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## THE MARTIAL LAW AND ITS IMPACT ON LABOUR RELATIONS IN POLAND

### (Summary)

The most dramatic moment of the ‘Solidarity’s Revolution’ which led to the collapse of the communist system, not only in Poland but also in the whole Central and Eastern Europe, was the enactment of the martial law by the military junta on 13 December 1981. The martial law imposed a special regime on the Polish nation. Its provisions covered all areas of activity, including labour relations. As a consequence, many labour law acts were replaced with new regulations. Those acts deprived Polish employees and their representatives of many of their rights, despite of protests in the country and the international support, including that given by the ILO. The 35-years’ anniversary of the martial law which took place several months ago was an inspiration to recall the labour law of that time and to attempt to summarise the evolution of the Polish labour relations since that period till 1989. The time which separates us from those events helps us to do it *sine ira et studio*.

**Keywords:** trade unions’ movement in Poland; evolution of labour law; workplace trade unions; collective labour agreements

### 1. Introduction – labour law of the communist time in Poland

In the wake of the Second World War labour relations in Poland were determined by the communist ideology, adopted by all states of Central and Eastern Europe

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dominated by the Soviet Union.<sup>1</sup> According to this ideology, the state policy should guarantee people full employment and welfare. The class struggle would have no longer reasons to exist. Strikes and other collective actions, even though not legally forbidden, were not perceived as a legitimate element of the trade unions' activities. The trade unions were to play the role of 'the transmission belt' of socialist ideas from the ruling Party to the masses.<sup>2</sup>

The state was the main or almost the only employer as a result of the mass nationalization of private undertakings and expropriation of big landowners.<sup>3</sup> According to the Decree of 1950,<sup>4</sup> the main form of economic activity in Poland was a state-owned enterprise. The sector of craft and private enterprises was very small.<sup>5</sup> The urgent need for the country's reconstruction after the Second World War resulted in the strong development of the heavy industry and the planning of economy. Its centralized character did not allow for any margin of economic decisions concerning, for example, the remuneration on the enterprise level. The centralized wage policy heavily limited the scope of collective bargaining or any forms of social dialogue at the workplace.<sup>6</sup>

The role of work in the communist system extended far beyond the role it played in the free market economies. Work was a duty of citizens and the 'question of honour' (Article 58 of the 1952 Constitution of the Polish People's Republic).<sup>7</sup> The Polish People's Republic (PRL) ratified the ILO Forced Labour Conventions: No. 29 of 1930 and No. 105 of 1957, whereby the forced employment was considered illegal. However, there was a social disapproval of people refraining from work. The authorities intended to integrate them into society by delegating to work.

<sup>1</sup> See **M. Seweryński**, *Polish Labour Law from Communism to Democracy*, Dom Wydawniczy ABC, Warsaw 1999, p. 17.

<sup>2</sup> **R. Laba**, *The Roots of Solidarity. A Political Sociology of Poland's Working Class Democratization*, Princeton University Press, Princeton New Jersey 1991, pp. 156–157; **S. Ashwin, S. Clarke**, *Russian Trade Unions and Industrial Relations in Transition*, New York, Basingstoke, Pagan 2002, p. 17.

<sup>3</sup> According to **J. Gardawski, A. Mrozowicki, J. Czarzasty**, *Trade Unions in Poland*, Report 123, ETUI, Brussels 2012, p. 16, in 1960 private sector workers constituted only 4.5 per cent of the labour force.

<sup>4</sup> Dekret z dnia 26 października 1950 r. o przedsiębiorstwach państwowych [Decree on State-Owned Enterprises of 26 October 1950], Polish Journal of Laws, 1950/49/439.

<sup>5</sup> **F. Millard**, *Polish Politics and Society*, Routledge, London, New York 2003, p. 6.

<sup>6</sup> **J. Gardawski, A. Mrozowicki, J. Czarzasty**, *op. cit.*, pp. 16–17.

<sup>7</sup> PRL – *Polska Rzeczpospolita Ludowa* (Polish People's Republic) was the official name of Poland in the years 1952–1989.

The process of development of the individual labour law after the Second World War culminated in the promulgation of the Labour Code in 1974.<sup>8</sup> One of its features was the elimination of differences in the treatment of white and blue collar workers. To some extent the individual labour law in PRL played a protective role. It guaranteed paid holidays, the protection of employees against unfair dismissal, special protection of working women and young people, and health and safety rules. However, the subordination of the state-owned enterprises to the government administration had an impact on individual employment relationships. Different limitations on the freedom of contracts were imposed. New labour law institutions appeared, such as the socialist discipline of work, planned employment of graduates, obligatory delegations to work, sanctions for the infringement of the workplace order and of the work discipline.<sup>9</sup> Moreover, the conditions of work in the state-owned enterprises were hard, especially in the industrial branches. The wages were also low. For these reasons, the dissatisfaction with work grew with time.<sup>10</sup>

Article 72 of the 1952 Constitution stated that every citizen had the right to associate in trade unions with the exception of associations whose goals or activity would undermine the political and social system or the legal order of the state. The Trade Union Act of 1949 guaranteed trade unions' freedoms. PRL ratified the ILO Conventions Nos. 87 and 98, but in fact, trade unions were strongly linked to the governing party – the Polish United Workers' Party (*Polska Zjednoczona Partia Robotnicza* – PZPR).

In the light of the 1949 Trade Union Act, all trade unions had to adhere to the Confederation of Trade Unions (*Zrzeszenie Związków Zawodowych* – ZZZ) and to be registered with the executive authority of the Confederation, namely the Central Council of Trade Unions (*Centralna Rada Związków Zawodowych* – CRZZ). The Council refused to register trade unions which did not respect the supremacy of the ruling party. The chairman of CRZZ was a member of the PZPR's Central Committee and of its Political Bureau.<sup>11</sup> As early as in 1949, ZZZ approved of the primacy of PZPR.<sup>12</sup>

<sup>8</sup> Kodeks pracy, ustawa z dnia 26 czerwca 1974 r., Polish Journal of Laws of 1974/24/141. The Labour Code is still in force after numerous amendments.

<sup>9</sup> After 1956, the labour law became more concerned with workers' rights and some rigorous regulations (i.a. the socialist discipline of work) were repealed.

<sup>10</sup> M. Seweryński, *op. cit.*, p. 27.

<sup>11</sup> J. Wratny, *Ewolucja zbiorowego prawa pracy w Polsce w latach 1980–1991* [Evolution of collective labour law in Poland in years 1980–1991], *Studia i Materiały IPiSS* 1991/16, Warsaw, p. 16.

<sup>12</sup> M. Seweryński, *op. cit.*, p. 62

Workers demanded an actual representation of their interests. The demands for free trade unions were formulated during the protests in the Polish shipyards in 1970/1971.<sup>13</sup> The formation of truly independent, though illegal, trade unions started in the second half of the 1970s (*Wolne Związki Zawodowe Wybrzeża*). The inconsistency of the Polish legislation and practice with the ILO conventions Nos. 87 and 98 was emphasised by the Committee on Freedom of Association (CFA) on several occasions since the 1950s.<sup>14</sup>

The practice of collective labour agreements in Poland was renewed soon after the Second World War. That could be attributed to the resumption by the trade unions of their natural form of activity and to the new government's goal to restore Poland's economic life, which was unattainable without regulating of labour relations, including wages.<sup>15</sup> However, the years 1950–1955 brought about the disappearance of collective labour agreements in Poland. Wages became regulated by legal acts promulgated by the government and particular ministers. Formally, the trade unions were consulted in the course of the preparation and implementation of such acts, but in practice their input had little significance.

Nevertheless, the regulation of labour relations in the first half of the 1950s was not solely limited to the government's administrative directives. Attempts were also made to implement the system of 'plant collective contracts'. However, those contracts, previously introduced in the Soviet Union in 1947, had nothing in common with genuine collective labour agreements. They contained neither the substantive provisions typical of collective labour agreements, nor the legal means necessary for securing their implementation.<sup>16</sup>

The practice of collective bargaining appeared in Poland again as a consequence of the political and economic changes introduced due to the workers' protests (referred to as Polish October 1956). Collective bargaining was to play a role in the resolution of labour disputes and the securing of labour protection, with special regard to job security.

The new legislative context for collective labour agreements was established in the Polish Labour Code. Based on the assumption of the unified status of workers, the Labour Code restricted the possibilities of modifying its provisions by collective labour agreements. The latter were allowed to regulate only wages

<sup>13</sup> R. Loba, *op. cit.*, pp. 159–160.

<sup>14</sup> D.A. Wirth, *Trade Union Rights in the Workers' State: Poland and the ILO*, *Denver Journal of International Law and Policy*, 13 (1984), pp. 278–279.

<sup>15</sup> W. Szubert, *Układy zbiorowe pracy* [Collective labour agreements], PWN, Warsaw 1960, pp. 59–62; M. Seweryński, *op. cit.*, pp. 122–123.

<sup>16</sup> M. Seweryński, *op. cit.*, pp. 123–124.

and those specific working conditions which were inherent in a given trade, profession or branch of work. The Labour Code did not impede the practice of collective bargaining in Poland but it impoverished the contents of the collective labour agreements.

During the communist period in Poland, the model of industry branch collective labour agreements was prevailing. It was a consequence of the centralized economy, precluding the possibility of negotiating collective agreements at the enterprise level. The unions were also organized by the sectors of the economy and their hierarchical internal structure impeded the initiative to negotiate enterprise collective labour agreements.

To conclude, collective labour agreements in the communist Poland remained formally acknowledged as a source of labour law. However, except for periods of appeasement in the political sphere, the role of unions in promoting workers' rights and in democratization of labour relations was significantly limited.

Workers' participation in the management of the state-owned enterprises was also developed. The Decree of 1945 set up the institution of works councils in the establishments with more than twenty employees. The councils could control and supervise the functioning of an enterprise, cooperate with its manager in fulfilment of workers' social needs and in making employment decisions. Works councils were independent of the trade unions only until 1947 when they became the organs thereof.

The workers' self-government was revived by the Law on Workers' Councils of 1956,<sup>17</sup> after the spontaneous establishment of workers' representative organs in enterprises during the Poznan riot of June 1956. According to that law, works councils were entitled to participate in decision-making about almost all important matters concerning the enterprise. This model was abandoned already in 1958 when works councils were replaced with the Workers' Self-Management Conference, an institution dependent on PZPR.<sup>18</sup> The attempts at reforming the works councils were made in the second half of the 1970s, but the councils remained strongly linked to the trade unions and to the ruling party.<sup>19</sup> Their role in the decision-making process was weak.<sup>20</sup>

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<sup>17</sup> Law on Workers' Councils of 19 November 1956, Polish Journal of Laws of 1956/53/238.

<sup>18</sup> **J. Gardawski, A. Mrozowicki, J. Czarzasty**, *op. cit.*, p. 16.

<sup>19</sup> **D.S. Mason**, *Solidarity: The Regime and the Public*, Soviet Studies, October 1983/XXXV/4, p. 535.

<sup>20</sup> **J.M. Bloom**, *Solidarity and Struggle against Communism in Poland*, Brill, Leiden Boston 2013, p. 29.

## 2. Reforms preceding the martial law

From the beginning of the 1980s, living and working conditions in Poland steadily worsened.<sup>21</sup> Social protests and strikes which started in the shipyard of Gdańsk in 1980 and spread to other workplaces ended up by the conclusion of August Agreements (*porozumienia sierpniowe*). It should be noted that the social movement which burst out in 1980 was not a revolutionary one. Its aim was not to take-over the rule of the state but to ensure the constitutionally-guaranteed rights which were not respected by the government and to improve the economic and social conditions of living for the workforce.

The August Agreements were concluded between the authorities and the strike committees in different places where strikes and protests took place, among others in Szczecin and Jastrzębie. However, the most important was the Gdańsk Agreement concluded on 31 August 1980 between the Inter-Establishment Strike Committee (*Międzyzakładowy Komitet Strajkowy* – MKS) and the Government Commission acting on behalf of the government. The scope of the Gdańsk Agreement covered the whole country. It was preceded by its approval by the Central Committee of the PZPR.<sup>22</sup> This agreement had a specific legal character because it was signed by the representatives of workers of Poland with the authorities. It was classified as a socio-political pact or a general agreement. Even though it was not a normative agreement,<sup>23</sup> its provisions were to be enforced by the legislative acts. The obligation to fulfil the provisions of the August Agreements was confirmed by the Political Bureau of the Central Committee of the PZPR.<sup>24</sup> On the other hand, MKS confirmed its respect for the political system, the leading role of PZPR and the binding force of the political alliance with the Soviet Union. According to paragraph 2 of the Gdańsk Agreement, the trade unions which were to be set up as a result of the Agreement should respect the Constitution.

The Gdańsk Agreement extended beyond the labour law. In general, it established the programme of reform of the communist state. However, one of its most important guarantees was the right of workers to set up and to join autonomous

<sup>21</sup> D.S. Mason, *op. cit.*, pp. 534–536.

<sup>22</sup> J. Frąckowiak, *Prawne znaczenie Porozumienia Gdańskiego jako umowy społeczno-państwowej* [Legal character of the Gdańsk Agreement as a social-state pact], *Państwo i Prawo* 1981/7, p. 82.

<sup>23</sup> L. Garlicki, *Refleksje nad charakterem Porozumienia Gdańskiego* [Thoughts on the character of the Gdańsk Agreement], *Państwo i Prawo* 1981/1, p. 8.

<sup>24</sup> It stated: ‘Our party has always aimed at the consequent and full execution of the concluded agreements’. The Document of the Political Bureau of 9 February 1981 for the 8th Plenary Meeting of the Central Committee of PZPR.

and self-governing trade unions which could bargain collectively and organize strikes. New trade unions were to be independent of PZPR and of employers, registered by the court and not affiliated to ZZZ. The authorities obliged themselves to prepare the law on trade unions which i.a. would precise the unions' status.

On the basis of the Agreement, the Solidarity trade union was registered in 1980 by the voivodship court of Warsaw as an autonomous organization, not affiliated to ZZZ. This registration was allowed by the judgment of the Supreme Court of 10 November 1980 (I PR 82/80), according to which the voivodship court was not entitled to modify unilaterally the content of the trade union statute. The Individual Farmers' Trade Union Act<sup>25</sup> was passed on 6 May 1981, after social protests. On the basis of that law, the Rural Solidarity associating individual farmers (*NSZZ Solidarność Rolników Indywidualnych*) was registered. Unfortunately, the Trade Union Act following the August Agreements was not eventually adopted, although a draft of such act was prepared by the bilateral commission representing the government and the Solidarity trade union.<sup>26</sup>

Solidarity, as opposed to the former trade unions in Poland, was not based on the branch but on the territorial structure. Such an organization facilitated the confrontation with the communist authorities.<sup>27</sup> Workers of different branches independently of their place of employment could adhere to Solidarity. According to estimates,<sup>28</sup> some 9,500,000 people were its members in the years 1980–1981 and the Rural Solidarity had about 2,350,000 members.

The Gdańsk Agreement obliged the authorities to reform the self-government of the enterprise. The Act on Self-Government of the State-Owned Enterprise Staff was passed on 25 September 1981.<sup>29</sup> It provided for the establishment of works councils until the end of December 1981. The main competencies of the work councils were: the right to appoint and to dismiss the manager of an enterprise, to monitor business operations and to take decisions on restructuring.<sup>30</sup>

<sup>25</sup> Ustawa o związkach zawodowych rolników indywidualnych, Polish Journal of Laws 1981/11/50.

<sup>26</sup> **J. Wrątny**, *op. cit.*, p. 16.

<sup>27</sup> **Z. Hajn**, *Związkowe przedstawicielstwo pracowników zakładu pracy w Polsce – ewolucja, stan obecny, przyszłość* [Trade union workplace representation of employees in Poland – evolution, the present condition and the future], in: **Z. Hajn** (ed.), *Związkowe przedstawicielstwo pracowników zakładu pracy* [Trade union workplace representation of employees], Wolters Kluwer, Warsaw 2012, p. 48.

<sup>28</sup> See **J. Gardawski, A. Mrozowicki, J. Czarzasty**, *op. cit.*, p. 32.

<sup>29</sup> Ustawa z dnia 25 września 1981 r. o samorządzie załogi przedsiębiorstwa państwowego, Polish Journal of Laws 1981/24/123.

<sup>30</sup> Polish Journal of Laws 1981/24/123.



The Gdańsk Agreement guaranteed a five days' working week, wages increase, professional qualifications, instead of the party membership, as the main criterion for appointment of state-owned enterprise managers, as well as the improvement of working conditions in health care institutions.

In that time, as a consequence of the economic crisis, the provisions of existing collective agreements became outdated. New regulations were established by specific strike-ending accords. Hundreds of such accords were signed in the years 1980–1981, and their scope was mostly limited to a single establishment. Signatories to these accords were strike committees on the one side, and state-enterprise managers on the other. However, in the light of the Labour Code provisions, it was difficult to consider the accords to be genuine collective labour agreements. This was obviously an indication of the regulations' inconsistency with the new circumstances and of the need for their revision. However, the reform was stopped by the introduction of the martial law.

### 3. Labour regulations of the martial law

The military coup d'état of 13 December 1981 put an end to democratic developments which followed the conclusion of the August Agreements. According to Article 15 para. 1 subpara. 1 of the Decree on the Martial Law of 12 December 1981,<sup>31</sup> the Prime Minister was entitled to suspend activities of associations and trade unions in case those organizations' activities undermined the political and societal system, legal order of the state or threatened security of the state, as well as for other important reasons. The scope of its application was thus large and arbitrary. The Prime Minister made use of the above-mentioned delegation the very next day.<sup>32</sup> The suspension of the trade unions' activities was accompanied by the temporary take-over of their property and the internment of around 10,000 trade unionists. Article 46 paras. 1 and 2 of the Decree on the Martial Law provided for penal sanctions in case of the continuation of the unions' activities. On the

<sup>31</sup> Dekret z dnia 12 grudnia 1981 r. o stanie wojennym, Polish Journal of Laws 1981/29/154. The provisions of the Decree on the Martial Law were confirmed by the Law of 25 January 1982 on the Specific Legal Regulation in the Period of the Martial Law, Polish Journal of Laws 1982/3/18.

<sup>32</sup> Order No. 51 of the Prime Minister of 13 December 1981 concerning the suspension of activities of trade unions and other social organizations for the period of the martial law [Zarządzenie No. 51 Prezesa Rady Ministrów z dnia 13 grudnia 1981 r. w sprawie zawieszenia działalności związków zawodowych i niektórych organizacji społecznych na czas obowiązywania stanu wojennego], M.P. (Polish Monitor) of 1981, no. 30, item 273.



basis of Article 16 of the Decree on the Martial Law, the Council of Ministers<sup>33</sup> suspended the self-government of a state-owned enterprise for the period of the martial law.

The right to organize strikes and other collective actions was also suspended (Article 14 para. 1 of the Decree on the Martial Law). The organizer of a strike or of another action of protest was punished by the penalty of imprisonment (up to five years). Moreover, such an act might have been treated as ‘a serious infringement of the functioning of the national economy’ (Article 14 para. 2 of the Decree). The last provision referred to the description of the crime provided for in Article 127 of the Criminal Code of 1969 which punished persons liable for the crime even with a death penalty. The liability for this crime was not dependent on the fact whether the goal of the liable person, namely the serious infringement of the functioning of the national economy, was achieved.<sup>34</sup> Participation in the strike also amounted to a severe infringement of the employee’s duties, which resulted in the right of an employer to terminate an employment relationship without notice. Furthermore, the participation in the strike or in another action of protest was punished with penalty of three months’ imprisonment or with a fine (Article 50 para. 1 of the Decree). In relation to the complaints alleging that the internment of the trade unionists and prohibition of the trade union activity infringed the ILO Conventions Nos. 87 and 98 CFA agreed that the above acts were contrary to the principles of freedom of association.<sup>35</sup>

The ban on the trade unions delayed the complex task of rewriting the provisions regarding collective bargaining. At the same time, the decentralization of the economic administration seemed to indicate that the proper participant on the side of the management was also in a formative stage. In this situation, the government limited itself to a temporary solution. Thus, the Council of Ministers passed the Resolution No. 135 of 1982, which authorized the enterprise to adjust wage and benefits’ conditions by means of its own internal wage regulations. However, the freedom of regulation was quite restricted, particularly by the financial situation of enterprises. This latter limitation arose from the principle of ‘enterprise self-financing’, which together with the principles of ‘enterprise autonomy’ and ‘workers’ self-government’, constituted three basic assumptions

<sup>33</sup> Regulation of the Council of Ministers of 30 December 1981, Polish Journal of Laws 1981/32/185.

<sup>34</sup> See the resolution of seven judges of the Supreme Court of 20 August 1971 (RNw 112/71), OSNKW 1972/1/16.

<sup>35</sup> 65 Off. Bull., Ser. B, No. 1 at 186–87 (1982) (CFA Case No. 1097). See **D.A. Wirth**, *Trade Union Rights...*, p. 280.

for the economic reform adopted by the government in relation to state-owned enterprises (Acts of 1981 and 1982).

The Resolution No. 135 was issued during the martial law time, when all trade unions and workers' self-government bodies were suspended. For this reason, the Resolution did not formulate the method for establishing a plant wage regulation. Thus, in practice, it was decided unilaterally by an enterprise manager. Not infrequently, however, managers consulted such regulations with the workers' self-government organs if their operations were restored after the martial law.

In individual employment relations, the Decree on the Martial Law allowed the government to introduce forced work during the martial law time (Article 29 paras. 1 and 8) contrarily to international obligations. This competence was implemented by the regulation of the Council of Ministers of 30 December 1981 on the introduction of the general duty to render work during the martial law.<sup>36</sup> It concerned men aged 18–45 with some derogations.<sup>37</sup> The persons who fell under the scope of the regulation were delegated by administration bodies to work in the state-owned establishments which notified their need for employees. The non-fulfilment of the duty to work was sanctioned with a fine (Article 51 of the Decree on the Martial Law).

The Decree on the Martial Law also allowed for the large scope of administrative intervention in terms of the employment relationship. The head of a local administration body (*naczelnik*) was entitled to transfer a worker to another workplace, situated in the territory of competence of the given administration authority (Article 29 para. 2). Moreover, the general manager of an establishment had the power to confer additional tasks and work of a different kind than the work agreed for in the contract in the same or another town, even without an employee's consent, if the employee possessed necessary qualifications and his/her health and personal situation allowed it. The employee could lodge a complaint against such a decision to the arbitration commission. All those administrative prerogatives, even though they were not largely applied, presented a real threat to employees.

The Decree on the Martial Law introduced the 6-days' work week (Article 29 para. 4). The manager of an establishment was also entitled to impose work on Sundays and on public holidays. Eight hours' daily working time was a rule, but its

<sup>36</sup> Polish Journal of Laws 1981/32/187.

<sup>37</sup> The exemptions concerned, among others, retired and disabled persons, persons responsible for personal care of a child under 15 or other members of a family on charge, individual farmers, pupils, priests and monks, as well as citizens of other countries.

extension to twelve hours was allowed in case of specific needs of the employer. This extension, however, was not permitted in case of employees working under conditions which were prejudicial to health (Article 29 para. 5 of the Decree on the Martial Law).

#### 4. Evolution of labour regulations after the martial law

Once the martial law was lifted in 1983,<sup>38</sup> some restrictions in the realm of individual labour law were still in force or were newly introduced. Law on the Specific Legal Regulation during the Period of Surmounting the Socio-Economic Crisis of 21 July 1983<sup>39</sup> introduced special labour law regulations concerning the length of the notice period and the weekly working time to establishments which had fundamental importance for the national economy or for the defence of the state, or which rendered services of general interest.

The authorities retained the forced labour under certain conditions. On the basis of the Law on the Proceedings against Persons Refraining from Work of 1982,<sup>40</sup> notorious work evasion resulted in the enrolment in a special list held by the administration authorities. Persons included in the list could be forced to perform work for the public needs (the yearly time of works could not exceed sixty days).

The authorities partially restored collective labour relations.<sup>41</sup> The Trade Union Act of 1982<sup>42</sup> enshrined international trade unions' standards, such the autonomy of trade unions, their independence from the administration bodies, equality of all trade unions before the law, the non-discrimination principle based on the trade union membership, as well as the right of employees not to join a union. According to Article 23 of the 1982 Trade Union Act, trade unions set up on the

<sup>38</sup> Uchwała Rady Państwa z dnia 20 lipca 1983 r. w sprawie zniesienia stanu wojennego [Resolution of the Council of the State of 20 July 1983 on the levy of the martial law], Polish Journal of Laws 1983/39/178.

<sup>39</sup> Ustawa z dnia 21 lipca 1983 r. o szczególnej regulacji prawnej w okresie przewycięzania kryzysu społeczno-ekonomicznego oraz o zmianie niektórych ustaw, Polish Journal of Laws 1983/39/176, which was in force till 31 December 1985.

<sup>40</sup> Ustawa z dnia 26 października 1982 r. o postępowaniu wobec osób uchylających się od pracy, Polish Journal of Laws 1982/35/229, which was in force till 31 December 1989.

<sup>41</sup> For the analysis of the political and economic background of those changes, see **J.F. Brown**, *Poland Since Martial Law*, Rand Note, December 1988, pp. 1–32.

<sup>42</sup> Ustawa z dnia 8 października 1982 r. o związkach zawodowych, Polish Journal of Laws 1985/54/277.

basis of that Act were entitled to bargain collectively on the national level and to organize strikes and other collective actions under conditions provided for in the Act. It also guaranteed the trade unions' officials protection against dismissal.

Nonetheless, the 1982 Trade Union Act served as an instrument of elimination of the Solidarity trade union from the collective labour relations in Poland.<sup>43</sup> Firstly, according to Article 59 of that Act, the registration of trade unions made before the entry into force of the Act lost its validity. New registration requests were to be lodged at the courts. However, since 1 January 1983, it was possible to set up only in-house trade unions. The registration of the nationwide trade unions was postponed by one year (namely till 1 January 1984) and of the trade unions' confederations till 1<sup>st</sup> January 1985. Secondly, on the basis of Article 53 para. 4 of the Trade Union Act of 1982, since the end of 1984 only one trade union organization could operate in an establishment. The Solidarity trade union perceived those restrictions as violation of the freedom of association and went underground. On the other hand, the branch trade unions registered their establishment-level structures and set up their confederation: *Ogólnopolskie Porozumienie Związków Zawodowych* (OPZZ) in 1985, mostly on the basis of the ZZZ material assets and membership.<sup>44</sup> According to the regulation of the Prime Minister of 30 April 1985, part of the property of the delegalized trade unions, i.a. that of Solidarity, was transmitted to OPZZ.<sup>45</sup> CFA found the Trade Union Act of 1982 contradictory to the ILO standards.<sup>46</sup> Finally, the restrictions on the trade union pluralism were levied by the amending Law of 1989.<sup>47</sup> On 17 April 1989, NSZZ Solidarność was registered. The new 1991 Trade Union Act guaranteed in the end full trade union freedom.<sup>48</sup>

The 1982 Trade Union Act set up a decentralized model of trade unions in Poland. The establishment-level trade unions were endowed with large prerogatives in relations with employers, which could not be carried out by higher-level organizations. The workplace trade unions were guaranteed large autonomy from confederations and federations. It was admitted in the literature<sup>49</sup> that the

<sup>43</sup> J. Wratny, *op. cit.*, pp. 45–46.

<sup>44</sup> J. Gardawski, A. Mrozowicki, J. Czarzasty, *op. cit.*, p. 38.

<sup>45</sup> Regulation of the Council of Ministers of 30 April 1985 on the property of former trade unions, Polish Journal of Laws 1985/25/107.

<sup>46</sup> 65 Off. Bull., Ser. B, No. 3, at 299–301 (1982) (CFA Case No. 1097). (D.A. Wirth, *Trade Union Rights...*, pp. 280–281).

<sup>47</sup> Ustawa z dnia 7 kwietnia 1989 r. o zmianie ustawy o związkach zawodowych, Polish Journal of Laws of 1989, no. 20, item 105.

<sup>48</sup> Polish Journal of Laws 1991/55/234.

<sup>49</sup> Z. Hajn, *Związkowe przedstawicielstwo...*, p. 48.

decentralized structure of trade unions and the lack of a strong bilateral dialogue on the branch or national levels is the legacy of the 1982 Trade Union Act.

In 1983 the self-government of a state-owned enterprise was revived. The underground Solidarity trade unionists were members of works councils as the ethical code of this organization allowed it. According to rough estimates,<sup>50</sup> from 5% to 15% of the works councils of the state-owned enterprises in the second half of the 1980s were governed by the underground Solidarity members.

However, in state-owned enterprises which were of fundamental importance for the national economy or for the state defence, the administration body that had set up such enterprise could suspend the activities of the self-government for a defined period not longer than six months or request its dissolution by the newly-established Commission for the Affairs of the Workers' Self-Government (*Komisja do Spraw Samorządu Pracowniczego*).

The temporary method of wage regulation at the enterprise (works) level, based on the Resolution no. 135, was replaced with the Act of 26 January 1984, which provided for the negotiated regulation of wages in enterprises. The former wage regulations were to be transformed into agreements concluded by the works union organizations and the manager. Before signing the agreement, however, the manager had to seek the approval of the workers' self-government body (the workers' council and the workers' general assembly or its representatives). In establishments without union organizations, wages could continue to be determined by internal regulations adopted by the manager, with prior approval of the workers' self-governing body or, in the event that there was no such body, directly of the working staff themselves.

Works wage agreements took effect upon being registered by the Minister of Labour. The registration was conditioned upon the conformity of the agreement with existing law and the approval by the 'founding organ' of an enterprise (a minister, a county or city mayor), which would confirm the fulfilment by the enterprise of the economic requirements necessary to implement the agreement.

Considering the parties involved as well as the method and the legal effect of entering into works wage agreements, it is difficult to ignore their similarity to collective labour agreements. The two processes differ, however, by the fact that the parties to the works agreements might have a prior approval of the agreement from the workers' self-government body. Thus, in the works agreement negotia-

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<sup>50</sup> These data are presented by **J. Gardawski, A. Mrozowicki, J. Czarzasty**, *Historia i teraźniejszość związków zawodowych w Polsce* [History and the present day of the trade unions in Poland], *Dialog* 2012/3, p. 6.

tions, one can see an attempt to accommodate two forms of labour representation in the enterprises: the union and the staff.

The 1984 Act did not solve the question of how to formulate a new system of collective agreements. It made it possible to negotiate wages only at the works level taking into consideration economic measures and motivating state-owned enterprises to increase production, as well as to avoid excessive wage increase, which could result in inflation. At the same time, the unions looked to strengthen their position in collective bargaining, guaranteed in the 1982 Trade Union Act. The doctrinal postulates aimed in the same direction.

The above expectations were accomplished to some extent by the Act amending the Labour Code of 24 November 1986.<sup>51</sup> Its provisions allowed the parties to negotiate branch and works collective labour agreements in all sectors of the economy: in state-owned but also co-operative and private enterprises which began to develop in the second half of the 1980s. Their scope of regulation was expanded so that, besides wages and benefits, other working conditions, specific to a given branch or profession, could also be regulated. As far as the branch collective labour agreements in the public sector of the economy are concerned, they could be concluded by a respective national union organization and a minister representing a given branch of economy. The latter should, however, receive a prior approval of such agreement from interested enterprise managers and workers' self-management bodies. The freedom of negotiations remained limited, as the collective labour agreements had to conform both to the law and to the socio-economic policy of the government. Stipulations, more advantageous to the workers than statutory provisions, could be included in the collective labour agreements only when they were expressly statutorily authorized or when justified by specific conditions of a given branch of economy or profession. Furthermore, all branch collective labour agreements were subject to registration by the Minister of Labour and Social Policy, who could refuse registration in case of the agreement's inconsistency with the binding law or the requirements of economic policy. The Minister of Labour was also authorized to extend the legal effect of a branch collective labour agreement to cover workers who otherwise were not subject to any agreement.

As far as the works' level in the public sector is concerned, the 1986 Act allowed union divisions (after consultation with a proper national trade union) to

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<sup>51</sup> In 1986 the communist authorities introduced many political reforms aiming to improve the situation in the country. See **F. Millard**, *Polish Politics and Society*, Routledge, London, New York 2003, p. 7.

negotiate with a works manager (upon prior consent of workers self-management bodies) collective accords, which regulated wages and welfare benefits. However, those accords had to remain within the limits of a proper branch collective labour agreement. Higher wages and benefits could be provided for only if the enterprise possessed financial means and continued to achieve its economic goals imposed by the state authorities. The conformity of works collective accords with the statutory provisions and the proper branch collective labour agreements was under the control of the enterprise's founding body registering the accords.

The evolution of provisions regulating collective labour agreements in Poland after the abolition of the martial law remained seriously limited, despite legal doctrine proposals. It was due to the lack of social partners' genuine freedom of negotiation. The state-administered and planned nature of the national economy hampered decisions made by state-owned enterprise managers. The government's concern for guaranteeing the productivity of the state-owned enterprises was at the origins of prohibiting the parties to collective agreements to correct the enterprises' binding economic tasks, or to raise wages and workers' social benefits. The attempts to increase the enterprises' freedom of decision, according to their officially declared autonomy and workers' self-management, were very timid. On the other hand, the newly re-established unions were in fact licensed by the still governing communist authorities, Solidarity remaining underground. As a consequence, the trade unions could not play their genuine role of a workers' interests representative. The practice of free collective bargaining emerged only after the 1989 Round Table Agreement, restoring full trade union freedom and opening some prospects for market economy.

## 5. Conclusions

The main aim of the military coup d'état of 1981 in Poland was certainly to put an end to the development of Solidarity, which was an organization of a unique character on the worldwide scale, being both a trade union and a strong social movement that demanded democracy and economic reforms. The restrictions concerning the individual labour relations were auxiliary to this main goal of the martial law. Even though some of those restrictions persisted up to 1989, the impact of the martial law on the individual labour legislation was only temporary. Contrarily, the collective labour legislation which was passed during the martial law and in the years that followed had an important effect on industrial relations in Poland. By suspending the activities of the trade unions and taking over their property on the basis of the Decree on the Martial Law, the authorities blocked the development of



collective labour relations for at least ten years, i.e. till the conclusion of the Round Table Agreement in 1989. The 1982 Trade Union Act only apparently restored the achievements of the Gdańsk Agreement. In fact, that legislation eliminated the pluralism of trade unions in establishments. By postponing for two years the formation of national trade unions' confederations, the legislation made it impossible to re-establish the Solidarity structures.

On the other hand, the 1982 Trade Union Act favoured the setting-up of the enterprise-level trade unions. The large scope of competencies conferred on the workplace trade unions influenced further development of the trade unions' model in Poland. Thus, Polish trade unions are nowadays mostly organized at the establishment level and the trade union structure is quite dispersed. Furthermore, this model of unions favours the establishment-level collective labour agreements, hampering the branch- or national-level type. As a consequence, collective labour agreements at a higher level, helping to spread minimum employment standards in the whole country, have still not developed in Poland.

Moreover, the ideological struggle of the PRL government with the Solidarity trade union exerted its impact on the relations between the Solidarity and the left-wing trade union confederation, OPZZ. The conflict, concerning especially the restitution of the Solidarity's property, aggravated the relations between these two big umbrella organizations and, on many occasions, made it difficult to undertake actions in the interest of employees together. Some common trade unions' initiatives, undertaken in response to the employment crisis in Poland, have only recently allowed us to hope that the historic cleavages may give place to the unions' cooperation in favour of labour relations in Poland.

However, the most important consequence of the martial law in Poland was the destruction of the social climate necessary to develop social partners' dialogue with the aim of building harmonized labour relations. That is why, the general reform of the Polish labour law after the Solidarity's Revolution has not been completed and many of its fundamental issues are still to be resolved.

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## STAN WOJENNY I JEGO WPLYW NA STOSUNKI PRACY W POLSCE

(Streszczenie)

Najdramatyczniejszym momentem okresu „Rewolucji Solidarności”, która doprowadziła do upadku systemu realnego socjalizmu nie tylko w Polsce, ale i w całej Europie Środkowo-Wschodniej, było ogłoszenie stanu wojennego w dniu 13 grudnia 1981 r. Prawo stanu wojennego regulowało między innymi stosunki pracy. Wprowadzone regulacje pozbawiały polskich pracowników i ich przedstawicieli wielu praw, mimo protestów w kraju oraz wsparcia instytucji międzynarodowych, w tym Międzynarodowej Organizacji Pracy. Upływ trzydziestu pięciu lat od wprowadzenia stanu wojennego inspirowało do przypomnienia zmian w prawie pracy, jakie zostały wówczas dokonane, oraz do podsumowania ewolucji stosunków pracy po okresie obowiązywania regulacji stanu

wojennego do 1989 r. Czas dzielący nas od tych wydarzeń pozwala na przeprowadzenie analizy wpływu prawa stanu wojennego na współczesne prawo pracy, a zwłaszcza na zbiorowe stosunki pracy, *sine ira et studio*.

**Słowa kluczowe:** związki zawodowe w Polsce; ewolucja prawa pracy; zakładowa organizacja związkowa; układy zbiorowe pracy