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COLLECTIVE AGREEMENT AS A PERMANENT ELEMENT OF LABOR LAW

GENERAL REMARKS

The category of “specific sources of labor law” is highlighted in the literature of labor law primarily in opposition to those in the art. 87 of the Constitution of sources of universally binding law in Poland². The formal basis for this distinction is the content of art. 9 § 1 L.L., which, along with the laws and regulations to the sources of labor law includes also the collective agreements, other collective agreements based on the law, regulations and statutes. “Specificity” of these sources is not limited only to this aspect. This feature also concerns the legal nature of these sources – which is assessed by the fact that they are created by specially authorized to do so and entities within the statutory special procedure. Collec-

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² T. Zieliński, [in:] T. Zieliński (ed.), *Labour Code. Commentary*, Warsaw 2003, p. 166.

tive agreements are among the sources of autonomous law too, complementary standards generally applicable law (the state), which today are not sufficient to regulate relations professional³. These sources are the expression of autonomous self-government bodies in the sphere of economic life creating its own law. Yet another term sources of “non-statutory”, which is to emphasize their separateness from statutory law also by the fact that they are not formally acts implementing laws. These sources are sometimes referred to as a “local” labor law, which is to emphasize the limited scope of their validity (usually limited to the workplace, profession, industry)⁴.

In labor law, there are many legal institutions very hard to assess the skills equivalent legal. Such items include, without any doubt, collective agreements, which collate characteristics that are opposite, that their classification within the accepted notions occurring in the theory of law, is completely unrealistic. For the evaluation of the collective agreement is clearly impacting the evolution of profiling this legal institution (determination of her as “the new phenomenon of law”). The source of the operation were strike compromises, which were concluded between employers and trade unions. They regulate a wide range of elements in the area of remuneration. It should be noted that the systems appeared at the moment when it turned out that the individualistic way of shaping relations (typical civil law) is totally inadequate and fails to satisfy in any way the needs of employees. In this regard, the principle of arrangement are based on collective negotiation are directed to consider the needs of employees and employers themselves – at the same time – leading to alleviate the conflict of interest in labor relations⁵.

Elementary events in the systems work as legal regulations are also the way in which they were made (collective bargaining), and that in the process of shaping participate on an equal footing representatives of trade unions and employers. It was they who contain the agreement (the system), which means that they become their parties taking responsibility in the form of commitments for compliance with all the provisions of the collective agreement. Their activity and effectiveness in this element are the warranty card durability systemic solutions, while contributing to guarantee social peace in social relations within its duration (proceedings for possible only after the termination of the act)⁶.

Collective agreements and labor regulations is without a doubt the most important of the specific sources of labor law, but not the only one. Non-statutory and autonomous labor law is not only a qualitative development of the two specified design but also the continual introduction of new forms of regulation that time are considered as the source of this law, sometimes attribute this does not give them current on the basis of Polish law directory sources such labor law contains in Article. 9 § 1 L.L. In addition to collec-

³ K.W. Baran, *Collective labor law*, Krakow 2002, p. 43.

⁴ H. Szurgacz, [in:] *Labor law comp*, p. 44. See. also J. Jończyk, *Works (local) labor standards*, [in:] *Local standards of labor law*. Materials III Winter School Labour Law, Karpacz 12-16 January 1976, Wrocław 1976, p. 3.

⁵ G. Goździewicz, *Collective agreements as a source of labor law*, [in:] Z. Góral (ed.), *Collective agreements*, Warsaw 2013, p. 69.

⁶ A. Raczyński, *Collective labor agreements*, Warsaw 1928, p. 3.

tive agreements and labor regulations is included in this source category yet other than a collective agreement based on the law, collective agreements, other than working rules regulations and statutes. A common feature of all these acts is the “defining the rights and obligations of the parties of the employment relationship”, while the common sources of labor law define the rights and obligations of employees and employers. Sources peculiar define the rights and obligations of employees and employers, but only to the extent that they are acting as a “party of the employment relationship”⁷.

THE PROVISIONS OF THE NORMATIVE SYSTEM

The primary purpose of collective agreements is to bring the parties in the area for the establishment of reception conditions for employees above-standard size, which is more advantageous than to be included in the statutory acts. The provisions of that act in a content dominant wield advantage normative, as they can not only take the form of standards of a general nature and have the opportunity to shape the legal situation of entities (persons) third parties - employees and not just union members, who negotiate and sign the collective agreement. They form the content of a individual contracts of work and regardless of the opinion of the employee, provided that they are more favorable than the provisions of employment contracts and the provisions contained in the laws themselves⁸.

The provisions of the normative system have many items of specific:

1. Mode of regulation (negotiation),
2. A wider circle of recipients compared with the statutory norms,
3. The limited scope of standardization (only authorized employees),
4. completely different mechanism of action⁹.

At the time of the violation, privileged person will be able to pursue individual claims on the path of judicial review. Same legal value of a collective agreement is achieved at the time of registration binding and material efficiency of the provisions of a legislative nature. The duality of collective agreements was already noticeable in the legal literature from the very beginning, but in the opinion of its legal nature especially high attention was paid to the contractual elements of the legislation, placing the system more in private law than seeing it as part of the public law¹⁰. Processes investigation to conclude a collective labor agreement, mutual agreement by the parties in terms of its content, implementation of subsequent changes of agreements in the form of additional protocols, the suspension of its use makes the contractual aspects are still alive and so important that it must be taken into account in the overall assessment of the legal nature¹¹.

⁷ H. Szurgacz, [in:] *Labor law. Comp.*, Warsaw 2005, p. 44.

⁸ Z. Salwa, *Sources of Labour Law*, [in:] K.W. Baran, *Outline System of Labour Law*, Warsaw 2010, p. 400.

⁹ K.W. Baran, *Sources of Labour Law*, [in:] K.W. Baran (ed.), *Labor Law*, Warsaw 2009, p. 82.

¹⁰ A. Musiała, *Collective Agreement as sources of Labour Law*, Poznan 2013, p. 57.

¹¹ *Ibidem*, p. 58.

THE COLLECTIVE AGREEMENT IN A DIFFERENT POLITICAL SYSTEM

Collective agreements were formed, in a capitalist system, but at the moment they occur in almost all legal systems invalidly from the question of economic or political. The diverse model is systemic in individual countries. The most developed in countries with democratic characteristics, because he realizes the principles of social market economy, where it is acting as regulator normative solutions, but also an important instrument with which you can easily adjust the working conditions and, in particular remuneration for work provided. In Poland, where there was a socialist economy itself the role and significance of collective bargaining was not as adequate for the purpose and function of which they had to perform. The situation changed after the consequences of the assumptions socio-economic development. In place of the workers and their organizations they emerged organizational entities, which lead to (managed by) entrusted property and employed workers. In the doctrine of labor law from the previous political system shaped the view that recognized collective bargaining agreement as normative, which was to emphasize their individuality within the socialist system. The weight was moved to expose the features of normative and contractual reduction elements, due to the virtual absence of collective autonomy and be diminished the role of collective bargaining, which are inseparable from the essence of collective bargaining agreements. One such example is even a form of termination of the collective agreement¹². This consisted in the fact that the provisions of the spoken or disbanded collective agreement was to apply until the entry into force of the new system - that is, after the expiration of the period of notice and the date of solving the system, unless the parties have reserved that do not intend to include a new layout. That decision was challenged by the Constitutional Court in 2002 year¹³.

In a free-market economic model system has been a very important change. These acts have been appreciating as a source of labor law, so you can shape the conditions of employment of employees on more favorable terms than regulate it acts laws, and at the same time as a very important instrument through which conflicts are resolved in the field of labor relations. The legislator introduced in stages to the growth element of the negotiation, respecting the independence of the will of the social partners in terms of the conclusion, content and its duration¹⁴.

Therefore, it is clear that doctrinal disputes in the element do not lead to any finding of clear and irrefutable legal concept that reflects, the legal nature of said act. It must be said that the collective agreement is cumulative, which is a normative ele-

¹² J. Wrątny, *Functions Collective Labour Law*, [in:] K.W. Baran, *The Labour Law*, t. 5: *Collective labor law*, Warsaw 2014, p. 131.

¹³ Constitutional Court's judgment of 18 November 2002. K 37/01, OTK-A 2002, No. 6, pos. 82.

¹⁴ G. Goździewicz, *Collective agreements as a source of labor law*, [in:] Z. Goral (ed.), *Collective agreements*, Warsaw 2013, p. 72-74.

ments are intertwined with elements of contractual and together they form a unity. The legal deductions, it is noteworthy aspect that raises a lot of controversy which is the application of the provisions of the Civil Code in matters not in the right arrangement. Enforcement of the provisions of the Civil Code contains a provision “to the employment relationship”, which indicates that the legislature a question of individual dimension of implementation, taking place between the employer and the employee. For now, the issues where there is a need for solutions of civil law, we are dealing with collective bargaining departments. A perfect example is entering the system. Supporters of the contractual nature of the system they favor a broad application of the provisions of the Civil Code (including redress through the courts) while opponents argue that the addressees of the provisions of the bond are defined entities and proper implementation of the normative provisions of the Agreement. They serve to guarantee social peace during the term of the collective agreement¹⁵.

Great opponent of such a provision is the Supreme Court, which in a resolution of 23 May 2001, stated that, due to its content and the creation of a collective bargaining agreement is closer to the source of the rights articulated in article 87 of the Constitution than the contract under civil law. The Court, however, makes it possible to aid the provisions contained in Article 65 § 2 of the Civil Code, which applies to contracts where the determination of the content on the basis of the interpretation of the language and the system proves to be unrealizable¹⁶.

THE CONSTITUTION AND THE COLLECTIVE AGREEMENTS

The term of a collective agreement as a “normative agreement” means that within this category we can distinguish two aspects: the normative and contractual. Normativity is expressed in: the statutory for fastening of the act marked the art. 9 L.L., in the way its provisions under Article. 241¹³ L.L. and art. 18 L.L., in the personal scope of its impact, limiting only the parties, but also including employees regardless of their union affiliation, and for the present. This is the agreement to the source standards. However, the provisions of can not be equated with the law in the strict sense, as clearly stated in Article. 9 L.L. These standards are a special kind of power to shape the conditions to respond should be the content of labor relations, and thus the power to determine the rights and obligations of third parties - such third parties are employees, even those unaffiliated in the trade unions¹⁷. Specificity these norms are also expressed in the fact that they do not come from state bodies with competence lawmaking, formed as a result of negotiations, the circle of recipients is always lim-

¹⁵ Ibidem, p. 75-76.

¹⁶ III ZP 17/00, OSNAPiUS, nr 23, poz. 684.

¹⁷ L. Florek, *Compatibility labor laws with the Constitution*, PiZS 1997, No. 11, p. 11; W. Sanetra, *Constitutional right to bargain*, PiZS 1998, No. 12, p. 5.

ited (in comparison with the standards generally accepted – and then become similar to local law), closely is marked the scope of regulation¹⁸. Aspect of the contractual arrangement is expressed in primarily through the procedure for the formation of the act (autonomous negotiations social partners), through contained in the terms of the order of nature a bond, defining mutual obligations of entities that comprise them, but also by the way supervise its use mode changes and solutions to.

This assessment seems to be consistent with the role of institutions of collective labor agreements admits Polish Constitution of 1997. It does not include systems to the sources of universally binding law. About collective agreements in the Polish Constitution is in Chapter II, which deals with “Freedoms, rights and duties of man and citizen”; and in the context of this chapter entitled “Freedom and political rights”¹⁹.

The problems of a legal nature which relates to a collective agreement as a source of law is closely associated with the assessment of this act as a source in terms of the present. The Constitution itself does not help matters, because our legislature did not include collective agreements in chapter III of the Basic Law, but only in the second section – “freedom and civil rights.” Article 59 gives guarantees to trade unions and organizations the right to bargain, and in particular collective labor disputes with the conclusion of collective labor agreements and other agreements²⁰. The disadvantage of the systems is that they are constitutionally fixed which means that you have to analyze the whole standards. Constitutional norms without doubt enrich the installation system of mutual relations between the social partners, in terms of some of the results of collective bargaining, you are ready to respect these arrangements. That’s why the legislator did not exclude the possibility of specific statutory authorization to create acts by various entities. Problematic is the provision of Article 59, paragraph 4, of the Constitution. The Constitutional Court pointed out that the aforementioned provision does not preclude this possibility, but the Supreme Court found that this is not possible due to lack of permissions ordinary legislator to introduce restrictions on the right to conclude collective labor agreements. Attention should be paid Constitutional Court’s judgment of 28 June 2000, which stated:

1. the collective agreement is empowered by the Constitution and the State is obliged to recognize its force;
2. the system of law in the Constitution is dichotomous and there is no any reason to seek a third system²¹.

So we can assume that the collective agreements for the source of universally binding law.

Constitutional provisions and international agreements do not specify the nature of the legal systems only guarantee their conclusion without prejudging whether they

¹⁸ A. Jeliński, L. Kaczyński, *The Statute as a source of labor law*, PiP 1999, No. 4, p. 35.

¹⁹ *Ibidem*, p. 46

²⁰ G. Goździewicz, *Collective agreements...*, p. 77.

²¹ K 25/99, OTK 2000, nr 5, poz. 141.

are sources of labor law. Even the legislator in Article 9 of the Labour Code has specified the labor law with the hierarchy contained in the normative acts, which he regulates it. The basic requirement is to define the rights and obligations of workers. These acts are sources of law in terms of the present, but do not have the power universally applicable. Therefore the principle of *ignorantia iuris nocet* is not applied²². A normative character does not doubt the system both in the light of the Constitution and Article 9 of the Labour Code. Therefore, the Supreme Court resolution from 24 June 1998, which says “Rating that the collective agreement (...) is an act of a normative nature, containing in its content legal standards, does not change the regulation contained in the Constitution of 2 April 1997. This means that acts listed in Article 9 of the Code of Labour are still normative acts and the rules it contains employee preference are still valid”²³ In the economic market role of collective bargaining is reported, and depriving them of the nature of the sources of law even more specific would cause reverse science labor law. A similar approach was represented by L. Kaczynski, who has committed under the provisions of the Basic Law of the possibility of negotiating forms of law-making work due to the condition of a pragmatic and axiological²⁴.

EXEMPTIONS FROM THE REGULATION OF ARRANGEMENT

The provisions of the collective agreement apply to all employees in the workplace covered by the provisions of this Agreement, unless the parties agree otherwise the system. Exempted from the provisions of the Agreement may be eg. A particular group of employees separated due to the nature of the work or occupation. If the parties decide to exclude a certain group of employees, the provisions of the system will not apply to this group of people as a whole. Of course, they will apply to them the general labor laws. Often you can meet with the exception of the will of the parties, a group of employees belonging to the senior executives in the part concerning the conditions of remuneration. Does not apply to managers on behalf of employer and facility managers work on a basis other than an employment relationship, which the principles of remuneration under the law can not be determined in the company collective labor agreement. The Labor Code clearly indicate the entities for which the collective agreement can not be concluded.

The system does not include for:

1. civil servants,
2. employees of state offices employed on the basis of nomination and appointment,

²² T. Zieliński, G. Goździewicz, [in:] L. Florek (ed.), *The Labour Code. Comment*, Warsaw 2009, p. 69-70.

²³ III ZP 14/98, OSNAPiUS 1998, nr 24, poz. 705.

²⁴ L. Kaczyński, *The influence of art. 87 of the Constitution on the specific sources of labor law (introduction)*, “The State and Law” Z. 8, p. 66-67.

3. local government employees employed on the basis of the selection, nomination and appointment of marshal offices, district offices, municipal offices, union offices of local government units and their counterparts, as well as the administrative units of local government units,

4. judges and prosecutors²⁵.

The regulation included in Article 239 § 3 L.L is partially out of date, since it does not longer employed in local government administration by appointment. It does not work well in the case of employees of a State appointment as a basis for employment. Despite the enactment of new laws on employment in the local government unit the Article 239 § 3 L. L. has been not updated. This shows clearly the lack of a systemic approach of the legislator to employment in the public administration²⁶. In the same public sphere we encounter difficulties in identifying employer as a party to collective labor agreement and at the same time an entity which takes decisions on issues of pay. This is the result adopted in the Polish legal doctrine in the concept of employer²⁷. This indicates that it is doubtful side of the multi-establishment employers in the public sphere. Acting in accordance with Article 241¹⁴ § 1 point. 2 L.L. multi-establishment system contains the appropriate statutory authority employers' organizations on behalf of the employers affiliated to this organization. Therefore, the state and local government agencies were not affiliated to employers' organizations, was introduced a different solution. Until the association to the above mentioned subjects in employers' organizations, multi-establishment collective labor agreement concluded on behalf of employers relevant minister or central government authority and on behalf of the employers of government workers of budgetary sphere entities as appropriate:

- a) the mayor (mayor, city president),
- b) district administrator,
- c) province marshal,
- d) chairman of the board association of communes or district²⁸.

Another element that raises doubts is excessive exclusion of the right to strike with respect to public employees zone. The right to strike is not granted to workers employed in organs of state government and local administration, courts and prosecutor's office. This exemption is generally considered excessive in the context of the limitations provided by the Polish constitution – Article 59 paragraph. 3 and Article 31 paragraph. 3) and ratified by Poland of international agreements, at the same time beyond the precincts of so-called public good²⁹. Another problem concerns the collective bargaining in the

²⁵ Art. 239, 241 26, section eleven of the Law from 26 June 1974. Labour Code (Dz.U.2014.1502 J.T.).

²⁶ A. Reda-Ciszewska, *Current problems of collective labor law in Poland – some comments from the perspective of the trade unions*, [in:] J. Wrątny (ed.), *Current problems of employee representation in collective labor relations*, Warsaw 2014, p. 119.

²⁷ Z. Góral, *The collective representation of employees of the public sphere*, [in:] A. Wypych-Żywicka (ed.), M. Tomaszewska, J. Stelina, *Collective labor law in the XXI century*, Gdańsk 2010, p. 145.

²⁸ A. Reda-Ciszewska, *Current problems...*, s. 120.

²⁹ *Ibidem*, s. 121.

public sphere. Party to the dispute are organizational units that do not have legal personality as administration offices. On this point the Constitutional Court ruled in its judgment of 24 February 1997., Stating that Article 5 of the Act of 23 May 1991. of resolving disputes of collective bargaining in the extent which adopted the concept of the employer does not provide for the participation of minister of government department or the chairman of the board of the community as distinct from the direct employer side of the collective dispute concerning the employees in state or local government units, public sector, is consistent with Article 1 and Article 85 of the norms of the Constitutions Republic of Poland and Article 77 of the Constitutional Act of 17 October 1992. on mutual relations between the legislative and executive power of the Republic of Polish and local government³⁰. Would be fitting, however, to update the regulations of the Law on solving labor disputes in terms of its compliance with the Constitution of Poland.

FINAL CONCLUSION

Presenting the above mentioned problem it should be noted that the model legal provisions of the Polish labor law has got the imperfect character. Leaving the legislator collective bargaining in labor law, which de facto controls the individual relationship should be seen in the fact that there is a relationship between the provisions of section IX and other departments of the Labor Code and other legal acts in force in Poland. It should be noted that until now there is a great need for advice on the issue of systemic. Here dominate the issues of infringing the principles of equality, non-discrimination, the granting or liquidation of specific services, solutions collective agreements and related conditions of remuneration³¹. The optimistic perspective for collective agreements is clear from the view that in the coming years we can expect grounding conditions that favor systemic policy including the extension of the scope of freedom of negotiation. Deepening the market economy in Poland is another optimistic element. The proof of the growing importance of collective bargaining is the following information along with a graph showing the amount included multi-employer collective agreements³².

On 31 december 2014, the minister in charge of labor registered a total of:

- 174 multi-employer collective agreements,
- 333 additional protocols to these agreements,
- 46 agreements on the application in whole or in part contained another corporate collective labor agreement,
- 9 additional protocols to those agreements³³.

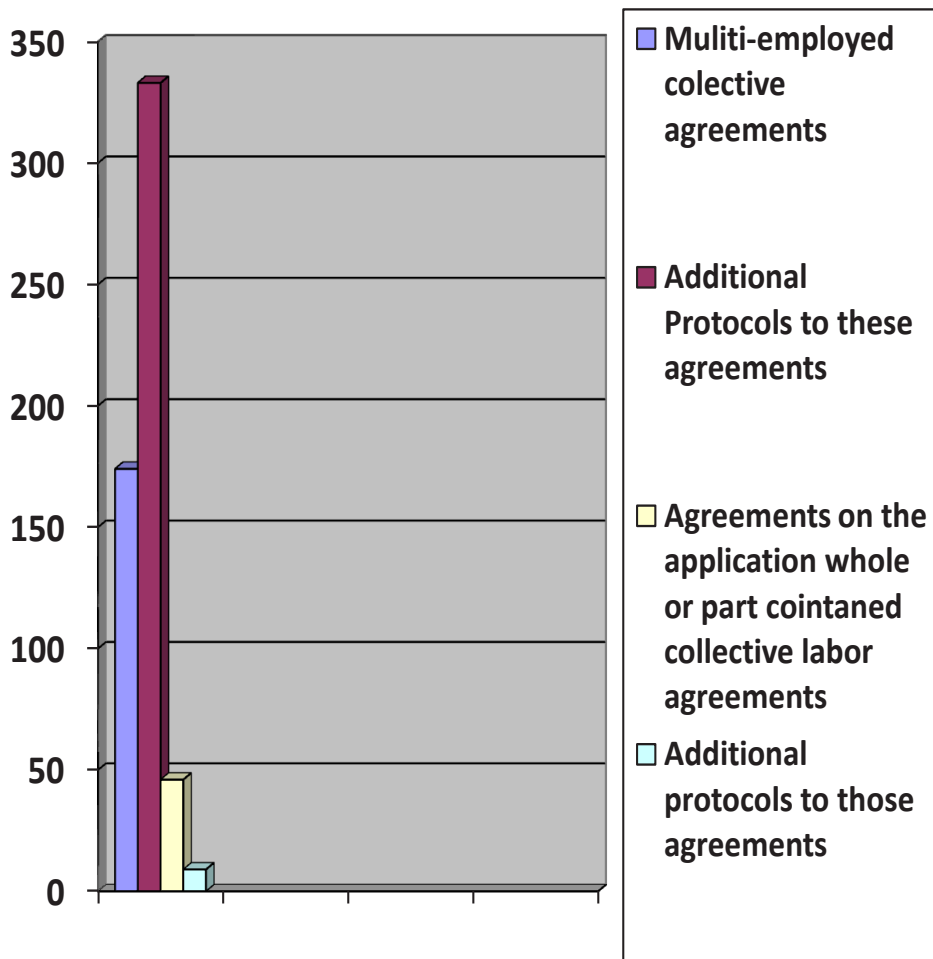
³⁰ K 19/96, OTK 1997/1/6.

³¹ K.W. Baran, *Collective labor law. Comment*, Warsaw 2010, p. 356.

³² G. Goździewicz, *Collective agreements...*, p. 91.

³³ The website of Department for Social Dialogue and Partnership, on-line <http://www.dialog.gov.pl/dialog-krajowy/uklady-zbiorowe-pracy/>.

Figure 1. Total registered multi-employer collective agreements



Source: The website of Department for Social Dialogue and Partnership, on-line <http://www.dialog.gov.pl/dialog-krajowy/uklady-zbiorowe-pracy/>

The obstacle to conclude collective agreements may be the lack of cooperative base of employers who treat systems as an obstacle, sometimes even a relic from the previous system to a free market economy. Such an attitude can only counteract the unions, which maintain a strong social position. Their withdrawal may lead to an increase in the importance outside union law³⁴.

³⁴ G. Goździewicz, *Collective agreements...*, p. 92.

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Constitutional Court's judgment 18 November 2002. K 37/01, OTK-A 2002, no. 6, pos. 82.

Summary: In my work I wanted to present collective labor agreements as a permanent element of labor law, and their impact on labor law and other branches of the Polish law. I took into account in my work, judgments, resolutions of the Constitutional Court and the Supreme Court and their importance for collective bargaining and their significance for the Constitution as well as the Polish legislation. I have tried to outline collective agreements other legal and political systems, starting with the countries having the characteristics of a democratic state through socialist system. I presented at the same time what groups are excluded from the regulation of systemic and what are the consequences. In the final part of my work I have presented possible scenarios (optimistic and pessimistic outlook) for collective labor agreements and graph of how much was singht multi-establishment agreements, together with additional protocols, agreements for these protocols, etc.

Keywords: labor law, Constitutional Court, Supreme Court, collective agreements, multi-employer collective agreement, judgments, resolutions, political system, Constitution, civil service

UKŁAD ZBIOROWY PRACY JAKO TRWAŁY ELEMENT PRAWA PRACY

Streszczenie: Opracowanie przedstawia układy zbiorowe pracy jako trwały element prawa pracy oraz ich wpływ na prawo pracy i inne gałęzie prawa polskiego. Uwzględnia wyroki, uchwały Trybunału Konstytucyjnego oraz Sądu Najwyższego i ich doniosłość dla układów zbiorowych pracy, dla Konstytucji RP, a także dla polskiego ustawodawstwa. Przedstawiono zarys układów zbiorowych w innych systemach prawno-politycznych, zaczynając od państw o charakterystyce demokratycznej, poprzez państwa o ustroju socjalistycznym. Zaprezentowano jednocześnie, jakie grupy są wyłączone z regulacji układowej oraz jakie są tego skutki. W części końcowej zaprezentowano możliwe scenariusze (perspektywa optymistyczna oraz pesymistyczna) dla układów zbiorowych pracy oraz rysunek przedstawiający, ile zostało zawartych układów ponadzakładowych wraz z protokołami dodatkowymi, porozumieniami do tych protokołów etc.

Słowa kluczowe: prawo pracy, Trybunał Konstytucyjny, Sąd Najwyższy, układy zbiorowe pracy, ponadzakładowe układy zbiorowe, wyroki, uchwały, system polityczny, Konstytucja, służba cywilna