms, in demands to take up negotiations being made arbitrarily, and the freedom being thus grossly restricted. This is why I advocate, *de lege ferenda*, removal of the norm from Poland's labour law system, as it contradicts normative regulations of universal nature.

7. The above presented issues are not the only normative problems related to collective labour agreements; I have just focused on those aspects that are material for industrial relations. In further parts of the paper I should like to concentrate on matters other than those pertaining to CLAs, as it also them that shape, to an ever greater extent, the autonomous labour law within its broad limits set out by Art. 59 par. 2 of the Constitution of the Republic of Poland. The provision in question does not limit concluding other collective accords beyond the subjective sphere. In industrial relations based on free game of market forces these bear, from the very nature of things, a differentiated character, the criteria for the differentiation being specified in Art.9 § 1 of the Labour Code. The provision must not be interpreted extensively, following the *exceptiones non sunt excendendae* rule. The status of a "different accord" can be assigned, according to it, to the accords meeting two conditions jointly. They have to have a statutory basis[28] and provide for rights and duties of parties to employment relationship.

De lege lata the following categories of accords have been provided a statutory basis:

– accord on implementation of a collective labour agreement (Art. 241^{10} of L.C.);

– accord on suspension of implementation of a collective labour agreement (Art. 241^{27} § 1 L.C.)[29];

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[27] In the light of the views of the ILO Committee of Experts on the Application of Convention and Recommendation limitations of the voluntary nature and freedom of collective bargaining should be regarded as exceptional and be applied only insofar as they are necessary (cf. ILO *Committee of Experts on the Application of Convention and Recommendation*, (in:) *General Survey, Committee of Experts*, Geneva 1983, p. 104).

[28] Cf. L. Florek, *Ustawa i umowa*…, pp. 187–189.

[29] Cf. L. Kaczyński, *Zawieszenie zakładowego układu zbiorowego pracy*, (in:) *Prawo pracy, ubezpieczenia społeczne, polityka społeczna. Wybrane zagadnienia* [Suspension of the Single-Establishment Collective Labour Agreement, (in:) Labour Law, Social Security, Social Policy. Selected Issues], B. M. Ćwiertniak (ed.), Opole 1998, p. 291 *et seq*.; Z. Salwa, *Uprawnienia związków zawodowych* [Trade Union Powers], Bydgoszcz 1998, pp. 64–65.

– agreement relative to transfer of the work establishment onto a new employer (Art. 26^1 par. 3 of the Trade Union Act);

– agreement on suspending labour law provisions (Art. 9^1 of L.C.)[30];

– agreement on application of less favourable terms of employment (Art. 23^{1a} of L.C.)[31];

– agreement on terms of use of telework (Art. 67^6 of L.C.)[32];

– conciliation agreements concluded under a collective dispute (Art. 9 of the Act on Settlement of Collective Disputes);

– mediation agreement concluded under a collective dispute (Art. 14 of the Act on Settlement of Collective Disputes);

– arbitrage-related agreements concluded under a collective dispute (Art. 16 par. 7 of the Act on Settlement of Collective Disputes in connection with § 9 of the Ordinance on the Mode of Procedure Before Social Arbitration Boards);

– strike (or post-strike) agreements concluded under a collective dispute (Art. 9 or Art. 14 in connection with Art. 17 of the Act on Settlement of Collective Disputes)[33];

– agreement concerning mass lay-offs (Art. 3 par. 1 of the Act on Particular Rules for Termination of Employment Relationships with Employees for Reasons not Concerning the Employees)[34];

– anti-crisis agreements;

– agreements on the increase of an average salary (Art. 4 of the Act on Negotiation-Based System of Increase of Average Salaries in Business Units).

The above presented list does not, by the very nature of things, have enumerative character, as the employer is free to find a statutory "support" to further types of agreements.

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[30] Cf. K. Rączka, *Porozumienia zawieszające przepisy prawa pracy* [Accords Concluded to Suspend Labour Law Provisions], PiZS 2002, Vol. 11, p. 28; J. Stelina, *Charakter prawny porozumienia o stosowaniu mniej korzystnych warunków zatrudnienia* [Legal Nature of the Accord on Application of Less Favourable Terms of Employment], PiP 2003, Vol. 9, p. 85 *et seq.*

[31] Cf. L. Pisarczyk, *Porozumienia kryzysowe jako instrument dostosowania przedmiotu świadczenia stron stosunku pracy do zmieniających się okoliczności*, (in:) *Indywidualne a zbiorowe prawo pracy* [Crisis-Related Agreements as a Tool to Adjust the Object of Performance of Parties to the Employment Relationship to the Changing Circumstances, (in:) Individual and Collective Labour Law], L. Florek (ed.), Warszawa 2007, p. 123 *et seq.*

[32] Cf. A. Sobczyk, *Telepraca w prawie polskim* [Telework under Polish Law], Warszawa 2009, p. 50–53.

[33] Cf. K. W. Baran, *Porozumienia zawierane w sporach zbiorowych jako źródła prawa pracy* [Collective Agreements in Collective Labour Dispute], Monitor Prawa Pracy 2008, No. 9, *passim*.

[34] Cf. A. Leszczyńska, *Porozumienia w sprawie zwolnień grupowych*, (in:) *Źródła prawa pracy* [Agreements Concerning Mass Lay-offs, (in:) Labour Law Sources], L. Florek (ed.), Warszawa 2000, p. 126 *et seq.*

Under the concept of freedom to bargain and conclude collective agreements, parties to such agreements can provide for various issues in the latter. Ideally, three main options are available, the agreements providing for:

– only rights and duties of parties to the agreement;

– rights and duties of both parties to the agreement and parties to the employment relationship;

– only rights and duties of parties to employment relationship.

8. The category of accords mentioned in item 1 does not have impact on terms of employment of workers, so in the light of Art. 9 § 1 of L.C. the accords do not have the feature of labour law provisions. The remaining two categories of agreements have such feature insofar as they provide for rights and duties of parties to employment relationship. The said means that they can give rise to claims that can be asserted in court.

In practical terms it is "transfer" of provisions of other accords specifying concrete rights and duties of employees to an individual employment relationship that often remains a problem. *De lege lata* there is an objective loophole in that respect, this is why I suggest that a norm similar to that of Art. 241^{13} of L.C. should be introduced into the system of collective labour law.

A serious problem in industrial relations is also caused by lack of rules for making amendments in other collective accords and for termination of those. In particular lack of general rules concerning the latter issue, more specifically – giving a notice to terminate them – proves very painful to social partners and violates the negative freedom to conclude collective agreements. The existing legal solutions force either termination of only periodical agreements (a thing hardly acceptable for social reasons) or application – using the *a simili* argument – of provisions of Art. 241^{7} of L.C.

As far as obligational provisions of other accords are concerned, regulations concerning obligational provisions of CLAs should be *ab exemplo* applied. The presented interpretation option is rooted in *a coherentia* and *a completudine* arguments. The first of those stresses coherence, the other completeness of the legal system in its functional dimension.

In my opinion, the autonomous labour law also includes accords concluded between the employer and non-union forms of employee representation. Under the law in force it is the subjective aspect that seems to be of particular importance in that respect. The existing labour law solutions provide for wide opportunities to conclude accords of that kind[35] with representatives of employers appointed in the way arbitrarily set forth by the employer. Under such conditions there exists a serious threat of manipulating the way of the appointment, in the various dimen-

[35] Cf for instance Art. 9^{1} § 2 in fine, 23^{1a} § 2. See also K. W. Baran, *Ogólna charakterystyka ustawodawstwa antykryzysowego na tle funkcji prawa pracy* [General Characteristics of the Anti-crisis Legislation against the Background of Labour Law Functions], PiZS 2009, Vol. 9, p. 19.

sions of the latter. From the social perspective the optimum solution seems to be a statutory-based procedure allowing the staff to appoint their representatives by means of a secret ballot. I believe that only a body of representation appointed in such a way will have a mandate broad enough to conclude agreements having impact on employee rights and duties with the employer.

Against that background there arises a question whether Poland's works councils can be viewed as a representation "appointed in the way adopted at a specific employer's". I favour a positive answer to the issue if the employer falls into the scope of operation of Art. 1 of the Act on Informing and Consulting Employers and the staff[36] made use of the right, having appointed the works council[37]. It should be remembered that under industrial relations the bodies in question are the most representative ones, as they are elected by all employees in a system of common and democratic voting. Hence in my paper I will focus on the accords concluded with the works councils[38]. It is well-worth stressing, though, that the discussion presented here will be applicable, *mutatis mutandis*, also to other accords concluded by non-trade union representations enjoying participation powers, including those appointed *ad hoc* in the mode adopted at a specific employer.

The point of departure lies in the statement that the accords between the employer and the non-trade union form of worker representation are ones of differentiated legal nature depending on the rights and duties established by them. And thus, where the accord concerns only its parties, it has obligational nature, whereas if rights and duties are provided for by the accord it is one of normative character. In the former case it is thus, consequently, not a source of labour law within the meaning of Art. 9 § 1 of the Labour Code, and a source of law in the latter. As it seems, an example of the first category mentioned here is agreements concluded pursuant to Art. 5 of the Act on Informing and Consulting Employees, as they provide only for mutual obligations of the parties[39]. Quite different is the situation of the agreement concluded under Art. 14 par. 2 item 5 of the said Act. It can contain provisions concerning rights and duties of parties to the employment relationship and within such objective scope the accord will be one of normative nature, parties of employment relationships being authorized to enforce their claims through court. As regards obligational provisions, *de lege ferenda* I would suggest granting works councils the right of action (like the one granted to trade

[36] For a more detailed discussion see K. Walczak, G. Orłowski, *Załoga a rada pracowników*, (in:) *Informowanie pracowników w polskim prawie pracy* [The Workforce and the Works Council, (in:) Informing Employees under Polish Labour Law], A. Sobczyk (ed.), Kraków 2008, p. 105 *et seq.*

[37] Cf. A. Sobczyk, *Zmiany w ustawie o radach pracowników* [Amendments to the Works Councils Act], MPP 2009, Vol. 9, pp. 459–460.

[38] Cf. B. Wagner, *Porozumienia zawierane*…, p. 114 *et seq.*

[39] Cf. for instance B. Raczkowski, *Gdy powstaje rada – obowiązki pracodawcy* [When the Works Council Is Established – Duties of the Employer], MPP 2006, Vol. 8, p. 419–420.

unions pursuant to Art. 8 par. 3 of the Act on Company Welfare Fund). It should be taken into account, by the way, that the councils do not have, *de lege lata*, the right to conduct collective disputes to enforce implementation of the accords.

There can arise, in practice, a problem of collision of provisions concerning rights and duties of parties to the employment relationship. It seems that the general collisions directives should be applied in such case. It is, first of all, the *lex posterior*, *lex xpecialis* and *lex posterior generalis non derogat legi priori speciali* rules that should be taken into account. Where doubts cannot be cleared up, though, the interpretator should be guided by the rule of dispelling them in favour of the employee.

9. When analyzing the status of the autonomous sources of labour law, it is worthwhile to discuss their position within the system of sources of Poland's labour law in general. The point of departure for further considerations is the observation that position of that category of sources within the hierarchy of legal norms is not specified by the Constitution of the Republic of Poland. There is no doubt, though, that they rank lower than the universally binding norms do. That view is supported by the fact that Art. 9 § 2 of L.C. in its objective dimension provides for primacy of normative acts over acts of the autonomous labour law[40].

Mutual hierarchical relations have not been unmistakably determined within the set of the specific labour law sources, either. These are implicitly set by Art. 9 § 3 of the Labour Code, which ranks CLAs and other accords higher. Provisions of Labour Code do not, however, set "internal" relations between sources of the autonomous labour law, more specifically between CLAs and other accords. Their status, as determined by the said provisions, each time is set by means of conjuction. Consequently, it should be assumed that in the supra-individual plane they all enjoy equal legal power. In practical terms the said means that if there are no contradictions between them in the objective dimension, provisions of both acts should be applied. Where there does occur such a contradiction, though, general collision directives of both the second and third degree should be followed. In case of "level-type" differences between sources of the autonomous labour law (e.g. a multi-establishment collective labour agreement vs. company-level one) it is allowed to refer, *per analogiam*, to Art. 241^{26} § 1 of the Labour Code.

10. When discussing the status of the autonomous sources of labour law in the hierarchy of sources of law in general it seems necessary to devote some space also to their relation to the company-level sources of law, the regulations in par-

[40] Cf. T. Zieliński, (in:) *Kodeks pracy. Komentarz* [The Labour Code. A Commentary], A. Zieliński (ed.), Warszawa 2000, p. 144–145; E. Chmielek-Łubińska, (in:) *Kodeks pracy. Komentarz* [The Labour Code. A Commentary], B. Wagner (ed.), Gdańsk 2008, pp. 35–36.

ticular[41]. Let us begin by forwarding the thesis that collective labour agreements and other accords may provide for terms of employment less favourable than those established in the regulations. Reasons supporting the view come from the *a contrario* argument applied to Art. 9 § 3 L.C. stating that provisions of the regulations must not be less favourable than those contained in collective labour agreements and accords. And thus it is right to infer from the reasoning that CLAs and collective accords may contain provisions less favourable to the employee than regulations do. Consequently, rules contained in the regulations may be repealed by them. As regards the employer, the consequence of such a change, viewed from the perspective of an individual employment relationship is the requirement to make a notice to change the terms of employment in the mode prescribed by Art. 42 § 1–3 of L.C.

It should be stressed against the background of the discussion of the autonomous labour law that distinction should be made between the hierarchy of labour law sources, which hierarchy has a universal nature, and the precedence of application of norms regarding an individual employment relationship. It is the rule of favourability that governs here. The consequence of its application is the precedence of rules of lower rank (including those of autonomous labour law) against norms occupying a higher position in the hierarchy. In the practice of industrial relations this results in the shift of order of application of norms of higher and lower rank, which phenomenon can be described as the diffusion of labour law norms.

To sum up, it seems right to state that despite the thirty years that have lapsed since the socio-political breakthrough of August 1980, norms of the autonomous labour law keep playing a secondary role in Poland's industrial relations. I have no doubt, though, that their importance will gradually rise as the free market mechanisms will gain in strength and become more mature. Achieving that may, however, be possible, through deregulation and making statutory law, restricting freedom to bargain in industrial relations in many aspects, more flexible. The statutory law should just set minimum standards for social partners who, within the framework of norms negotiated between them would determine the status of parties to an individual employment relationship.

[41] The below presented observations are, *mutatis mutandis*, applicable to articles of incorporation. As regards the latter category of legal acts see: A. Jedliński, L. Kaczyński, *Statut jako źródło prawa pracy* [The Articles of Incorporation as a Labour Law Source], PiP 1999, Vol. 4, p. 35 *et seq.*

ABSTRACT

The notion of autonomous labour law is usually used to cover all sources of law not enumerated in Art. 87 of the Polish Constitution. However, in the opinion of the author, it should be reserved only for accords of non-individual nature concluded by entities representing employees and the employer(s), especially for collective labour agreements (CLAs). The CLAs (and other accords concluded between the employer and the trade unions) are the main topic of this paper. The first problem is the proposal to extend the CLA-related freedom. At present, it is largely the monopoly of trade unions. The author suggests that the extend the right to conclude CLAs be extended to non-union representative-bodies, especially taking into account work councils. The next problem is the range of groups of employees are covered by CLAs. It is, in opinion of the author, definitely too broad. The CLAs should be allowed also in entities of the public (governmental) sector. The provisions of Art. 59 par. 2 of the Constitution of the Republic of Poland and the freedom of collective bargaining are applicable also to employees of the public sector. The third problem raised by the author is the enforcement of collective rights through court. There should exist a legal possibility for a trade union that is a party to a CLA to file a suit against the employer to labour court. The next issues considered by the author are the problem of the "transfer" of provisions of CLAs to an individual employment relationship and the lack of rules for making amendments in CLAs and for terminating them. The author makes also some comments as to the status of the autonomous sources of labour law (especially CLAs and other accords concluded between the employer and the trade unions) in the hierarchy of the sources of law. In the opinion of the author, their importance will gradually increase. Achieving that may be possible in particular through deregulation and changes making statutory law, which restricts the freedom of collective bargaining, more flexible.

AUTONOMICZNE ŹRÓDŁA PRAWA PRACY – WNIOSKI *DE LEGE LATA* I *DE LEGE FERENDA*

Streszczenie

Pojęcie autonomicznego prawa pracy jest zwykle używane w odniesieniu do wszystkich źródeł prawa niewymienionych w art. 87 Konstytucji. Niemniej jednak, zdaniem autora, powinno być ono zarezerwowane dla zbiorowych aktów zawieranych pomiędzy podmiotami uprawnionymi do reprezentowania pracowników i pracodawców,

w szczególności do układów zbiorowych pracy. Układy zbiorowe pracy (i inne porozumienia zbiorowe) są głównym przedmiotem niniejszego opracowania. Pierwszy problem dotyczy rozszerzenia prawa zawierania układów zbiorowych w znaczeniu podmiotowym. Aktualnie jest to przede wszystkim domena związków zawodowych. Autor sugeruje rozszerzenie prawa do zawierania układów zbiorowych na reprezentacje pozazwiązkowe, i w szczególności ma tutaj na myśli rady pracowników. Kolejne zagadnienie dotyczy grupy pracowników, do których stosuje się postanowienia układów zbiorowych pracy. Zdaniem autora, jest ona określona zdecydowanie zbyt wąsko. Zawieranie układów zbiorowych powinno być dopuszczalne także w sektorze publicznym (rządowym). Postanowienia art. 59 par. 2 Konstytucji RP oraz swoboda prowadzenia rokowań zbiorowych odnosi się także do pracowników sektora publicznego. Trzeci problem tu poruszany to kwestia dochodzenia praw, wynikających z porozumień zbiorowych, przed sądem. Związki zawodowe będące stronami porozumień zbiorowych powinny mieć zapewnioną prawną możliwość wniesienia pozwu przeciwko pracodawcy do sądu pracy. Kolejne kwestie poruszane w tym artykule to problem przenoszenia warunków zatrudnienia wynikających z porozumień zbiorowych do indywidualnych stosunków pracy oraz brak regulacji dotyczących dokonywania zmian i wypowiadania porozumień zbiorowych. Autor odnosi się również do miejsca autonomicznych źródeł prawa pracy (w tym w szczególności układów zbiorowych i innych porozumień zbiorowych) w hierarchii źródeł prawa. W ocenie autora ich znaczenie będzie rosło. Osiągnięcie tego jest możliwe w szczególności poprzez deregulację i uczynienie przepisów ustawowych, ograniczających swobodę prowadzenia rokowań zbiorowych, bardziej elastycznymi.

KEYWORDS

autonomous labour law, sources of law, collective labour agreement, accords of non-individual nature, trade union, non-union representations, work councils, public sector, freedom of collective bargaining, collective rights, individual employment relationship, autonomous sources of labour law

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autonomiczne prawo pracy, źródła prawa, układ zbiorowy pracy, porozumienia zbiorowe pracy, związek zawodowy, przedstawicielstwa pozazwiązkowe, rady pracowników, sektor publiczny, wolność rokowań zbiorowych, prawa zbiorowe, indywidualny stosunek pracy, autonomiczne źródła prawa pracy

Bogusław Cudowski
University of Białystok

EMPLOYEE REPRESENTATION IN COLLECTIVE LABOUR DISPUTES – *DE LEGE LATA* AND *DE LEGE FERENDA*

1. The issue of employee representation in industrial relations is an extremely complex one, the fact being a result of, first of all, no uniform model of representation of employee collective rights and interests having been developed under Poland's labour law legislation. By far, the organization most important among those established to represent collective interests of the employees is trade unions. The union membership, however, has been permanently on the decline. At many companies there have been no trade unions at all. As opposed to the situation, in certain areas of industrial relations there exist works' councils, employee councils, European works councils or representations elected *ad hoc* by the company staff. In recent years many essential legal solutions concerning the issue discussed in the paper have been added as well. It is thus natural for Polish labour law doctrine to take permanent interest in the issue of representation of employee rights and interests[1]. There is no doubt that under the current social market economy schemes representation of collective employee rights and interests has gained weight. Representation like that lacking, the situation of an individual employee gets considerably deteriorated.

An area of specific importance within industrial relations is collective labour disputes. For a long time now legal regulations concerning the sphere have been giving rise to doubts and controversies.

2. Prior to starting discussion of the main thread of the paper it is necessary to resolve the issue of who is, in fact, entitled to conduct a collective dispute. As

[1] Cf. for instance L. Florek, *Ochrona praw i interesów pracownika* [Protection of Employee Rights and Interests], Warszawa 1990, pp. 126–178; *Reprezentacja praw i interesów pracowniczych* [Representation of Employee Rights and Interests], G. Goździewicz (ed.), Toruń 2001 or J. Stelina, *Zbiorowa reprezentacja pracowników w Polsce – stan obecny i perspektywy*, (in:) *Problemy kodyfikacji prawa pracy. Wybrane zagadnienia zabezpieczenia społecznego* [Collective Representation of Employees in Poland – Current Status and Further Prospects, (in:) Problems of Labour Law Codification], Gdańsk 2007.

Art. 1 of the Act on 23rd May, 1991, on Resolution of Collective Disputes[2] has it, it is employees that can be a party to a collective dispute. In addition, according to Art. 6 of the said Act, its provisions are applicable respectively to the persons mentioned in Art. 2 paras. 1 and 2 of the Act of 23rd May, 1991, on Trade Unions[3]. The persons in question are members of cooperative farms, agents (not being employers themselves) and home workers. The law does not directly provide for the capacity of members of so-called uniformed services to conduct collective disputes. From Art. 1 of the Act it follows that collective disputes may be conducted not only by employees, but also those groups of job-holders that have the right to form trade unions, it thus being justified to state that the right to conduct a collective dispute is a consequence of the right of coalition. It can be inferred from the said that where the right to form a trade union is enjoyed by a specific category of job-holders, the people are also entitled to conduct a collective dispute. The matter has been provided for in various pieces of legislation, first of all in Art. 2 par. 7 of the Trade Union Act, in service regulations, Constitution of the Republic of Poland, and – indirectly – in the Act on Collective Disputes.

In the context of the present discussion, all job-holders (officers, employees and people doing work under civil law contracts) can be divided into three groups. Included in the first one are those having a limited right to form trade unions. The group is comprised of officers of the Police, Frontier Guard, Prison Guard and State Fire Brigade (Art. 2 of the Trade Union Act). The officers in question have the right to conduct a collective dispute but no right to strike. Also officers of the Customs Service, under Art. 144 of the Act of 27th August, 2009 on Customs Service[4] are allowed to form trade unions following the rules set forth in the Trade Union Act. They may not go on strike, though, nor take up activities that would disturb regular operation of the service (Art. 124 item 2 of the Act on Customs Service). Not entitled to establish trade unions are officers of the Internal Security Agency, Foreign Intelligence Agency, Central Anticorruption Bureau, Military Counterintelligence Service, Government Protection Bureau and regular soldiers. Trade union membership prohibition pertains also to persons occupying top positions in public service, as mentioned in the Constitution of the Republic of Poland. Further on, the prohibition affects certain professional groups, the members of which otherwise enjoy the status of employees, like judges. There is a variety of opinions on the problems in labour law doctrine[5], the main issue being compli-

[2] Journal of Laws, No. 55, item 236, with further amendments - hereinafter referred to as the "Act".

[3] Consolidated text: Journal of Laws of 2014, item 167.

[4] Consolidated text: Journal of Laws of 2013, item 1404, with further amendments.

[5] Cf. K. W. Baran, *Wolności związkowe i ich gwarancje w systemie ustawodawstwa polskiego* [Trade Union Freedoms and Their Gurantees in Polish Legislation], Bydgoszcz–Kraków 2001, pp. 40–48 and J. Skoczyński, *Reprezentacja praw i interesów pracowników służby publiczne*, (in:) *Reprezentacja praw i interesów pracowniczych* [Representation of Rights and Interests of Public

ance of Polish solutions with international law. The third group of job-holders are people enjoying full rights to form trade unions and conduct collective disputes, including the right to strike. Besides employees, the group includes members of cooperative farms and persons doing work under the contract of agency, provided that they are not employers themselves.

Considering the above said, it can be stated that the right to conduct collective disputes is enjoyed by those employees, officers and persons that have the right to form trade unions. It can be thus assumed that provisions of the Act on Resolution of Collective Disputes are applicable to them. Job-holders other than employees are mentioned by the Act only where the latter provides for prohibitions to strike. The remaining provisions of the said Act, including those on industrial actions, concern employees. From the entirety of provisions of the Act, its Art. 1 in the first place, it stems, however, that the piece of legislation may be applicable also to other professional groups enjoying the freedom to form trade unions. And vice versa, employees and officers who are not allowed to form trade unions and bargain collectively are not entitled to conduct collective disputes under provisions of the Act on Resolution of Collective Disputes. The capacity to organize collective protests in other forms, beyond the framework of the said Act, is yet another issue[6].

As the earlier said reveals, it is the freedom to form trade unions and the right to bargain collectively that determines the capacity to conduct a collective dispute. The issues thus outlined are, however, extremely vast and would require devoting a separate study to them[7].

When evaluating Poland's legal schemes in the discussed respect, reference should be also made to the Community and international legislation. Sources of primary law of the EU provide for employee guarantees to organize trade unions and bargain collectively. At the same time a rule was adopted that issues of employee freedom of association, the right to strike and lockout should remain beyond the scope of the EU legislative powers. The Lisbon Treaty entering into force did not change anything in the matter. Article 151 (the former Art. 136 of the Treaty establishing European Community)[8] makes reference to the European Social Charter signed in Turin on October 18, 1961 and to the Community Charter of Workers' Fundamental Social Rights of 1989, signed in Strasbourg. Both Char-

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Service Employees, (in:) Representation of Employee Rights and Interests], G. Goździewicz (ed.), Toruń 2001.

[6] See: B. Cudowski, *Pozastrajkowe środki prowadzenia sporów zbiorowych* [Non-strike Ways of Conducting Collective Disputes], MPP 2009, Vol. 4.

[7] For a further discussion of the matter see Z. Hajn, *Autonomia rokowań zbiorowych w świetle Konstytucji*, (in:) *Konstytucyjne problemy prawa pracy i zabezpieczenia społecznego* [Autonomy of Collective Bargaining in the Light of the Constitution, (in:) Constitutional Issues of Labour Law and Social Security], H. Szurgacz (ed.), Wrocław 2005.

[8] *Consolidated version* of the *Treaty on the Functioning of the European Union,* Official Journal of the *European Union,* C 115/47.