

# **Report on violations of trade union rights in Poland in 2007**

(report of the National Commission of NSZZ “Solidarnosc” prepared for International Trade Union Confederation)

## **I. National legislation**

On 16<sup>th</sup> of October 2007, the act from 24<sup>th</sup> August 2007 changing the Labour Law went in force. The amendment implemented a new institution to the Polish law – teleworking. According to the legal definition, teleworking is a regular work outside of the company with the use of electronic communication. The conditions of teleworking should be defined in an agreement between the employer and enterprise trade unions. Unless the agreement with all trade unions is possible, the employer is obliged to reach an agreement with representative trade unions. Unless the agreement is reached within 30 days of presenting the project by the employer, then the employer defines the conditions of teleworking unilaterally in a regulations taking into consideration the provisions agreed with the trade unions in course of negotiating the agreement.

If there are no trade unions in the company, the conditions of teleworking are to be defined by the employer in regulations after consulting workers’ representatives. Presently this new form of work is not very common, but the interest in it grows both among the employers and the workers.

**Overview of the legal regulation on Poland on the issue of the right 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 organization 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 are 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 are 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, Municipal Guard, 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 (e.g. go-slow, work to rule)**

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.

## **II. Complaints filed to the ILO**

In 2007 the National Commission of NSZZ "Solidarnosc" did not report to the ILO any case of violating the international labour standards. However, the Union co-operated with the Helsinki Foundation Poland in preparing the complaint filed by the Foundation to the International Tribunal of Human Rights in Strasbourg (Council of Europe) referring to violating trade union rights in Frito Lay Poland based on the Art. 34 of the European Convention of Human Rights and Art. 45-47 of the Regulations of the European Tribunal of Human Rights. The situation in Frito Lay in Grodzisk Mazowiecki was reported by "Solidarnosc" to the ILO in 2006, with complaints about:

- collecting personal information on trade union membership in a way excluding security and confidentiality of data. Deliberate ignoring the legal procedures of calculating trade union membership in a company;

- disciplinary dismissal of Slawomir Zagrajek, the shop steward in the company. The employer accused Mr. Zagrajek of misinforming the employer about the number of trade union members in the company.

The violation of individual and collective trade union rights in other Polish company, Sussons Poland S.A. (Warsaw) was reported by “Solidarnosc” both in the ITUC report 2005 and 2006. Presently a complaint to the ILO about the violation of trade union rights in this company is being prepared, with details of:

- illegal disciplinary dismissal of the shop steward in the company;
- hampering trade union activities;
- confiscation of trade union property (flags).

### **III. Violation of individual rights of trade union members**

Based on the information gathered from trade union sources, one of the most frequent violations of the individual rights of trade union members was termination of labour contracts with trade union activists, including those whose employment was legally protected against dismissal. Frequently these are disciplinary dismissals which terminate the labour relations immediately and usually take place in newly established enterprise trade union organizations.

- FAURECIA Ltd. in Gorzow Wielkopolski – in July 2007 the employer dismissed 5 members of a newly established Temporary Enterprise Commission of NSZZ „Solidarnosc”. On 26<sup>th</sup> October at the gates of the management office of the company a nation-wide demonstration in defence of the dismissed workers took place.
- ANALDA ZYWIEC TRADE Ltd. in Gdynia – the shop steward of the Temporary Enterprise Commission of NSZZ „Solidarnosc”, Mr. Jacek Pobłocki, was dismissed. In his defence, on 10<sup>th</sup> May 2007, a demonstration was organized at the gates of the company in Wejherowo and management office in Gdynia. The EWC of Heineken (ANALDA is a sub-contractor of the corporation) was informed about the situation.
- ALUMINIUM Metal Works KONIN IMPEXMETAL S.A. – trade unionists involved in negotiations with the employer were dismissed. On 24<sup>th</sup> August a nation-wide demonstration in defence of the dismissed workers took place in Konin.
- Professional Training Company in Lublin – Mr. Krzysztof Gruca, shop steward from NSZZ “Solidarnosc”, was dismissed on disciplinary grounds. According to the union lawyers the dismissal was illegal, labour inspection and the labour court were notified.
- W-SUPPORT PL Ltd. in Wroclaw – in October 2007 the employer terminated labour contract of the shop steward of Temporary Enterprise Commission of NSZZ “Solidarnosc”.
- SOLID in Warsaw – employees of this security company who were organizing trade union were transferred to other lower paid positions, and some of them were dismissed.
- Fiat GM Powertrain – in February 2007 four young workers were dismissed. Both they and the Enterprise Commission are of the opinion that the real reason for the dismissal was that they had joined trade union shortly before the dismissal.
- Selgros Poznan – members of newly established Enterprise Commission of NSZZ “Solidarnosc” were dismissed. After several weeks and rallies organised by the Union an agreement was reached.
- Municipal Fire Brigade in Lublin – shop steward of the Enterprise Commission of NSZZ “Solidarnosc”, his deputy and two other trade union members were dismissed from their positions. According to the Enterprise Commission that action was aimed at threatening the workers and weakening the union’s position.

## **IV. Violation of collective trade union rights**

### **Attempts of removing trade union organisation from a company**

- Solid Security in Warsaw – on 12<sup>th</sup> of February a lawyer hired by the employer forced the workers to leave trade union. In the presence of the lawyer the workers were supposed to sign resignation from membership of the union. When a TV news reporter arrived, the lawyer escaped.
- FIAT AUTO POLAND in Bielsko-Biala – on 19<sup>th</sup> March 2007, members of the “Solidarnosc” union were called one by one to the office and ordered to sign resignation from union membership. The workers were also threatened by the possibility of being transferred to worse jobs, informed of the “unpopularity” of “Solidarnosc” and there were suggestions that it would have been better to join other trade unions co-operating with the employer.
- Group OZAROW S.A. – workers were under pressure to resign from trade union membership, probably the action was connected to the planned ownership transformation in the company.

### **Confiscation of trade union assets**

- PLL LOT S.A. in Warsaw – on 2<sup>nd</sup> February 2007, security service entered trade union premises with a written order of the CEO of confiscating trade union computers under the pretext of disclosure of confidential information. The Enterprise Commission of NSZZ “Solidarnosc” informed the prosecutor’s office about confiscation of trade union assets.

### **Lack of consultation with trade unions**

- Spinning Mill ZAWIERCIE – the employer implemented new remuneration regulations without prior consulting the trade unions. NSZZ “Solidarnosc” organised a rally at the gates of the company, with the participation of workers from “Solidarnosc” from other companies in the area.
- Polish Railways S.A. in Gdynia – the employer without prior consent of the unions disposed of the company social fund and also unilaterally revoked social benefits that had already been granted. Moreover, the employer, against the Labour Code, did not consult trade unions in termination of working conditions. The employer imposed on the workers the division of increased wages without consulting this with the employees.
- Internal Revenue Office in Zielona Gora – trade unions were not consulted about the division of increased salaries.
- Galvanic Systems Company in Wielun – the employer did not consult trade unions about the division of increased salaries.

## **V. Other violations of collective trade union rights**

- Internal Revenue Office in Zielona Gora – the employer refused to release a worker – member of the national branch section - from work with maintaining the right to be paid due to trade union training.
- Professional Training Company in Lublin – the employer refused to release workers to a trade union meeting.
- ZPJ Miranda in Turek – the employer sued the Enterprise Commission of NSZZ “Solidarnosc” for a one-day strike that had taken place in 2006. According to the union, based on the opinion of the mediator and the conclusions of prosecutor’s actions, the strike was legal.

## **VI. Increase of remuneration in Poland**

In 2007, the increase of remuneration in Poland reached approx. 10% in comparison to 2006. It was a substantial increase, as in the previous year it was 5% increase. There were several reasons to that –

economic ones, e.g. high economic growth, higher inflation and increased productivity that was not followed by increased wages over the last few years. Also, there were social reasons expressed by NSZZ “Solidarnosc” through its 6-month action “Low wages – a barrier for development of Poland”. Broad information campaign was reflected in increased number of wage demands in companies.

## **VII. Other cases**

In 2007, a new act (13.04.2007) on the National Labour Inspection was implemented. The act increased the upper limit of a fine for transgressions against the workers rights (2000 PLN) and a fine imposed by county courts by the motion of a labour inspector (30 000 PLN). Unfortunately, despite the fears and protests of the employers, the practice revealed that no such fine was imposed by the end of 2007. the analysis of data shows that the highest fine imposed in 2007 was 10 000 PLN despite the fact that the case referred to a fatal accident at work in especially hazardous conditions when the employer did not ensure proper equipment and supervision.

At the same time, protraction of court proceedings in the area of labour law practically makes the use of it impossible. Additionally, the amounts of compensation for the protraction of proceedings is usually symbolic or none. Comparative data shows that the Strasbourg Tribunal grants at least 5 times higher damages.

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