Definitive Report - Report No 378, June 2016

Case No 3111 (Poland)
Complaint date: 14-JAN-15 - Active

Allegations: The complainant organization alleges that the definition of parties to a collective dispute as contained in the national laws restricts the collective bargaining rights and the right to strike of some workers and denounces an excessive exclusion from the right to strike of some civil service employees. The complainant also denounces the fact that national laws do not provide for general strikes or strikes relating to socio-economic issues

674. The complaint is contained in a communication from the Independent Self-Governing Trade Union "Solidarnosc" (NSZZ "Solidarnosc") dated 14 January 2015.

675. The Government forwarded its response to the allegations in a communication dated 3 June 2015.

676. Poland has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), as well as the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Workers' Representatives Convention, 1971 (No. 135).

A. The complainant's allegations

677. In a communication dated 14 January 2015, the complainant organization NSZZ "Solidarnosc" denounces a lack of proper implementation by the Polish Government of ILO Conventions Nos 87 and 151 into Polish legislation (Act on Trade Unions of 23 May 1991, and the Act on Collective Labour Disputes of 23 May 1991). The complainant alleges that the Government: (i) violates Convention No. 87 by limiting parties on the employers' side of a collective dispute and of the strike to the employer within the meaning of the Labour Code, and Convention No. 151 through the lack of provisions that would recognize "public authorities" as a party of the dispute for civil servants; (ii) violates Convention No. 87 through the lack of legal regulations allowing trade unions to organize strikes on socio-economic issues and general strikes; and (iii) violates Convention No. 151 through depriving some of the employees in the state governing bodies and local government, courts and prosecutor's offices of the right to strike.

678. The complainant provides a legislative overview indicating that, in accordance with article 59(3) of the Constitution of the Republic of Poland, trade unions have the right to organize strikes and other forms of protest within the limits specified in the Act on Trade Unions, and may conduct collective disputes based on the provisions of the Act on Collective Labour Disputes. A collective labour dispute of workers with an employer or employers may concern working conditions, wages or social benefits as well as workers' rights and freedoms of employees or other groups who have the right to organize in trade unions (section 1 of the Collective Labour Disputes Act). An employer within the meaning of this Act is an entity referred to in section 3 of the Labour Code (section 5 of the Collective Labour Disputes Act). If the parties fail to reach agreement, the final stage of the industrial dispute is a strike. A strike is a collective work stoppage by workers and is the last resort (section 17(1) and (2)). A warning strike can be organized but only once and for a period not longer than two hours (section 12). In defence of the rights and interests of workers who do not have

the right to strike, the union of another establishment can organize a solidarity strike not exceeding one half of a working day (section 22). Any work stoppage due to a strike that affects positions, equipment and machinery, where interruption of work would constitute a danger to human lives or health or to the security of the State is prohibited (section 19(1)): it is unacceptable to organize a strike in the Agency of Internal Security, the Intelligence Agency, the Military Counter-intelligence Service, the Military Intelligence Service, the Central Anti-Corruption Bureau, in units of the police, armed forces of the Republic of Poland, prison service, frontier guard, custom service as well as units of the fire brigades (section 19(2)); and the right to strike is not granted to employees in state governing bodies and local government, courts and prosecutors' offices (section 19(3)). A strike affecting one establishment is announced by the trade union organization with the consent of the majority of voting employees if the vote was attended by at least 50 per cent of employees at the workplace (section 20(1)); a strike affecting more than one establishment is declared by the trade union body indicated in the by-laws after having been approved by the majority of those workers voting in the establishments in which the strike is to take place, as long as in each of these establishments at least 50 per cent of workers attended the vote (section 20(2)); notice of the strike must be given at least five days in advance (section 20(3)).

679. As regards point (i), the complainant states that referring the Collective Labour Disputes Act to the definition contained in section 3 of the Labour Code means that, in Poland, a party to a collective dispute on the employer side can only be an organizational unit or a natural person, who employs workers. The complainant denounces that, due to the narrowing of the definition of a party to a collective dispute and strike to the employer within the meaning of the Labour Code, it often happens that trade unions cannot initiate a dispute (for example, for a wage increase) with the entity actually deciding on the financial issues of the profession. For example, the university or school itself is considered to be the employer of persons engaged by the university or school, although financial issues of public institutions such as universities and schools are decided by, depending on the subject, the Minister of Science and Higher Education, the Minister of Education or the Minister of Finance. Until recently, the Minister of Science and Higher Education could be a party to a multi-establishment collective agreement of public universities; however, national legislation repealed the relevant provision at the end of 2014. The complainant indicates that it is not currently possible to initiate a collective dispute or even to negotiate a collective agreement with the appropriate minister, as the legislation shifts the burden of decision in all employment matters, including financial matters, to the university (the employer within the meaning of the Labour Code). On issues concerning employment law, the speaker on behalf of the university as the employer is the vice-chancellor of the university, and the speaker on behalf of the school as the employer is the headmaster, although they both work within the financial limits set by the Ministry of Science and Higher Education and the Ministry of Finance (or in the case of a public school, by the Minister of Education and the Minister of Finance). The complainant believes that directing economic demands of workers to the vice-chancellor of the university or to the school principal is pointless, because they have no real power over financial decisions.

680. Furthermore, the complainant denounces that it is often impossible to conduct a collective dispute in the private sector with the entity economically responsible in practice, for example, against the actual employer or parent company. In Poland, there are many companies that merge in order to concentrate capital. Hence, it is not always the employer within the meaning of the Labour Code (employing entity) that is the actual employer or the employer deciding on the financial situation of the persons working in a particular branch of a company. The complainant adds that the legal solution adopted in the Collective Labour Disputes Act was created for the needs of

the individual employment relationship and does not correspond to the specificity of collective labour relations; it has been criticized in the national labour law doctrine as it results in requests concerning the interests of workers being addressed to employers with no decision-making powers.

681. The complainant reiterates that the objections come down to the fact that, on the one hand, public authorities cannot constitute a party to a collective dispute or strike in Poland (neither the Government nor the Minister nor the local government), and, on the other hand, parties to a collective dispute or strike cannot be other entities economically responsible for, or granting entitlements to, certain professions. According to the complainant, a party to a labour dispute and strike should always be the financially responsible entity or the entity actually conferring powers on certain professions, for example, a public authority such as a government, competent minister, local or provincial government, among others, or another responsible entity, for example, the parent company.

682. As regards point (ii), the complainant states that the abovementioned problem of the competent (real) parties to a collective dispute and strike is of great practical importance, since the recognition solely of the employer within the meaning of the Labour Code as a party to a collective dispute, causes consequences in the form of limiting labour dispute matters to issues at the enterprise level. Section 1 of the Collective Labour Disputes Act provides that a collective dispute of workers with the employer or employers may relate to working conditions, wages and social benefits, union rights and freedoms of employees or other groups, who have the right to organize in trade unions. In light of this statutory provision, unions cannot – within the limits of a collective dispute – express their dissatisfaction with socio-economic issues towards the entity really responsible for the workers' professional, social and economic situation. The employer in the narrow sense of "employing entity" does not determine the socio-economic situation affecting the working conditions and social conditions of the workers. National law does not provide for situations where unions may start disputes and carry out strikes against a public authority on the grounds of socio-economic issues. The complainant concludes that the lack of adequate regulations concerning organization of strikes on socio-economic issues is in fact a ban on strikes against the economic policy of the State and is a serious violation of the freedom of association.

683. Furthermore, the complainant contends that while, under the Collective Labour Disputes Act, trade unions can initiate strikes including warning strikes, solidarity strikes, enterprise strikes and multi-employer strikes, national legislation does not use the term "general strike". The complainant understands the term "general strike" as a strike involving, in particular, different employers of a certain industry, region or even the entire country, in order to support or defend favourable legislative solutions, or to protest against plans and decisions taken by public authorities, which bring about adverse social consequences or consequences for certain professions.

684. As regards point (iii), the complainant refers to section 19(1) of the Collective Labour Disputes Act which prohibits any work stoppage due to a strike that affects positions, equipment and machinery, where interruption of work would constitute a danger to human lives or health, or to the security of the State. The complainant underlines that, at the same time, national legislation does not specify a particular position or even a procedure that would be helpful in determining the list of positions on which the interruption of work would be a threat to life, health or security of the State. Section 19(2) prohibits strikes at the Agency of Internal Security, the Intelligence Agency, the Military Counter-intelligence Service, the Military Intelligence Service, the Central Anti-Corruption Bureau, and in units of the police, armed forces of the Republic of Poland, prison service, frontier guard, custom service, as well as units of the fire brigades. Lastly, section 19(3) provides that the right to strike is not granted to

employees in state governing bodies and local government, courts and prosecutors' offices. The complainant organization questions the compliance with ILO standards of the restrictions on the right to strike in relation to certain employees in public administration, since national law denies this right to a wide range of people with the status of employee, including those who have been employed not in civil servant positions but under contracts of employment for auxiliary and servicing activities in state governing bodies, local government, courts and prosecutors' offices.

685. In the complainant's view, the prohibitions in section 19(1) and (3) of the Collective Labour Disputes Act must be regarded as excessive. Pursuant to article 59(4) of the Polish Constitution, the scope of freedom of association for trade unions and employers' organizations and other trade union rights may only be subject to such statutory limitations as are permitted by international agreements binding on the Republic of Poland. The complainant considers that the right to strike should be guaranteed to a wide group of workers and limitations on this right can only be exceptional (that is, in the case of public servants exercising authority in the name of the State or of workers in essential services in the strict sense of the term), whereas section 19(3) of the Act denies the right to strike to all employees in state governing bodies and local government, courts and prosecutors' offices.

686. Consequently, the complainant organization denounces that national legislation does not implement ILO fundamental standards on freedom of association, especially in relation to the right to strike, as it does not provide for: collective labour disputes and strikes with the government, minister, local government, or entity responsible for economic, social or professional affairs, other than the direct employer; strikes on socio-economic issues and general strikes; and the right to strike for some employees in state governing bodies and local government, courts and prosecutors' offices. In this regard, the complainant denounces that the necessary legislative amendments have still not been made, and the Government has still not implemented the recommendations made by the Committee in 2012 in the framework of Case No. 2888 with regard to the right to organize of persons performing work under civil law contracts and the self-employed.

B. The Government's reply

687. In a communication dated 3 June 2015, the Government wishes to first make reference to the constitutional sources of the right to strike and the right to organize. Article 59(1) and (2) of the Constitution of the Republic of Poland stipulates that the right to organize of trade unions, socio-occupational organizations of farmers and employers' organizations shall be ensured, and that trade unions and employers and their organizations shall have the right to bargain collectively, particularly for the purpose of resolving collective labour disputes, and to conclude collective labour agreements and other arrangements. In turn, pursuant to article 59(3), trade unions shall have the right to organize workers' strikes or other forms of protest subject to limitations specified by statute. For protection of the public interest, statutes may limit or forbid the conduct of strikes by specified categories of employees or in specific fields. The scope of the freedom of association of trade unions and employers' organizations and of other freedoms of association may only be subject to such statutory limitations as are admissible in accordance with international agreements to which the Republic of Poland is a party (article 59(4)). The Government stresses that the right to strike differs from the right to organize of trade unions and the right to collective bargaining: while the scope of the right to organize and the right to collective bargaining is broad, the right to strike is subject to limitations defined by law, taking into consideration the specificities of strikes.

(i) Party to a labour dispute

688. Regarding the issue of defining the party to a labour dispute, the Government states that the resolution of labour disputes is regulated by the Collective Labour Disputes Act. By means of this Act the legislator has fulfilled the obligation under article 59(3) of the Constitution of the Republic of Poland to define the limitations applicable to the freedom to protest. These criteria determine the admissibility in a situation in which, pursuant to the force of law, one protected interest (the right of an entrepreneur to conduct profit-oriented economic activity and the protection of his property rights) is being renounced for the sake of another interest (the right of workers to fight for improving their employment situation).

689. The Government indicates that, in light of section 1 of the Collective Labour Disputes Act, a dispute may concern: employment conditions, payment conditions, social benefits, and the rights and freedoms of association. The term "labour dispute" is defined as a dispute between employees and an employer or employers. The party to a labour dispute, apart from employees represented by a trade union, may thus exclusively be an employer or employers. Under section 5 of this Act, a definition of an employer was adopted which is identical to the definition laid down in section 3 of the Labour Code. This legal structure is based on a largely universal governance model, and the capacity, on their own behalf, to employ workers constitutes the fundamental criterion, on the basis of which a legal or natural person is considered an employer. The merit of the term used in section 3 of the Labour Code is that the management, executive board or other body performing tasks governed by the provisions of labour law for the employer shall be able to discharge – for the benefit of employees – the obligations assumed by them by determining specific employment and payment conditions in their employment contracts.

690. The Government believes that, according to the above definition of the party to a labour dispute, there is no doubt that the employers of workers employed in organizational units which are part of the central or local government administration, are these units, represented by their directors who make decisions concerning specific employment and payment conditions offered to people employed by them, which implies that both a competent minister or other central government administration body and a local government body are excluded from the scope of the definition laid down in section 3 of the Labour Code, and, consequently, section 5 of the Collective Labour Disputes Act. The Government emphasizes that the exclusion of public authorities from the direct participation in labour disputes constitutes a mindful and deliberate choice of the national legislator made in 1991 while enacting the Collective Labour Disputes Act, and that it remains within the legislative leeway of Parliament to opt for legal solutions that may bring about expected social and economic effects in the most appropriate manner. The Collective Labour Disputes Act was subject to an evaluation by the Polish Constitutional Tribunal, which, in its judgment of 24 February 1997, ruled that section 5 of the Collective Labour Disputes Act, under which the definition of "employer" does not provide for the participation of a minister or president of a communal association board (gmina) as a party to a labour dispute – separate from the direct employer – in disputes concerning employees of state-budget units administered by central or local authorities, is in compliance with articles 1 and 85 of constitutional rules left in force by section 77 of the Constitutional Act of 17 October 1992 on the mutual relations between the legislative and executive institutions of the Republic of Poland and on local self-government. Although a new Constitution was adopted in the meantime, the thesis behind this judgment remains valid.

691. According to the Government, the example provided by the complainant of a minister responsible for higher education who may not become a party to the dispute concerning an increase in salary, despite the fact that he or she makes decisions

concerning the higher education institution's finances, does not entirely correspond to legal reality. The annulment of the competence of the minister responsible for higher education to establish a multi-enterprise collective labour agreement (section 152 of the Act of 27 July 2005 on Higher Education), was related to the change of financial management principles applied by public higher education institutions. Under section 100 of the above Act, higher education institutions manage their financial affairs independently based upon a finance and operation plan, and the operating costs of public higher education institutions, the discharge of their liabilities, funding for their development and any other needs shall be covered by the revenues referred to in section 98(1) of this Act. The responsibility in this regard lies with the rector of a higher education institution, and it is the rector who – by enacting real powers pertaining to employers' finances – represents the employer in labour relations towards employees of a higher education institution. The rector of a public higher education institution is responsible for managing its financial affairs and for managing – as an employer – funds allocated for employee salaries. Therefore, the rector is an appropriate party to any potential labour dispute concerning salary-related issues. Incidentally, it should be added that the possibility of establishing a multi-enterprise collective labour agreement for employees of such higher education institutions still exists; however, powers in this regard are now entrusted to an employers' organization comprising those higher education institutions which employ workers for whom such an agreement would be established.

692. Referring to the alleged impossibility for trade unions to express their dissatisfaction in socio-economic matters in the form of a labour dispute, the Government recalls that an agreement had been concluded on 29 May 1992 between the Council of Ministers and the complainant on the rules for proceedings in resolving disputes between the state administration and NSZZ "Solidarnosc". Pursuant to its preamble, the reason for the conclusion of this Agreement was that the rules contained in the trade union legislation did not allow for the resolution of many issues of concern for large labour groups. Moreover, the recently adopted Collective Labour Disputes Act did not apply to disputes with the state administration, and there was a lack of legal foundations for conducting social dialogue with the Government with a view to resolving social conflicts generated by reforms carried out in Poland. Under this Agreement, in the case of nationwide disputes of an inter-sectoral nature, the principal or central public administration bodies (Council of Ministers, ministers or directors of central offices) and the National Commission of NSZZ "Solidarnosc" could have been parties to a dispute. However, in the case of disputes concerning an entire sector or occupation, parties to a dispute could have been ministers or directors of central offices competent in relation to the subject of a dispute and – on the trade union's part – national sectoral secretariats empowered by proxy to represent national authorities of the union. The subject matter of a dispute could exclusively cover matters within the scope of trade unions' competences envisaged by law, provided that the rules of proceedings had not been specified in the legislation. The Agreement provided for the rules of proceedings for amicable dispute resolution – negotiations, mediation and arbitration – without granting the relevant union the right to organize a strike, which due to the scope of the dispute would have had to take the form of a general strike. The entry into force of the Act of 6 July 2001 on the Tripartite Commission for Social and Economic Affairs and on voivodship social dialogue commissions provided a legal basis for the achievement of the objectives for which the Agreement had been concluded. Pursuant to the provisions of this Act, the Tripartite Commission constituted a forum for social dialogue conducted with a view to reconciling the interests of workers, employers and the public interest. The Commission aimed to achieve and maintain social peace and was empowered to conduct social dialogue on salaries, social benefits and on other social or economic issues. Each party of the Commission had the right to submit matters with high societal and economic impact for further elaboration within the

Commission, if such a party was convinced that resolving a particular matter was significant for maintaining social peace. The Government indicates that, at present, work is being conducted on the draft Act on the Social Dialogue Council and on other social dialogue institutions, on the basis of which the Tripartite Commission is to be replaced by the Social Dialogue Council as a forum for the tripartite cooperation between workers, employers and the Government. It is envisaged that social dialogue will continue within the Council with a view to reconciling the interests of workers, employers and the public interest.

693. As to the alleged lack of formal empowerment of public authorities as a party to a labour dispute, the Government states that the Collective Labour Disputes Act neither protects these authorities against participation in disputes, nor constitutes a declaration of neutrality of the State in collective relations. The practice in collective relations applied in Poland to date proves that governmental authorities are not excluded from participating in such matters. Employees and their representatives, when explicitly and publicly articulating their demands, direct their claims subsequently to public authorities in the form of open letters and petitions, among other things. In turn, employers in the broadly understood state-budget units aim at safeguarding as many budget resources as possible so as to meet the demands of employee representatives.

694. Referring to the alleged violation by limiting parties on the employers' side to a labour dispute to employers within the meaning of the Labour Code and the suggestion of the complainant to provide for the possibility of conducting a labour dispute with the actual employer (in enterprises that are merged with the objective of concentrating capital or in companies with separate branches), the Government stresses that the diversity of businesses, including organizational structures, justifies the prudence of the national legislator in regulating this issue. The possibility of establishing legal persons that are solely responsible for fulfilling their obligations is an important element of the freedom of economic activity. However, pursuant to article 20 of the Constitution, the basis of the economic system of the Republic of Poland shall include solidarity, dialogue and cooperation between social partners, which means that the national legislator must, on the one hand, realize the principle of economic freedom and, on the other hand, ensure labour protection and establish an appropriate legal framework for dialogue and cooperation between social partners at every level of social and economic life, including at the establishment level. The adoption of a concept that the party to a labour dispute and to a strike should always be an entity which bears financial responsibility or is actually, for example, the parent company, carries a risk of completely bypassing in a dispute the employer referred to in section 3 of the Labour Code and section 5 of the Collective Labour Disputes Act. This would undermine the legitimacy of the use by entrepreneurs of instruments of commercial or civil law which regulate the issue of subjectivity, and allocating responsibilities. Moreover, the Government refers to the possibility under the legislation in force to conduct a multi-establishment dispute that goes beyond the scope of activities carried out by one employer. Additionally, jurisprudence should also be taken into account, which, in cases of abuse of the concept of the employer management model, ensures appropriate interpretation of already existing legislation.

(ii) General strikes

695. According to the Government, nothing precludes the organization of strikes involving different employers in a particular sector, region or country. Pursuant to section 20 of the Collective Labour Disputes Act, a multi-establishment strike shall be declared by a trade union body indicated in the statute following the approval of the majority of voting employees in each establishment in which the strike is to take place, provided that in each of these establishments at least 50 per cent of employees participate in

voting. Therefore, it is possible to conduct a strike involving employers in a particular sector, region or the entire country, provided that the demands formulated in the dispute remain directly related to the activities carried out by the employers involved in the dispute.

696. As regards the complainant's request to introduce a "general strike", that is, "a strike involving different employers in a particular sector, region or the entire country with a view to supporting or defending more favourable legislative solutions, or against negative professional or social consequences of plans and decisions implemented by public authorities", the Government believes that it would only be possible to meet such demands through legislative action, which would go beyond the scope of the competence of the employers involved in the dispute. The Government concludes that the introduction of a general strike in the form requested by the complainant may have an adverse impact on employers, who would have to bear the costs related to downtime periods, while at the same time having no impact on the stance of the addressee of demands (the public authorities). Individual employers cannot influence the legislative action of a government or the plans and decisions taken by public authorities, and thus should not bear the negative consequences of the economic policy pursued by the State. In the Government's view, supporting or defending legislative action should take place in the forum specifically established for this purpose (the Tripartite Commission, or the Social Dialogue Council which is to replace the Tripartite Commission). If trade unions want to express public dissatisfaction with disadvantageous professional or social consequences of public measures, they may exercise their right to organize an assembly with a view to jointly expressing their position concerning a subject matter (Act of 5 July 1990 on Assemblies). With regard to the possibility of organizing a strike related to socio-economic issues, the Government highlights that workers have the right to express their dissatisfaction with socio-economic issues. To this end, they can avail themselves of the possibility provided for in Polish law of organizing assemblies, which can be carried out in different forms (demonstrations, pickets or protests).

(iii) Right to strike in the civil service

697. With regard to the limitation of the right to strike, the Government recalls that, in accordance with article 59(3) of the Constitution of the Republic of Poland, the public interest is the criterion entitling the legislator to limit or exclude the right to strike with regard to specified categories of employees. The scope of freedom of association of trade unions and employers' organizations may only be subject to such statutory limitations as is admissible in accordance with international agreements to which Poland is a party. The Government states that, while the ILO Conventions do not explicitly regulate the right to strike, the ILO supervisory bodies recognize its existence on the basis of the interpretation of the provisions of Convention No. 87, underlining at the same time that the right to strike is not an absolute right and that national law may exclude the possibility of exercising this right in exceptional circumstances or establish conditions or limitations of its exercise with regard to public servants who act as representatives of public authorities or to workers employed in services of a fundamental nature (that is, the non-performance of which would threaten the life, health or personal security of the whole population or part of it); the ILO supervisory bodies further point out that the limitation or exclusion of the right to strike for specified categories of employees should be accompanied by appropriate measures for defending their interests in the form of a conciliation procedure or amicable settlement, as well as in the form of an arbitration procedure.

698. The Government indicates that the statutory prohibition of the right to strike is introduced by section 19 of the Collective Labour Disputes Act and has a two-fold

nature: it is either determined by the subject matter (section 19(1) and (2)), or by the subject (section 19(3)). Section 19(1) does not directly establish the prohibition of strikes in a specified organizational unit but prohibits the work stoppage due to strikes that affects positions, equipment and installations where the interruption of work constitutes a hazard to human lives or health or to security of the State. This implies the division of workers into those who can refrain from work and those who do not have such a right. The factor determining the existence of prohibition is – in this case – the final result of the work stoppage. This regulation is neither dependant on the sector or branch to which the establishment belongs, nor on its management form or ownership. Section 19(2) provides for a strike ban according to the scope of activity. This provision exhaustively lists units of uniformed services in which strikes are prohibited, and is to be interpreted pursuant to the principle of literal interpretation. Therefore, workers in establishments within the organizational structure of the cited militarized authorities shall not be treated in the same way as workers in establishments conducting auxiliary and service operations for them.

699. The Government adds that, under section 19(3) of the Collective Labour Disputes Act, all employees of public authorities, central and local government administration, courts and prosecutors' offices are deprived of the right to strike. One of the employee categories deprived of the right to strike is, in line with these provisions, members of the civil service corps, which is a specific form of the public service. Unlike in some countries – where the civil service corps covers almost the whole public sector including, among others, teachers, health care and local government employees – its scope is rather limited in Poland, and covers only about 121,400 persons employed in government administration offices (about 2,300 offices). Pursuant to section 78(3) of the Civil Service Act, members of the civil service corps are not allowed to participate in strikes or in actions of protest that would interfere with the regular functioning of an office; they are thus allowed to participate in certain actions of protest. Moreover, in line with section 22 of the Collective Labour Disputes Act, the trade union of another establishment may declare a solidarity strike to defend the rights and interests of workers who do not have the right to strike. The Government highlights that the civil service corps is formed by officials employed in organizational units with a great importance for the performance of state activities. Additionally, some persons employed in the civil service carry out services relevant to society, the continuity of which has to be ensured. The Government concludes that the exclusion of the right to strike for members of the civil service corps under section 19(3) seems to be justified by public interest and falls within the catalogue of permissible exclusions formulated by the ILO supervisory bodies.

700. Persons employed in courts and prosecutors' offices constitute another category of employees deprived of the right to strike under section 19(3) of the Collective Labour Disputes Act. Due to the legislative principles of division and balance of powers, including the judicial power exercised by courts and tribunals, workers employed in courts are subject to special regulations. Many cases dealt with by courts are such that the lack of, or delay in taking, a decision could cause considerable perturbations in the functioning of the State, local government units, individual legal entities and natural persons. In view of the above, the public interest was given priority over the interests of persons employed in the so-called public service. In this respect, the Government highlights that the wording of section 19(3) shows that it was considered that the functioning of a court necessitated the functioning of the entire institution, both of the judges or officers of justice and of the court workers.

701. The Government further underlines that the fact that employees listed in section 19(3) of the Collective Labour Disputes Act are deprived of the right to strike does not imply that they are not allowed to conduct a labour dispute. Trade union organizations representing the interests of these categories of employees may initiate a labour

dispute and conduct it, provided that it does not result in a strike. Pursuant to section 16, the party to the labour dispute, which represents the interests of employees, may, instead of exercising the right to commence a strike, attempt to settle the dispute by submitting it to a social arbitration committee. Section 17 stipulates that a strike shall be the last resort and shall only be declared after all possibilities for dispute settlement under the Act have been exhausted (submitting demands, negotiations and mediation). The Act has also equipped trade unions with the means of exerting pressure on employers in the course of legal labour disputes, other than strikes: under section 25, after the procedure provided for in Chapter 2 (negotiations) has been exhausted, forms of protest other than strikes shall be authorized in order to defend the rights and interests listed in section 1 (conditions of work, wages or social benefits, as well as union rights and freedoms of employees or other groups of persons), provided that they do not endanger human lives or health and do not involve a work stoppage, subject to respect of the legal order; it is expressly stipulated that employees who do not have the right to strike shall also be entitled to the above, thus also members of the civil service corps.

702. The Government reiterates that trade unions representing workers deprived of the right to strike are entitled to use the same procedures established in the Collective Labour Disputes Act, that is, negotiations, mediation and arbitration, as trade unions that represent workers who enjoy the right to strike. According to the Government, Convention No. 151 does not lay down the catalogue of obligations or functions carried out by public employees that would justify the restriction of the exercise of freedom of association (including the right to strike). This catalogue is to be drafted by a national legislator, when deciding to what extent it is justified to restrict collective rights of public employees, so as to ensure that the exercise of these rights would not conflict with the protection of public interest. The Government therefore believes that the Polish legislator had the right to consider that it was necessary for the public interest to exclude the right to strike with respect to all members of the civil service corps, rather than only with respect to high-level employees. It should be taken into account that the civil service corps is formed by officials employed in organizational units with a great importance for the performance of state activities. The performance of these activities seems to be impossible to guarantee when excluding the right to strike only with regard to certain groups of office employees, as it requires full availability of not only high-level (managerial) employees but also of the whole apparatus of officials as well as workers ensuring the operation of an office.

703. With regard to the complainant's statement that the Government has so far not extended the right of association in trade unions to persons carrying out work on a basis other than the employment relationship, the Government provides an overview of the steps taken and the work being pursued with a view to preparing necessary legislative changes with respect to the right to organize of persons working under civil law contracts and the self-employed.

C. The Committee's conclusions

704. The Committee notes that, in the present case, the complainant organization alleges that the definition of parties to a collective dispute as contained in the national laws restricts the collective bargaining rights and the right to strike of some workers and denounces an excessive exclusion from the right to strike of some civil service employees. The complainant also denounces the fact that national laws do not provide for general strikes or strikes relating to socio-economic issues. The Committee also notes the Government's general statement that the right to strike differs from the right to organize and the right to collective bargaining in that it is subject to limitations defined by law, taking into account the specificities of strikes.

Definition of the party to a collective labour dispute

705. With regard to the definition of parties to a collective labour dispute, the Committee notes the complainant's allegations that: (i) the reference in section 5 of the Collective Labour Disputes Act to the definition of "employer" in section 3 of the Labour Code means that the party on the employers' side to a collective dispute and strike can only be an employer, that is, an organizational unit or a natural person, who employs workers; (ii) due to this narrow definition of the party to a dispute, public sector unions often cannot initiate a dispute (for example, on wage increases) with the entity actually deciding on the financial issues of the profession, since public authorities cannot constitute a party to collective disputes in Poland; (iii) for instance, the rector is deemed to be the employer of persons employed at higher education institutions whereas the financial issues of such institutions are decided by the relevant minister; (iv) it is often impossible to conduct a collective dispute in the private sector with the entity economically responsible in practice; and (v) collective bargaining rights and the right to strike are violated by limiting them to the direct employer pursuant to the Labour Code, as a party to a collective labour dispute and strike should always be the actual financially responsible entity or the entity actually conferring powers on certain professions, for example, the relevant public authority (Government, competent minister, local or provincial government, among others), or the entity responsible for economic, social or professional affairs, for example, the parent company.

706. The Committee notes the Government's indications that: (i) the definition of "employer" in section 3 of the Labour Code corresponds to a largely universal governance model, with the capacity to employ workers constituting the fundamental criterion on the basis of which a legal or natural person is considered an employer, and the merit being that the management, executive board or similar body may discharge the obligations assumed by the employer by determining specific employment and payment conditions of employees; (ii) the employers of workers employed in organizational units which are part of the central or local government administration, are these units, represented by their directors who make decisions concerning employment and payment conditions, which implies that public authorities (for example, the competent minister, central government administration body or local government body) are excluded from the scope of the definition; (iii) the Constitutional Tribunal ruled that section 5 of the Collective Labour Disputes Act, under which the definition of "employer" does not allow for the participation of a minister or president of a communal association board as a party to a labour dispute concerning employees of state-budget units administered by central or local authorities, is in line with the Constitution; (iv) as to the example supplied by the complainant, the rector of a public higher education institution who is responsible for managing its financial affairs, including funds allocated for employee salaries, is the appropriate party to a labour dispute concerning salary-related issues; (v) governmental authorities participate indirectly in collective disputes: employees and their representatives, when publicly articulating their demands, direct their claims subsequently to public authorities in the form of open letters, petitions, and so forth, and employers in state-budget units aim at safeguarding budget resources to meet the demands of employee representatives; (vi) the diversity of private sector businesses, including organizational structures, justifies the prudence of the national legislator, since the adoption of a concept that the party to a dispute should always be an entity which bears final financial responsibility carries a risk of bypassing the employing entity in a dispute; (vii) moreover, jurisprudence ensures, in cases of abuse of the concept of the employer management model, appropriate interpretation of existing legislation; and (viii) under the legislation in force, it is possible to conduct a multi-establishment dispute going beyond the scope of one employer.

707. The Committee notes that the definition of employer in section 3 of the Labour Code, according to which an employer is an organizational unit or an individual, provided that it employs employees, applies to both the public and the private sectors and is valid for the Collective Labour Disputes Act.

708. The Committee is of the view that, in the framework of a collective labour dispute, it is neither realistic nor necessary to always deal on the employer side with the entity bearing the ultimate financial or economic responsibility or with the highest employer representative, be it in the public sector (for example, the competent minister) or in the private sector (for example, the parent company). At the same time, the Committee recalls that, according to Paragraph 13 of the Workers' Representatives Recommendation, 1971 (No. 143), workers' representatives should be granted without undue delay access to the management of the undertaking and to management representatives empowered to take decisions, as may be necessary for the proper exercise of their functions. In view also of the obligation of both the employer and the trade union to negotiate in good faith and make every effort to reach an agreement as well as the importance of the right to strike as one of the essential means for workers and their organizations to defend their economic and social interests, the Committee considers that it should be ensured that the party to a collective labour dispute on the employer side has the authority to make concessions and take decisions concerning wages and terms and conditions of employment, so that the pressure brought to bear during the various stages of a collective labour dispute is effectively directed to an appropriate entity.

709. The Committee notes the Government's reference to the capacity of the judiciary to correct any cases of abuse in regard to the concept of "employer" and the possibility to conduct a multi-establishment dispute to include entities other than the direct employer. The Committee, also referring to its comments below concerning section 19(3) of the Collective Labour Disputes Act, requests the Government to take the necessary steps to ensure that the party to the collective labour dispute on the employer side can be clearly identified and has the authority to make concessions and take decisions concerning wages as well as terms and conditions of employment.

General strikes and strikes on socio-economic issues

710. With regard to general strikes and strikes on socio-economic issues, the Committee notes the complainant's allegations that: (i) the recognition solely of the employer within the meaning of the Labour Code as a party to a collective dispute and section 1 of the Collective Labour Disputes Act, causes consequences in the form of limiting labour dispute matters to issues at the enterprise level; (ii) unions cannot within the limits of a collective dispute express their dissatisfaction at socio-economic issues towards the entity really responsible for the workers' professional, social and economic situation, nor carry out strikes against a public authority on the ground of socio-economic issues; (iii) national legislation is not in line with the principles of freedom of association as it does not allow for "general strikes" as a strike involving in particular different employers of a certain industry, region or even the entire country, in order to support or defend favourable legislative solutions, or to protest against plans and decisions taken by public authorities, which bring about adverse social consequences or consequences for certain professions.

711. The Committee notes the Government's indications that: (i) section 20 of the Collective Labour Disputes Act provides for multi-establishment strikes; (ii) the introduction of general strikes may have an adverse impact on employers, who would have to bear the costs related to downtime periods, while at the same time having no influence on the stance of the addressee of demands (legislative action or plans and decisions taken by the public authorities); (iii) supporting or denouncing legislative

action should take place in the forum specifically established for the purpose of achieving and maintaining social peace by conducting social dialogue on social or economic issues of concern and reconciling the interests of workers, employers and the Government (the Social Dialogue Council which is to replace the Tripartite Commission); (iv) if trade unions want to express public dissatisfaction with disadvantageous professional or social consequences of public measures, they may exercise their right to organize an assembly to jointly express their position concerning a subject matter; and (v) similarly, with regard to the possibility of organizing a strike related to socio-economic issues, workers may avail themselves of the possibilities provided for in national legislation concerning assemblies (demonstrations, pickets or protests).

712. The Committee observes that a collective dispute between employees and an employer or employers may only relate to working conditions, wages, social benefits, union rights and freedoms of employees or other groups of persons who enjoy the right to organize, and that a strike is a collective labour stoppage by employees for the purpose of settling a dispute concerning the abovementioned matters (sections 1 and 17 of the Collective Labour Disputes Act). Observing also that multi-establishment strikes are regulated in section 20 read in conjunction with section 1 of the Collective Labour Disputes Act, the Committee recalls in this respect that the occupational and economic interests which workers defend through the exercise of the right to strike do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions and problems facing the undertaking of which are of direct concern to the workers. Furthermore, organizations responsible for defending workers' socio-economic and occupational interests should be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and standards of living [see Digest of decisions and principles of the Freedom of Association Committee, fifth (revised) edition, 2006, paras 526 and 527]. While noting with interest the establishment of the Social Dialogue Council, a new tripartite institutional forum replacing the Tripartite Commission for Social and Economic Affairs, the Committee observes that the guarantee of freedom of assembly and tripartite social dialogue is important even if not sufficient to ensure respect for the principles enunciated above. The Committee requests the Government to take the necessary measures in order to ensure that workers' organizations are able to express, if necessary, through protest actions, more broadly, their views as regards economic and social matters affecting their members' interests.

Restrictions on the right to strike in section 19 of the Collective Labour Disputes Act

713. With regard to the right to strike in the civil service and in certain positions, the Committee notes the complainant's allegations that: (i) the restrictions on the right to strike in section 19(1) of the Collective Labour Disputes Act are excessive, given that national legislation does not enumerate the specific positions nor establish a procedure to determine the list of positions on which strikes are prohibited as the interruption of work would be a threat to life, health or security of the State; and (ii) the restrictions on the right to strike in relation to certain employees in public administration in section 19(3) are excessive, since national law denies this right to a wide range of persons, including those who have not been employed in civil servant positions but under contracts of employment for auxiliary and servicing activities in state governing bodies, local government, courts and prosecutors' offices. The Committee also notes the complainant's view that, in light of article 59(4) of the Polish Constitution,

pursuant to which the scope of freedom of association for trade unions and employers' organizations and other trade union rights may only be subject to such statutory limitations as are permitted by international agreements binding on Poland, the right to strike should be guaranteed to a wide group of workers and limitations should only be exceptional (that is, in case of public servants exercising authority in the name of the State or of workers in essential services in the strict sense of the term).

714. The Committee notes the Government's indications that: (i) the factor determining the existence of a strike prohibition under section 19(1) of the Collective Labour Disputes Act, regardless of the branch, is the final consequence of the work stoppage (hazard to human lives or health or to security of the State) this implies the division of workers into those who can refrain from work and those who do not have such a right; (ii) one of the employee categories deprived of the right to strike under section 19(3), is the members of the civil service corps, which is a specific form of the public service; unlike in some countries – where the civil service corps covers almost the whole public sector, including teachers, health care and local government employees – its scope is rather limited in Poland covering only about 121,400 persons employed in government administration offices (about 2,300 offices); (iii) the civil service corps is formed by officials employed in organizational units with a great importance for the performance of state activities including services relevant to society, which cannot be guaranteed with a strike ban limited to certain groups of office employees, as it requires full availability of the whole apparatus of officials as well as workers ensuring the operation of an office; (iv) the exclusion of the right to strike for members of the civil service corps seems to be justified by public interest and falls within the catalogue of permissible exclusions formulated by the ILO supervisory bodies; (v) as regards persons employed in courts and prosecutors' offices, many cases dealt by courts are such that the lack of, or delay in taking, a decision could cause considerable perturbations in the functioning of the State, local government units and legal and natural persons – the public interest was thus given priority over the interests of persons employed in courts or prosecutors' offices (including both judges or officers of justice and the court workers); (vi) unions representing workers deprived of the right to strike are entitled to use the same procedures in the Collective Labour Disputes Act, that is, negotiations, mediation and arbitration, as other trade unions; (vii) pursuant to section 78(3) of the Civil Service Act, members of the civil service corps are not allowed to participate in actions of protest that would interfere with the regular functioning of an office – they are thus allowed to participate in certain actions of protest; (viii) under section 25 of the Collective Labour Disputes Act, after unsuccessful negotiations, forms of protest other than strikes are authorized to exert pressure on employers in the course of a labour dispute, including for employees who do not have the right to strike; and (ix) under section 22, the trade union of another establishment may declare a solidarity strike to defend the rights and interests of workers who do not have the right to strike.

715. The Committee observes that section 19(3) of the Act on Collective Labour Disputes denies the right to strike to the members of the civil service corps and to employees in courts and prosecutors' offices, and that section 19(1) prohibits any work stoppage due to a strike that affects positions, equipment and machinery, where interruption of work would constitute a danger to human lives or health or to the security of the State. The Committee recalls that the right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population). The Committee further emphasizes that too broad a definition of the concept of "public servant" is likely to result in a very wide restriction or even a prohibition of the right to strike for these workers, and that the prohibition of the right

to strike in the public service should be limited to public servants exercising authority in the name of the State [see Digest, op. cit., paras 575 and 576]. The Committee invites the Government to consider establishing a procedure for determining which public servants enumerated in section 19(3) of the Collective Labour Disputes Act and in section 2 of the Civil Service Act are exercising authority in the name of the State and for whom the right to strike could therefore be restricted, as well as for defining minimum services where appropriate. Such a procedure could also be used with respect to section 19(1), in order to determine the cases where an interruption of work would be deemed a hazard under section 19(1) and where the right to strike would thus be prohibited or restricted, as well as to define minimum services where appropriate.

716. Lastly, regarding the complainant's indication that the recommendation made by the Committee in 2012 in the framework of Case No. 2888 to grant the right to organize to persons performing work under civil law contracts and the self-employed, has still not been implemented, the Committee notes with satisfaction that: (i) the Government has taken steps with a view to preparing the necessary legislative amendments; (ii) the Constitutional Tribunal rendered a judgment in June 2015 holding that section 2(1) of the Act on Trade Unions is contrary to the Constitution of the Republic of Poland and that the legislator should extend the right to organize to all persons performing paid work on the basis of a legal relationship; and (iii) a draft act introducing the relevant systemic changes will be submitted for consultation to the newly established Social Dialogue Council.

717. The Committee refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations.

The Committee's recommendations

718. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) Concerning the definition of the party to a collective labour dispute, the Committee requests the Government to take the necessary steps to ensure that the party to a collective labour dispute on the employer side can be clearly identified and has the authority to make concessions and take decisions concerning wages as well as terms and conditions of employment.

(b) As regards general strikes or strikes on socio-economic issues, the Committee requests the Government to take the necessary measures in order to ensure that workers' organizations are able to express, if necessary, through protest actions, more broadly, their views as regards economic and social matters affecting their members' interests.

(c) With respect to the restrictions on the right to strike in section 19 of the Collective Labour Disputes Act, the Committee invites the Government to consider establishing a procedure: (i) for determining which public servants enumerated in section 19(3) of the Collective Labour Disputes Act and in section 2 of the Civil Service Act are exercising authority in the name of the State and for whom the right to strike could therefore be restricted; (ii) for determining the cases where an interruption of work would be deemed a hazard under section 19(1) and where the right to strike would thus be prohibited or restricted; and (iii) for defining minimum services where appropriate.

(d) The Committee refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations.