

Report on violations of trade union rights in Poland in 2004 NSZZ „Solidarnosc” January 2005

I. Cases before the ILO Committee on Freedom of Association

In July 2005 the Freedom of Association Committee examined the complaint filed by NSZZ "Solidarność" against the Government of Poland for not ensuring effective implementation of the ILO's principle of freedom of association (case no 2395). The complaint concerned 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 Committee's recommendations for the Polish Government were as follows:

- to intercede with the parties with a view to re-establishing the previously available check-off facility and to keep it informed of progress made in this respect.
- to speed up the judicial proceedings initiated for reinstatement by the chairperson of the NSZZ "Solidarnosc" trade union in the Hydrobudowa-6 S.A. company, and for recognition of dismissal as ineffective by the member of the executive committee of the trade union, and to keep the Committee informed of the progress of the proceedings as well as their final outcome.
- to intercede with the parties with a view to enabling chairperson of the trade union, to exercise his trade union activities without any further interference by the employer, in particular, to be able to remain in the trade union office without having to be accompanied by an employee. The Committee requests to be kept informed in this respect.
- to ensure that trade union officials and members have the right to an effective remedy by the competent national tribunals for acts of anti-union discrimination. The Committee requests to be kept informed of developments in this respect.

Currently, a further complaint concerning non-observation of freedom of association in Poland is in the process of preparation. This complaint refers to the situation in UPC Telewizja Kablowa Ltd. a part of UPC Holding Services BV located in Amsterdam, Holland (United Pan-Europe Communications, Amsterdam, a property of Liberty Media Holding USA and to situation in Frito Lay Poland Ltd. in Grodzisk Mazowiecki, Poland (part of PepsiCo International, located in New York, USA):

- (UPC Telewizja Kablowa Ltd.) Dismissal of Marcin Kiełbasa, 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 “Solidarność” argues that Marcin Kiełbasa was dismissed in direct connection 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

The complaint is planned to be sent to the International Labour Office in 2006.

II. Legislation

No amendments to the last year's report

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:

- Delia joint-stock company in Zamosc – the management of the trade union organization has been dismissed after asserting the workers' right to remuneration;
- Breckle Poland Ltd. in Wroclaw – founder members of the newly established trade union organization have been dismissed
- Walbrzych International Production Ltd. in Walbrzych – a member of trade union organization has been dismissed after intervention concerning wrongful calculation of workers' wages. After handing in a notice the trade unionist has been escorted by security staff to the exit.
- General Electric Power Controls Polska Ltd. in Kłodzko
- Uzdrowisko Krynica Żegiestów joint-stock company – the chairperson of the trade union organization has been dismissed
- Fortum in Czestochowa

- Wytwarznia Silnikow Wysokopreznych „Andoria” joint stock company in Andrychow - the chairperson of the trade union organization has been dismissed as well as members of the management of the trade union organization, who signed the opposition letter concerning dismissal of the chairperson.
- Frito Lay Ltd (PepsiCo) in Grodzisk Mazowiecki – dismissal of the chairperson of the trade union organization under the alleged reason of intentional misleading the employer about the number of trade union members in the enterprise.

There were cases of **elimination of workplaces held by trade unionists** in order to get rid of them from the company, as it was in Telekomunikacja Polska joint stock company (France Telecom) in Szczecin.

In Securitas Polska Ltd. the employer **created a new subject (new enterprise)** in order to move there all founder members of the newly established trade union organization. Next, the enterprise has been liquidated and the workers dismissed.

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:

- „Jeglowa” Ltd. in Przeworno
- Zakłady Garbarskie „Skotan” joint stock company in Skoczow
- „Sokolow” joint stock company Oddzial Zaklady Miesne Jaroslaw (Smitfield Foods) in Tarnow
- Zaklad Usług Komunalnych in Milicz – the manager after trying to press trade union members to withdraw from the organization made an attempt to **establish a “competing” trade union organization**
- Walbrzych International Production Ltd. in Walbrzych – the employer pressed trade union members to withdraw from the organization under the threat of dismissal. 30 members surrendered.
- Wytwarznia Silnikow Wysokopreznych „Andoria” joint stock company in Andrychow – the employer forced a trade union member to resign from the open-ended employment. Labour contract were to be resigned under the condition of withdrawal from the trade union organization.
- Frito Lay (PepsiCo) in Grodzisk Mazowiecki – the employer forced workers to declare trade union membership before the hired notary.

Some trade union members encounter **discrimination due to trade union membership** in their companies:

- „Sokolow” joint stock company Oddzial Zaklady Miesne Jaroslaw (Smitfield Foods) in Tarnow - contrary to the direct superiors’ proposals, trade union activists have been passed over when other employees have been given bonuses
- “Sklejka –Pisz” joint stock company in Pisz – the employer demanded that the trade unions’ chairperson (who, by the Law, is excused from performing work during the term of office) each single time when he was about to leave the enterprise, gave in writing a detailed information about the place of destination. When the trade unionist refused to obey such a rule – the employer punished him with a disciplinary penalty and deducted a certain amount from his salary because of not being present at the workplace.
- Zaklady Garbarskie :Skotan” joint-stock company in Skoczow – the employer individually transferred the leader of the enterprise-level trade union organization to the workplace 5 km away from the enterprise

- Aventis Pharma – the employer transferred members of trade union management to workplace 200-300 km away from their place of living.
- Walbrzych International Production Ltd. – the employer dismissed the member of trade union management and afterwards initiated a significant number of lawsuits against her. This activity was obviously aiming at persecuting her as the lawsuits were groundless and that was only a question of time for the court to dismiss them. However, this activity created a significant inconvenience for the defendant who was obliged to attend numerous proceedings not taking into account all negative psychological effects.

II. Violation of collective trade union rights

In 2005 there was **no cases reported** of employer's **refusals to negotiate collective agreements**. There were cases of **non-observance of collective agreements** in relation to, among others, remuneration for overtime (Fortum in Czestochowa and GPEC Ltd. In Gdansk).

There were also cases of **lack of consultation with trade unions** of matters in which such consultation is required by law (like remuneration agreements). Such problems took place in Walbrzych International Production Ltd. in Walbrzych and In Samodzielny Zespol Publicznych Zakladow Opieki Zdrowotnej in Radzymin.

In Aventis Pharma In Warsaw 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. giving the trade union organization notice to quit the office that was rented from the employer with a refusal to allot another one or trough opening trade union's letters thus violating confidentiality of correspondence (Walbrzych International Production Ltd. in Walbrzych). In Fortum in Czestochowa the employer confiscated a part of the union's (flags that were displayed in connection with the on-going collective dispute in the company). In Fiat Auto Poland joint stock company anti-union leaflets were distributed. In Uzdrowisko Krynica Zegiestow joint stock company the employer organized secret surveillance of members of the union's management. One of the security workers was obliged to collect information about union leaders' activities - meetings, talks etc. This worker was also authorized to provoke union members to consume alcohol beverages at the workplace.

III. Special Economic Zones

No amendments to the last year's report

IV. Problem of non-payment of remuneration

Non-payment of remuneration remains wide spread in Poland. This phenomenon is conditioned by unemployment rates and economic situation. According to official statistics an overall amount of unpaid wages was equal to 127 800 000 PLN in the first half year of 2005. The number of harmed workers was equal to 141 000. Employers make benefit from workers'

vulnerability on the labour market with a high unemployment rate. Problem of non-payment of wages is the most popular in the commercial and constructing sector. The Polish Labour Inspection notes that from 2003 non-payment of wages does not increase, perhaps thanks to stable economic situation.

In 2005 the most serious cases of non payment of wages took place in Igloopol in Debica and Delia joint stock company in Zamosc. In both companies non-payment of remuneration lasted several months. In Igloopol desperate workers have been occupying the enterprise. In Delia on 6.12.2005 there was a protest organized by “Solidarnosc” against violations of workers’ rights in the enterprise.

V. Workers’ problems in big retailers

At the turn of 2004 and 2005 there was a lot of media releases concerning gross and extensive infringements of human and workers’ rights in JMD Biedronka, a retailer chain owned by the Portuguese Jeronimo Martins Group.

In 2005 the National Labour Inspection reported in reference to JMD Biedronka units: unreliable working time records, lack of trainings, numerous cases of infringement of safety and health requirements, manual carriage of goods where the weight of load seriously exceeded the accepted levels.

Workers in JMD Biedronka units were usually obliged to perform work as checkers, shop-assistants, janitors and carriers at the same time, depends on the employer’s need. They were also commonly employed part-time for a minimum pay while being forced to work 10 –20 hours a day, including Saturdays and Sundays, a practice that constitute an outrageous infringement of Labour law, human and worker’s rights. In consequence, work time of an ordinary worker equaled to minimum 70 hours per week. The Polish Labour Law (Art. 129 of the LabourCode) allows work time equal to 8 hours per day and 40 hours per week in a reference period no longer than 4 months. One of the TV stations presented a testimony of one of the JMD Biedronka workers that once performed work 30 hours without a break.

Working time records in JMD Biedronka are generally unreliable as an unofficial rule in this company is “no overtime”. Consequently, managers of units are urged by regional managers not to display overtime work in records. The records are therefore counterfeited, according to workers’ testimonies.

Moreover, it is a common practice to force women workers (a majority of JMD Biedronka retailers are women) to unload deliveries and carry goods manually instead of buying the required equipment (like fork lift trucks) in order to save money. Women workers were obliged to transport loads heavier than 2 tons while permissible load is up to 80 kg.

Up to now, several dozens of workers sued JMD Biedronka. A majority of cases concern non-payment of overtime. The public opinion was shocked by the case of young woman worker in her twenties, who, being forced to unload deliveries far beyond her strength miscarried the pregnancy (on 30.03.2005 the court in Elblag interrogated witnesses, the proceedings are ongoing). In a different retailer other woman worker, more or less in the same age, suddenly died from brain aneurysm that could have been directly caused by extensive physical work

(on 20.04.2005 the Association of harmed JMD Biedronka workers informed the Regional Prosecution Office in Slupsk about this case).

Violations of worker's rights in JMD Biedronka retailers was widespread and had all-country scope. That was the reason why the Helsinki Foundation in Poland demanded the Public Prosecutor to take this case under the official supervision .

It has to be underlined that violations of workers' rights in JMD Biedronka are not exceptional. As to the nature, these infringements are the same as in other big retailers. Perhaps only the intensity of violations was extraordinary. Such opinion is shared also by representatives of Helsinki Foundation and National Labour Inspection.

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