

Report on violations of trade union rights in Poland in 2004

NSZZ „Solidarnosc”

I. Cases before the ILO Committee on Freedom of Association

In 2004 one complaint was filed to the ILO Committee on Freedom of Association by NSZZ „Solidarność”:

- Complaint against the Government of Poland for not ensuring effective implementation of the ILO's Conventions No 87, 98 and 135. The complaint concerns non-deduction of trade union fees as well as dismissal of two leaders of enterprise-level trade union organization as a consequence of their trade union activities. The case was adopted for investigation on 22 November 2004 (case No 2395).

Additionally, in September 2004 the Presidium of the National Commission of NSZZ „Solidarnosc” called upon the government to ratify the ILO Convention 97 from 1949 on migrating workers. NSZZ „Solidarnosc” is of the opinion that ratification of Convention 97 is indispensable for ensuring proper functioning not only of the internal system of migrating workers' rights protection, but also counteracting deterioration of labour standards in the country. At the same time NSZZ „Solidarnosc” disagrees with the argument of Polish government that the national law sufficiently protects the rights of migrant workers in Poland.

II. Legislation

I. Limitations to the right to organise:

1. Legal limitations of registering a trade union

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

2. Limitation of the right to organise in specific 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.

A trade union may not act in defence of e.g. self-employed persons.

3. Limitations of trade union membership (or acting leadership functions in a union) for non-Polish residents

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.

4. Limitations of trade union membership for migrating workers in Poland

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

II. Limitations of the right to collective bargaining:

1. Requirement of approval by the government for registering an agreement

In Poland the governmental approval is not required for registering an agreement being the effect of collective bargaining.

Collective agreements must be registered.

In case the provisions of an agreement are discordant with the law, the registering body may:

- 1) register the agreement without the discordant provisions with prior consent of the parties,
- 2) call upon the parties of the agreement to make proper changes in it within 14 days.

2. Prohibition of collective bargaining in specific 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:

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

Limitations of validity or range of collective agreements

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.

3. Are any trade unions excluded from collective bargaining?

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.

III. Limitations to the right to strike, e.g.:

1. Prohibition of a strike in specific 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.

2. Excessive requirements or limitations regarding quorum or reasons of a strike

In our opinion it is not the content of requirements but their number and the requirement that they all have to be met jointly that 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.
- 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.

4. Prohibition of specific forms of strikes (e.g. Italian strike, etc.)

Polish law does not regulate the issue of the form of strike.

III. Trade union rights in practice

I. Violation of individual trade union member rights

One of the most frequent method of union busting is terminating employment contract with trade union activists, especially those whose contracts were legally protected from dismissal. Often those dismissals are made on disciplinary grounds with immediate effect. Unfortunately, proceedings of cases brought to labour courts are long. Such cases were noted in Polish Post Car Transport in Gdansk, Cable Factory ROGUM in Pruszcz Gdanski, SUPERSAM Market in Katowice, Industrial-Trade Bank PBK S.A. in Lublin, TOP SOFA in Oborniki, Verge Sport Ltd. in Kowary. There were cases of elimination of workplaces of trade unionists in order to get rid of them from the company, as it was in Polish Telecommunication S.A. in Kielce and Bielsko-Biala and in UPC Cable TV in Lublin. The second case was broadly discussed in media, when the leader of newly established union of NSZZ „Solidarnosc” was dismissed due to „liquidation of the position”. Court proceedings are underway.

Trade union members are often intimidated in order to force them to leave the union or to quit their jobs under pressure. Such cases were noted in ZPJ MIRANDA SA in Turek, in Animal Asylum in Warsaw, in State Treasury Asset Management in Warsaw, in SADROB Poultry S.A. in Plock, Verge Sport Ltd. in Kowary or Wałbrzych International Production Ltd.

Some trade union members encounter discrimination due to trade union membership in their companies. Union members of NSZZ „Solidarnosc” in Municipal Real Estate Management in Warsaw are paid less than other employees without giving a reason. In State Treasury Asset Management in Warsaw trade union members are omitted when bonus wages are granted.

II. Violation of collective trade union rights

There were cases when employers refused to negotiate collective agreements. Such situation took place in Municipal Real Estate Management in Warsaw and in Cussons Poland SA in Wroclaw. In the second case the employer posed difficulties to organising a legal protest action.

In GBG Service Ltd. in Czeladz the employer used the money from the company social fund without knowledge and authorisation of the union, thus violating the act on company social benefits fund.

Frequently we encounter cases of hampering of trade union activities through e.g. removing the office of the union from the company to a place hard to reach (Cussons Poland SA in Wroclaw) or annexation of the union offices and documentation, money and personal property (SUPERSAM Market in Katowice).

We still noted discrepancies in deducting trade union dues by the employers, e.g. in TPBP TARBUD SA in Stalowa Wola the employer demanded the union to pay fees for deducting trade union dues.

III. Special Economic Zones

In Poland the Special Economic Zones were created by the act from 1994, there is 14 of them now and they will be operating until 2017. In time they will be turned into economic activity zones where created and monitored conditions will facilitate jobs creation. In order to be granted authorisation to invest in the zones and to take advantage of existing privileges a company must meet pre-conditions of the volume of investment or number of jobs created. Companies operating within SEZ are granted tax relief and exemptions. Moreover, the companies within the SEZ have access to areas prepared for investment with entire infrastructure. Data from 2004 show that over 62 thousand new jobs were created in SEZ. Further 120 thousand workers found employment in SEZ surrounding areas.

According to Polish law there is no possibility to exclude or to limit the binding effect of the Polish Labour Code or other legal norms that regulate workers' or trade unions rights.

IV. Problem of non-payment of remuneration

This negative phenomenon became so common in Poland that some say about the „culture” of non-payment for work. The problem is present in areas of high unemployment and weaker economic condition and refers to 60% of companies inspected by the National Labour Inspection. The total amount of due wages in 2003 was about 100 M PLN. The workers silently agree with such treatment being afraid of loosing their jobs. According to the NLI since 2003 the problem has been slightly and slowly decreasing, mostly thanks to improved economic conditions. It is commonly believed that the situation would be dramatically improved by implementing harsh punishments for employers that do not pay the remuneration, as presently the fines are respectively low.

V. Workers' problems in big retailers

In the second half of 2004 there were drastic cases of violating workers' rights in big retail stores. Workers' rights are violated in every second big retailer, most frequently through non-granting vacation leaves, lack or wrong evidence of work time, lack of sanitary facilities, enforcing long working time, badly organised internal transport. Prosecutor office in Poznan is conducting an investigation against the charge of organised system of workers' exploitation in Biedronka retail chain stores owned by Jeronimo Martins Distribution. In September 2004 former employee of Biedronka in Elblag won the case against the shop to acknowledge 2600 overtime work hours and payment of 35 thousand PLN of compensation. Many other workers of this chain retailer followed the example and charged the employer, though the employer appealed from the sentence and the final verdict is yet to be seen.

Another outrageous case was noted in the beginning of 2005 in Frito Lay (owned by PepsiCo) in Grodzisk Mazowiecki where female workers were harassed on sexual grounds. This is a new case so more detailed description is not possible at the moment.