



Social dialogue and conflict resolution in Poland

Context

Industrial relations framework for conflict resolution

Institutional basis for conflict resolution

Statistics on industrial conflicts 1992-2002

Conflict resolution mechanisms

Conclusion

Abbreviations

Bibliography

Annex 1: National development project

Annex 2: Road map for conflict resolution

This report is available in electronic format only and has not been subjected to the standard Foundation editorial procedures

Context

This report is part of a series of projects from the Foundation which focuses on aspects of industrial relations in the run-up to enlargement. The national report for Poland is part of the second phase of a project on 'Social dialogue and EMU' carried out by the European Foundation for the Improvement of Living and Working Conditions in 2002-3, in cooperation with the Swedish 'Work Life and EU Enlargement' programme. This phase of the project looked at the current mechanisms for resolving industrial conflicts prevailing in each of the ten acceding countries involved in the project: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.

The main report provides an overview of the whole project and is available online at <http://www.eurofound.eu.int/publications/EF0421.htm>. It looks specifically at the role of social dialogue in resolving industrial relations conflicts. In most of these countries, both the systems of industrial relations as well as conflict resolution mechanisms are relatively new and have been subject to intense upheaval during the transition phase to market economy. Collective and individual industrial disputes are a new phenomenon for these countries as well. The report gives an overview of the existing institutional and regulatory frameworks for industrial action prevailing in each country, then goes on to describe the various systems in place to deal with conflict resolution. The overall aim of the research is to show how social dialogue can be harnessed to devise a road map for industrial peace.

Industrial relations framework for conflict resolution

Solving social and economic problems by means of social dialogue or tripartite adjustment and consultation has a constitutional basis in Poland. The constitution defines itself as the basic law for the state, based, among others on social dialogue as well as on the principle of subsidiarity strengthening the powers of citizens and their communities. In another passage the constitution recognises solidarity, dialogue and cooperation between social partners as an element of a social market economy that is the basis of the economic system of the Republic of Poland. Many acts refer to social and civil dialogue and tripartition as the basis and means of dealing with social matters. In Poland there are also many organs and institutions based on the principle of tripartition and social dialogue.

A leading tripartite institution is the Tripartite Commission for Social and Economic Matters created in 1994 by the social partners and the government. The activity of the commission was legally regulated by the Act of the Tripartite Commission for Social and Economic Matters and Provincial Commissions for Social Dialogue of 2001 (*Dziennik Ustaw / Journal of Law/ 2001/100/1080* with subsequent amendments).

The board consists of the representatives of the government and the most representative union organisations and employers' organisations. The representatives of local authority of the National Bank of Poland and Central Statistical Office are also members of the commission with the advisory capacity.

The commission, in accordance with the act, is a forum for social dialogue led to reconcile the interests of the employees and the employers with the common good and also to gain and maintain public peace. The scope of its activity concerns wages and social benefits, other social and economic matters as well as the realisation of the tasks specified in separate acts. The commission may act as a bilateral or tripartite body, with the inclusion of the government. Each side may submit to the proceedings important socio-economic matters and also present individually or together with another side their attitude towards these matters. It concerns, among others, the country's budget for the following year and the rise of payments and pensions and retirement pays. In the way of negotiations the sides establish, among others, the level of the minimum payment for labour. If, however, the commission doesn't establish it in the fixed term, it is done by the government. Social partners may also have their representatives in the commission and they may enter into collective agreements or other accords.

The foregoing characterisation shows that the commission combines the elements of an autonomous dialogue with a so-called 'tripartite dialogue'. So far the tripartite option has been dominant. The work of the commission led to compromises in many important cases. At the same time, however, in many cases compromises concerned only some of the members of commission. Often talks ended without any agreement. In some periods there were crises connected, for instance, with suspension of the commission's participation by some union organisations (more: Gaciarz, Pankow, 2001, pp. 132-133).

Other organs of institutional tripartition are, for example, the Labour Protection Council, the Central Council of Employment, the Council of Statistics, the National Advisory Council for the Disabled Persons' Matters, the Supervisory Board of Social Insurance Institution, the Committee for Collective Labour Agreements, the Polish Tripartite Committee for Cooperation with the ILO. On the level of the economy sectors so called 'tripartite teams' work, e.g. for Miners' Social Safety, for the Restructure of the Energy sector and others. The main reason for their existence is solving the problems connected with the obstacles to privatisation and reorganisation of certain branches. Up to 2002 the activities of these organs led to entering eight agreements like the Miners' Social Package, the Strategy for Light Industry in the years 2000-2005 and others (RM, 2002, p. 64).

On the regional level a basic form of tripartite relations are Provincial Commissions for Social Dialogue, which are advisory organs of the local public administration. They also deal with conflicts between employers and employees (see below, Goodwill Mission). Besides there also specialised organs like provincial and district employment councils dealing with labour market problems.

The tripartite relationships appear also in the ad hoc activities, the best example of which was the Pact on State Undertaking, signed in 1993, establishing social rules for the privatisation of the economy. The pact greatly moderated conflicts connected with privatisation. Other agreements, national and regional of general or sectoral nature were also signed (Sobótka, 1997, pp. 234 ff.)

Gradually, autonomous dialogue is developing in Poland. Its natural background is a company or work establishment where the powers of the employees' representatives are concentrated. They are executed mainly by the trade unions. They however mainly exist in big public sector enterprises and the rate of unionisation was, in 2000, about 18% of the workforce. This situation is caused by many factors including the formalising of the workplace organisations and establishing a minimum of 10 members as a condition of using union powers. What is more, the extended powers and legal privileges of the unions make the employers act against creating new organisations (Pliszkiewicz, Wojtyła, 1999, pp. 7, 22-23; Sewerynski, 2000, pp. 125-127). Non-union workers' representation exists only in the state-run undertakings, state treasury companies and privatised enterprises. Only the employees' participation in safety and health matters has common range.

The dialogue at the branch of economy level, especially the practice of entering collective labour agreements is developing more weakly. In connection with the privatisation, as a result of which, in 2001, 74.8% of all the employees worked in a private sector, some of the branch tripartite organs changed into bilateral institutions. An example of such a body, created in 2001, is the Team for Metal Industry Workers' Affairs (RM 2002). As shown above, the elements of an autonomous dialogue appear also in the Tripartite Commission for Social and Economic Matters. Another example of an autonomous dialogue on the central level is the Round-Table of Social Dialogue for European Integration. The example of a non-institutional dialogue is the accord of the All-Polish Trade Union Alliance, the Polish Confederation of Private Employers and the Union of Polish Handicraft in 2002, on labour code amendments that contributed greatly to changes of the law aiming at bettering of the enterprises' situation and reduction of unemployment.

There is no doubt that tripartition and social dialogue have their settled place in industrial relations and social life in Poland. Hitherto tripartite and autonomous dialogue has brought significant success, especially in the sphere of reduction of social tension. In general, however, its effects are not fully satisfying for any side. In any case they do not show the amount of work put into gaining compromises.

Institutional basis for conflict resolution

Legal basis for strikes and lockouts

The legal basis for the right to strike and lockout needs separate consideration. The right to strike is backed by international law as well as Polish law. According to the constitution trade unions have the right to organise workers' strikes or other protests subject to limitations specified by a statute. The scope of the freedom as well as other union freedoms may only be subject to such statutory limitations as are permissible in accordance with international agreements to which the Republic of Poland is a party.

The Collective Disputes Settlement Act of 1991 and other acts concerning specific groups of workers, contain the regulation of the right to strike. The act of 1991 describes collective dispute as a dispute between the employees and the employer or employers, concerning working conditions, wages, social benefits and trade union rights and freedoms. A dispute takes place after the demands were notified, if the employer had not met them in the time specified by the union, not shorter than three days.

A strike was defined as a collective restraining of the employees from work in order to resolve a dispute with the employer or a group of employers, concerning matters which may be the subject of the dispute. A right to organise a strike is vested only in union organisations, while the employee has the right to take part in a strike.

A strike may be aimed only at employers, not at public organs. According to the Constitutional Court such an interpretation is not contradictory to the constitution. However the court pointed out that it sets limits on the possibility of negotiating workers' demands and postulates (sentence of 1997, K 19/96). Yet collective disputes with public administration are permissible, if led according to the agreed procedures (see below).

An important limitation of the scope of the freedom to strike and collective dispute in general, is the limitation of permissible demands to working conditions, payments or social benefits and union freedoms. Such restriction results in informal conflicts and protests concerning e.g. demands for changes in the company's management, objections to privatisation, change of the owner or restructuring actions and the like, which are considered to go beyond the actual definition of the collective dispute. The correctness of some of the restrictions stemming from the definition might be questioned. That is why a more flexible definition of the collective industrial dispute is proposed (more: Cudowski, 2000, pp. 240-241).

The definition of a collective dispute contains also a ban on strikes supporting individual employees' demands which may be decided before the court (see below, Legal Conflicts). Some disputes, mainly those concerning breaches of payment rules, pass the restriction by.

A strike against a party to the collective labour agreement or other collective accord while it is in force and concerning its content, is also excluded.

Other restrictions on the right to strike result from ultima ratio and proportionality principles. According to the ultima ratio principle a strike cannot be announced without trying to solve the dispute in a peaceful way beforehand. According

to the proportionality principle a strike organiser should take into consideration the proportion of the demands to the losses caused by a strike.

Personal limitations of the right to strike are based on a ban on strikes for employees whose work stoppage may put somebody's life or health in danger or may be dangerous for the security of the state. It is also inadmissible to organise a strike in the State Security Bureau, in the police and army units, Prison Service, Frontier Guard and Fire Brigade. Besides, the persons employed in state bodies, in public administration, courts and the public prosecutor's office, are not entitled to strike. The scope of these exceptions is criticised in jurisprudence (e.g. Skoczynski, 2001, pp. 79-80).

Time limits consist of a prohibition on striking before 14 days passed after the union announced its demands, as well as of a prohibition on starting a strike during the 5 days after the strike was declared. Organising a strike also requires approval of the majority of voting employees, on condition that at least 50% of the staff of the work establishment take part in a referendum.

Employees, including those having no right to strike, can use other forms of protest, provided that they do not put human life or health in danger, do not require any work stoppage and do not interfere with the legal order. They may be organised only by a trade union. According to the Supreme Court a so called 'hunger strike', as a potential threat to the employee's life or health, cannot be treated as a form of protest in the face of law (sentence of 1997, I PKN 393/97).

Leading a strike or other form of protest contradictory to law is penalised by a fine or a restriction of liberty, however the cases of imposing such a punishment are exceptional (e.g. the Supreme Court sentence of 2000, IV KKN 69/2000). A person organising a strike also bears liability for damages on general civil law terms. Court proceedings are very rare. However, lately the employers and other harmed persons have used this way to pursue their claims more boldly.

The position of strike participants depends on the legality of strike. A legal strike causes suspension of a duty to perform work and to pay remuneration. Employees maintain, however, other rights and social benefits. The duration of a strike is included in the employment period. The employee's participation in an illegal strike gives the employer the right to apply sanctions for breaking the employee's duties. Such liability is limited by judicial decisions recognising that at its root lies the employee's full awareness of the illegality of his/her behaviour (sentence of the Supreme Court of 1992, I PRN 11/92).

The question of the legality of a lockout is very unclear. There are no legal provisions on this subject. Moreover Poland, in ratifying the European Social Charter, excluded Article 6, Part 4 of this act. That is why some authors claim that a lockout in Poland is not permissible (Masewicz, 1992, p. 20). According to others a lack of prohibition means full permissibility for this kind of action (Swiatkowski 1996, p. 92). However, it seems that the most legitimate view is that, in spite of the lack of a prohibition, a lockout is a breach of an employment contract in the eyes of the law. Consequently its use might be very costly for the employer. This makes lockouts practically useless (Hajn, 1999, pp. 88-94). In such a state of affairs it is suggested that the case of lockouts should be explicitly included in legal provisions. The predominant opinion is that a limited defensive lockout should be permissible (RM 2002, p. 73, Hajn, 1999, p. 93).

Legal conflicts (interpretation of the content of the agreement)

Conflicts connected with the interpretation of the content of the collective labour agreement or another collective accord may be solved in two ways. The first one is based on explaining doubts by the parties to the agreement. The other one consists in settling a dispute concerning the interpretation of the agreement by a court or another body.

The right of the parties to explain the content of the agreement is confirmed by the Labour Code stating that in case of any doubts the content of the agreement is explained by the parties together. A procedure for an interpretation and

resolving a dispute that may arise from it may be defined by the parties in the agreement. Normally it comes down to setting up a common committee of the parties (Skulimowska, 1997, pp. 161-162; Sierocka, 2000, pp. 192-193). The autonomous interpretation is not binding for courts, however a court should aim at identifying the purpose, will and intentions of the parties to the agreement (e.g. sentence of the Supreme Court 1999, I PKN 345/99).

In practice the most important way of resolving problems connected with the interpretation of the content of a collective agreement is court proceedings. While trying cases resulting from individual claims, based on the normative provisions of the collective agreement, a court, if needed, performs appropriate interpretation of the provisions. The claims arising from employment relationships are settled by the courts of labour or courts of labour and social insurance, which are separate units of common courts. In the cases of the employee's claims the legal proceedings are free of court fees. Moreover, the employees enjoy many facilities and informal procedure.

A trade union may institute court proceedings on behalf of the employees, it may also be the employee's attorney ad litem and enjoy other procedural privileges. Any litigation on individual claims of employees may also be settled before a conciliation commissions appointed in the establishments by means of an arrangement between an employer and trade unions or a staff. The aim of proceedings before the commission is to reach agreement. In case of not reaching any compromise the commission, on the employee's request, conveys the case to the labour court.

The admissibility of settling before the court cases connected with the interpretation of contractual provisions of the agreement, that is provisions defining the mutual duties of the parties to the agreement, is controversial. A dominant view is that such cases may be solved only by way of a collective dispute (Iwulski, Sanetra, 1999, p. 588; Gozdiewicz, 2003, pp. 885-886). However, there is an opinion that obligations of parties included in a collective agreement are obligations in the meaning of the civil law and they can be a subject matter of a lawsuit (Hajn, 1996, p. 25; Florek, 2000, pp. 998-999). So far there haven't been any published judgments on this subject.

Collective bargaining and strikes and lockouts (interest conflicts)

Interest conflicts most often arise in the course of negotiating collective labour agreements or other collective agreements as well as work establishment internal regulations, which, as a rule, need to be agreed with the union's organisation. These negotiations comprise wages and other working conditions as well as social aspects of enterprise transformation, which cause a substantial number of disputes. Some disputes go beyond the scope of the above-mentioned acts, their source being personal conflicts, violation of union rights, misuse of union powers etc.

Polish law ensures broad freedom of collective agreement bargaining. Each employer or employers' organisation may enter a collective agreement. An agreement is applied by virtue of the law to the employees, and if the parties decide so, also to other persons like homeworkers, agents, offer takers, retired employees. The labour code also provides full liberty of shaping the subject of collective agreement negotiations.

Terms of remuneration and other terms and conditions of work may also be settled in internal establishment regulations. The most important are work regulations and pay regulations, which are obligatory in workplaces employing at least 20 employees. Workplace regulations define the employee's and employer's rights and duties connected with keeping order in a workplace including a schedule of working time. Pay regulations settle terms of remuneration and other payments. In principle these two regulations may replace the collective labour agreement, which is often an attractive prospect for both partners because of an easier way of establishing them and the lack of a need for registration. In practice, in the majority of establishments, the said regulations substitute collective labour agreements.

There are also negotiated collective accords other than collective labour agreements. They are sources of labour law if they are based on a statute and regulate the rights and duties of the parties to employment relationships. They are called

then 'nominate collective accords'. They include, among others, agreements defining rules of making collective redundancies, agreements concerning employees' rights in the event of transfers of undertakings, as well as some agreements connected with privatisation of enterprises. Other agreements are defined as 'innominate collective accords'. They are not sources of law for employees and employers but only sources of obligations for their parties (e.g. sentence of the Supreme Court of 2000, I PKN 541/99). In general, courts easily qualify agreements to the category of nominate agreements (e.g. sentence of 1999, I PKN 176/99; sentence of 17.11.1999, I PKN 364/99). It encourages replacing collective labour agreements with other less formalised accords which, however, do not give the employees such guarantees as collective labour agreements.

A strong competition between these two groups of acts is visible. Nowadays, collective labour agreements seem to be in defence. The role of collective labour agreements is also limited by circumstance, formalism and the complexity of laws concerning the agreements. A factor discouraging employers from entering the agreements was also a rule stating that a dissolved collective labour agreement was still valid until another one was signed. This rule has been revoked not long ago by a sentence of the Constitutional Court in 2002 (K 37/01). Furthermore, for the majority of employers statutory standards of workers' rights and working conditions are too high to be raised in collective agreements. Research on collective agreements confirms that only rarely do they go beyond statutory standards, concentrating on wage regulation (Wratny, 1997, p. 178; PIP, 2/1, pp. 258-260).

A characteristic feature of Polish collective agreements is a weakness of multi-employer bargaining. In 2001 there were 140 registered multi-employer collective agreements, only 17 of which had national scope. It is a result of the insufficient extent of the organisation of employers, their reluctance towards branch bargaining, the slight presence of unions in the private sector of the economy, the weakness of branch structures in the main union organisations, which is connected with a union movement model concentrating on workplace or company levels (RM, 2002, pp. 71-72; Hajn, 2002/2).

The present industrial relations system contains also mechanisms weakening the scope of single-employer bargaining. One of them is connected with the already mentioned limited presence of trade unions in workplaces. In Poland there also exists quite visibly a so-called 'duality of the labour market', that is the coexistence of substantial segments of the labour market covered and not covered by collective agreements (Goldthorpe, 1984, pp. 315-343). It makes employers escape from collective agreements in order to cope with competition with employers free from burdens springing from collective agreements. A result of this is a stagnation of single-employer bargaining expressed in a drop in the number of company agreements (PIP, 2002/1, pp. 255, 259-260).

Finally, it should be pointed out that the scope of collective negotiations has been limited over the last two years by a high unemployment rate (18.7%, March 2003) and other factors like the growing participation of employment in small and medium size enterprises, a collapse of traditional branches of industry, the spread of atypical forms of employment and outsourcing, as well as by the employers' 'escape from labour law' towards employment based on civil law contracts (Hajn, 2002/1, p. 191).

The above characteristics of collective bargaining in Poland lead to better understanding of the data concerning disputes and industrial actions, and especially a proportion between official and unofficial actions, the participation of trade unions in their organisation of and reasons for industrial conflicts.

Statistics on industrial conflicts 1992-2002

Data on lockouts

There is no official data concerning lockouts. It can also be claimed that they do not occur in practice.

Data on collective disputes and protest actions

The data on collective disputes and protest actions come from three sources. They are: the Central Statistical Office which publishes data on legal and illegal strikes; the National Labour Inspectorate which registers collective disputes as understood by the Collective Disputes Settlement Act and 'Review of protest actions', an official internal document prepared since 2000 by the Ministry of Labour including information from different sources; and finally the press. The last source covers all kinds of protests regardless of their form (strikes, strike threats, pickets, protest marches, rallies, blockades, hunger strikes), their legality, the participants (workers, farmers, the unemployed, self-employed, students, environmentalists etc. (Kloc, 2002, pp. 1-6).

Number of strikes, collective disputes and protest actions

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Strikes	250	305	6354	7443	429	42	21	35	37	920	44	11
Collective disputes				234	254	298	274	375	330	577	633	330
Protest actions											576	1051

Source: Kloc, 2002, pp. 3,4,5.

The table above shows significant differences between the number of strikes, collective disputes and protest actions.

Until 1994 the number of strikes was higher than the number of collective disputes, which resulted from the significant number of illegal strikes. From 1995 to 1998 the number of strikes notably fell, which is attributed to the favourable economic situation during these years and the fall in unemployment rate as well as to a more consistent approach by the employers towards the execution of law concerning strikes. The sharp rise in 1999 was a consequence of the structural reform of the health service and education. The two sectors caused a significant rise in the number of strikes. For example, in 1992-1993 80-90% of the total number of strikes were attributed to them; in 2000 approximately 75%; in 2001 five out of eleven strikes related to the health service. The number of actions increased because of the way of counting the strikes. For example, a strike organised simultaneously in 1,000 schools is counted as 1,000 strikes, while it is really is one industrial action.

The number of collective disputes and protest actions is considered more representative. One has to bear in mind, however, that, as shown above, the latter indicator goes beyond industrial relations. In recent years there has been a decrease in the number of strikes and an increase in protest actions and collective disputes. It can be assumed that this phenomenon is a result of the employees' anxiety about losing their jobs in the face of a high unemployment rate, the employers' application of the rule of not paying the employees for the time of strike, the weakness of trade unions and the unions' appreciation of forms of protest other than strikes.

The growing number of protest actions, which in 2001 grew higher than the number of official collective disputes, is explained by the ineffectiveness of formal actions undertaken by the trade unions, which causes a rise in informal actions also organised by the unions. Finally not all employers, especially small companies, comply with the obligation to register disputes at the State Labour Inspectorate. (Kloc, 2002, pp. 1-6).

Duration of strikes

There are no data concerning the duration of strikes.

Number of participants in strikes and days lost

	1990	1995	2000	2001
Strikes	250	42	44	11
Participants	115,687	18,114	7,858	1,183
Days lost	159,016	56,308	74,266	4,201

Source: *GUS, 2002, p. 148.*

Reasons for strikes

There are no data showing separately the reasons for strikes. However, it is estimated that their main reasons have so far been the structural reforms in the health service and education, and, in other sectors, business restructuring, particularly in mining and armaments (m.in. [Kloc, 2002, pp. 3-4).

The most reliable data refer to collective disputes. They are systematically gathered by the State Labour Inspectorate. For example, in 2002 the reasons for collective disputes were: pay rise demands (16.3%); legal protection of labour (particularly violating the provisions related to remunerations and other related benefits such as not paying the employees on time, lowering pay) (30%); social matters, particularly the distribution of company social funds (12,1%); economic matters, such as restructuring and organisational changes in undertakings, investments, financial plans (6%); personnel matters, mainly changes and evaluation of management (6,5%); violation of the legal regulation on negotiating collective agreements (3%); technical labour protection, mainly lack of central heating and hot water, lack of protective clothing, abstergents, lack of machinery security (3,6%); violation of the trade unions' rights, including the lack of cooperation between the employer and trade unions in case of group redundancies, violation of trade unions' powers within application of labour law at the workplace, not granting the premises for trade unions' activity, lack of access to information about the functioning or restructuring of the work establishment (6,8%); other problems, e.g. employees' training (16%).

In previous years the disputes were centred around similar categories of problems with differences in the proportions of reasons. For example in 2000 46.5%, and in 2001 29% of disputes concerned pay rises. In general, widely understood pay matters are the reasons behind the majority of protests (PIP, 2000; PIP, 2001; PIP, 2002/2; K.K., 1999, p. 42).

These findings show that certain part of the disputes registered at the Labour Inspectorate are not in accordance with the legal definition of the collective dispute. It applies, in particular, to disputes based on the violation of payment provisions which can be dealt with by labour courts as well as to some of the disputes concerning economic and personnel matters.

Conflict resolution mechanisms

Disputes connected with collective bargaining can be solved on the basis of procedures agreed between the sides of conflict or by means of procedures stated by law.

Agreed procedures

According to the Labour Code in case of adjusting an own negotiation procedure concerning collective agreements, legal provisions on collective disputes settlement are not applied, unless the parties decide of their application in certain scope. These procedures have been established by some collective labour agreements, however, the parties of most of them do

not use this possibility (Skulimowska, 1997, pp. 165-168; Chomiak, 1999, p. 13). Besides, there are procedural regional accords, which can not be classified as collective labour agreements like, for example, the agreement concerning rules of conducting negotiations and resolving disputes, concluded in 1996 by trade unions and employers' organisations of the Warsaw region. Disputes connected with negotiations between trade unions and public administration are referred to by the agreement between Council of Ministers and the National Commission of Solidarity Trade Union which concern the rules of procedure of resolving disputes between public administration and Solidarity 1992 (Hajn 1999, pp. 94-96).

Legal mechanisms

Legal procedures are of vital importance. The Collective Disputes Settlement Act provides for three procedures: negotiations, mediation and voluntary arbitration. They should be applied in the order mentioned above. A strike started before the end of mediation is illegal. Besides, the act on Tripartite Commission regulates the good will mission.

Negotiations

Negotiations are based on direct talks and adjustments between the sides. That is why they cannot be identified with conciliation. Negotiations are started immediately after a dispute is announced. An employer is obliged to enter negotiations under a penal law sanction and immediately notify the district labour inspector of a dispute. Negotiations end with the moment of making an agreement. In case of not making any agreement the sides should make a protocol of divergences.

The purpose of negotiations, as a statutory method of resolving a collective dispute obligatorily preceding mediation, evokes doubts. A collective dispute starts because former negotiations between the sides were unsuccessful. Therefore an opinion that this method should be voluntarily used at the sides' discretion at each level of resolving a dispute is accurate (Cudowski, 2000, p. 243).

Mediation

Mediation is started after finishing negotiations, if the union's side upholds demands. Mediation means resolving a dispute with the participation of an independent third party whose role is to make it easier for the sides to come to an arrangement.

The sides should within five days agree on a mediator. If they do not do that, each of the sides may ask the Minister of Labour to point out a mediator from the list of mediators composed by the minister in agreement with the most representative social partners. According to a settled practice a Minister do not impose a mediator against the sides' will. A mediator should be a person who guarantees impartiality (Skulimowska, 2003, p. 8).

A mediator's powers are only of an advisory character. The statute indicates, for example, that a mediator may propose carrying out detailed or additional research connected with the subject of the dispute, conducting an expert analysis or changing the date of starting a strike. The sides decide about which of these proposals to adopt.

If the mediation time extends a trade union may organise two-hour threat strike. A mediation procedure ends with signing an agreement or making a protocol of divergence. A mediator is entitled to compensation and refunding of costs whose amount is fixed with the sides of a dispute. The costs of mediation are shared equally by both sides, unless some other sharing is fixed. Exceptionally the Minister of Labour may cover the costs.

The efficiency of mediation is hard to evaluate. The only record is of mediations with the participation of mediators from the list of the Minister of Labour. In 1998-2001 they were 20% to 30% of all disputes noted down by the State Labour Inspection. Over one year mediators from the list took part in 15% to 20% of disputes. In 1999 they succeeded in ending 25% of disputes, 40% in 2000, 30% in 2001 (Kloc, 2002, pp. 11-12).

The Polish mediation system is of an unclear, semi-private nature. For the majority of mediators it is additional work. The way of establishing the mediator's fee in the way of contracts negotiated with the sides by a mediator is criticised, as this is the wrong way to start a mission. Because of union financial problems mediators' services are sometimes financed by employers, which may call in question the principle of the independence of a mediator (Skulimowska, 2003, pp. 2-6).

Arbitration

Not reaching any agreement on resolving a collective dispute in the way of mediation entitles a union to start a strike. However, a trade union may submit a dispute to arbitration board, which is equal to resigning from a strike for the time of arbitration. Arbitration proceedings cannot be started before negotiations and mediation are finished (sentence of the Supreme Court of 1997, KAS 3/96).

An establishment level dispute is tried by social arbitration board at the regional court, while a multi-employer dispute is tried by such a board at the Supreme Court. The board is composed of a chairman who is a professional judge and six members, three appointed by each side. The board should try to persuade the sides to make an agreement. If this is unsuccessful the board, after trial proceedings, gives an award. A decision is reached by a majority of votes. It binds both sides unless they decide otherwise before submitting a dispute to arbitration. A binding decision bars the way to a strike. The employment of arbitration is very rare in practice (Kloc K., 2002, p. 12)

Goodwill mission

It is a new method introduced at the beginning of 2003 by the amendment to the Tripartite Commission Act. As it has been pointed out earlier the provincial commission of social dialogue may examine social or economic cases causing conflicts between employers and employees, if it finds them valid for keeping social peace. The commission may express an opinion on appointing a person with a good will mission from the Minister's of Labour list of mediators. This person helps the sides of a conflict. If the mission fails the sides or a person conducting the mission asks the commission of social dialogue for an opinion. The state budget covers the fee of the person conducting the mission and all other costs.

A goodwill mission goes beyond the legal notion of a collective dispute specified in Collective Disputes Settlement Act. It results from the use of the word 'conflict' instead of 'collective dispute' and very wide meaning of the expression 'social and economic matters causing conflicts between employers and employees'. It is the evidence of the legislator's aspiration to create an institution going beyond the limitations of the hitherto existing system of resolving collective disputes and helping to reduce the phenomenon of informal conflicts. Because this method is new, nothing can be said about its efficiency.

Other

In practice labour inspectors play an important role in reducing the number of collective disputes. The Collective Disputes Settlement Act obliges an employer to notify the regional labour inspector, who usually orders an inspection (Official Bulletin PIP 1991, nr 1). The controlling inspector does not function as a mediator but announcing the results of the inspection, and in cases of violating the law by the employer also applying sanctions, contributes to liquidation of part of the dispute. There are no official data showing results of this activity. It is estimated that disputes covered by inspections account for 40% of all union demands and 20% -25% of disputes (Kloc, 2002, p. 10).

Conclusion

A characteristic feature of collective industrial relations in Poland is their concentration on central and company levels with a simultaneous weak development of these relations at the branch level. At branch and central levels there dominates a model of formalised tripartition. Gradually there also develops an autonomous dialogue, which should be mainly associated with a privatisation of the economy. In workplaces a dialogue is weakened by the limited scope of trade unions activities and the lack of a common system of non-union employees' representation. Regulation of working conditions in collective agreements is done mainly at the workplace or company levels. There are only a few branch agreements. However, in the last few years collective bargaining practice in work establishments has declined too. It is clear that agreements are superseded by other collective accords and establishment regulations.

Conciliatory settlement of collective disputes is based mainly on statutory methods. There are no data illustrating the efficiency of these methods. However, rare use of arbitration can be stated. Mediation shows a certain effectiveness and it is estimated that improving this method may bring the best results.

Since 1995 a small number of strikes has been noted. Simultaneously a disproportion between this rate and a number of collective disputes and between formal collective disputes and a growing number of social conflicts, has been growing. This may show ineffectiveness of formal procedures of resolving disputes. To some extent this phenomenon results from a narrow statutory definition of a collective dispute and strike. Polish law does not regulate lockouts and they are not to be found in practice.

Abbreviations

GUS Główny Urząd Statystyczny / Central Statistical Office

MPIPS Ministerstwo Pracy i Polityki Socjalnej / Ministry of Labour and Social Policy

PIP Państwowa Inspekcja Pracy / State Labour Inspection

RM Rada Ministrów / Council of Ministers

Bibliography

Chomiak M., *Regulacja prawna i praktyka rozwiązywania sporów zbiorowych w Polsce, Polityka Społeczna*, No 2, 1999.

Cudowski B., 'Model rozwiązywania sporów zbiorowych', in Gozdziejewicz G. (ed.), *Zbiorowe prawo pracy w społecznej gospodarce rynkowej*, Torun, Dom Organizatora, 2000.

Florek L., *Kodeks pracy. Komentarz*, ed. Zielinski T., Warszawa, ABC, 2000.

Gaciarz B., Pankow W., *Dialog społeczny po polsku - fikcja czy szansa*, Warszawa, Instytut Spraw Publicznych, 2001.

Goldthorpe J.H., 'The End of Convergence: Corporatist and Dualist Tendencies in Modern Societies', in Goldthorpe J.H. (ed.) *Order and Conflict in Contemporary Capitalism*, Oxford, Clarendon Press, 1984.

Gozdziewicz G., *Kodeks pracy. Komentarz*, ed. W. Muszalski, Warszawa, C.H. Beck, 2003.

GUS, Yearbook of the Republic of Poland, Warsaw, 2002.

Hajn Z., *Zdolność układowa a podmiotowość cywilnoprawna*, *Przełąd Sadowy*, No 7-8, 1996.

Hajn Z., *Status prawny organizacji pracodawców*, Warszawa, C.H. Beck, 1999.

Hajn Z., 'Collective labour agreements and contracts of employment in Polish labour law', in Lewaszkiewicz-Petrykowska B. (ed.), *Rapports polonais présentés au Seizième Congrès International de Droit Comparé*, Brisbane, 14-20 July 2002, Wydawnictwo Uniwersytetu Łódzkiego, Łódz, 2002/1.

Hajn Z., 'Ustawowy model organizacji polskiego ruchu związkowego i jego wpływ na zbiorowe stosunki pracy', in Matey-Tyrowicz M., Nawacki L., Wagner B. (eds.), *Księga Jubileuszowa Profesora Tadeusza Zielńskiego*, Warszawa, 2002/2.

Iwulski J., Sanetra W., *Kodeks pracy. Komentarz*, Warszawa, LIBRATA, 1999.

K.K., 'Spory zbiorowe z udziałem mediatorów z listy MPiPS', *Polityka Społeczna*, No 2, 1999.

Kloc K., Labour conflicts and strikes in Poland in the 1990s and methods of solving them. Paper given at the ILO 'First Conference of Central and Eastern European Labour Mediators and Arbitrators', 14-21 June 2002, Budapest, report (unpublished).

Masewicz W., 'Lokaut jako pojęcie i instytucja prawna', *Praca i Zabezpieczenie Społeczne*, No 12, 1992.

MPiPS, Rozwiązywanie sporów zbiorowych w Polsce w latach 1991-1997, report for ILO 'Subregional Tripartite Seminar on Collective Labour Disputes Settlement in Central and Eastern European Countries', 8-10 September 1997, Warszawa (unpublished).

PIP, Sprawozdanie Głównego Inspektora Pracy z działalności Państwowej Inspekcji Pracy w 2001 r., / The Report of the Chief Labour Inspector on the Activity of State Labour Inspection for 2001, Warsaw, 2002/1.

PIP, Spory zbiorowe - 2000 rok, official internal report of the State Labour Inspection (unpublished), 2000.

PIP, Spory zbiorowe - 2001 rok, official internal report of the State Labour Inspection (unpublished), 2001.

PIP, Spory zbiorowe - 2002 rok, official internal report of the State Labour Inspection (unpublished), 2002/2.

Pliszkiewicz M., Wojtyła J., 'Prawo pracy w praktyce małych i średnich przedsiębiorstw. Szanse i zagrożenia', in *Materialy konferencyjne, XI Zjazd Katedr i Ośrodków Prawa Pracy i Polityki Socjalnej*, Katowice, 1999.

RM, Zasady dialogu społecznego. Dokument programowy Rządu przyjęty przez Radę Ministrów w dniu 22 października 2002 r. Załącznik nr 2: Podstawy prawne dialogu społecznego w Polsce i jego ocena, <http://www.mpips.gov.pl/>, Warszawa, 2002.

Sewerynski M., 'Problemy statusu prawnego związków zawodowych', in Gozdiewicz G. (ed.), *Zbiorowe prawo pracy w społecznej gospodarce rynkowej*, Torun, Dom Organizatora, 2000.

Sierocka I., *Zakres podmiotowy i treść układu zbiorowego pracy*, Białystok, Temida 2, 2000.

Skoczynski J., 'Reprezentacja praw i interesów pracowników służby publicznej', in Gozdiewicz G. (ed.) *Reprezentacja praw i interesów pracowniczych*, Torun, TNOiK, 2001.

Skulimowska B., 'Postanowienia obligacyjne układów zbiorowych pracy', in Wratny J. (ed.) *Układy zbiorowe pracy w demokratycznym ustroju pracy*, IPiSS, Warszawa.

Skulimowska B., Założenia regulacji prawnej służby mediacji, internal report of Ministry of Economy, Labour and Social Policy, 2003 (unpublished).

Sobótka E., 'Rola porozumień zbiorowych w regulowaniu stosunków pracy i kształtowaniu polityki społeczno-gospodarczej w Polsce na tle porównawczym', in Kozek W., (ed.) *Zbiorowe stosunki pracy w Polsce w perspektywie integracji europejskiej*, Warszawa, 1997.

Swiatkowski A., 'Lokaut (Studium stosunków przemysłowych)', *Studia z zakresu prawa pracy*, Kraków, 1996.

Z. Hajn, University of Lodz

Annex 1: National development project

‘Supporting peaceful dispute resolution and developing extra-judicial rights dispute settlement procedures’¹

Individual rights disputes

The courts settle individual right disputes. Labour courts are separate branch of courts hearing cases over violation of employment contracts. The procedure is free of charge and is less formalised than procedure in civil matters. An employee may act *pro se* or be assisted by a trade union or an advocate.

Before bringing the case to the court an employee may demand resolution of his claim by the conciliation commission. According to the Labour code the conciliation commission may be set up jointly by an employer and trade union. Conciliation procedure lasts no more than 30 days (or 14 days in cases over the termination of contract of employment). An agreement reached before the commission must not violate the law or the so-called ‘principles of community life’. Before granting an enforcement clause the court tests the content of the agreement. If conciliation fails, upon request of an employee the commission submits the case to the court.

Collective interests disputes

The Act of 1991 is the basic regulation of collective industrial disputes resolution in Poland. The Act covers disputes arising from collective bargaining (interest disputes). Although there is no definition of a industrial dispute, the law states that claims may relate to wages, working conditions and other benefits or violation of workers` rights to organise. According to the law, only trade unions may initiate industrial disputes by presenting the employer (employer’s organisation) with their demands. The first stage of the resolution of the dispute consists in direct negotiations between the parties. This stage may end by concluding an agreement, thus ending the dispute, or by preparing the protocol of differences. Should the latter be the case, compulsory mediation follows.

The law does not specify the duties of mediator. It merely states that the mediator shall assist the parties in reaching an agreement. The parties may jointly select a mediator or, upon request of any of the parties, a mediator may be nominated by the Minister of Labour from the panel of mediators. Mediation ends when an agreement is reached by the parties, or by preparing a protocol of differences. In the latter case, the leading party of the dispute (trade union) may decide to go on strike or to resort to arbitration. Arbitration is therefore voluntary. The arbitration board, consisting of representatives of both parties to the dispute and a labour court judge, decides on the matter. The parties to the dispute decide about the binding effect of arbitration decision.

Enactment of the Act of 1991 was premature since the legislation on free collective bargaining was introduced in 1994 by amendments to the Labour code. Legislation on collective bargaining provided that disputes over interpretation of the collective agreement shall be resolved by the parties according to the procedure determined in the collective agreement. In practice joint commissions are set up to settle those disputes without any intervention of a third neutral party (mediator or arbitrator).

According to the Labour code, collective agreement consists of different provisions. Its provisions determining the rights and obligations of the parties to the employment relations are of normative character. There may be also provisions

¹ The development project was drafted by Barbara Skulimowska, Ministry of Labour and Social Policy, Social Dialogue Department, according to the outcome of the Prague I tripartite workshop.

² The highest level of administration unit in Poland

determining mutual obligations of the parties to the agreement. Usually those provisions give certain privileges for the trade union organisation (premises for trade union activity, office equipment, e.g., telephone, fax etc.). There is no legal procedure for settlement of disputes as to those provisions.

Social conflicts

In the first years of new regulation, disputes proved difficult to resolve. Usually the claims were direct to the government, as the state was the real employer. In 1992 an agreement between the 'Solidarity' trade union and the Council of Ministers on the procedure of resolving disputes with the government was concluded. The agreement provided different forms of resolution e.g. negotiations, mediation and arbitration. The scope of the disputes was restricted to issues of trade union concern, the resolution of which has not been regulated otherwise (first of all by the Act of 1991).

This refers to all the decisions taken by the state acting as an owner (real employer), which may threaten workers' interests. Actually these were not decisions on employment conditions, but decisions on the restructuring of sectors. The second limitation excluded from the scope of that agreement are all those questions where legislation is required and which therefore are beyond government jurisdiction.

About 13 disputes have been initiated on the basis of the agreement. Only one dispute was solved according to agreed procedures. Establishing tripartite sectoral committees solved the rest being initiated as a trade union response to the programmes of restructuring or privatisation of different sectors of economy. It is expected that in future those committees will change into bipartite sectoral bodies that will cope with challenges caused by free market challenges (i.e. competition).

In 1992 the government invited trade unions and employers' organisation to the tripartite negotiations on the necessary future reforms towards a free market economy (privatisation, labour law reform). At that time it was clear that further reforms were not possible because of the strong resistance of the society. Tripartite negotiations were aimed at obtaining public acceptance of further reforms while maintaining social peace. As a result, in 1993 'The Pact on the state-owned enterprise' was concluded, and in 1994, the Tripartite Commission on Socio-Economic Issues was established. Since 2001 the commission has been regulated by the Act on the Tripartite Commission for Socio-Economic Affairs and voivodship³ commissions for social dialogue.

The main task of the commission is to maintain social peace (Art. 1 of the Act). According to Article 2 any party of the commission may bring up for discussion issues of high social or economic importance it considers vital to the preservation of social peace. The method of activity of the commission is social dialogue. During the period of activity of the commission there were some changes in its functioning. The role of the state (both as an owner and employer) is decreasing. In the Act of 2001 the provision was introduced on concluding agreements by two parties of the Commission, namely workers' and employers' organisations. That gives the basis for development of bipartite dialogue at cross-industry level.

The transformation of the Polish economy witnessed a dramatic decline in trade union membership, especially, in the private sector. Trade unions or any other form of representation do not any more represent workers' interests in this sector. Sometimes employees spontaneously strike or organise protest action. Yet the law on industrial disputes does not cover those conflicts. First of all, there is no proper representation of workers to negotiate and to conclude an agreement.

³ as above (note 2)

Secondly, they often do not direct their claims at their employer but rather at the state authorities, expecting their intervention. Information about the strike or threat of strike with a demand for a mediator (to legalise the strike) is sent to the Ministry of Labour. Because formally such conflicts cannot be considered as industrial disputes, the 'goodwill mission' was developed in practice. A person from the panel of mediators is designated to look into the conflict. This method appeared to be quite successful.

Based on this experience, in 2002 amendments were introduced to the Act on Tripartite Commission on Socio-economic Issues and voivodship commissions for social dialogue, to the effect that the voivodship commission may now examine social or economic issues which cause conflicts between workers and employer(s). The case can be submitted to the commission by any of its parties, by the parties concerned by the conflict or by any trade unions or employers' organisation. The commission after consideration may issue an opinion or decide that someone from the Ministry's panel of mediators will be engaged with the 'goodwill mission' to assist both sides of the conflict to solve it. If the mission fails the parties concerned or the person serving on the goodwill mission requests the commission to issue an opinion. This procedure is very informal, in order to cover great range of different conflicts.

Challenges to the system

The very rapid changes that took place in Central European countries make it impossible to precisely identify future challenges. An important challenge for those countries represents the development of autonomous social dialogue at European level and the conclusion of framework agreements by European social partners that are expected to be implemented in Member States by collective agreements. The draft of the Constitutional Treaty strengthening this method even further. Considering that collective bargaining practice in Poland has been developing very poorly, it seems that this method will not be very successful without some sort of legislative intervention by the state.

1. The weakness of social partners in Poland and the lack of trade union representation of workers' interests in the private sector seems to be the most important challenge to the social dialogue and conflict resolution system. Traditional forms of bipartite dialogue (collective bargaining and effective industrial dispute resolution) are not developed.

In this circumstances implementation in Poland of Directive 2002/14 on workers' information and consultation would require creation of a third actor - works councils, representing non - unionised employees. It is easy to predict that works councils entitled to mere information and consultation will not be attractive enough for workers and, therefore, will not happen. On the other hand, councils with some negotiation rights might undermine the position of trade unions and cause a further decline in trade union membership. There would, thus, be no reason for employers to strengthening their organisations.

This alternative has an important impact on conflict resolution systems. The first scenario means that spontaneous protests will still occur at enterprise level. The second leads to the extension of the law on industrial disputes to cases of impasse in negotiation between works councils and employers and the functioning of social dialogue only on the lowest level.

2. The law on resolution of industrial disputes has been in force since 1991. There is a need for a debate evaluating that law. It seems that the existing regulation is concentrated on the resolution of disputes that have already appeared and does not provide for any preventive measures.

Sometimes disputes arise because people still have little knowledge about existing law and other options of securing their rights and interests. They organise protests because they need some help or just information. Both sides of industry do not have adequate negotiation skills. They have problems with articulation of their interests, they do not trust each other, and they treat compromise as a failure.

3. According to Polish law, courts rule on all disputes over employees' rights. Violation of workers' rights occurs quite often. The courts are overloaded and it takes a lot of time for to get a final decision. Besides, employees are afraid to sue their employer in the court of law during employment. Conciliation commissions at enterprise level are set up very rare. They are, in fact, useless in cases of violation of rights were usually there is no room for compromise. Employment relations, are in Poland over-regulated by statutory law which is very complicated. In such circumstances it is difficult establishing extra judicial resolution of disputes over rights.

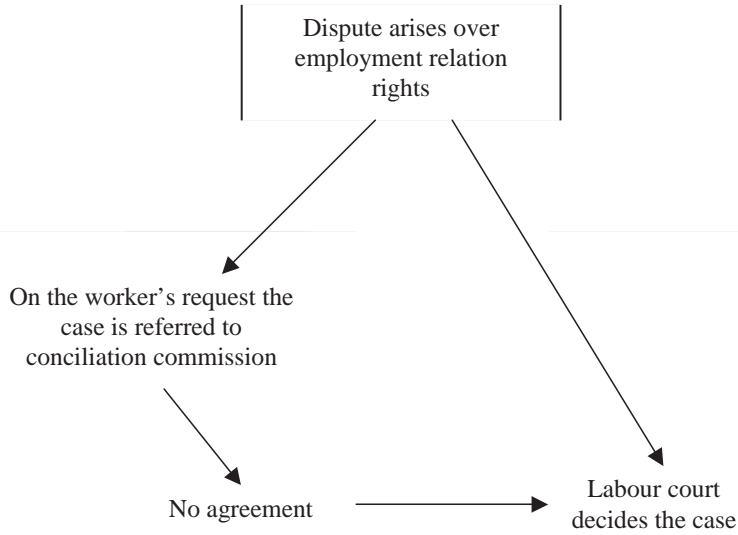
Development project

During a workshop in Prague (29-30 November 2003) the Polish delegation agreed the following schedule of activities:

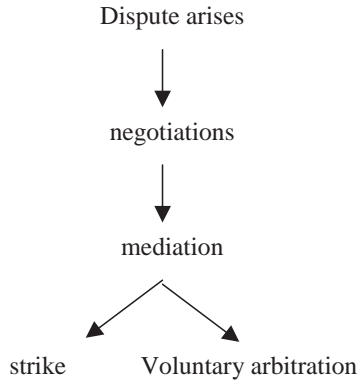
- 1) Improvement in the representation of both sides of the social dialogue.
 - a) Trade unions' and employers' organisations will discuss the causes of the very low level of union membership and try to remove them. They will also try to develop methods of acquiring new members.
 - b) Implementation of Directive 2002/14 will be widely consulted with social partners organisations.
- 2) Support for peaceful collective dispute resolution .
 - a) An expert group will be set up to evaluate existing procedures.
 - b) Advisory services will be developed and mediation services will be strengthened.
- 3) Extrajudicial procedures of resolution disputes over rights will be developed.
 - a) Methods of promotion of voluntary procedures agreed by both sides will be developed.
 - b) A legislative basis will be prepared.

Annex 2: Road map for conflict resolution

1. Individual rights disputes



2. Collective interests disputes



3. Conflicts between employees and employers

Conflict arises

On the request of any party of the conflict or any party of the voivodship commission for social dialogue the commission may consider the conflict and express its opinion

The commission may appoint a person from the panel of mediators with “good will mission”. If the mission fails the person or the sides