International Seminar on Comparative Labour Law

'Workers representation in undertakings'

Polish Report

24-27 MARCH 2020
POZNAŃ, POLAND

EWLL

European Working Group on Labour Law
Adam Mickiewicz University

UAM FACULTY OF LAW AND ADMINISTRATION

Authors:

Maria Katańska

Paweł Kuniszewski

Jadwiga Lester

Michał Sobol

with

prof. UAM dr hab. Michał Skąpski

dr Jakub Gołaś (ed.)

Supplementary information:

The report was created for the purpose of the International Seminar on Comparative Labour law devoted to the issue of 'Workers representation in undertakings'.

The seminar is organised by the Faculty of Law and Administration of Adam Mickiewicz University in Poznan and European Working Group on Labour Law.

The publication was created within the framework of the research project "Limits of trade union freedoms in the Polish legal system" (Reg. No. 2017/27/N/HS5/00127), financed by the National Science Centre.

Cover photo:

Pixabay/ Free for commercial use

Table of contents

Chapter I. Introduction, general remarks, sources of law

1. Introduction

Despite the fact that functioning of all types of voluntary associations, including trade unions and employers' organizations is founded on the principle of freedom (of association), numerous guarantees and declarations addressed to social partners and their organisations may be found in the Polish legal system. Such specificity of the national legal system results directly from specific characteristics of social and labour relations, where economic advantage of employers and apparent social imbalance have to be compensated by strong legal guarantees serving weaker party of industrial relations.

There are numerous forms of associations that are recognized and protected in the Polish legal system, but account should be taken of the fact that the national legislator attaches particular attention especially to trade unions. In the Polish Constitution it is easy to find numerous provisions addressed directly to trade unions. For instance, under Article 12 of the Constitution of the Republic of Poland "the Republic of Poland shall ensure freedom for the creation and functioning of trade unions". Furthermore, "solidarity, dialogue and cooperation between social partners" has been recognized in the Constitution as "the basis of the economic system of the Republic of Poland"(Article 20). Finally, there is also separate provision ensuring "freedom of association in trade unions, socio-occupational organizations of farmers, and in employers' organizations" as a specific political freedom. This is the only form of workers' representation that is subject to such strong and firm constitutional guarantees. Therefore, presented report will be centred on the position of trade unions in the Polish legal system.

Regardless of a strong constitutional declarations, it is difficult to consider trade union movement functioning in Poland as fully effective and widespread form of workers' representation. Relevant statistical data allows to establish that the percentage of working population belonging to a union in Poland is around 11-12 %[1] and it is worth noting that it is the most popular form of collective representation of workers in Poland.

However, the crisis of unionisation should also be taken into account, as since 1999 a clear and almost continuous downward trend of unionisation level can be observed. In the 1990 about 49% of workers belonged to trade unions, while in 2016 it was only 12,7 %[2]. The statistics clearly evidence that union movement – despite being dominant form of collective action in Poland - has relatively weak social mandate among workers.

One of the reasons of that may be the fact that existing system of statutory provisions governing process of establishing and later functioning of a trade union or other form of workers' representation in an undertaking is not fully adapted to social and economic realities.

As will be demonstrated in the report, there are numerous legal barriers existing in the system that effectively discourage workers to organize in collective form. Such issues as uniform requirements ignoring the diversity of labour market, statutory monopoly of the organizational form of a trade union, unnecessary formalization of social dialogue at the level of undertaking or legislator's inability to clearly define and explain the concept of worker for the purpose of collective labour law are the important factors shaping current state of industrial relations in Poland[3].

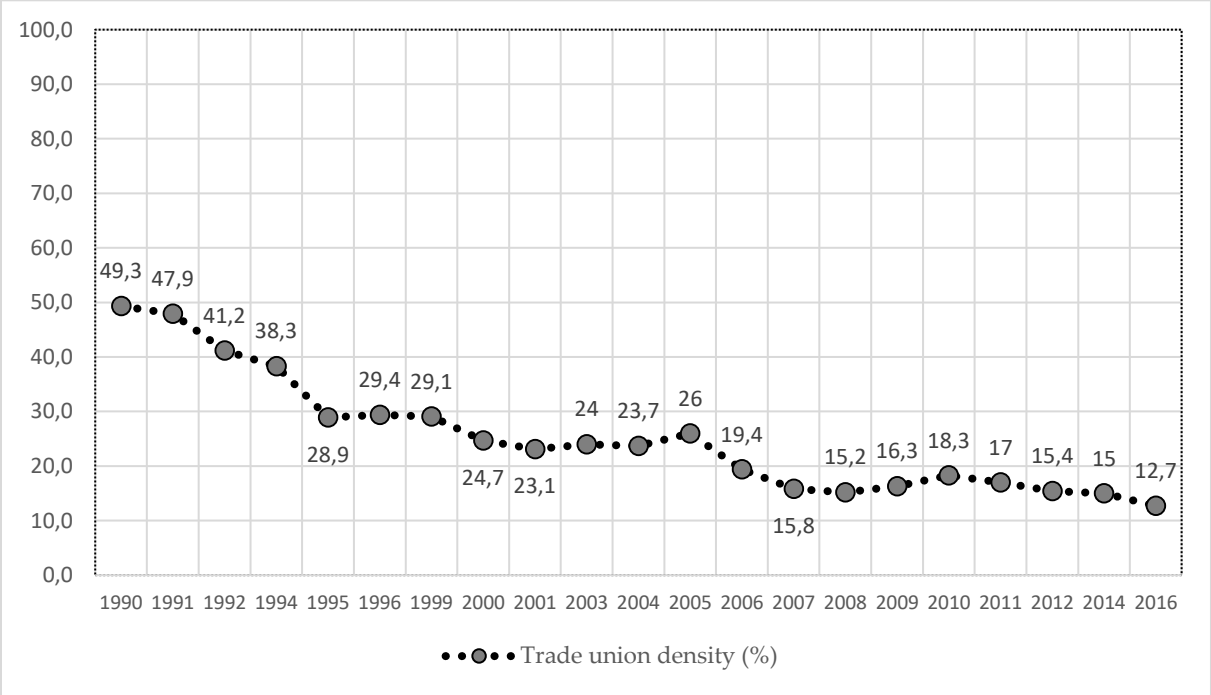
[1] Trade unions in Poland in 2014, Information note, Central Statistical Office (GUS), Warsaw 2015, p. 1.

[2] OECD Stats, https://stats.oecd.org/Index.aspx?DataSetCode=TUD#

[3] Data for 2018 from the information published by the GUS.

Current model of workers' representation in undertakings is not characterized only by shortcomings and conservatism observed in the policy of the national legislator. In order to fully characterise specificity of the national system of workers' representation it is also important to refer to the most recent reforms that make the Polish legal system in discussed field less imperfect and controversial. Lately introduced developments are focused mainly on the Trade Union Act and its personal scope, making it more compatible with both the essence of freedom of association and constitutional and international legislative standards of limiting that freedom

Figure 1. Trade union density (%) in Poland in years 1990-2016.



Source: OECD Stats, https://stats.oecd.org/Index.aspx?DataSetCode=TUD#

.

2. Forms of workers representation

2.1. Preliminary remarks

As mentioned in the introduction, a trade union organization should be considered as the dominant organisational form, in which workers can collectively represent their rights and interests in undertaking and in general. This is the only legal form that enables workers to collectively operate at al levels of industrial relations – from collective bargaining and industrial action to participation in tripartite bodies and legislative initiative. Other forms of representation available to workers have more incidental character and limited area of competences.

2.2. Trade unions: definition and types

2.2.1. Basic features of trade unions

The legal status of trade unions is regulated mainly under the Act of 23 May 1991 on Trade Unions (hereinafter: "TUA"), but there are also certain legal guarantees expressed in the Constitution of the Republic of Poland of 1997.

To fully understand specificity of the legal status of trade unions in Poland, as the first step, it is necessary to examine the concept of a trade union adopted in the Polish legal system. Firstly, it is worth noting that the Polish Constitution itself does not yet define the concept of "a trade union organisation", but – as

it was indicated before – it includes a series of fundamental guarantees that are focused on free functioning of national union movement. Such strategy of the constitutional legislator has substantial impact on statutory actions, as any legal act lower than the Constitution has to be shaped in compatibility with the essence and nature of the freedom of association and other constitutional standards.

The legal definition of a trade union is contained in the Trade Union Act. Under Article 1(1) TUA, a trade unions is defined as "a voluntary and self-governing organisation of working people, established to represent and defend their rights, professional and social interests". As can be seen from the above definition, the concept adopted on statutory level and expressed in Article 1(1) TUA is focused mainly on basic features and functions of trade unions.

Firstly, according to the abovementioned legal definition, a trade union is a social organisation of a corporate type, associating on a voluntary basis specific types of subjects collectively called as "working people". Although the concept of "working people" is not defined or explained later in the TUA, it is clearly related to the personal scope of the right to establish and join trade union organization (right of association or of coalition).

Secondly, a trade union is defined as an autonomous organization, which is self-governing in its internal matters and independent from any external influence. Self-governance of trade unions means that any organization functioning under the TUA is autonomous in defining its objectives, policies, internal structure or operational rules, while independence means that each and every organization is free of any external influence. It is worth to note that under Article 1(2) TUA it is proclaimed that "a trade union is independent in its statutory activity from employers, state administration, local government and other organisations".

2.2.2. Types of trade union organisations and structure of union movement in Poland

In order to present full picture of a trade union organisation as the dominant form of workers' representation in undertaking it is also necessary to note that there are different types of trade unions distinguished in the Trade Union Act. The basic distinction adopted in the Act is related to a specific operating range of different types of unions. For instance, in the Act it is specified that an "enterprise trade union" should be considered as basic unit of union movement that operates at the lowest level of industrial relations, limited to relationship with one employer and its undertaking, while a "inter-enterprise trade union" operates at the same level but this type of organisation in not limited to only one undertaking.

It is widely recognised that each type of trade union is characterized by such aspects as: its operating range, relationship with employer and structure of given undertaking. The status of an 'enterprise' trade union organisation may be granted only to those organisations whose activities cover at least one entire enterprise (entire workplace, but not its branch or separated part)[4]. On the other hand, the status of an "inter-enterprise" trade union organisation is held by those organisations which cover at least two different employers and their enterprises.

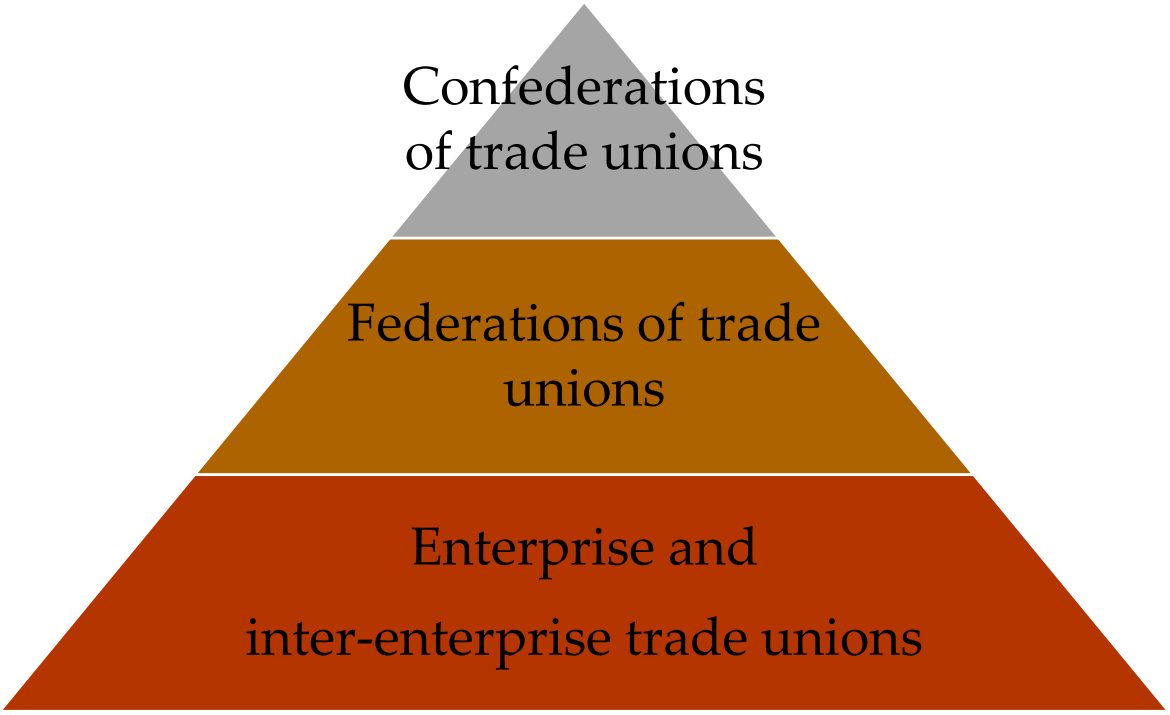
In addition to the above division, it is also worth noting that union movement in Poland function within specific structure, where

[4] The resolution of the Supreme Court of 24 April 1996, I PZP 38/95, Legalis 29962.

discussed above types of organisations should be considered as union movement's basic units. Out of total 19 500 registered organisational units of trade unions, 78% of them operate in the form of enterprise trade union and 18% in the form of the inter-enterprise unions[5].

There are also other types of trade unions such as: nationwide trade unions, nationwide associations of trade unions (federations) and nationwide confederations of trade unions (Article 11(1)(2) TUA).

Furthermore, trade union organisations (including federations and confederations) have the right to form and join international trade union organisations. Federations and confederations, like trade unions, are subject to registration and acquire legal personality upon registration.

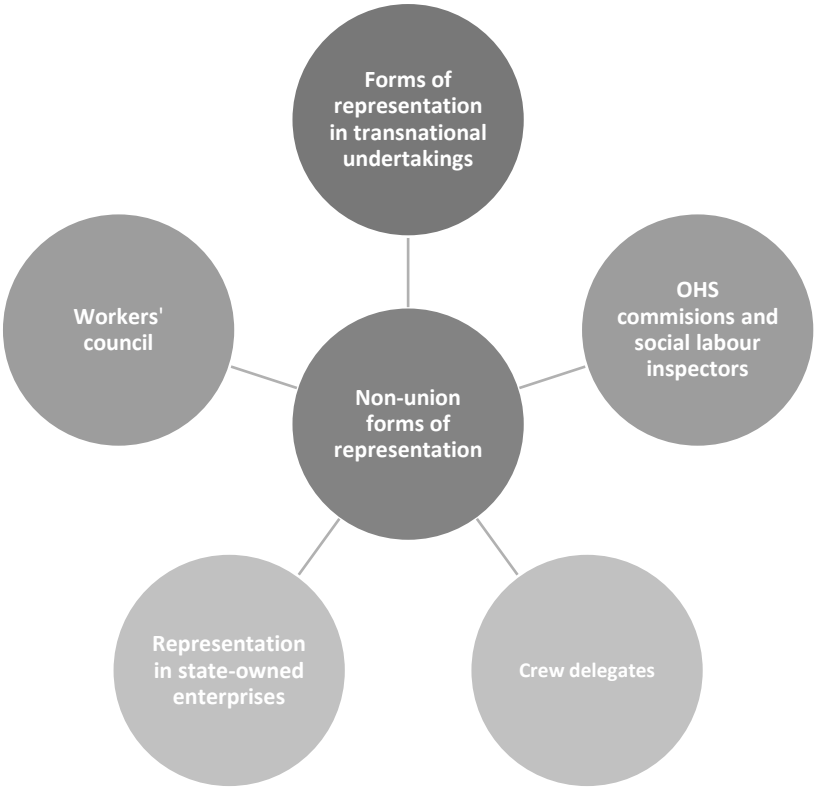


[5] Trade unions in Poland in 2014, Information note, GUS, Warsaw 2015, p. 3.

2.3. Other forms of worker's representations in undertaking

In the Polish legal and economic system, a trade unions is the basic form of workers' representation in undertaking. However, despite unions' dominance, it is also possible to spot other - non-union - forms of workers' representation. These include: workers' councils, OHS commission and social labour inspectors, specific form of representation in state-owned enterprise, *ad hoc* representatives and community forms of representation (e.g. European Works Councils).

These non-union forms of workers representation, as it was noted before, are not very common in Poland. There are some legal provisions regulating their status, but it must be borne in mind that their competences are significantly limited and related only to specific field of representation of workers' interests and rights. Each type of non-union workers organizations will be discussed in Chapter V.



3. The hierarchy between specific forms of workers' representation in undertaking

In the Polish legal system, there are no statutory or constitutional provisions that would directly sanction distinct hierarchy between different forms of workers' representation in undertakings. However, after taking account of the totality of powers and competences granted to all forms of workers' representatives, it is easy to notice that trade unions have factually dominant status in the field of workers' representation. In case of other forms of collective representation, granted rights and competences granted are limited in number and range. It is even fair to say that national legislator – through series of provisions of collective labour law – pursues its efforts to legitimize statutory monopoly of trade unions in such fields of representation as collective bargaining or industrial action.

4. Legal basis for workers' representation in undertakings

The ability of workers' representatives to operate in undertakings is guaranteed at all levels of the Polish legal system – from the Constitution and international acts to the statutory provisions. There can be no doubt that the Constitution of the Republic of Poland of 1997 is the most important legal source concerning the freedom of association or worker's liberty to act collectively in other forms. However, it is equally important to note that there are also other sources relevant to the field of workers' representation such as: international acts (including ILO Conventions No 87, 98 and 135 or the Human Rights Pacts) or statutory provision of various acts.

The Constitution of the Republic of Poland contains numerous provisions that can be related to the issue of workers' representation in undertakings. As it was signalised before, majority of such provisions are focused mainly on the legal status of trade unions and its freedom to operate.

Firstly, under Article 12 of the Constitution it has been declared that "the Republic of Poland shall ensure the freedom of establishment and operation **of trade unions**, social and professional organisations of farmers, associations, civil movements, **other voluntary associations** and foundations".

Secondly, it is worth pointing out that under Article 20 of the Constitution "dialogue and cooperation of social partners" has been recognized as "the basis for the economic system of the Republic of Poland".

Thirdly, another important declaration was placed in Article 58(1), according to which "everyone shall be guaranteed the freedom of association".

However, it should be borne in mind that the most important constitutional provision in the field of workers' representation in undertakings has been placed in Article 59, under which the freedom of association of workers has been legitimised as one of political freedoms functioning in the Polish legal system.

Furthermore, the legislator has also decided to introduce - under that provision - specific model of limiting recognised freedom that is based on the simple assumption that "the scope of freedom of association in trade unions and employers' organizations and other trade union freedoms may be subject only to such statutory restrictions as are permitted by international agreements binding the Republic of Poland".

As it was pointed out previously, the legal status of trade unions and other forms of workers' representation is also regulated at statutory level. Among relevant bills the Labour Code of 26 June 1974 , the Trade Union Act of 23 May 1991 (hereinafter: TUA) and the Act on informing and consulting employees of 7 April 2006 (hereinafter: AICE) deserve particular attention.

The legal status of workers' representatives in undertakings should not be considered as one of the key issues covered by the Labour Code. However, there are few provision that shape status of trade unions and other forms of workers' representatives. For instance, according to art. 18^1(1) of the Labour Code, employees and employers have the right to form organisations and join these organisations in order to represent and defend their rights and interests. Furthermore, there are specific competences of trade unions directly regulated in the Labour Code such as: concluding collective agreements (Section XI of Labour Code) or consulting the intention of an employer to terminate a contract of employment (Article 38 of Labour Code).

The Trade Union Act of 1991 is the most important instrument determining the status of trade unions in the Polish legal system. As trade unions have actual monopoly for representing workers it is also the most crucial act in the field of workers' representation in undertakings. The Act regulates all major aspects related to functioning of trade unions in relations with workers, employers and public authorities. The material scope of the Act covers such issues as personal scope of the right to establish and join unions, process of establishing organization, basic properties of trade unions (autonomy, equality, voluntary) and protection against discrimination. It also includes provisions related to such issues as: competences and powers, characteristics of enterprise and inter-enterprise trade unions, control of union activities and liability for infringements of the Act.

Chapter II. Freedom of association

1. Role of the freedom of association in the Polish legal system

The freedom of association is recognised in the Polish legal system as "the basis of the economic system of the Republic of Poland". As it was pointed out previously, the Constitution of the Republic of Poland contains a number of provisions confirming the importance of discussed freedom. Ensuring and respecting freedom of association is the fundamental responsibility of the State (Article 12). Without distinct recognition of the freedom of association it would not have been possible to effectively implement the concept of "solidarity, dialogue and cooperation between social partners" as one of the basis of adopted in Poland model of social market economy (Article 20). It also cannot be ignored that the freedom of association represents a category of political freedoms and rights recognised in the Polish legal system (Articles 58 and 59).

As already pointed out, one of the key constitutional provisions related to the freedom of association has been placed in the chapter on political rights and freedoms. There are two provisions in the discussed chapter of the Constitution (Articles 58 and 59) that refer directly to the discussed freedom. In the first place, the freedom of association is recognized as certain type of universal freedom enjoyed by "everyone" (Article 58), while in subsequent provision "the same" freedom is recognized in the narrower sense as a "the freedom of association in trade unions, socio-occupational organizations of farmers, and in employers' organizations".

As can be seen, the constitutional legislator has adopted a clear distinction between the general freedom of association and the particular freedom of association in organisations of social partners. The general freedom, as expressed in Article 58 of the Constitution, refers to all forms of associations, without any exemptions in this regard. However, it cannot be ignored that - at the same time - particular types of associations established by social partners (trade unions, socio-occupational organizations of farmers and employers' organizations) enjoy more specific guarantees enshrined in Article 59 of the Constitution. In this case, the freedom of association has less universal character, as discussed provision is addressed only to specific subjects who are able to establish specific type of associations. Importantly, both provisions cannot be considered as contradictory or competitive, as Article 59 has in fact complementary function in relation to Article 58. The fact that separate constitutional provision addressed to trade unions, socio-occupational organizations of farmers and employers' organizations has been placed in the Constitution can be motivated by the lawmaker's desire to emphasise and confirm the great importance of social partners' associations for the Polish economic, social and legal system.

The great importance of discussed freedom is also confirmed under Article 59(4) of the Constitution, where the specific model of limiting the scope of freedom of association and other trade union freedoms has been adopted, as discussed 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". As a result, the Constitution proves that the national lawmaker has accepted his limited role in shaping the freedom of association of social partners' organisations and submitted discussed regulatory area to indisputable and universal standards of the international law. Such constitutional declaration reconfirms unquestionable importance of the freedom of association in trade unions, socio-occupational organizations of farmers and in employers' organizations for the Polish legal system.

2. Personal scope of the freedom of association

2.1. General remarks

Specific constitutional dualism of the freedom of association affects the final structure of the personal scope of analysed freedom. While the general freedom should be enjoyed by everyone, the specific freedom has more substantial scope covering specific forms of associations - trade unions, socio-occupational organizations of farmers, and employers' organizations. As a result, it can be assumed that in case of the specific freedom of association there are three types of subjects – employers, farmers and those who can associate in trade unions. However, those subjects are not defined directly in the Constitution.

In theory, due to its universal nature, freedom of association should be enjoyed by everyone, as "the inherent and inalienable dignity of the person" constitutes "a source of freedoms and rights of persons and citizens" (Article 30(1) of the Constitution). In fact, personal scope of the freedom of association is limited by various acts that define more detailed rules of exercising right to establish and join given types of association (trade unions, foundations, societies, guilds, political parties, movements etc.). In case of workers' representation in undertakings and related freedoms all the legislative attention is focused mainly on trade unions.

The answer to the question about entities entitled to establish and join trade unions can be found in the Trade Union Act of 23th May 1991 (TUA). At the outset, it is worth noting that adopting a specific personal scope of the right to establish and join trade union can lead to a situation where not all entities that ought be covered by appropriate guarantees have actual access to the right to establish and join trade unions. This is because substantially mischaracterized personal scope of the right of coalition increase a risk that all those who do not meet statutory requirements will be excluded from essential guarantees of the freedom of association.

This dependence between appropriately formed personal scope of the statutory guarantees and the difficulty to respect the nature of freedom of association could be observed recently in the Polish legal system, where after clear stance of the ILO's Committee on Freedom of Association and the Constitutional Tribunal, the lawmaker decided to significantly change trade union law. The amendment of Trade Union Act that entered into force on 1st January 2019 has substantially modified statutory model of personal scope of the right to establish and join trade unions.

The previous model was based on the assumption that the full right of coalition (right to establish and join union) should be granted only to subjects specifically mentioned in the Trade Union Act. As a consequence, the discussed right was limited only to employees and other minor categories of workers (members of agricultural production cooperatives, and persons who perform work on the basis of an agency contract if they are not employers). Such legal solution was criticised by Committee on Freedom of Association in 2012[6] and eventually declared unconstitutional by the Constitutional Tribunal in 2015[7].

2.2. Full and limited right of coalition

The right to establish and join trade unions is defined in the Polish legal system as the right of coalition. The Trade Union Act distinguishes between the full right of coalition and the limited right of coalition. The subject of the full

[6] See Report No. 363 of the ILO's Committee of Freedom of Association on Case No. 2888 against Poland.

[7] The judgment of the Constitutional Tribunal of 2 June 2015, K 1/13, Legalis 1271433.

right of coalition has the right to both establish own organization and join existing one, while the subject of the limited right of coalition can only join existing trade unions.

The personal scope of the full right of coalition is defined in Article 2(1) TUA. Under that provision, the right to establish and join trade unions shall be given to persons engaged in gainful work. The concept of persons performing gainful work is explained by the legislator in Article 1^1 TUA in the form of statutory definition. According to this provision, a person engaged in gainful work should be understood as:

- employee or as
- other person performing paid work on a basis other than employment relationship.

An employee - as referred to in Article 1^1 TUA - should be defined in accordance with Article 2 of Labour Code as person "employed on the basis of an employment contract, an appointment, an election, a nomination or a co-operative employment contract" (in conjunction with Article 1^1(3) TUA).

At the same time, it is important to note that a person performing paid work on a basis other than employment relationship cannot be simply identified as a general category of workers not being employees. The legal status of discussed personal subcategory is determined by four statutory conditions, which have to be met cumulatively. These are:

1) performing paid work,
2) working on a basis other than the employment relationship,
3) not employing other people for the same kind of work and regardless employment basis and
4) having rights and interest related to carried out activity, which can be represented and defended by a trade union.

Apart from persons engaged in gainful work, who enjoy the full right of coalition, there is also separate personal category of "working people" who enjoy only the right to join already established and existing trade unions (the limited right of coalition). These entities have the right to join trade unions in the cases and under the conditions set out in statutes of trade unions. The limited right of coalition is granted only to subjects clearly indicated in Article 2(3)(4)(4^1) of TUA in the forms of exhaustive list. Those are:

- pensioners,
- unemployed,
- volunteers, trainees and other persons performing unpaid work.

2.3. The right of coalition of public officials

In addition to persons performing paid work, the right of coalition is also granted to certain group of subjects, who do not enjoy the formal status of employee. These are: police officers, border guards, functionaries of Customs and Fiscal Service and Prison Service, as well as firefighters of the State Fire Service and workers of the Supreme Chamber of Control. This is because under Article 2(7)TUA, the provisions of the Trade Union Act concerning persons performing paid work shall be applied also to officers, taking into consideration the differences resulting from separate acts.

However, it should be also noted that there are numerous statutory restrictions that limit the right of coalition of uniformed functionaries and public officials in Poland. Certain categories of public officials and uniformed functionaries are formally excluded from the right of coalition and are unable to establish or join trade unions. These are: professional judges, the President of the Supreme Audit Office, the Ombudsman, members of the National Broadcasting Council, the President of the National Bank of Poland, professional

soldier, members of military intelligence service, functionaries of Internal Security Agency or of Central Anticorruption Bureau.

There are also other categories of public functionaries that experience limited right of coalition in the form of trade union monism. For instance, higher functionaries of the Supreme Audit Office have the right to join the only one trade union organisation, which associates workers and functionaries of the Office. Furthermore, the lawmaker has also decided to impose also other forms of restrictions on trade unions of public officials, such as deprivation of the right to strike of trade unions associating police officers.

2.4. The status of self-employed

Self-employed persons – up to the end of 2018 – did not enjoy the right to establish own unions and join existing ones. Their legal status has significantly changed and improved with the entry into force of the reform of Trade Union Act on 1 January 2019.

As already indicated, the ILO's Committee on Freedom of Association and the Constitutional Tribunal urged the Polish legislator to assure that all categories of workers – even the self-employed – have the right to establish and join trade unions. It appears that the Trade Union Act in new shape – based on the concept of persons performing paid work – make is possible for the self-employed to enjoy the full right of coalition, provided that individual representing discussed subcategory of labour force does not employ other people for the same kind of work.

However, it should be borne in mind that current personal scope of the right of coalition – that is based on the concept of persons performing paid work – is relatively new and it is impossible to establish unified method of application of discussed above statutory provisions.

Guided by the justification for the amendment of the TUA, it should be assumed that the current regulation covers self-employed persons if they meet the requirements set out in Article 1^1 TUA. This means that in order to enjoy the right of coalition, the self-employed person shall perform paid work, have rights and interest related to carried out activity, which can be represented and defended by a trade union and not employ other people for the same kind of work.

It should be emphasized once again that not all self-employed persons should enjoy the full right of the coalition. The Constitutional Tribunal in the above mentioned judgment stated that it is necessary to differentiate between broadly understood workers and entrepreneurs, in particular with regard to self-employed persons. According to the Constitutional Tribunal, only workers engaged in the form of self-employment shall enjoy statutory guarantees of trade union freedoms. As a Tribunal claims, it would be incompatible with international standards to extend statutory guarantees of the freedom of association to all self-employed entrepreneurs without any clarifying restrictions.

3. Legal recognition of workers' organisations

3.1. Preliminary remarks

All workers' organisations have to be legally recognised in the Polish legal system. The process of recognition is not uniform and takes varied forms from judicial registration to simple notification of the employer managing given undertaking. Workers can associate in various organisational forms, of which trade unions is the most important and widespread. This is because it is the only organisational form that provides workers with the opportunity to represent their interests and protect their rights

in almost all fields of industrial relations. In consequence, in order to function freely as legitimate organisation, newly established trade unions have to meet series of material requirements and undergo staged process of registration.

3.2. Registration of trade union organisation

3.2.1. The sequence of actions

The issue of trade union formation is governed entirely by Chapter II of Trade Union Act. Specified sequence of actions must be followed in order to legally recognize newly established trade union organisation and enable it to operate freely. These are:

1) adoption of the resolution on the establishment of trade union,
2) adoption of the trade union's statute and election of the founding committee,
3) submitting of the registration request within 30 days of the founding date,
4) registration of the union in the court register,
5) acquiring of legal personality on the day of the registration.

3.2.2. Creation of a trade union organisation - resolution on the establishment and subsequent obligations of the founding committee

According to Article 12(1) TUA, a trade union is established at the moment of adoption of the resolution on the establishment. The resolution has to be adopted by at least 10 persons entitled to form a trade union.

In the first place, it is necessary to determine whether such quantitative requirement is compatible with international standards biding in the Polish legal system.

As none of the relevant international agreements identifies a specific numerical threshold for establishing trade union, it appears that discussed issue is left to the discretion of the national lawmaker. However, it cannot be ignored that adopted thresholds should both be compatible with the essence of freedom of association and match the socio-economic realities[8].

After adopting the establishment resolution, the founders are obliged to adopt the statute of the organization and elect the founding committee composed of 3 to 7 persons (Article 12(2) TUA). It is worth noting that the founding committee is the only body entitled to represent new organisation in the period between the moment of establishment and the day of registration.

The content of statue is freely determined by union's founders. In this regard, legal requirements are limited only to simple obligation to include in the statute specific elements that are listed in Article 13 TUA[9]. The requirement to determine at least statutory elements in the statute results from the reasonable need to avoid any legal uncertainty in terms of correct formation, representation or functioning of given organization.

It is worth pointing out that the legislator confined itself only to identifying obligatory elements in the Act, while the manner in which

[8] Having regard to such issues like the diversity of undertakings in Poland or complex structure of enterprises, the invariant numerical threshold of at least 10 entitled persons can be considered as excessively uniform. As it will be shown below in the report, such form of numeric requirement is likely to constitute a serious limitation of the right of coalition

[9] Those are: the name and seat of the union, scope of activity, objectives and tasks, rules of acquiring and losing membership, the rights and obligations of members, organizational structure, method of representation, authorities entitled to represent organization, method of appointment to trade union bodies, the sources of financing of the organization's activities, rules related to passing and amending the statue, rules related to dissolution and liquidation.

those elements should be shaped was left to the discretion of the founders of the newly established organisation. Such extend of statutory interference with internal affairs of trade unions proves that the legislator respects self-governance of social partners' organisations.

3.2.3. Registration procedure

As indicated in Article 14(1) TUA, after successful establishment, a trade union must be registered in the National Court Register. The registration procedure is free of charge. The application for the registration is submitted by the founding committee. If the committee fails to file the application for registration within 30 days of the founding date, the founding resolution should expire and become void.

It is also worth to note that the registration court is entitled to examine the application and even may refuse to register given organization. In such a case, the resolution on the establishment of the association should be repealed, unless the committee appeals to the higher court.

As such principles of the freedom of association like self-governance and independence of trade unions are effectively protected in the Polish legal system, the court's refusal to register should be used as the last resort reserved for most obvious cases of infringements. For instance, the registration court may refuse to make register given organisation if the founding members are not entitled to establish trade union or when the content of the statute is contrary to Trade Union Act or other general acts.

At the moment of registration (i.e. on the day of issuing the decision on registration), registered trade union and its all organisational units indicated in the statute acquire legal personality. From that moment, newly registered organisation is able to operate freely as legitimate workers' representation in undertaking.

3.3. Legalisation requirements for other forms of worker's representatives

Other – non-union – forms of worker's representation in undertaking experience specific legalisation requirements, which in general are less formalised[10]. The difference in legal approach toward legalisation requirements between trade unions and other forms of representation can be justified by the simple fact that other forms of collective representation have limited powers and competences and are able to operate only within restricted field of affairs. For this reasons, there is no need to apply equally formalised procedure of legal recognition.

[10] For more details, please see Chapter V.

Chapter III. Independence and self-governance: protection against acts of interference

1. Protection and limits of trade unions' autonomy

1.1. Preliminary remarks

Independence should be defined as the ability to act without any external influence, while self-governance should be understood as the ability to autonomously shape own internal situation, structure, goals, tasks and policies. Both properties together determine the scope of autonomy of workers' organisations.

The Polish legislator fully respects the concept of autonomy of workers' organisations, which is confirmed by the fact of adopting strong guarantees of the principle of non-interference. As in the case of other important aspects of functioning of worker's organisations in the Polish legal system, majority of adopted statutory guarantees are addressed exclusively or mostly to trade unions. It is also important to bear in mind that there are no equally comprehensive measures protecting autonomy of non-union forms of collective representation.

1.2. Autonomy of trade unions – constitutional and international foundations

As indicated before, ensuring freedom for the creation and functioning of trade unions and other types of voluntary associations is the fundamental obligation of the State that was adopted under Article 12 the Constitution of the Republic of Poland. This obligation is not limited only to assuring the right to establish or join chosen organisation, as it also includes other particular duties. For instance, ensuring free functioning of trade unions is impossible without adopting proper guarantees of autonomy of union movement. Therefore, constitutional obligation of the State to ensure freedom for the creation and functioning of trade unions also concerns the necessity to implement appropriate measures assuring workers' organisations full autonomy from the state, employers or other organisations[11].

It is also worth mentioning that legislative policy in the field of unions' autonomy is simultaneously determined by unquestionable standards originating from such international documents like the ILO Freedom of Association and Protection of the Right to Organise Convention No. 87 or The Right to Organise and Collective Bargaining Convention No. 98, which were ratified by Poland.

1.3. Statutory guarantees of independence

Under Article 1(2) TUA, a trade union organisation is declared independent in its statutory activity from employers, state administration, local government and other organisations. Prohibition on interference in the affairs of trade unions is addressed to any organisation, entity or person that could potentially violate the independence of trade unions.

As the main threat to trade unions' independence comes from employers, the legislator decided to adopt under the Act of 23.05.1991 on employers' organisations[12] special provision obliging employers' associations to refrain from any actions "aimed at limiting the right of employees to associate in trade unions" and interference "aimed at exercising control over trade unions" (Article 4).

The obligation to refrain from any interference in the trade unions' affairs also applies to public authorities. This is confirmed by both the international standards (Article 3(2) of ILO Convention No. 87) and statutory provisions (Article 1(2) TUA). However, it should also be noted that the primary task of

[11] J. Gołaś, *Granice wolności związkowych w polskim systemie prawnym*, Poznań 2019, p. 48-51.

[12] Journal of Laws No. 55 item 235.

public authorities is to exercise control or ensure safety of the State and stability and public order. Therefore, there are fields of trade union activity where such interference is inevitable. This is why the statutory protection of independence of trade unions is not absolute.

The basic task of trade unions is to exercise competences and powers related to the sphere of representation and protection of workers' rights and interests. This is the field of unions' activity that is covered by the strongest guarantees of independence. However, other fields of unions' activity that are not related to protection or representation of workers' interest or rights are not protected in the same way, but to a lesser extent. For instance, trade union conducting economic activity should be subjected in this field of activity to the same principles and control as other entities conducting business activity.

Finally, it is also worth noting that public authorities are generally reluctant to interfere and control union' activities. This tendency is confirmed by the Supreme Court, which accepts that "the compliance of activities of trade union with its statute should not subjected to any assessment of the labour court"[13]. Such statement should be considered as evident declaration of recognition of trade unions' autonomy and as direct confirmation of the principle of non-interference in trade union affairs.

1.4. Guarantees of self-governance

Self-governance of trade union means that any organisation can define its tasks, objectives, policies or internal structure autonomously and independently[16]. In the field of self-governance it is particularly important that trade unions have full ability to freely assign tasks, define policies and regulate its internal structure or principles of membership.

The Trade Union Act provides strong guarantees of unions' self-governance. For instance, it is declared under Article 9 TUA that organisational structure of trade union should be freely specified in statutes and resolutions of trade unions. Furthermore, Article 10 TUA ensures that rules of acquiring or losing membership in a trade union should be defined only in the statute or through resolution of statutory bodies of given organisation.

The statute of a trade unions is the most important and comprehensive document in the field of self-governance. It is shaped and adopted by the founding committee at the beginning of functioning of newly established organisation (Article 12(2) TUA).

The Trade Union Act does not define the manner in which the statue should be shaped by trade unions' authorities. However, Article 13 TUA identifies obligatory components of the statute that should be specified in this document. These are in particular: name, residence, operating range, tasks and methods of achieving them, rules of acquiring and losing membership, rights and obligations of members, organisational structure, method of representation and persons empowered to represent union, union bodies, methods of appointment and revocation, competences and cadence, sources of finance, method for collecting contributions, rules for passing and amending the statue and the method of dissolution and liquidation.

Self-governance of trade unions may be limited only under relevant statutory provisions. For instance, such restriction is expressed in Article 13 of the Constitution of the Republic of Poland, under which "Political

[13] The judgement of the Supreme Court of 14 December 1999, I PKN 457/99, Legalis 49787.

[16] A. Świątkowski, Autonomia organizacji partnerów społecznych (in:) System prawa pracy, t. 5, Zbiorowe prawo pracy, K.W. Baran (ed.), Warszawa 2014, p. 299.

parties and other organizations whose programmes are based upon totalitarian methods and the modes of activity of nazism, fascism and communism, as well as those whose programmes or activities sanction racial or national hatred, the application of violence for the purpose of obtaining power or to influence the State policy, or provide for the secrecy of their own structure or membership, shall be prohibited".

1.5. Trade union's autonomy and political activity

In the Polish legal system, there are no provisions that would prohibit trade unions from political activities. This means that trade unions are not obliged to be apolitical and that public authorities should refrain from any interference in this field. Such principle is also confirmed by the views of the ILO's Committee on Freedom of Association[20].

Polish trade union movements often cooperate with political parties and numerous union members stand for general elections. However, it is worth noting that unions' political engagement may pose a real threat to efficient representation of workers' rights and interests, as such organisations start to focus on particular political affairs instead of exercising its basic functions and tasks[21]. Yet, there are no legal measures protecting workers from such a problem. On the other hand, it should be borne in mind that political commitment is fundamental part of union movement activity. In order to carry out needed reforms, it is often necessary for trade unions to exert political pressure.

1.6. Protection of independence and self-governance

Autonomy of trade unions is protected mainly through penal provisions inserted in Article 35 TUA. Under that article, any person who prevents establishment of a trade union organisation in accordance with the law (Article 35(1)(1) TUA) or prevent trade union from performing its activities pursued in conformity with generally applicable law (Article 35(1)(2) TUA) "shall be liable to a fine or a restriction of liberty".

Despite the doubts raised by employers, the constitutionality of the possibility to apply penal provisions against violators of trade union autonomy was finally confirmed by the Constitutional Tribunal[24]. The Court stressed that the legislator has competence to protect unions' autonomy through penal sanctions, which should be used as a measure defining impassable limit of employer's interference in unions' affairs.

However, it is worth noting that discussed penal provisions are rarely used in practise, which may suggest that attempts of unauthorised interreference in trade unions' affairs are not frequent in industrial relations. According to the statistical data survey commissioned by the ombudsman, in period between 2005 and 2015 the prosecutor's office registered 920 cases that concerned violation of Article 35(1) TUA[25], of which 35 cases were finally referred to the court with 27 indictments. Furthermore, in 323 cases the court refused to initiate further proceedings and in 501 cases the proceedings were finally discontinued.

[20] See Report No. 334 of the ILO's Committee on Freedom of Association in Case No. 2301, para. 124.

[21] Związki zawodowe w Polsce. Aktualna sytuacja, struktura organizacyjna, wyzwania – Vera Trappmann - http://www.feswar.org.pl/fes2009/pdf_doc/Analiza_Zwiazki_zawodowe_Trappmann.pdf

[24] The judgment of the Constitutional Tribunal of 14 April 2008, P 50/07, Legalis No 97761.

[25] https://www.rpo.gov.pl/pl/content/naruszenia-wolnosci-dotyczace-dzialania-zwiazkow-zawodowych

1.7. Limits of trade union's autonomy

As already pointed out in the report, protection of trade unions' autonomy should not be absolute. Trade unions – as any other legal entity operating in the polish legal system – is obliged to respect and abide generally applicable law. Therefore, identified cases of violation of law should be considered as sufficient reason for justified interference of public authorities in trade union affairs[26].

The polish legal system provides for one decisive form of public interference in trade unions affairs, as under Article 36 TUA, the registry court is allowed to initiate supervisory proceedings in certain cases. Such proceedings should be initiated when there are serious allegations that operations or forms of conduct of trade union's authorities constitute illegal activities.

Illegality of actions taken by the trade union' body should be understood in a broad sense. Trade unions, as any legal entity functioning within the polish legal system, must obey generally applicable law. There are various legal provisions that are addressed to trade unions that determine undisputed standards of conduct and that may be used in order to assess legality of union's activities. For instance, such standards have been defined in the Constitution, where under Article 13 it is forbidden to promote totalitarian methods and ideologies, to use violent methods to obtain power or to conceal organisation's structure of memberships.

It is important to note that discussed supervisory proceedings have predetermined order and require close cooperation between the registry court and competent public prosecutors. In order to initiate supervisory proceedings, in the first place, it is necessary for competent district prosecutor to file a formal request for supervisory actions. In such a case, if the registry court determines that the trade union's body pursues activities, which are in contradiction to generally applicable law, the court is competent to set a deadline of at least 14 days for trade union's authorities to correct its illegal action and adjust to legal standards (Article 36(1) TUA).

If a trade union fails to adapt its action within fixed deadline, the registry court may also:

- impose a fine of up to PLN 3000 on individual members of trade union's body responsible for illegal actions or
- set a new deadline for the trade union's authorities in order to organise election for new members of a body responsible for illegal actions, on the pain of suspending further activities of that body (Article 36(2) TUA).

As a last resort, in a case of failure to hold elections and choose new members, the registry court – upon formal request of the Minister of Justice – may rule on removal of the trade union from the register (Article 36(3) TUA). In such a case, the delated organisation shall immediately cease its activities and carry out liquidation proceedings within three months from the day the court's decision becomes effective (Article 36(5) TUA).

2. The problem of "yellow unions" in the Polish legal system

2.1. General remarks

The concept of "yellow trade unions" is not formally recognised in the Polish legal system. However, it is a phenomenon that occurs in

[26] J. Gołaś, *Granice wolności związkowych w polskim systemie prawnym*, Poznań 2019, p. 380-388.

practice of industrial relations in Poland. For that reason it is possible to present working definition of the yellow unions in the context relevant to polish realities.

The yellow union should be understood as an organisation formally representing workers but actually controlled by an employer. As a result, yellow trade union only simulates activities focused on representation and protection of workers' rights and interests, while in fact, acts in order to secure employer's interests.

In case of Poland, due to such factors as the conflict model of industrial relations and employers' reluctance to accept worker's right to participate in the management of undertaking, there is a real risk that employers may attempt to encourage favourable individuals to establish dependant organisations and take control over social dialogue in undertaking.

It is conservatively estimated that about 5-10% of trade unions functioning in Poland can be considered as controlled or directly steered by an employer[28]. Regardless whether such estimations are accurate, it should be accepted that the occurrence of yellow trade unions represents a real problem for industrial relations in Poland[29].

However, it should be clarified that in the Polish legal system there are no legal provision functioning that would allow any public authority or court to assess and verify trade union's independence from employer or any other external entity. Such problem results from the fact that the legislator did not adopt any relevant measure that would effectively protect trade unions from external influences. Efforts of the national lawmaker are limited only to expressing empty statement that "in pursuing its statutory activities a trade union shall be independent from employers, state administration, territorial self-government, and other organizations" (Article 1(2) TUA). In theory, such declaration proves that any activity of external entity aimed at interfering in trade union's affairs is forbidden. In reality, discussed declaration - without legal measures enabling courts to verify trade union's autonomy or severely punish violators of union's independence - has no practical relevance.

2.2. Sources of finance for trade unions and their independence from employer

It is also important to note that certain provisions of the TUA enable employers to exert a specific form of pressure on enterprise trade unions. Under Article 33(1) TUA employers are "obliged to make available to the company trade union organisation the premises and technical equipment necessary for the trade union activity at the employer's premises". Standards related to the performance of indicated obligation are not specified under the TUA, which in practice allows employers to use it as a form of expression of resentment or preference toward chosen worker's organisations. As a result, favourable organisation are more likely to enjoy better working conditions in enterprise, while unfavourable organisations may face worse housing and technical working conditions.

This risk of abusing obligation defined in Article 33(1) TUA in order to exert pressure on trade unions is also compounded by the fact that trade unions functioning in Poland have limited sources of income and sometimes premises and technical equipment delivered by an employer are the only assets available. In this

[28] J. Kapiszewski, *Związkowcy na pasku prezesów*, Dziennik Gazeta Prawna, 12.08.2013 r., p. B11.

[29] K.W. Baran (ed.), *Komentarz do ustawy o związkach zawodowych* [in:] *Zbiorowe prawo pracy. Komentarz*, Warsaw 2016.

context, it is also worth mentioning that due to law unionisation levels contribution paid by members may not be sufficient to cover all costs of union activity in enterprise. Furthermore, there are no legal measures imposing compulsory and collective payment of contributions. As a result, timely payment fully depends on the goodwill of trade union's members. Additionally, non-members benefiting from union representation are not legally oblige to cover costs of such representation (*the free rider problem*).

Chapter IV. Protection against discrimination

1. Principle of non-discrimination

Discrimination should be considered as an unacceptable form of unequal treatment of workers. There are numerous legal instruments in the Polish legal system that are designed to protect employees and other workers against any form of discrimination. The general principle of non-discrimination is adopted in the system at all legislative levels – from the Constitution (Article 32) to Labour Code (Article 11^3 and Chapter IIa) and Trade Union Act (Article 3).

There is variety of discriminatory criteria. Unequal treatment of workers may by motivated by various preferences and aversions of an employer. For this reason, there is no need or necessity to create exhaustive list of such criteria. This fact was noticed by the Polish legislator who adopted the concept of exemplary lists of identified discrimination criteria, among which criteria of trade union membership is also recognised.

2. General protection against discrimination on ground of trade union membership

There are specific provisions in the system of labour law that protect workers against discrimination based on the criteria of trade union membership. These are:

- Article 11^3 of Labour Code: "Any discrimination in employment, direct or indirect, in particular in respect of […] trade union membership […] is prohibited.
- Article 18^{3a}(1) of Labour Code: "Employees should be treated equally in relation to establishing and terminating an employment relationship, employment conditions, promotion conditions, as well as access to training in order to improve professional qualifications, in particular regardless of […] trade union membership […].
- Article 3 TUA: "Any discrimination in employment of [working people] on grounds of trade union membership or non-membership in trade union or performance of a function within the trade union with the effect of, in particular:

  1) terminating or rejecting the establishment of an employment relationship,

  2) establishing disadvantageous conditions of remuneration for work or other employment, or not being selected for promotion or not being granted other work-related benefits,

  3) not being chosen to participate in training organized to improve professional qualifications, unless the employer proves that this was due to objective reasons,

  - is prohibited, unless the employer proves that this was due to objective reasons".

Possible consequences of discriminatory actions on ground of trade union membership:

- Employer refusing to employ a candidate on the discriminatory ground is liable to fine of not less them PLN 3,000 (Article 123 of the Act of 20.04.2004 on Promotion of Employment[32]);
- The discriminatory provisions of collective labour agreements, regulations and statutes are not biding (Article 9(4) of the Labour Code);
- The discriminatory "provisions of employment contracts and other acts on the basis of which an employment relationship is established" are invalid (Article 18(3) of the Labour Code and Article 3(3) TUA);

[32] Journal of Laws No. 99 item 1001.

- A victim of discrimination "has the right to compensation of at least the amount of the minimum remuneration for work" (Article 18^{3d} of the Labour Code);
- Termination of an employment relationship by employer on discriminatory ground may give a rise to an appeal of the employee;
- Person discriminating working people on grounds of their participation in trade union, non-membership or performance of a trade union function are liable to a fine[33] or a restriction of liberty[34] (Article 35(1)(3) TUA).

3. Special protection of sustainability of an employment relationship of workers performing trade union function

3.1. Why do trade union functionaries need special protection?

Workers performing specific trade union functions are covered by special protective measure that substantially limits employer's possibility to terminate their employment relationship. There are valid grounds for special treatment of trade union's functionaries, as due to their commitment in worker's representation they are particularly exposed to reluctance of an employer.

Furthermore, it should be also noted that union functionaries are responsible for proper functioning and management of organisation. Therefore, special protective measure should also be considered as a specific guarantee that trade union's independence and self-governance function undisturbed.

Special protection of workers performing trade union functions is also consistent with international standards that bind Polish lawmaker.

3.2. Material scope of special protection

Special protection of sustainability of the employment relationship of workers performing trade union function is based on the construct of a consent of the union's management board for termination of employment relationship of protected functionary.

Under Article 32(1) TUA, an employer is not able to legally:

a) terminate the employment relationship with or without notice or
b) unilaterally change working or pay conditions to the detriment of the protected functionary

- without prior and explicit consent of the management board of trade union organisation.

It should be noted that the management board of trade union organisation is charged with certain obligations and formal requirements that have to be satisfied in order to effectively protect chosen union's functionaries.

Firstly, discussed protective instrument is based on a resolution of the board. As a result, in order to protect specific union's functionaries, in the first place it is necessary to adopt detailed resolution naming protected union's activists and specifying the period of granted protection (Article 32(2) and (3) TUA). In case of failure to adopt necessary resolution, special protection shall be granted only to the chairperson of the organisation (Article 32(8) TUA).

[33] From PLN 100 to PLN 1,080,000 (determined by daily rates).

[34] From 1 month to 2 years (measured in months and years).

Workers named in the resolution are protected for a period specified there and for an additional period corresponding to half of the period specified in the resolution, but not longer than for a period of one year after expiration of period indicated in the resolution (Article 32(2) TUA).

Secondly, in order to formally protect chosen functionaries, after adoption of the resolution, the board has to inform in writing the employer about the names of protected workers and the period of granted protection (Article 32(9²) TUA). Failure to satisfy this formal requirement prevents chosen workers from exercising effective protection. In such a case, the employer shall not be required to obtain prior consent of the board in order to terminate a contract of employment of union's functionary[35].

Thirdly, the board has a fixed period of time in which it may consent or refuse to employer's request to terminate or unliterally change employment relationship of protected worker. In case of termination upon notice or unilateral change, the prescribed deadline is 14 working days with the effect from the day of employer's written notification about his plans. In case of termination without notice, the deadline is 7 working days. Board's failure to take a clear stand within prescribed period of time permits an employer to terminate or unilaterally change employment relationship of protected worker (Article 32(1¹-²) TUA).

3.3. Personal scope of special protection

It should not be overlooked that not all workers performing trade union function may be protected with a use of discussed instrument, as the lawmaker decided to determine under Article 32(3) and (4) TUA the maximum number of workers of the enterprise trade union that can be named in the relevant resolution of the management board of the union organisation.

There are two methods of determining the maximum personal threshold. In the first place, the board may decide to determine the maximum number of protected workers on the basis of the number of the management staff operating in the employer's enterprise. In such a case, the number of protected workers shall not exceed the number of the managerial staff (Article 32(3) TUA). As a second method, the union board may decide that the maximum number of protected workers should be determined in relation to the general number of members of given union organisation. In such a case, the more trade union has members, the more functionaries may be protected from termination (Article 32(4) TUA).

It is also important to explain which workers are eligible for special protection. Under the TUA, it is possible to protect following trade union's functionaries:

a) a member of the board of management (Article 32(1)1() TUA);
b) other worker being a member of the enterprise trade union organization, who is empowered to represent the organization in relation to the employer, the body or the person representing employer in labour law matters (in case of failure to adopt relevant resolution)(Article 32(1)1() TUA);
c) the chairperson of the company trade union organization or the chairperson of the founding committee (Article 32(8) TUA);
d) no more than three workers listed in a resolution of the founding committee (in a

[35] The judgment of the Supreme Court of 23 February 2005, III PK 77/04, Legalis No 71094.

case of newly established organization (Article 32(7) TUA);

e) a worker elected to perform specific union functions outside the enterprise, who use unpaid leave or is released from performing work in order to perform those functions (Article 32(9) TUA).

3.4. Controversy

Lastly, it is also worth to note that there are two extremely different views on the limits of the special protection of trade union activist covered by Article 32 TUA.

On the one hand, it is claimed that workers covered by special protective measures enjoy granted protection regardless of their acts that may be considered as violation of laws and worker's obligations[38]. As argued, due to formal effectiveness of granted protection, such functionary cannot be dismissed without prior authorisation of the union's board even if his actions constitute a serious breach of employee's fundamental duties.

On the other hand, it is also argued that discussed protective measures should not be regarded as absolute privilege[39]. Such opinion is often motivated by a statement that granted protection should not be abused in order to obtain irremovable status in working relation. Therefore, workers abusing granted protection in order to breach their fundamental working duties should not be effectively protected (in conjunction with article 8 of the Labour Code). In such a case, an employer should be able to legally terminate working relationship with protected worker even without obtaining prior authorisation of the union's board or after obtaining its negative opinion[40].

4. Special protection of sustainability of an employment relationship of members of workers' council

Under Article 17 of the Act of 7.04.2006 on informing and consulting employees[41], an employer shall not – without the prior permission of worker's council, terminate or unilaterally change working or pay conditions[42] of the employment relationship of an employee being a member of that council. The protection lasts for the period of the membership in the worker's council and is granted to all its members.

5. Special protection of sustainability of an employment relationship of members of social labour inspectors

Under Article 13 of the Act of 24.06.1983 on the Social Labour Inspection[43], an employer shall not terminate the employment relationship of an employee performing function of a social labour inspector. It is also legally forbidden to unilaterally change working or pay conditions to the detriment of the social labour inspector. The protection lasts for a term of his office and for additional one year after its expiration.

However, it is legally acceptable to terminate without notice the employment relationship with a social labour inspector when there are circumstances enabling employer to terminate such relationship without a notice.

[38] The judgement of Supreme Court of 13 March 2019, II PK 305/17, Legalis No 1883283.

[39] Związkowiec wyjątkowo i rażąco naruszający obowiązki pracownicze może zostać zwolniony – Chałas i Wspólnicy, https://www.chwp.pl/nasze-publikacje/zwiazkowiec-wyjatkowo-i-razaco-naruszajacy-obowiazki-pracownicze-moze-zostac-zwolniony/

[40] The judgement of Supreme Court of 24 May 2001, I PKN 410/00, Legalis No 56122.

[41] Journal of Laws No. 79 item 550.

[42] To the detriment of the protected functionary.

[43] Journal of Laws No. 45 item 163.

These are: serious breach of employees basic duties, committing a crime during employment that makes further employment impossible, culpable loss of professional license required to perform work or long absence at work (Articles 52 and 53 of Labour Code).

In such a case, an employer may terminate the employment relationship with the social labour inspector after obtaining explicit consent of competent authorities of the enterprise trade union organisation.

Chapter V. Importance and position of non-union forms of workers' representation

1. Legal relationship between the various workers' representations

1.1. Preliminary remarks

Non-union forms of workers' representation do not enjoy such clear and strong constitutional guarantees. Therefore, these are not institutions as deeply rooted in and protected in the Polish legal system as trade unions, which in the event of a limitation of their rights by the legislator may subject such regulation to the control of the Constitutional Tribunal.

Due to the relatively low level of unionisation in Poland, the doctrine sometimes expresses a view to promote alternative forms of worker representation[44]. It is difficult to treat non-union forms of workers' representation as a real alternative to trade unions, which enjoy undisputed status and a broad spectrum of competences. It is also symptomatic that the ability to operate within the framework of non-union representations excludes persons employed under civil law contracts. According to the statistics for 2018, in case of Poland, 8.2 % of employed persons were performing it exclusively on the basis of a civil law contracts[45]. This number is predicted to increase.

In this chapter, which analyses the competences of alternative representations, the attention will focus primarily on competences, rights and power that differentiate non-union forms of representation in undertakings from trade unions. These differences can be associated with relatively limited field of operation and narrow list of competences that enables workers to act within specialised representations in order to protect and promote specific interests and protect specific rights. Participation in the trade union movement is never a premise that excludes joining another representation.

It is also important to bear in mind that non-union forms of representation function parallel to trade unions and participation in such alternative organisations should not contradict worker's engagement in union movement.

Figure 2. The number of employed persons, employees and mandate and civil-law contractors in years 2012-2018 in Poland (in millions)

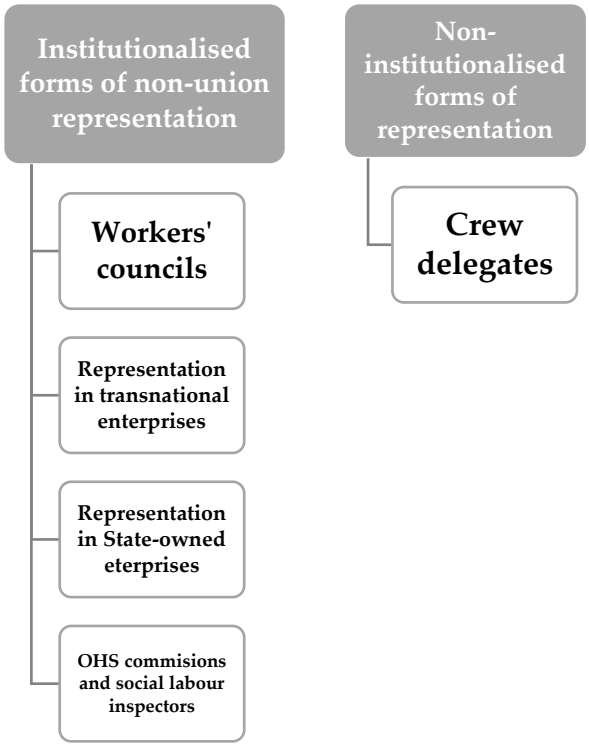
Specification	2012	2013	2014	2015	2016	2017	2018
Employed persons	14,17	14,24	14,56	14,84	15,29	15,71	15,9
			of which				
Employees	10,34	10,41	10,67	10,86	11,25	-	-
Mandate and specific work contractors	1,35	1,40	1,30	1,30	1,25	1,20	1,30

Source: Own calculations based on *Wybrane zagadnienia rynku pracy*, Notatka Informacyjna, GUS, Warszawa 3.01.2018, p. 2, *Rocznik statystyczny pracy 2017*, GUS, Warszawa 2017, p. 22-23 and Employment in national economy 2018, GUS 2019, p. 14

[39] J. Wratny, *Rola pozazwiązkowych przedstawicielstw pracowniczych w zakładzie pracy. Kontynuacja czy zmiany w okresie kryzysu*?, „Problemy Polityki Społecznej. Studia i Dyskusje"2009/12.

[40] *Wybrane zagadnienia rynku pracy*, Notatka Informacyjna, GUS, Warszawa 3.01.2018.

In the Polish system of collective labour law, institutionalised (formalised) and non-institutionalised (informal) forms of non-union representation can be distinguished. Such distinction is based on two following criteria – specific legal structure and form of establishment and legal recognition. There are following forms of institutionalised forms of representation: workers' councils, European Works Council and special negotiating bodies, formalised representation in State-owned enterprises and occupational health and safety commissions and social labour inspector.



1.2. Institutionalised forms of workers' representation

1.2.1. Workers' council

The legal position of workers' councils is regulated by the Act of 7.04.2006 on informing and consulting employees.

This institution is established in the case of employers conducting business activity employing at least 50 employees. These premises turn out to be controversial. It is estimated that nearly 9,7 mln people are employed in sector of micro and small enterprises, amounting to 59 % of total employment in Poland[46]. Another problem is that many of biggest employers dominated by foreign capital are not formally engaged in business activities in Poland but only "help" or "serve" their parent companies functioning abroad.

The first important issue allowing to distinguish the workers' councils from the organisational form of trade union is the number of members. In trade unions, even though only a very narrow group of members are often functionaries, there is no limit to the general number of members. In the case of the workers' councils, the membership thresholds are determined by the general number of

[46] Raport o Stanie Sektora Małych i Średnich Przedsiębiorstw w Polsce, Warsaw 2019.

workers employed in undertaking. The council consists of:

a) **three members** – in case of 50 to 250 workers employed;
b) **five members** – in case of 215 to 500 workers employed and
c) **seven members** – in case of over 500 workers employed in undertaking (Article 3).

The members of the council are chosen by employees from among candidates put forward by them[47]. Each candidate has to be supported by a group of at least 10 workers (20 in case of employing over 100 workers). In order to organise election, a written request of at least 10% of workers employed in undertaking has to be presented. Elections are organised by the employer, who is obliged to inform workers about the date of elections, which should be held no earlier than 30 day after the notification. Since the day of notifications, workers have 21 days to propose in writing supported candidates for the Council (Article 8).

The act clearly identifies workers entitled to vote in elections and workers eligible for elections (Article 9). The general principle is that every worker shall have the right to participate in elections as a voter. There is only one exception addressed to young employees. In case of eligibility for elections, only employees working continuously for at least one year are entitled to stand as a candidate to the worker's council.

There are also other restrictions, under which certain categories of employees are deprived of the right to stand in elections. Such ban concerns managers of the establishment, chief accountants, legal counsels and young workers, who (except for young workers) perform certain activities in the name of employer in employment relationships.

The election of members for the workers' council are held by the election committee (Article 10). The composition, appointing and operational rules regarding the election committee should be defined in specific regulations adopted by the employer and agreed with crew delegates. Failure to reach agreement within the deadline of 30 days since the day of presentation of the regulation draft enables the employer to adopt the regulations on his own, taking into account already agreed provision. The election shall be held on a working day, if possible, at a general meeting of workers or in any other way provided for in the regulations, not later than 30 days from the date of its determination. Elections of staff members shall be direct and by a use of secret ballot. Elections are valid if at least 50 % of the workers employed by the employer participate. In a case of failure to meet this 50 % threshold, a re-election shall be held 30 days after the date of the election. The re-elections should be considered valid regardless of the number of workers who participated.

The members of the workers' council shall be the candidates who receive the highest number of votes. In a case of receiving equal number of votes and only one seat to be filled, the re-election for this seat should be organised. Each member of the workers' council is appointed to a four-year term of office (Article 11). Members of workers' councils are covered by the special protective measures, that are discussed in Chapter IV.

The basic competence of the workers' council is the right to obtain specific information and data from the employer. The

[47] It is worth nothing that before the 2009 reforms, workers' councils were often elected by representative trade union organisations. Such a mechanism was often criticized especially by some smaller unions organisations, which had no impact on both establishing and functioning of councils. Such statutory provision declared unconstitutional by the Constitutional Tribunal in its judgement of 1 July 2008, K 23/07, Legalis 100243.

essence of this right is the obligation of the employer to provide information on:

- the activity and economic situation and the expected changes in this respect;
- the state, structure and expected changes in employment and activities aimed at maintaining the level of employment;
- activities that may cause significant changes in the organization of work or the basis of employment - at the written request of the council of employees (Article 13).

Therefore, the Council has access to accurate financial documentation, which is essential for formulating postulates and negotiating terms and conditions of employment by the crew.

The employer shall provide the information in time, form and scope to enable the workers' council to review the matter, analyse it and prepare for consultation (in matters related to the economic and employment situation) (Article 13(2)). In particular substantiated cases, the employer is entitled to refuse to provide the council with information (Article 16). This concerns a situation in which disclosure of such information could substantially disrupt activities of the undertaking or expose it to the risk of substantial damage.

It must also be taken into account that that members of the workers' councils are not legally obliged to share obtained information with regular employees[48]. This was noted in the judgment of the Constitutional Tribunal of 1 July 2008, K 23/07[49], which influenced the decision on the unconstitutionality of provisions on determining the composition of the council directly by trade unions. This situation may give rise to doubts as to whether, the national legislator has adequately implemented Directive 2002/14/EC, from which the right to information should be guaranteed to all employees and not only to their elected representatives.

The second pillar ensuring proper functioning of the workers council is the obligation of an employer to consult with the council matters concerning:

- the state, structure and expected changes in employment and actions aimed at maintaining the level of employment;
- actions that may cause significant changes in the organisation of work or the basis of employment (Article 14).

Such consultations shall meet adequate legal standards referring to time-limit, form and extent enabling the employer to take proper actions related to matters covered by the consultations. It is also important to assure that consultations are organised at the appropriate level of management and in a way assuring that proper agreement is possible to be reached between the workers' council and the employer.

To perform its tasks, the council may use assistance of experts. This competences will be particularly important in the case of councils operating in large enterprises, where the participation of specialists in the field of microeconomics, finance and accounting is necessary for making appropriate decisions. That is why it is so important to adopt appropriate agreements laying down the rules for the work of the council, ensuring smooth cooperation with such experts and ensure their proper remuneration.

Despite the fact that on constitutional grounds the right to conclude collective labour agreements and other agreements has been reserved to trade unions (Article 59(2) of the Constitution), also the workers' councils may

[48] J. Wratny, *Rady Pracowników. Geneza, Stan Obecny, Perspektywy', in: Demokracja w Zakładzie Pracy*, Z. Hajn (ed.) and M. Kurzynoga (ed.), Warsaw 2017.

[49] The judgment of the Constitutional Tribunal of 1 July 2008, K 23/07, Legalis 100243.

conclude specific collective agreements with the employer. This right is guaranteed under Article 14(2)(5) of the Act, which points out the importance of carrying out consolations in the manner providing "the opportunity to reach an agreement between the employee council and the employer". Interestingly, this could be a contribution to the dispute between the workers' council and trade union, as there could be a situation where two representations settle something in conflict[50].

In practice, where trade unions operate in given undertaking, it is impossible to completely separate functioning of the workers' council from influence of union movement. It is highly probable that in such case the composition of the council will be dominated by trade union organisations, which – due to own membership base – have facilitated procedure of gathering support in the elections to the workers' council. Participation of union's members in the workers' council is profitable for the organisation, as it may be used as other source of special protection for additional members. In such a case, a greater number of trade union activists will be able to conduct trade union activities without fear of losing their jobs for this reason.

Finally, it is also worth pointing out that there is decreasing trend in the number of functioning workers' councils in Poland. It is estimated that since 2006 the number of councils decreased from 3100 to 524 in 2015[51].

1.2.2. European Works Council and other forms of participation in transnational undertakings

The European Works Councils has been introduced to the Polish legal system by the Act of 5.04.2002 on European Works Councils[52]. This Act implemented Directive 94/45/EC, which proves that discussed forms of representation have informative and consultative character.

As stated in Article 1, the Act defines "the rules for the establishment and operating of the European Works Councils and the procedure for informing and consulting the employees in community-scale undertakings and group of undertakings". There are two different forms of collective representation regulated in the Act. These are: special negotiating bodies and the European Works Council. Each of indicated form has its own, specific tasks and functions.

The special negotiating bodies are established in order to conclude (on behalf of employees) an agreement with the central management on establishment of the European Works Council or in order to determine agreed form and procedure for informing and consulting employees engaged in Community-scale undertakings and group of undertakings (Article 6). Members of the special negotiating body are elected or appointed in proportion to the number of employees employed in each Member State by a Community-scale undertaking or a group of Community-scale undertakings.

It should be noted that trade unions have statutorily guaranteed impact on the composition of the special negotiating bodies, as in case when the employees are employed in Poland within one establishment being part of the Community-scale undertaking or a group of Community-scale undertakings, the members of the body representing Polish employees are chosen directly by the representative company trade union. Only when there is no trade union

[50] M. Lekston, Art. 14 Konsultacje z Radą Pracowników [in:] *Komentarz Do Ustawy o Informowaniu Pracowników i Przeprowadzaniu z Nimi Konsultacji, [in:] Zbiorowe Prawo Zatrudnienia. Komentarz*, K. Baran (red.), Warsaw 2019.

[51] P. Ciompa, R. Górski, M. Jankowska (ed.), M. Skóra, J. Wratny, *10 lat rad pracowników w Polsce. Co dalej*?, Instytut spraw obywatelskich, Łódź 2016.

[52] Journal of Laws No. 62 item 556.

in the undertaking, discussed competence shall be transferred directly to employees (Article 8).

However, the key role in representing employees within Community-scale undertakings should be attribute to the European Works Councils. The Council is established either under terms and conditions defined in the agreement on the establishment of the council or under terms and conditions defined directly in the Chapter 4 of the Act.

The European Works Council has specific competences, which are directly connected to the field of consulting and informing employees engaged in the Community-scale undertaking. Firstly, the Council has the right obtain information and carry out consultations concerning the whole Community-scale undertaking or group of undertakings or at least two undertakings located in different Member States (Article 28). Secondly, the central management is obliged to organise a meeting with the Council at least once a year in order to present information on the economic situation and the prospects of the progress of the undertaking and in order to consult presented data (Article 29). Information and consultation during the meeting should, in particular, concern following issues:

- the structure of the undertaking or group of undertakings,
- economic and financial situation, the probable business development including production, sales and investments,
- the situation and probable changes in employment,
- introduction of crucial organisational changes;
- introduction of new working methods or production processes,
- relocation of the undertaking or its substantial part or establishment and transfers of production to another undertaking,
- planned mergers and divisions of undertakings or establishments;
- reduction of or closure of undertakings, establishments or of its important parts,
- collective redundancies.

It is also worth to note that according to data coming from the NSZZ Solidarność, employees from Poland participates or participated in 187 European Works Councils[53], while there are over 800 companies with foreign control[54] operating on the Polish market[55].

Finally, it is equally important to point out that there are also other forms of employees' participation in community-scale undertakings. Certain provisions guaranteeing right to employees' information, consultation and participation can be also found in the acts regulating the legal status of the European Company[56], the European Cooperative Society[57] and cross-border companies[58]. In case of each act, it is guaranteed that employees are represented by a special body. This specific representative formula is composed of members directly designated by the staff of the undertaking and it operates under rules and conditions defined in the specific agreement. The members are covered by the special protection mechanisms.

[53] K, Mis, 'European Works Councils in Poland and the Europeanization of the NSZZ Solidarność Trade Union. [in:] *Interest Representation and Europeanization of Trade Unions from EU Member States of the Eastern Enlargement* Stuttgart 2015, p. 139–60.

[54] Data for 2016.

[55] D. Cybulska and A. Piotrowska, Grupy Przedsiębiorstw w Polsce w 2016 r., Główny Urząd Statystyczny, Warsaw, December 2017.

[56] The Act of 4.03.2004 on the European Economic Interest Grouping and the European Company, Journal of Laws No. 62, item 551.

[57] The Act of 22.07.2006 on the European Cooperative Society, Journal of Laws No. 149, item 1077.

[58] The Act of 25.04.2008 on the participation of employees in the company resulting from the cross-border merger, Journal of Laws No. 86, item 525.

1.2.3. Formalised representation in state-owned enterprises

This specific formula of representation was won by NSZZ Solidarność in the 1980s. It is a representation referring to the principle of workers' participation in the management of the undertaking and the concept of employee share ownership.

In case of the principle of participation in the management, it is claimed that certain statutory provisions should ensure worker's impact on internal affairs of the State-owned enterprise. Such concept has been adopted in the Act of 25.09.1995 on the Self-Government of the Crew of the State-Owned Enterprises[59]. The self-government of the crew has specific tasks, which covers, in particular, co-deciding in important matters of an enterprise, expressing opinions, taking initiative and requesting and exercising control over the enterprise's activities (Article 1(2)). The self-government has specific structure that is made up of two following bodies:

- The General Meeting of employees that is responsible for shaping the statue of the enterprise, sharing the profit intended for the crew, presenting annual evaluation of the enterprise and adopting multiannual plans of operation (Article 10) and
- The Works Council of the Enterprise that is responsible, in particular, for accepting annual balance sheets and reports and for deciding in the fields related to investments, changing organisational form of the enterprise, merging and division or changing future directions of activities (Article 24);

However, it should be taken into account that discussed form of the representation can only function in the State-owned enterprises, the number of which is continuously reduced[60]. Reasons for this is the constant process of deindustrialisation and privatisation of state enterprises connected with the consequences of political and economic transformation after 1989.

The negative consequences of privatisation were supposed to be mitigated by the application of instruments proposed in the Act of 30.08.1996 on Commercialisation and Privatisation of Undertakings and in the Act of 30.08.1996 on Commercialisation and Certain Rights of Workers[61]. These acts were supposed to assure that the supervisory boards of companies established as a result of commercialization of the State-owned undertakings should be composed of at least five members, of which two-fifth shall be elected directly by the employees (Articles 11 and 12 of the Acts). However, such statutory guarantees could be applied to a limited number of enterprises, of which majority experienced series of privatisation abuses, asset stripping, hostile takeovers and bankruptcies in first years of transformation in Poland[62].

1.2.4. Occupational health and safety commissions and social labour inspectors

The legal position of occupational health and safety commission is regulated in Article 237^{12} of the Labour Code.

It is a specific form of workers representation that can be established and function only within large undertakings, as under Article 237^{12} of the Labour Code, the OHS commission can be established only be an employer who employs more than 250 employees. The OHS commission has specific character, as it is composed of representatives of both employees (including a social labour

[59] Journal of Law No. 24 item. 123.
[60] There were only 31 State-owned enterprises in 2019, of which a significant part were in liquidation or bankruptcy.
[61] Journal of Law No. 118 item 561.
[62] A. Karpiński. S. Paradysz, W. Żółtkowski, P. Soroka,, *Od Uprzemysłowienia w PRL Do Deindustrializacji Kraju*, Warsaw 2015

inspector) and employer (including the OHS service employees and a doctor providing preventive health care for employees).

The OHS commission is responsible for:

- reviewing working conditions,
- periodically evaluating the state of health and safety at work,
- issuing opinions on measures taken by the employer to prevent accidents at work and occupational diseases,
- formulating conclusions on the improvement of working conditions and
- cooperating with the employer in the performance of his duties in the field of health and safety at work.

It is also worth noting that the commission is strongly linked with the trade union movement, as it is guaranteed under Article 237[13] of the Labour Code that employees' representatives to the commission shall be appointed – in the first place – by trade unions functioning in given undertaking. At the same time, those representatives may be appointed directly by employees - in the mode adopted in the work established – only if there are no trade union organisations functioning there.

There is also other workers' representation in the field of occupational health and safety that takes the form of the Social Labour Inspector, which has been introduced under the Act of 24.06.1983 on the Social Labour Inspectorate[63]. The basic task of the Social Labour Inspectorate is to ensure safe and healthy working condition and protect related rights and interest of employees. These tasks are carried out by the Social Labour Inspectors, who are appointed directly by employees (Article 6) from among individuals employed in the undertaking who are also members of the enterprise trade union (Article 5)[64].

The Social Labour Inspectors has specific competences that are defined in the Act and other relevant bills. These competences, in particular, are: controlling working conditions from the perspective of OHS standards, controlling of the compliance with the labour law provision (especially in the fields related to OHS, protection of young workers, employees having children, disabled, working time, holidays, occupational diseases and working accidents), participating in the control of the compliance with the environmental provision in the undertaking, participating in the analysis of the causes of working accidents and assessing plans focused on improving OHS conditions (Article 4). Social Labour Inspectors are covered by special protective measures[65].

1.3. Non-institutional forms of workers' representation

1.3.1. Crew delegate

The nature of the construct of the Crew delegate is to be represented by a person appointed to representative function directly by the entire crew. Such form of workers' representation is not popular in industrial relations in Poland as its functioning is limited only to those undertakings where trade unions do not operate. Thus, the crew delegate can be considered as a form of replacement or alternative to trade unions in regard to specific fields of workers' representation.

There are two types of non-institutional representatives: incidental (*ad hoc*) or permanent (requiring internal regulation)[66]. Examples of the delegate's competences include: consulting all activities related to health and safety, establishing a list of hazardous works or determining the distribution of working time and extending the settlement period.

[63] Journal of Laws No. 35 item 1983.

[64] Trade union's authorities may also resign of the membership requirements of candidate.

[65] See Chapter IV.

J. Stelina, *Rozdział XIX. Zbiorowe Prawo Pracy* [in:] *Prawo Pracy*, 4th ed., Warsaw 2018.

It is also worth noting that crew delegates are not covered by the special protection of employment relationship, which makes them vulnerable to discrimination and reluctance of the employer. Furthermore, there are no statutory provisions determining transparent and objective procedure of appointing crew delegates. These two factors together are the main causes for incidental character and rare presence of the crew delegates in the Polish undertakings.

Chapter VI. Competencies of trade unions and other forms of workers' representation

1. Workers' representations participating in collective bargaining and collective agreements

The right to collectively bargain and conclude collective labour agreements is guaranteed at the constitutional and statutory levels of the Polish legal system. According to Article 59(2) of the Constitution and Articles 241[14] and 241[23] of the Labour Code, collective labour agreement can be negotiated and concluded – on the side of workers – only by a trade union.

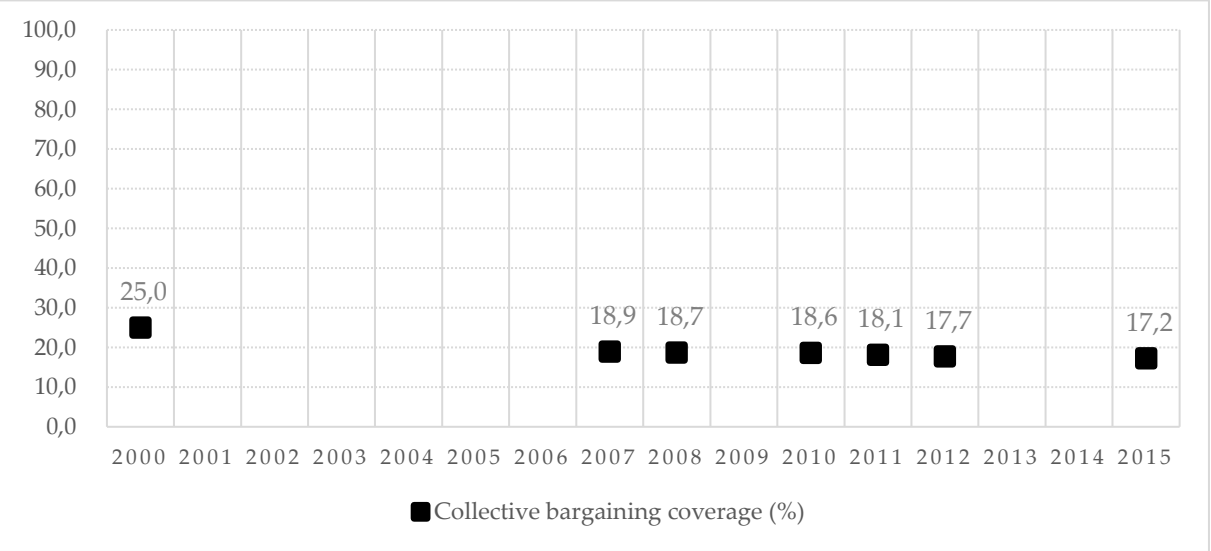
There are two types of collective agreements:

- multi-enterprise (sectoral) collective agreements, where more than one employer is involved and
- enterprise (company-level) agreements, where only one employer is involved).

Indicated distinction affects the form in which trade unions operate within the legal procedure of bargaining and conducting collective agreements. Sectoral agreements may be concluded only by the appropriate statutory body of a multi-enterprise trade union, acting for employees (Article 241[14] of the Labour Code), while company collective agreement can be concluded by an employer and an enterprise trade union (241[23] of the Labour Code).

Concurrently, there are no similar statutory or constitutional guarantees addressing the right to bargain to other forms of worker's representation in undertaking. Therefore, trade unions should be regarded as a sole representative of working people in the field of bargaining and conducting collective labour agreements. Consequently, there is statutorily guaranteed monopoly of union movement in the discussed field of collective action. Such legislative policy combined with progressive decline in the level of unionization of Polish labour market today result in drastically low collective agreement coverage of the Polish labour market.

Figure 3. Collective bargaining coverage (%) of the Polish labour market in years 2000-2015.



Source: OECD Stats, https://stats.oecd.org/Index.aspx?DataSetCode=CBC

Absence of alternative forms of workers' representation leads to the small amount of concluded collective agreements and its limited flexibility, as social partners are not willing to amend existing agreements. It is regrettable that collective agreements are not widely used and restricted only to trade unions. It should be noted that the Labour Code provides great opportunity to regulate certain issues more favourable for both employers and employees[67] and such opportunity should be guaranteed also to alternative employees' representative bodies.

2. The concept of representative trade union in the Polish labour law

Since the 1990s, labour relations in Poland have been characterised by trade union pluralism. As a result, there are no legal constraints in terms of establishing alternate trade union organisations in the same undertaking. Theoretically, an infinite number of trade unions can operate within the same undertaking.

Clearly, unrestricted union pluralism have damaging effect on industrial relations and may be linked with such issues like fragmentation of national union movement, weak bargaining position of workers' representatives or general chaos in relations with employers.

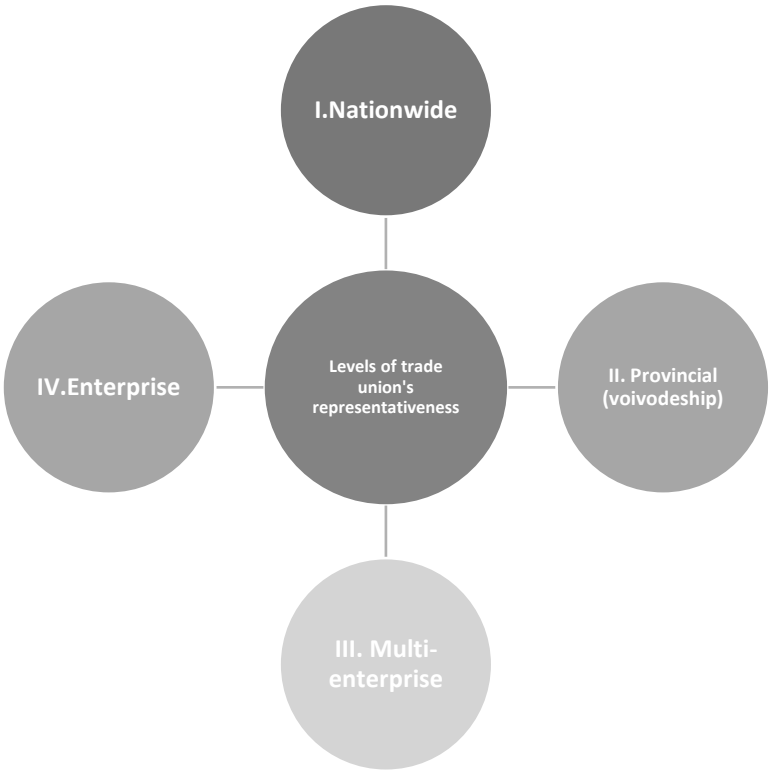
In case of the Polish legal system, negative consequences of the unlimited pluralism are partially mitigated with the use of the concept of representative trade unions, that allows to identify organisations that are most capable of representing all workers in the undertaking. Granting the status of representative trade unions means that given organisation – due to its size, popularity and structural associations – gives potentially the best possible assurance of representing all workers and gathering the strongest support from the crew. Labelling given trade union as the representative one leads to differentiation in terms of statutory competences and powers granted, as there are specific rights that are granted only to trade unions enjoying the status of representativeness.

The concept of representativeness adopted in the Polish legal system has complex nature. While it is based primarily on simple criteria of the number of members gathered by the organisation, it should be also noted that there are different levels of representativeness, which are determined by different rules. There are four levels of representativeness – nationwide, provincial (voivodeship), multi-enterprise and enterprise.

Rules of identifying representative trade unions at national and provincial levels are defined in the Act of 24.07.2015 on the Council of Social Dialogue and other social dialogue institution[68]. At the highest level, only nationwide trade unions, federation and confederation can be declared representative, provided that such organisation has more than 300,000 members being persons engaged in gainful work and it operates within the national economy entities, which basic activities correspond with more than a half of sections defined in the Polish Classification of Business Activity (Article 23). The status of nationwide representativeness is granted by the District Court in Warsaw within 30 days of the date of submitting relevant application.

[67] This concerns e.g. the possibility of paying remuneration for work partly in a form other than in cash, regulating a break in work up to 60 minutes, determining a different number of overtime hours in a calendar year than specified in the Labour Code, or introducing interrupted working time.

[68] Journal of Laws item 1240.



Only nationwide representative organisations are able to enjoy specific list of competences. For instance, only such organisations may participate in the Council of Social Dialogue, which gives them exclusive possibility to co-determine future of national labour market. Furthermore, they have exclusive right to:

- present formal opinions about government's drafts of bills, programmes and strategies;
- request public hearings;
- prepare own draft of legal acts, which must be proceeded by the Parliament;
- direct binding questions to relevant members of the Government, ministers,
- request for justified legislative action (amendment or new bill) and
- request the Supreme Court to resolve a legal issue (Articles 3-15).

At the provincial level, the status of representative unions has been reserved only for the nationwide representative organisations, as only organisations enjoying such status are entitled to appoint representatives to the Voivodeship Councils of Social Dialogue (Article 41). Therefore, only specific nationwide organisation are able to shape realities of social dialogue at provincial level.

There are different rules regarding the process of granting representative status at multi-enterprise and enterprise levels, which are defined in the Article 25^2 and Article 25^3 TUA. At multi-enterprise level, in order to be declared as the representative organisation, given trade union should either:

- enjoy the status of nationwide representative organisation in the meaning of the Act on the Council of Social Dialogue and other social dialogue institution or
- associate at least 15% of persons engaged in gainful work, but not less than 100,000 or
- associate the biggest number of persons engaged in gainful work that are to be

covered by the collective agreement (Article 25[2]).

The status of multi-enterprise representativeness is granted by the District Court in Warsaw within 30 days from the date of submitting relevant application.

At enterprise level, in order to be declared as the representative organisation, given trade union should :

- associate at least 8% of persons engaged in gainful work that are employed in the enterprise (in case of organisational units of the nationwide representative organisations) or
- associate at least 15% of persons engaged in gainful work that are employed in the enterprise (Article 25[3])(in other cases).

In case of no trade unions associating specified above percentage of working people, there is also subsidiary rule that allows to award the status of representativeness to the trade unions associating the biggest number of persons engaged in gainful work employed in the enterprise.

It is also worth noting that the representativeness of enterprise organisation is determined in specified procedure that is based on a simple declaration of a number of associated members. Each organisation is required to share with the employer information about associated members twice a year. The employer and other trade unions operating within the same enterprise are entitled to raise objections regarding declared number of members associated in given organisation. In such a case, questioned organisation have 30 days to request the competent court to verify declared number of members (Article 25[1]).

3. Workers' representations entitled to industrial action

As in the case of the right to collective bargaining, the right to industrial actions is also reserved for trade unions only. Trade unions are designated as the sole and only representation of workers in the process of industrial action. The national legislature has been very clear on this point, as under Article 59(3) of the Constitution, only "trade unions shall have the right to organize workers' strikes or other forms of protest" and under Article 2(1) of the Act of 23.05.1991 on Resolution of Collective Labour Disputes[69], the collective rights and interests of workers during a collective dispute may be represented only by trade unions.

This state of affairs may be controversial due to the fact that trade unions do not operate in the majority of workplaces in Poland, and the organization of the industrial action is directly connected with striking. Strike, and therefore the most characteristic form of workers' industrial, is a basic tool for workers' struggle to set appropriate employment standards. The right to strike should have universal character and should be available to all workers, regardless of functioning of trade unions in given undertaking.

The principle of dialogue and cooperation of social partners as one of the pillars of the social market economy was adopted under the Constitution in order to protect public life in Poland from relations based on conflict (characteristic to "wild capitalism"). Such goal was supposed to be achieved through assurance of workers' active participation in shaping economic and industrial standards. This active participation of working people has crucial meaning for the Polish society, as many people remember times of the People's Republic

[69] Journal of Laws No. 55 item 236.

of Poland, when the right to strike, then illegal, was one of the leading postulates and slogans of Solidarity movement.

Naturally, it cannot be assumed that the legislator has violated the Constitution or international law by reserving the competence to industrial action only to trade unions. However, granting such power also to other forms of workers' representation would certainly strengthen workers' position in industrial disputes and enable them to more effectively protect common interest. There is no need to introduce complex reforms, as other workers' representations would have no procedural problems with bargaining, mediation, referendum and the strike itself. Such a representation would not necessarily have to be institutionalised.

In discussions on this topic, the example of a "strike committee" is often proposed. This specific form could emerge in industrial disputes in the case of absence of a trade union organisations in given undertaking[70]. However, such a solution would have to be accompanied by more far-reaching changes in labour law, in particular regarding the competence to conduct collective agreements.

There are counterarguments to such idea, as it is often highlighted that in the Polish legal system only trade unions can afford to participate in industrial action, as it is the only organisational form that is able to establish strike funds, cover potential costs of action and that comes with special protective measures for individuals engaged in industrial action.

[70] M. Kurzynoga *Warunki legalności strajku*, Warsaw 2011.

Chapter VII. Workers' representation in small enterprises

1. General remarks

According to Article 20 of the Constitution of the Republic of Poland, the basis of the economic system of the Republic of Poland is the social market economy based on the freedom of economic activity, private ownership, but also solidarity, dialogue and cooperation between social partners.

The constitutional principle of solidarity, dialogue and cooperation of social partners is implemented, *inter alia*, through statutory guarantees of the freedom of association. However, this principle is not fully effective in all sectors of enterprises functioning in Poland. It should be noted that especially workers engaged in small enterprises do not have adequate legal guarantees to engage in the collective initiative[71].

The model of industrial relations in Poland is based on the enterprise trade unions that have been designed as the pillar of national union movement. The enterprise trade union has scope of action limited to only one undertaking and one employer, ensuring that potentially all workers at the lowest level of industrial relations have access to collective representation[72].

However, the legislator's intentions are not compatible with all statutory measures adopted in the Trade Union Act. For instance, adoption of the statutory requirement of at least 10 individuals necessary to establish trade union (Article 12(1) TUA) has caused that the entire group of workers employed in the sector of micro-enterprises is excluded from the basic guarantees of the freedom of association.

It should be noted that the vast majority of entrepreneurs in Poland operate in the form of micro-enterprises employing less than 10 people[73]. According to the data coming from the Central Statistical Office, in year 2016 there were 3 957 151 persons employed in 2 004 047 microenterprises[74]. In such realities of the Polish economic system, it is extremely difficult and often impossible to gather at least 10 workers ready to take collective initiative.

As a result, many employees, in particular in the private sector, experience significant constraints or even are cut off from union's representation and protection. Furthermore, it is important not to ignore the fact that the enterprise trade union is the only organizational form that enables workers to collectively bargain or initiate most forms of industrial action. The existence of trade union activity in practice depends not only on the establishment of an enterprise trade union, but also on the assembly of at least ten employees. Consequently, such uniform threshold is considered as the cause of weak trade union presence in some sectors, especially in the sector of small and medium-sized enterprises.

On the other hand, the specificity and nature of relations between workers and employers engaged in small enterprises cannot be ignored. The smallest undertakings are characterized by uncomplex structure and close links between individuals, leading to less formal and more personal relations between employer and workers[75]. In the field of industrial relations such specificity often results in the fact that there is no need among workers to establish institutional representation of their working rights and interest, as each one of them can effectively represent her or his interest individually.

[71] M. Łaga *Delegat załogi oraz delegat związku zawodowego jako partnerzy w zakładowym dialogu społecznym - uwagi de lege ferenda* (in:) J. Stelina (red.) *Zakładowy dialog społeczny*, Warsaw 2014, p. 112

[72] M. Skąpski *Labour Law* (in:) W. Dajczak, A. J. Szwarc, P. Wiliński *Handbook of Polish Law*, Poznan 2011, p. 567

[73] G. Goździewicz, *Ogólna charakterystyka stosunków pracy u małych pracodawców*, Warszawa 2013, p. 21–23.

[74] *Activity of enterprises with up to 9 persons employed in 2016*, Statistical Information, Warsaw 2018, p. 54 - 65

[75] T. Oleksyn, *Zarządzanie potencjałem pracy w małych i średnich przedsiębiorstwach – istota, specyfika, wyzwania*, PiZS 1/2003, p. 2-6.

2. The inter-enterprise trade union as an alternative for workers in the sector of small enterprises

However, it is worth noting that it is not always necessary to establish an enterprise trade union in order to enjoy fundamental union's powers, as under Article 34 TUA it is also possible to establish the inter-enterprise trade union that enjoys similar status. The inter-enterprise trade unions can be described as an organization, whose operating range is not limited to only one undertaking.

It is the organizational form that enables workers employed by different employers (at least two) to establish own and "shared" organization. The legal requirement of at least 10 members necessary to found trade union organization and maintain its fundamental powers is still binding, but in the case of the inter-enterprise trade unions this requirement is divided between workers employed in different undertakings (enterprises). In the other words, in order to cover given undertaking by activity of the inter-enterprise trade union, at least one member of the organization must be employed in this undertaking.

Such organizational form of trade union is mainly used in the case of related enterprises (e.g. companies belonging to one group/having one capital).[76] In theory, the form of inter-enterprise trade union can also be considered as an alternative facilitating the process of gathering at least 10 workers in the sector of small enterprises

As highlighted before, theoretically, the organizational form of the inter-enterprise trade union enables given organization to operate in each and every undertaking in which at least one of its members is employed.

Consequently, workers engaged in the sector of small enterprises receive potential opportunity to be collectively represented in relations with the employer by a fully functional organization. In reality, the form of the inter-enterprise trade union does not exploit its potential and it is far more often used as a favourable form of organization in large capital groups or large employers with neighbouring offices, whose employees have clearly similar interests. Unrelated employers – especially engaged in competitive undertakings - are sceptical about the concept of the inter-enterprise trade union, fearing that this form of workers' representation will be used by rivals only to industrial espionage and sabotage.

As a result, the authorities of inter-enterprise trade unions are often subjected to reluctance, distrust and difficult co-operation with employers. The management boards of inter-enterprise unions consisting of workers from other employers are commonly treated as "third parties" "foreign" or "hostile" element[77].

3. The crew delegate as an alternative for workers in the sector of small enterprises.

According to the Labour Code, if no trade union organization operates at a particular enterprise, agreements on some areas must be concluded between an employer "and representatives of the employees chosen in the standard manner adopted by the employer that conclude the agreement".

As it was discussed in the Chapter V, the crew delegate is selected "in the manner adopted by the given employer". It is most

[76] Z. Hajn, *Zbiorowe prawo pracy. Zarys systemu,* LEX 2013

[77] M. Łaga *Delegat załogi oraz delegat związku zawodowego jako partnerzy w zakładowym dialogu społecznym - uwagi de lege ferenda* (in:) J. Stelina (ed.) *Zakładowy dialog społeczny*, Warszawa 2014, p. 113.

desirable to hold free democratic elections with the participation of all employees, as only such manner guarantees that appointed delegate is autonomous and enjoys true mandate from the crew. However, is should be also noted that there are no specific statutory provisions defining standards of such selection.

The provisions of the Labour Code in certain cases oblige employers to cooperate with "representatives of the employees". Thanks to this regulation, workers engaged in undertakings deprived form the union representation still have chance to participate in decision-making process.

Unfortunately, the informal workers' representation in small enterprises, such as "representatives of the employees chosen in the standard manner adopted by given employer" are deprived of any institutional guarantees, including increased protection of the employment relationship. The lack of relevant statutory provisions in discussed field causes that crew delegates have weaker bargaining position and often are ineffective, despite vast possibility of co-deciding about working or remuneration conditions. It must be stated that the formula of the crew delegate is a necessary and reasonable form of representation, but it cannot be considered as an adequate and equal alternative to the enterprise trade union for workers engaged in the sector of small enterprises.

4. Workers' councils

As was presented before, under the Act on Informing and Consulting Employees, the Workers' Council is established in the case of employers conducting business activity employing at least 50 employees. Such legal requirement effectively prevents workers engaged in the sector of small enterprise from establishing discussed form of collective representation.

It should be noted that adopted statutory thresholds significantly reduce effectiveness of functioning of the Workers' councils and weakens the chances of workers to be properly consulted and informed, as the majority of Polish enterprises operate within the sector of small and micro enterprises[78].

5. Summary

It follows from the above considerations that the right of workers employed in the sector of small enterprise to be represented by a collective body is significantly restricted by inflexible legal requirement of the minimum number of founders/members. The discussed problem is also affected by the lack of alternative organizational form of representation in analysed sector. Union movement based on the construct of the enterprise trade union is not able to effectively reach all workers, as the statutory requirement to associate at least 10 individuals has become impenetrable barrier in case of those employed in the micro sector. It is also worth noting that workers employed in smallest enterprises cannot actually exercise majority of rights conferred by collective labour law, as those powers are reserved mainly to trade unions[79]. Introducing alternative form of collective representation of workers - designed to operate effectively in the sector of the smallest enterprises – could potentially reduce observed representation gap. At the same time, apparent absence of appropriate reforms leads to the situation, where the lowest level of unionization can be observed in the sector of small and micro enterprises.

[78] M. Skąpski, *Labour Law* (in:) W. Dajczak, A. J. Szwarc, P. Wiliński *Handbook of Polish Law,* Poznan 2011, p. 568.

[79] G. Goździewicz, *Reprezentacja praw i interesów pracowniczych (ogólna charakterystyka)* (in:) G. Goździewicz (red.), *Reprezentacja praw i interesów pracowniczych,* Toruń 2001, s. 14–15.

Chapter VIII. Recent developments in law and the future of workers representation

1. Introduction

While discussing the problem of the position of trade unions in Poland, it is impossible to ignore the historical experience and attitude of Polish society,

Polish society for many years experienced totalitarianism and authoritarian regime. Such historical experiences did not create appropriate conditions for the development of civic attitudes among Polish citizens. The needs related to sense of belonging and participation in community are realized mainly in families and on amicable areas. Therefore, in view of the widespread aversion to solidarity and collective action, the right to associate is currently treated with mistrust and devoid of much enthusiasm.

The lack of conviction and willingness to actively participate in the ranks of trade unions results in the stagnation and weaker position of the national union movement. The trade union membership base has remained unchanged for many years. Only the last amendment of the Trade Union Act extended the personal scope of the statutory guarantees of the freedom of association. However, a short period of time has passed since its coming into force, so it is difficult to observe its real impact on the trade union activity among society so far.

Aforementioned amendment of the Trade Union Act seems to be the essential minimum that should be done years ago. The range of activity of the legislator should to be broader. It is still necessary to indicate what activities and to what extent trade unions are able to represent interests and defend rights of the new categories of its potential members.

The amendment to the Trade Union Act coming into force on 1 January 2019 did not relate to the issue of trade union structure at all. Recently implemented changes should not be limited only to broaden the access to the right to join and form trade unions, which only continue to strengthen organisational monopoly of discussed form of association. New and alternative forms of collective representation are needed in industrial relations, which is a necessary step to structural and institutional reorganization of collective representation in Poland.

2. Recent reforms of the Polish labour law regarding the role and competences of workers' representation.

The Trade Union Act has been in force since 1991 and there was not any significant reform in this field until the end of 2018 when the personal scope of the Act has been extended considerably. As a result, since 1st January 2019, when introduced amendments came into force, the right to establish or join a trade union organization is granted not only to employees, but also to other categories of workers who were refused access to basic legal guarantees so far.

As it was mentioned before, the main reasons for introducing major reform of union law in Poland were:

- the conclusions of the Committee on Freedom of Association (ILO) presented in the Report No 363 in Case No 2888 against Poland and
- the judgment of the Constitutional Tribunal of 2 June 2015 (Case K 1/13).

Both institutions in issued documents criticized Trade Union Act and indicated that personal scope of such fundamental right as the right to establish and join trade union should not be based on the narrowest group of employees under a contract of employment. In the legal situation existing prior to abovementioned reform, personal scope of the right to establish and join trade union was covered by Article 2(1) of the Trade Union Act. Under the article, the right to establish trade

union and to join union was given only to employees, members of agricultural cooperatives and persons employed under agency contracts if they are not employers.

In the report criticizing such wording of the Act, the Committee on Freedom of Association called the Polish Government for "necessary measures" to be taken "in order to ensure that all workers, without distinction whatsoever, including self-employed workers and those employed under civil law contracts, enjoy the right to establish and join organizations of their own choosing within the meaning of Convention No. 87"[80].

Similar opinion was expressed by the Constitutional Tribunal in the judgement in case K 1/13. The Tribunal stated that discussed provisions of TUA are contrary to the constitutional concept of the freedom of association, as right to establish union and join union shaped in the Act is directly related to the constitutional freedom. As a result, statutory limitations on the discussed right should not impair the very substance of the freedom of association.

In this case, this meant that personal scope of statutory right to establish and join union should not be limited only to specific groups of workers listed in Article 2(1) of the Act. The Tribunal tried to point out that there are also other groups of workers (such as: civil law contractors or the self-employed) that should have the same access to discussed union rights and therefore personal scope of the right of coalition should not be based on absolute condition related to presence of the contract of employment.

After few years of legislative work, a comprehensive reform of the Trade Union Act was adopted and entered into force on 1st January 2019. The reform implemented new approach in determining personal scope of the right of coalition. Instead of exhaustive list of subjects entitled to form own organization and join chosen one, a new concept of "a person engaged in gainful work" has been introduced to the collective employment law system. Under the new version of Article 2(1) TUA, the right to establish union and to join union has been granted to a broad personal category of working individuals.

At the same time, legal definition of a person engaged in gainful work has appeared in the form of newly added Article 1^1 TUA. According to the definition, the concept of a person engaged in gainful work is based on two subcategories of entities:

- **employees** and
- **other persons performing paid work** on a basis other than employment relationship.

Each of indicated personal subcategory has its own understanding. An employee as referred to in Article 1^1 of the Trade Union should be defined in accordance with Article 2 of Labour Code as persons "employed on the basis of an employment contract, an appointment, an election, a nomination or a co-operative employment contract" (Article 1^1(3) TUA).

Concurrently, a person performing paid work on a basis other than employment relationship cannot be simply identified as a category of workers not being employees. The legal status of discussed personal subcategory is determined by four statutory conditions, which have to be met cumulatively. These are:

1) performing paid work,
2) working on another basis than the employment relationship,

[80] Report of the ILO's Committee of Freedom of Association No 363 on Case No 2888 against Poland, March 2012, point 1087.

3) not employing other people for the same kind of work and regardless employment basis and
4) having rights and interest related to carried out activity, which can be represented and defended by a trade union.

In view of the above, there is a broad group of entities that have been granted the right to form and join trade unions under the amendment of Article 2(1) TUA. It is particularly important that such personal subcategories like specific civil contractors (e.g. contract of mandate, a project contract, contract for services) or individuals pursuing specific form of economic (e.g. self-employment) or social activity now can enjoy full right of coalition.

Despite the fact that the status of a person performing paid work *de lege lata* does not refer to persons performing working activity in unpaid form, also this subcategory currently can enjoy relevant statutory guarantees. This is because, under newly added Article 2(4^1) TUA, volunteers, trainees and other persons who perform unpaid work have been granted the right to join a trade union in the cases and under the conditions defined in the union statutes.

3. Proposals of reforms of the law regarding the role and competences of workers' representation.

3.1. General remarks

In the doctrine of labour law and collective labour law in Poland, the researchers argue about direction of future reforms of the Polish legal system in the field of collective representation. There is no doubt that simple extension of personal scope of the right of coalition is not sufficient and satisfactory Further amendments are necessary, assuring the free access of all working people to various and equally competent forms of collective representation.

The need to change labour law and introduce more flexible and diversified model of industrial relations is now commonly emphasised by researchers and social partners. It is pointed out that the system of collective and individual labour law should be more adapted to changing social and economic realities characterised with such phenomenon like constant technological progress, emerging new ways of work, new contracts, growing demand for new, innovative services or the evolution of characteristics of global and European market.

In case of the Polish legal system, future development should be based on liberal approach focused on assuring free access of all working people to all fundamental freedoms and rights, which currently are fully enjoyed only by the narrow group of employees. Above all, it is crucial to accept that the self-employed and civil law contractors in many fields of professional activity do not differ from employees, and should be covered by similar guarantees. Thus, it is frequently argued that legislative focus should be shifted from the labour law (based on the contract of employment) to more universal legal field of the employment law.

3.2. The draft of the "Collective Labour Law Code" and the concept of the union delegate

The most comprehensive and innovative proposals of reforms in the field of labour law are proposed by the Codification Commission on Labour Law. Newest proposals are focused on the concept of the breakdown of the Labour Code to the (individual) Labour Code covering the field of the employment relationship and individual rights of workers and the Collective Labour Law Code covering the field of

collective rights of workers, employers and their representations.

Such concept may be justified, as currently the field of collective labour law is covered by various and separated acts, which causes unnecessary confusion in the legal system. Unification of separated acts in the form of the Collective Labour Law Code might improve the transparency of discussed area of law, making it more accessible and comprehensive for all working people. It would be a great opportunity to introduce desired and postulated reforms. As the consequence of the codification of collective labour law, this area of law would also gain greater recognition of its key role in social, economic and political areas of life in Poland.

However, it should be stressed that current discussion is not limited only to general ideas. For instance, the latest draft of the Collective Labour Law Code contains numerus proposals, of which the concept of the union delegate deserves special attention.

The concept of the union delegate should be considered as the organisational instrument designed to address the issue of the representation gap in the smallest undertakings. The concept is based on the assumption that there is no need to establish new organisational unit of union movement in the form of the enterprise trade union in order to operate within given undertaking. It is proposed that union representation operating in the smallest undertakings should be established in less formal procedure.

In Article 42 of the draft of the Collective Labour Law Code, the Codification Commission has characterised the concept of the union delegate as alternative or parallel form of union representation in undertaking. In order to facilitate workers' representation, the union delegate does not have to be formally recognised by the registration court. The delegate is empowered to operate as workers' representative in the undertaking under simple and deformalized act of designation (by the trade union) and notification (of relevant employer). Trade union's authorities designate its individual member and notify the employer (indicating his name and surname) that this specific member will operate within given undertaking as the union delegate (Article 43).

It is proposed that union delegate should have similar competences and powers in the field of workers' representation in undertaking as in case of the representative form of the enterprise trade union. Thus, such concept is relatively deformalized and simple to apply in practice, but it also provokes some controversy related to the fact that employers' opinion is not considered in discussed proceedings.

4. Summary

In view of the relatively recent entry into force of the discussed reform of the Trade Union Act, it is extremely difficult to assess its impact on national union movement and industrial relations in Poland.

It is not realistic to expect that the doctrine and judicature should develop unified understanding of newly implemented measures in such a short time. However, regardless of alternations brought by the reform, it seems that further changes are necessary.

Future reforms related to collective labour law in Poland should not be limited only to cosmetic improvements of current state, but should be exploited as the driver of necessary and expected changes. Researches point out that the Polish legal system in the field of collective labour law is in need of complex and radical changes that would popularize social dialogue and improve its effectiveness on the lowest level of industrial relations.

In order to fulfil such goals, it is necessary to remove all the barriers existing in the system that discourage workers to initiate collective activity and that undermine the importance of dialogue and cooperation of social partners. As it was pointed out earlier, structural monopoly of the organizational form of the enterprise trade union, as well as poor access to collective rights in the sector of small enterprises combined with the lack of genuine representative alternative to trade unions should be considered as the main obstacle hindering the development of genuine and voluntary dialogue between employers and workers. For this reason, many researchers present numerous proposals to solve the problem of the representation gap that are directly related with the lack of the alternative forms of collective representation for workers in the Polish legal system. This is also the issue that may be (and should be) the subject of future amendments of the system of collective labour law in Poland.

List of references

K. W. Baran (ed.), *System prawa pracy, t. 5, Zbiorowe prawo pracy*, Warsaw 2014

K. W. Baran, *Komentarz do ustawy o związkach zawodowych* [in:] *Zbiorowe prawo pracy. Komentarz*, Warsaw 2016

K. W. Baran (ed.), *Zbiorowe prawo zatrudnienia. Komentarz*, Warsaw 2019

K. W. Baran (ed.), B. M. Ćwiertniak, D. Dörre-Kolasa, Z. Góral, M. Lekston, K. Walczak, M. Włodarczyk, M. Wujczyk, *Outline of Polish Labour Law System,* Warsaw 2016

Chałas i Wspólnicy, *„Związkowiec wyjątkowo i rażąco naruszający obowiązki pracownicze może zostać zwolniony"*

P. Ciompa, R. Górski, M. Jankowska (ed.), M. Skóra, J. Wratny, 10 lat rad pracowników w Polsce. Co dalej?', Instytut spraw obywatelskich, Łódź 2016.

D. Cybulska and A. Piotrowska, Grupy Przedsiębiorstw w Polsce w 2016 r., Główny Urząd Statystyczny, Warsaw, December 2017

P. Czarnecki, *Ustawa o związkach zawodowych. Komentarz,* Warszawa 2019

Employment Outlook, OECD 2017

Employment in national economy 2018, Główny Urząd Statystyczny, Warsaw 2019

L. Florek, *Prawo pracy*, Warsaw 2019

J. Gołaś, *Defining the Pillars of Trade Union Freedoms: the Polish Example,* Adam Mickiewicz Law Review 8/2018

J. Gołaś, *Granice wolności związkowych w polskim systemie prawnym,* 2019 r. Poznań

G. Goździewicz (ed.) *Ogólna charakterystyka stosunków pracy u małych pracodawców* (in:) Stosunki pracy u małych pracodawców, Warsaw 2013

G. Goździewicz (ed.), *Reprezentacja praw i interesów pracowniczych (ogólna charakterystyka)* [in:] *Reprezentacja praw i interesów pracowniczych*, Toruń 2001

Z. Hajn, *Zbiorowe prawo pracy. Zarys systemu*, Warsaw 2013

J. Kapiszewski, *Związkowcy na pasku prezesów*, DGP 12.08.2013 r., p. B11

A. Karpiński. S. Paradysz, W. Żółtkowski, P. Soroka,, *Od Uprzemysłowienia w PRL Do Deindustrializacji Kraju,* Warsaw 2015

M. Kurzynoga, *Warunki legalności strajku,* Warsaw 2011

M. Lekston, *Art. 14 Konsultacje z Radą Pracowników* [in:] *Komentarz Do Ustawy o Informowaniu Pracowników i Przeprowadzaniu z Nimi Konsultacji, [in:] Zbiorowe Prawo Zatrudnienia. Komentarz*, K. Baran (red.), Warsaw 2019.

T. Liszcz, *Prawo pracy*, Warsaw 2019

M. Łaga, *Delegat załogi oraz delegat związku zawodowego jako partnerzy w zakładowym dialogu społecznym - uwagi de lege ferenda* [in:] J. Stelina (ed.), *Zakładowy dialog społeczny*, 2014 r. Warszawa

K, Mis, *European Works Councils in Poland and the Europeanization of the NSZZ Solidarność Trade Union* [in:*] Interest Representation and Europeanization of Trade Unions from EU Member States of the Eastern Enlargement,* Stuttgart 2015

Partnerzy dialogu społecznego – organizacje pracodawców i związki zawodowe, Główny Urząd Statystyczny, Warsaw 2018.

Raport o Stanie Sektora Małych i Średnich Przedsiębiorstw w Polsce, PARP, Warsaw 2019

Report No. 334 of the ILO's Committee on Freedom of Association in Case No. 2301

Report of the Committe of Freedom of Association No 363 on Case No 2888 against Poland, March 2012

Rocznik statystyczny pracy 2017, Główny Urząd Statystyczny, Waraw 2017

M. Skąpski, *Labour Law* [in:] W. Dajczak, A. J. Szwarc, P. Wiliński (ed.), *Handbook of Polish Law*, Poznań 2011

W. Sokolewicz and K. Wojtyczek, Komentarz do Art. 59 Konstytucj i RP (in:) *Konstytucja Rzeczypospolitej Polskiej. Komentarz,* t. II, ed. II, L. Garlicki (ed.)., M. Zubik (ed.), Warsaw 2016

J. Stelina, *Rozdział XIX. Zbiorowe Prawo Pracy* [in:] *Prawo Pracy*, 4th ed., Warsaw 2018.A. Świątkowski, *Autonomia organizacji partnerów społecznych (związków zawodowych i organizacji pracodawców)* (in:) *System prawa pracy, t. 5, Zbiorowe prawo pracy*, K.W. Baran (ed.), Warsaw 2014

V. Trappmann, *Związki zawodowe w Polsce. Aktualna sytuacja, struktura organizacyjna, wyzwania*, Warszawa 2014

J. Urbański and M. Szary, *Zmiany w ustawie o radach pracowników*, Poznań 2010

J. Wratny, *Rola pozazwiązkowych przedstawicielstw pracowniczych w zakładzie pracy, Kontynuacja czy zmiany w okresie kryzysu?*, „Problemy Polityki Społecznej. Studia i Dyskusje"2009/12.

Wybrane zagadnienia rynku pracy, Notatka Informacyjna, GUS, Warszawa 3.01.2018

J. Wratny, *Rady Pracowników. Geneza, Stan Obecny, Perspektywy* (in:) *Demokracja w Zakładzie Pracy* Z. Hajn (ed.) and M. Kurzynoga (ed.), Warsaw 2017.OTK-A 2008/6/100

Wybrane zagadnienia rynku pracy, Notatka Informacyjna, Główny Urząd Statystyczny, Warsaw 2018

T. Wyka, *Art. 237(13)Zadania Komisji BHP* (in:) *Kodeks pracy. Komentarz,* K. W. Baran (red.), Warsaw 2018

Związki zawodowe w Polsce w 2014 r., Główny Urząd Statystyczny, Warsaw 2015

Source of translations of the legal acts: Legal Infromation System – Legalis and own translations.

Questionnaire: Workers representation in undertakings

Introduction, general remarks and sources of law

1. In which organizational forms can employees and workers collectively represent their rights and interests in your country?
2. Is there a kind of hierarchy between the forms, in particular: trade union and works council?
3. Is there a legal basis for representation of workers in undertakings in your legal system (in legislation or case law) and if so, what is this basis?

Freedom of association

4. What is the role of the fundamental right of freedom of association in the system of representation of workers in your country?
5. How the personal scope of freedom of association is elaborated in your legal system? Does it include self-employed workers?
6. What are the requirements for qualification as legally or actually recognized organization?

Independence and self-governance: protection against acts of interference –

7. How are the independence and self-governance of workers' organizations protected against external influences? Are there limits to the self-governance of workers' organizations in terms of setting their own rules (in legislation or case law)?
8. Does the problem of "yellow unions" exist and what is their position in law and jurisdiction of your country?

Protection against discrimination

9. How are workers' representatives protected against discriminatory actions based on their representative status and activities?
10. What remedies exist? (including protection against dismissal or protection against disciplinary measures)

Importance and position of non-union forms of workers' representatives -

11. In view of the competencies of the various workers' representations: how is their relationship defined in legal terms (competition, cooperation)?

Competencies of trade unions and other forms of workers' representation

12. Which regulations (in legislation or case law) define which workers' representations are and can be parties to collective bargaining and can conclude collective agreements?
13. Does your system know and apply the concept of 'preferential' or 'most representative trade union' (entitled to collective bargaining and excluding other organizations)?
14. Are all forms of workers' representations entitled to industrial action?

Worker representation in small enterprises

15. Do the workers in small and medium sized enterprises have the right to be represented by a collective body?
16. If those representations exist, do they have the same competences as the workers' representation(s) in bigger firms? If not, how is their right to be represented secured?

Recent developments in law and the future of workers representation

17. What is the position of trade unions and other workers' representations nowadays and in the foreseen future as to their role and their powers as collective bodies representing workers' interests?
18. Are there reforms or proposals of reforms of the law envisaged regarding the role and competences of workers' representation?