

The National Commission of NSZZ „Solidarnosc”
Report on violations of trade union rights in Poland in 2003

Cases before the ILO Committee on Freedom of Association

In 2003 three complaints were filed to the ILO Committee on Freedom of Association. All of them were formally accepted. Presently, two cases are investigated (two complaints referring to SIPMA S.A. and HETMAN Ltd. are examined jointly).

- complaint against the Government of Poland for not ensuring effective implementation of the ILO's Conventions No 87, 98 and 135. The complaint concerns intimidating and harassing the workers of SIPMA Inc. in 1998-2003 and in HETMAN Ltd. in 2002-2003. In SIPMA Inc. due to the employer's actions the number of workers and trade union members fell in 12 Feb. 2003 by 2.4 times in comparison to May 1998, and percentage of trade union membership decreased by 43.6 times.

In HETMAN Ltd. the employer dismissed all the members of temporary enterprise commission immediately after announcement of establishing a trade union organization in the company. Afterwards, he dismissed another 25 members of the trade union, and 50 workers were given a reprimand. The case was adopted for investigation on 14 Apr. 2003 and 3 March 2004 (case No 2291).

- complaint against the Government of Poland for not ensuring effective implementation of the ILO's Convention No 98. The complaint concerns not fulfilling by the Government the obligation of promoting collective bargaining and voluntary negotiations with the Mining and Energy Workers' Secretariat of NSZZ "Solidarnosc" in 2002-2003.

In 1992 the Government of Poland signed an agreement with NSZZ "Solidarnosc" on the principles of resolving disputes between the state administration and NSZZ "Solidarnosc". According to the agreement, in case of a dispute the parties should immediately attempt to achieve arbitrary resolution. However, despite formal announcement of the dispute on 19 November 2002, the Government did not present any statement or attempt to talk to NSZZ "Solidarnosc" about the dispute. The complaint was adopted for investigation on 19 November 2003 (case No 2310)

Legislation

In 2003, the 26 June 2002 Act amending the Labour Code and several other acts was put in force. It was a substantial change of the labour law and the act on trade unions. As a consequence, the legal position of trade unions in Poland has been essentially changed. Amendments refer, among others, to more restrictive conditions for establishing a trade union enterprise commission, change of the regulation on special protection of trade union activist's labour contract and the regulation of collective agreements.

1. Change of the regulations on trade unions.

The Trade Unions Act used to make a distinction between trade unions operating only on the enterprise level and those which have also their supra-enterprise level and/or national level structures.

Before the amendment, the former were required to gather at least 10 members in order to establish a trade union organization. Presently, any trade union organisation operating in the enterprise must gather at least 10 members, and in case this number is lower for more than three months, the organisation is removed from the registry. This requirement applies even if the organization has its supra-enterprise or national level structures. Moreover, these members must be employed with labour contracts in the company. Previously, also those employed in other forms were taken into account.

Further, according to the amendment, trade union organizations are required to present the employer with quarterly reports on a total number of trade union members (workers and domestic workers employed).

These regulations put significant limitations upon the hitherto existing rights of the enterprise-level trade union organizations as well as upon these enterprise organisations that are a part of supra-enterprise or national level trade unions.

2. Change of the regulation on special protection of a trade union activist's labour contract

According to the previous regulation, a labour contract of the trade union board member's was protected by prohibition of termination by an employer of such relation without prior consent from the trade union board. The prohibition applied also to the protection against unilateral change of conditions of employment and remuneration without prior consent of the trade union board. The period of protection lasted for entire term of office of the board plus additional year after the end of the term. Trade union

members decided on the number and personalities of the protected activists through enterprise elections.

Such protection was also granted to members of the establishing committee of trade union (3 to 7 persons) during 6 months from establishing a trade union organization, and to workers elected for a trade union position in bodies of trade union organisation acting outside a company. In those cases the labour contract could be terminated only with consent of the establishing committee or proper body of supra-enterprise trade union organisation to which the activist was elected.

According to the amendment, protection of a trade union activist's labour contract is no longer unconditional. In case of an unrepresentative trade union organization this protection is granted solely to one trade union activist. In case of a representative trade union organization this protection is granted to a number of activists. The number is established in reference to the number of management staff or to in reference to the number of members of a trade unions organization.

3. Change of regulation of collective agreements

The new Labour Code gives the employer possibility of unilateral termination of a collective agreement. Such a terminated agreement ceases to be in force 6 months after termination, and the employer is not obliged to negotiate a new one.

Trade union rights in practice

According to the National Labour Inspection the number of violations related to legal protection of work as well as trade union rights is constantly increasing. The most frequent cases are:

- As a method of fighting against trade unions, employers often terminate labour contracts of trade union activists or members justifying it with heavy violation of workers' basic duties. Usually, in such cases employers violate the obligation to obtain the enterprise trade union organization's consent for such termination;
- Unilateral termination of working and remuneration conditions of trade union activists and members;
- Transfer of trade union activists to other positions for a period longer than allowed by the law;
- Trade union members are dismissed first in cases of group dismissals due to employer's reasons;
- Employers avoid and delay talks with trade unions in case of a collective dispute;
- Trade union members are being persuaded to leave trade union;
- Trade union assets are seized by the employers who often do not deduct and transfer membership dues to trade union accounts.

Events

In practice, the cases of discriminating workers attempting to organise trade unions in private sector are frequent, and the law does not provide sufficient protection against intimidating and dismissing those workers. In 2003 there were many cases of disciplinary dismissal of trade union activists and members (e.g. in Kaufland Poland Inc. in Slupsk, Hydrobudowa in Warsaw) or regular dismissal (e.g. Masterfoods Poland Inc., Societ  d'Exploitation Hotek Polska Ltd., PBK Bank Inc., where the unionists were dismissed shortly after they established a trade union).

Further, employers frequently do not respect the right to strike. On the other hand, legal regulations concerning strike are complicated and procedures are long. Therefore, those few strikes that occur are often declared illegal and trade unions are held financially responsible. Workers are often forced to sign declarations that they would not join a strike.

Procedures of collective dispute are violated on a regular basis, either through not signing a protocol that makes it impossible to appoint a mediator, or by not acknowledging the dispute.

The right to workers' consultation is frequently not respected – e.g. through imposing organisational changes, changes of regulations of working conditions or group dismissals and omitting the workers' consultation procedures.

Other examples of violations of trade union rights are: not granting a space and equipment for trade union activities, destroying or opening trade union mail, lack of deduction of trade union dues, not replying to official letters by employers, blackmailing to dismiss a worker unless he/she leaves trade union.

Summary

Violations of trade union rights in Poland occur frequently. The law does not provide with sufficient protection of workers, trade union members and activists against harassment, intimidation, blackmailing and illegal dismissal.

Difficult social and economic situation is used as an excuse for liberalising labour law and, further, not obeying it.

The latest amendment to the Labour Code significantly weakened position of a trade union organization in a company, both due to the new requirements as regards to trade unions' membership. The amendment frees the employer from many obligations to trade unions (e.g. collective bargaining), or reduces protection of trade union members and activists (e.g. protection of trade union activists against dismissal).