

Report on Violation of Trade Union and Workers' Rights in Poland - 2002

NSZZ "Solidarnosc", basing on interventions made in 2002, noted that in 2002 the most frequent transgressions made by the employers in the area of trade union and workers' rights included:

- non-payment of remuneration and other workers' benefits,
- violation of regulations on the time of work and holidays,
- illegal termination of work contracts,
- serious limitation of the right to organise trade unions and limitation of trade union freedoms.

One of the major problems in 2002 was disrespecting the provisions of the labour law referring to the payments of remuneration and other workers' benefits. Many individual cases of unjust reduction of remuneration or non-payment were brought to the labour courts. This in a large scale refers to companies under closing (especially in mining, steel working and railways sector), but also public companies going through economic difficulties (public health care) or private companies. In most of the cases the courts issued sentences justifying the workers' claims. For example, in "Zimnik" coal mine after 4-month non-payment of remuneration the workers decided to go on strike. As a consequence, the employer disciplinary dismissed a group of workers including trade union officers protected by the law. Despite the first instance court's sentence beneficial for the workers, the employer did not pay due remuneration and appealed from the court's decision. The dismissed workers for many months had no means for life and could not get another jobs. Similar cases connected to non-payment of wages were noted in many companies in Poland and caused a lot of sharp protests, especially in the mining, railways and health care.

Another serious problem is non-respecting the provisions referring to the time of work and holidays, connected to reduction or freezing of employment in order to make savings. This phenomenon is common especially in trade and services, but also in the heavy industry and health care, e.g.:

- exceeding the allowed overtime work per day and per year,
- working on Sundays and holidays without granting a free day,
- non-providing the workers with at least every third Sunday free from work,
- exceeding the allowed and normative time of work per day, e.g. where concentration and intensity of hazardous working conditions exceeds norms (mining, metal working).

In the health care, apart from non-payment of remuneration, there were very frequent cases of violating the regulation of the medical emergency work by exceeding the allowed norms of the working time, lack of regulation of remuneration or provisions blatantly violating the Labour Code in existing regulations.

Also in the trade many cases of transgressions in the area of the workers' rights were noted. According to the State Labour Inspection, in this sector still many transgressions take place, mostly non-payment or lowering of remuneration, exceeding the maximum of overtime work and lack of holidays.

In the last year, rapid increase of cases of trade union rights violations was noted, e.g.:

1. unjustified and illegal termination of work and wages conditions of trade union activists,
2. illegal and unjustified transferring of trade union activists to other jobs for periods longer than provided by the law,
3. confiscation by the employers of trade union assets from trade union dues and non-transferring them to the unions' accounts,
4. rejection of dismissing a worker from his/her duties for the period of his/her trade union work with maintaining their right to remuneration,
5. illegal, unjustified and without reason termination of work contract with a trade union activist without the termination period through accusation of heavy violation of basic work duties, without agreement from company's trade union organisation,
6. inciting workers – members of NSZZ "Solidarnosc" to resign from the union membership (cases very hard to prove due to the fact that intimidated workers are afraid to confirm the facts before inspections),
7. discrimination of trade union members through professional degradation, omitting them in wages increase programmes or dismissing them in the first row in group dismissals.

Violation of trade union rights became common in Poland in 2002. Polish government's and employers' aspirations to liberalise the Labour Code created the atmosphere of acceptance for limitation of trade union rights, which often made it possible not only to violate regulations and international conventions guaranteeing the rights, but also to violating the law by drastic and continuous intimidating the trade unionists. Many cases were put in courts and await resolving, but legal procedures take often very long time.

In the area of representing and defending the workers' interests by trade unions, in 2002 there were many cases of conflicts between the unions and the government and employers. The most important item and the background of the disputes was dire economic and social situation. The most dramatic occurrences took place in connection to non-payment of remuneration. The main reason is impunity of the employers violating the law. Any actions of the workers' representatives aiming at executing due wages cause aggravate reaction towards removing trade unionists and supporting workers from company. Small number of cases put in courts is an effect of long-term procedures and lack of means for executing the sentences by law enforcement institutions followed by lack of consequences for the employers responsible for the situation.

Improperly conducted privatisation combined with economic crisis and difficult situation of the labour market led to such practices as buying by bigger enterprises smaller companies that can be competition and closing them. Lack of reaction for such cases and increasing unemployment forced the employees of such bought companies (often modern and well functioning ones) to undertake actions towards changing the decisions or at least drawing the authorities' attention to the pathologies in the privatisation process.

One of such actions ended with direct confrontation of the protesting workers of Cable Factory in Ozarów and hired security forces supported by the police. NSZZ "Solidarnosc" appealed to the Minister of Internal Affairs for examining the case of using the force against legally protesting trade unionists, and to the Spokesman of Citizen's Rights for intervention.

The last year was another year when NSZZ "Solidarnosc" noted increase of violating trade union and workers' rights. Workers' complaints put to labour courts and inspection bodies increased in numbers. The National Labour Inspection stated that 80% of the complaints are justified. At the same time the number of employers that do not obey the court sentences increases, and legal procedures take too long. Worth noticing is also the fact that many labour law experts claim that trends in sentencing the cases by the labour courts is also changing – sentences are less beneficial for the workers. Increasing number of transgressions in trade union and workers' rights is accompanied by decreasing number of workers deciding to undertake legal steps against them

2002 is also the year of significant changes in Polish labour law. Using high and increasing unemployment as an argument, several changes were made with strong impact on workers' organisations' rights. Despite firm objections and protests all over the country, the government implemented following changes in the Labour Code, among others:

collective agreements cease to be in force exactly in the end of termination period (3 months, maintained), due either to expiration of time or unilateral termination. This made it possible for the employers to terminate the working conditions provided by the agreement right after expiration of the agreement and to resign from adopted obligations. Due to this the role of collective agreements as a source of labour law will be very limited, as its provisions may be unilaterally terminated. Previous regulations sustained the provisions of collective agreement even after its termination period (3 months), until a new agreement was achieved.

implementation of a new article in the Act on trade unions granting the status of workers' union only to company level organisations having at least 10 members being employed in the company on the basis of labour contracts. This puts limitation on hitherto existing rights of inter-company, supra-company and national trade unions. Previous conditions of organising and functioning trade unions were less restrictive in term of the type of contract. Also pensioners, unemployed, people working instead of military service and people working at home were allowed to join trade unions. In effect of the new provisions, an organisation having less than 10 members – workers of the company will be deprived of the rights of company trade union organisation. Similar restrictions will affect supra-company and national organisations. They will lose their status even if total number of their members (including those with other forms of work relations) will be higher than 10. As statutes of trade unions do not define their minimum number of members, they will remain legal organisations, but the amendment makes them illegal, and employers will be released from obligation to co-operate with them both in individual and collective workers' issues. The organisations are also obliged to present to the employer quarterly reports on total number of organisation members being employed on labour contracts. The Act does not define legal effects of not submitting such information.