

Report on violations of trade union rights in Poland in 2006

NSZZ „Solidarnosc”

National legislation

In 2006 no significant changes in legislation took place in Poland, as regards to the right to organize, collective bargaining or the right to strike. However, the 23.05.2006 ruling of the Highest Court on social clause agreements should be taken into account. Social clause agreements are negotiated in the process of privatization of public enterprises between trade unions representing workers and the strategic investor. These agreements usually give benefits to the workers in terms of social, labour and trade union guarantees. The problem was that up to now these agreements used to be very poorly implemented by the employers. A not clarified status of social clause agreements made this implementation problematic. The Highest Court ruling means that now social clause agreements form a part of labour law.

Overview of the legal regulation on Poland on the issue of the Wright to organize, collective bargaining and the right to strike

Right to organise

1. legal barriers to registration

A trade union must be registered in the National Court Registry. A minimum of 10 members of the organisation is the only limitation.

Self-employment - according to the law a trade union organization gathers “people of work” which means that it cannot represent the self-employed persons.

Temporary agency work – there is no limits as regards to organizing of temporary agency workers in the agency that employs them.

Telework – there is no limits as regards to organizing teleworkers if they are employed on the basis of a labour contract.

2. single trade union system imposed by law

In Poland there is a single trade union system imposed on certain groups of the employed: policemen, border guard, penitentiary guard, firemen of the State Fire Brigades and the employees of the Highest Supervision Chamber

3. organising ban in certain sectors

There is no absolute prohibition of organising a trade union in any specific sector. Several professional groups, e.g. policemen, border guard, penitentiary guard, firemen of the State Fire Brigades and the employees of the Highest Supervision Chamber are limited in their trade union activities by separate acts – they are obliged to organise in a single union (see above).

4. exclusion of non-nationals from union membership - or leadership positions

When it comes to foreigners, whether they are employees, members of farming co-operative, performing work based on an agency contract or were delegated to a company for replacement military service, they may be trade union members. Neither provisions of the general law nor internal trade union regulations make membership dependent on being a Polish citizen. There is also no barriers as regards access to leadership positions.

5. restrictions on the right of migrant workers to join trade unions

Migrant workers may be trade union members per analogiam as the foreigners.

Restrictions on the right to collective bargaining such as:

1. Government approval required for registration

In Poland the governmental approval is not required for registering an agreement being the effect of collective bargaining. The only requirement imposed by law is that the agreement cannot be discordant with the law and has to be concluded according to the procedure regarding collective negotiations.

2. Unions excluded from the collective bargaining process

There are no limitations in participating in collective bargaining for trade unions. Collective agreements, however, are concluded by all trade unions involved in bargaining, or at least all representative trade union organisations. This means the agreement may be signed despite the protest of non-representative organisations.

3. Ban on collective bargaining in certain sectors

According to the provisions of the Labour Code, only trade unions are legally entitled to bargain collectively. A collective agreement may not be negotiated for:

- members of civil service core,
- employees of state offices employed through appointment or designation,
- self-government employees employed through election, appointment or designation,
- court judges and prosecutors

4. Limitations on the validity and scope of collective agreements (e.g. on the grounds they would jeopardise the economic interests of the country).

According to the Polish law there is no limitations on the validity and scope of collective agreements.

5. Others

Limitations to validity of agreement regulations are set in a provision of the Labour Code stating that – on the grounds of the financial situation of employer - there may be concluded an agreement on suspending in part or in whole the use of labour law defining the rights and duties of the parties of labour relations. The employer and trade union representing the employees make this agreement. However, the suspension of the use of labour law may not last longer than 3 years. The agreement defines the range of conditions of labour contracts and other acts being the basis for labour relations to be suspended, and time of suspension of these provisions.

Restrictions on the right to strike such as:

1. Strict prohibition of strikes

There is no general prohibition on organizing strikes.

2. Ban on strikes in certain sectors

Only trade unions have the right to organise a strike. Pro publico bono the act may put limitations to organising a strike or prohibit a strike action to specific categories of employees or in specific areas.

To stop working due to a strike action in positions, devices or installations where abandonment of work is hazardous for human health and life or the national security is impermissible. Organising a strike in the Internal Security Agency, Intelligence Agency, Police and Military units, Penitentiary Guard, Border Guard, Custom Service and Fire

Brigades is impermissible. Employees of state administration, government and self-government administration, courts of law and prosecutor offices have no right to strike.

3. Excessively long list of essential services

4. Excessive quorum requirements and restrictions on the grounds for striking

It is not the content of requirements but their number and the requirement that they all have to be met jointly make it difficult to legally organise a strike. A strike is the ultimate means and may not be declared without prior exhaustion of possibilities of resolving the dispute according to the principles defined by the act on resolving collective disputes. (However, the strike may be organized without respecting these rules if an unlawful conduct of the employer made unable to perform negotiations or mediation. It is also possible to organize strike without respecting the above mentioned rules if the employer dismissed the trade union activist that represented workers in the dispute).

It is necessary to obtain the agreement of majority of voting employees if at least 50% of the number of employees participated in the ballot. It is unacceptable to conduct a collective dispute in order to support individual workers' demands if resolving the dispute is possible in labour court proceedings.

If the dispute refers to the content of collective agreement or other agreement of which trade union is a party, commencing and conducting the dispute on the grounds of changing the agreement may not be sooner than on the day of the termination of the agreement.

5. Ban on certain type of strikes

The Polish regulation does not address the issue of the type of a strike. However, according to the legal definition a strike is a collective refusal to perform work. Other types of strikes are therefore not allowed.

Skargi do Międzynarodowej Organizacji Pracy

In 2006 „Solidarnosc” informed the International Labour Office about the following cases of non-observance to the international labour standards:

ILO Convention no 98

The complaint refers to the following two cases: the first case concerns situation in UPC Polska Ltd. in Warsaw, Poland, which is a branch of UPC Holding Services BV located in Amsterdam, Holland (United Pan-Europe Communications, Amsterdam, a property of Liberty Media Holding, USA). The second case concerns situation in Frito Lay Poland Ltd. in Grodzisk Mazowiecki, Poland (branch of PepsiCo International, located in New York, USA).

The complaint concerns cases of anti-union discrimination:

- (UPC Poland Ltd.) Dismissal of Marcin Kielbasa, the leader of the newly established trade union organization in the enterprise. The employer claimed the reason for dismissal was not related to trade union activities (reorganization changes in the enterprise). He also claimed incorrect procedure of informing the employer about establishment of a trade union organization. NSZZ “Solidarnosc” argues that Marcin Kielbasa was dismissed in direct relation with establishing trade union organization in the enterprise despite all the legal requirements concerning the form of informing the employer about such establishment have been respected.
- (Frito Lay Poland Ltd.) Gathering individual data on trade union membership in a form that violated security and confidentiality of such data. Intentional withdrawal from legal procedures concerning specification of the number of trade union members in the enterprise.

- (Frito Lay Poland Ltd.) Disciplinary dismissal of Sławomir Zagrajek, the leader of the enterprise-level trade union organization. Zagrajek was accused by the employer of intentional misleading as regards the number of trade union members in the enterprise.

ILO Convention no 111

Observation concerning discrimination in equality in employment (sexual harassment) – harassment and dismissal of 8 women workers. This case took place in Frito Lay (Pepsico) enterprise in Grodzisk Mazowiecki near Warsaw.

Violation of individual trade union members' rights

Based on the information from trade union sources, similarly to previous years, one of the most frequent methods of fighting trade unions was terminating labour contracts with trade union activists including those whose employment was legally protected against dismissal. The dismissals are often of disciplinary grounds that terminate the contract instantly, and the lawsuits in Poland take very long time. Such cases were noted e.g.:

MEDIA MARKT in Gdansk

Andrzej Rosinski, shop steward of temporary Enterprise Commission was dismissed on disciplinary grounds two days after the union was organised. After the dismissal workers, who had earlier declared their will to join the union, resigned. Some of the workers were asked to sign a statement that there was no need for a trade union in the company. The case was put to the prosecutor's Office and the National Labour Inspection. NSZZ „Solidarnosc” had 19 members In Media Markt, since the union was organised 2 resigned due to harassment, 2 left as their contracts were not extended and 1 was dismissed. The Regional Board of Gdansk Region of NSZZ „S” organised a rally in defence of the shop steward.

Jutrzenka SA in Poznan

Dariusz Skrzypczak – shop steward of Inter-enterprise Commission of NSZZ „S” in Jutrzenka SA in Poznan, was dismissed on disciplinary grounds despite the protest of the trade union organisation. According to the union, Mr. Skrzypczak making statements on the necessity of regulating working conditions and remuneration was acting accordingly to the rights stemming from his position in the union. National Labour Inspection confirmed that by its sentence stating grave violation of the labour law and put charges against the company in the labour court. Mr. Skrzypczak himself also officially demanded to be restored in the company. By the labour court sentence he was reinstated and still is the shop steward, though he may not enter the company premises as the company rented an office for trade unions outside of its premises, preventing the shop steward from contacting the workers. Two rallies were organized in defence of Mr. Skrzypczak.

Walbrzych International Production,

Shop steward was dismissed. About 100 workers organised a rally in her defence.

FORMET SA in Bydgoszcz,

The employer unilaterally terminated labour contract of the shop steward Pawel Nadolny, a trade union activist. The employers also refused admission of Regional Board representatives to the company.

PKS SA in Minsk Mazowiecki,

Shop steward was illegally dismissed. After a lengthy lawsuit the court pointed at the employers' fault but did not reinstate the unionist claiming it was pointless.

ATEM Polska Ltd.

Shop steward of NSZZ „S” was dismissed immediately after he had informed the management about initial organising meeting of workers, doubtlessly it is a case of discrimination of workers and trade unions.

SKAREM Ltd. in Sitkowka-Nowiny

Shop steward Stanislaw Wiewiora was dismissed on disciplinary grounds without approval from the union organisation.

KEIPER Polska Ltd. in Swiebodzin

Shop steward of NSZZ „S” Agnieszka Flisiewicz was dismissed without approval from the union organisation.

SPZOZ in Malbork

Shop steward Wlodzimierz Drejski was dismissed on disciplinary grounds without approval from the union organisation

PZ Cussons Polska SA in Wroclaw

Shop steward Wacław Pastuszka was dismissed on disciplinary grounds.

Ekotrade in Warsaw

In December 2006 two representatives of security agency Ekotrade in Warsaw, pretending to be its workers came to „Solidarnosc” office In Warsaw and tried to join the union using false names. During this attempt they saw another worker from the company, thus getting the proof he was engaged in trade union activities and they dismissed him over the phone right after he left the office. Security employees are one of the worst paid workers in Poland, with the average hour wage of 1 euro net. Most of the workers perform 300-400 hours of work monthly, often without contracts. In Warsaw, security workers have been trying to organize unions for several months.

Power Stations in Ostroleka SA

Tadeusz Pieczynski, by decision of the enterprise commission was granted special protection of labour relations. Despite this, the management terminated his working conditions. National Labour Inspection examined the case and confirmed wrongful termination. The employer withdrew termination after CEO was replaced.

Selgros in Wroclaw

In December 2006, in retail network market Selgros In Wroclaw, trade union organisation of „Solidarnosc” was registered. The shop steward immediately informed the management. The very same day he was dismissed from work, as well as two other organizers of the union. Since according to the act on trade unions such dismissal was illegal, the dismissal notices were dated 3 days back. The shop steward did not accept the dismissal and came to work the next day. He was removed from the shop by the security. Totally 9 persons were dismissed in 30 days in Selgros in Wroclaw for organising trade union.

Violation of collective trade union rights

Attempts of eliminating trade unions from a company

- The management of Miranda SA in Turek established a subsidiary company Miranda Ltd. – workers may be employed on condition that they would voluntarily terminate their contracts and resign from trade union membership, and declare in written upon signing a new contract that they would never join or create trade union organisation in the subsidiary company. According to trade unions the management deliberately impedes collective dispute and proceedings of appointed mediator in order to avoid signing an agreement.
- In PKS Connex Ltd. in Kolobrzeg, low level management using their position exerted pressure on employees forcing them to protest against activities of the enterprise commission, especially after the union asked National Labour Inspection to verify

calculations of overtime work. The management takes every opportunity to harass trade unionists.

- In course of a collective dispute in Tartak Gora Co. employer dismissed 9 trade unionists, mostly from „S”, including one under special protection. Trade unions regard the employer’s actions as harassment of trade union organisation.

Confiscation of trade union assets

- In PKS SA in Minsk Mazowiecki, enterprise commission was deprived of its room thus making it impossible for it to act. Along with illegal dismissal of the shop steward made the entire organization work underground.

Lack of consultation

- In Radio Opole SA employer attempted to introduce work regulations without consulting it with trade unions.
- In Gonar company in Katowice, the management refused to talk with trade union despite ongoing collective dispute. Disabled employees were deprived of the possibility to use the company’s social benefits fund.

Surveillance of trade union members and premises

- In Zywiec Trade in Lodz, trade unions were illegally denied separate room for 4 years. Only after prosecutor’s intervention trade union were given the room for office. Shop steward was threatened to be dismissed despite the fact that his employment is legally protected. Workers are harassed and threatened not to join the unions. Their meetings were recorded and the union telephone line was bugged. CEO attempted to interfere with elections by putting forward his own candidate seducing him with promises of increased salary.

Non-payment of remuneration

The most serious violation of labour law was non-payment or delayed payment of remuneration. Last year the National Labour Inspection performed almost 94 000 controls in 67 000 enterprises. 56% of companies inspected by the National Labour Inspection proved to be dishonest in this regard. There is a growing number of cases of unfair calculation of working hours and overtime hours, exceeding acceptable norms of working time, depriving the workers of the right to rest and holidays. According to the Head Labour Inspector this has become a very common practice. Workers do not protest as they are afraid to lose jobs. At the same time, considering this pathology as common, there are no effective methods of executing demands with the use of legal means, thus the workers often resign from their legal instruments to demand payment of remuneration.

Especially blatant cases of non-payment of wages were noted in Grevita „Konfex” – after three months of non-payment the workers started a collective dispute. Similar situation took place in Tonsil SA in Wrzesnia. In Delia SA in Zamosc workers have not been paid for many months, the prosecutor’s office put charge against the management of the company.

Violation of workers’ right in hyper-markets

The public opinion is constantly agitated by cases of blatant violation of workers’ rights in big store networks, e.g. Zabka, Biedronka or Kaufland. After many cases of intimidation and exploitation “Solidarnosc” was finally organised in Lidl. In a hyper-market Real in Czeladz working women were forced to transport goods far exceeding the legally acceptable weight, working time was calculated incorrectly, workers were intimidated and even partially disabled women were forced to remove snow from the roof of the hyper-market.

The case of „Stokrotka” network, owned by Eldorado company, was quite loud. Workers of the market in Lublin informed the press about violation of workers’ rights In the company. National Labour Inspection confirmed the accusation of present and former workers of

“Stokrotka”. The workers claimed e.g. that they were not paid for the overtime, and the management banned organizing trade unions. However, there is “Solidarnosc” in the company, though membership is confidential apart from shop stewards protected by the law. In December two workers were immediately dismissed when noticed to talk to shop steward. The workers also accused the employer of unfair distribution of the money from the company social fund and elimination of bonuses. About 1500 workers are employed in the network in Poland, out of which 80% earn below 1200 PLN gross, (620 PLN net). Head Labour Inspector intervened in the case and ordered general inspection of the network. Unofficially, inspectors compared his case to another loud case of Biedronka markets reported last year.

Other

Despite court sentences, employers avoid execution of sentences. In the last year employers neglected half of sentences and agreements supervised by the labour inspection. In 2003 it was 64%, in 2004 57%. Employers usually attempt not to pay due compensations and wages to the workers. They also do not reinstate illegally dismissed workers and do not correct work certificates.

The National Labour Inspection proposed that employers neglecting sentences should be charged with crime against workers. Sanctions for such crimes would be stronger. Presently such shameful employers' actions are treated as transgressions.

National Commission of NSZZ „Solidarnosc”, February 2006