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POLISH REPORT ON STRIKES**

1. GENERAL BACKGROUND – COUNTRY PROFILE

1.1. POLITICAL UNIT TO BE COVERED IN THE REPORT / STATE

1.2. ECONOMIC, POLITICAL AND HISTORICAL BACKGROUND

1.2.1. THE SECOND POLISH REPUBLIC (II RP).

In 1918 Poland regained its independence after 123 years of partition among the three then neighbouring powers: Austria (the later Austria-Hungary), Prussia (the later Germany) and tsarist Russia (the later USSR). The name “Second Pol-

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ish Republic” (*II Rzeczpospolita, II RP*) emphasizes the continuity with the First Polish Republic (*I Rzeczpospolita*) (1569–1795), liquidated under partition treaties concluded among Austria, Prussia and Russia in the second half of the 18th century (1772–1795). The Treaty of Versailles - the major peace agreement ending the World War I, signed on 28 June 1919 by Germany, the powers of the Triple Entente, the Allied and Associated States, ratified on 10 January 1920 in Paris, established boundaries between European states and introduced a new political governance. The boundaries of the Second Polish Republic were established as a result of numerous treaty agreements. These include: the Treaty of Versailles, the Treaty of Saint Germain, the Treaty of Riga, the Treaty of Trianon and the resolutions of the Conference of Ambassadors of the Principal Allied and Associated Powers. In 1921, as a consequence of the Treaty of Versailles, the results of a plebiscite as well as three Silesian Uprisings, the eastern part of the plebiscite territory in the Upper Silesia was incorporated into Poland. The process of formation of the eastern boundary of the Second Polish Republic was the longest; it was approved by the Conference of Ambassadors on 15 March 1923 which was partly a result of the won Polish-Soviet war. Vilnius was incorporated into Poland. The Polish state included a small area of the Upper Silesia, inhabited largely by Poles, which historically was a part of Czechoslovakia. The Second Polish Republic bordered Germany, Czechoslovakia (since 1938 Slovakia and Hungary), Romania, USSR, Latvia, Lithuania and German exclave (Eastern Prussia). The area of the Second Polish Republic was 389,720 km. The then Poland had 34.8 million citizens. It was a heterogeneous state. Poles accounted for more than 68% of the population, Ukrainians – more than 15 %, Jews – 8.5%, Belarusians as well as “locals” (meaning persons without developed national consciousness) – more than 3%, Germans – more than 2%. This mosaic of nations was complemented by Russians, Lithuanians, Czechs, Romanies, few Slovaks and Karaims, ethnic groups close by language to Ukrainians (Boykos, Lemkos, Hutsuls), as well as Polonised Armenians and Tartars. The government system of the Second Polish Republic by 1926 was called a democratic republic with a multiparty parliamentary – cabinet system. After the May Coup d’État in 1926 the political system was modified through amendment of the Constitution (the August Novelization) and through the actual manner of exercise of power, and consequently it was transformed into a presidential-autocratic system.

The economic situation of Poland in the years 1918–1939 was determined by a decisive role of agriculture in generating the national income and employment. The level of industry was low, and the economic development was dependent on foreign capital. There was a significant overpopulation in rural areas and permanent unemployment. With a general backwardness, the standard of living was low and the economy was characterised by stagnation. In 1934 an attempt to resolve the impasse was a government policy which contributed to revival of industrial produc-

tion and increase in the number of employed persons, mostly through construction of the Port in Gdynia and of the Central Industrial Region. Labourers represented the second largest, after peasants, social class in Poland. Labourers and their families accounted for 27.5% of the population and in 1939 the number increased to ca. 30%. Only a part of the half of the labourers employed in the industry may be included in the large-industry working class.

1.2.2. POLISH PEOPLE'S REPUBLIC – PRL (1945-1989)

After the World War II Poland was in the sphere of influence of the former USSR. The current Polish boundaries are a result of the talks in Tehran (1943) and Yalta (1945) during the World War II. The Allies decided that the eastern boundaries of Poland will be under administration of the Soviet Union. A consequence of the shift of the borders of Poland to the east of Europe was a massive displacement of Polish and German population. The length of the boundaries of the Republic of Poland is 3,505.27 km. On land Poland borders seven neighbouring countries: the Russian Federation, the Republic of Lithuania, the Republic of Belarus, Ukraine, the Slovak Republic, the Czech Republic and the German Federal Republic. Dependence of the people's government in Poland on the Soviet Union was increasing. This meant adoption, to an increasing extent, of Soviet systemic mechanisms in the process of formation of a new legal order in Poland. The Polish People's Republic (PRL) was a state of 'socialist democracy' in which the power belonged to the 'working people of towns and villages'. The major characteristics of the socialist system were the lack of private ownership (state ownership), centrally planned economy and rule of one political party – the Polish United Workers' Party (*Polska Zjednoczona Partia Robotnicza – PZPR*).

1.2.3. THE THIRD POLISH REPUBLIC (1989 – NOW) – III RP

In June 1989 the Polish political system was changed as a result of a peaceful revolution initiated by the 'Solidarity' socio-political movement. The Republic of Poland was considered a common good of all citizens and was transformed into a democratic country based on the rule of law and following the principles of social justice. The supreme authority in the democratic Polish state belongs to the nation – a 'sovereign' which exercises its powers directly or through its representatives.

A structure of employment in the Polish economy deviates from the European standards since 13% of the employed persons work in agriculture while the EU average is 5%, 57% of the employed persons work in services sector (the EU average is 68%), and 30% of the employed persons work in the industry (the EU average is 26%). According to Eurostat, in 2014 in Poland 61.7% of the working age popu-

lation (15-64 years) were employed while the EU average is 64.9%. According to OECD, in 2014 Poles were the eight longest working nation from among 37 OECD countries – the average annual number of hours worked per 1 employee was 1923. Better mechanisation of work resulted also in the increased workforce productivity. In 2014 the number of persons employed in the national economy was 14.6 million. Public sector employed 3.4 million persons (23%), and private sector employed 11.2 million persons (77%). As at the end of 2013 the number of persons employed in the enterprise sector was 8.9 million, where micro-enterprises (up to 9 employees) employed 3.37 million persons. In Poland the most developed industries include: mining industry, energy industry, metallurgy, machinery, automotive industry as well as electromechanical industry, including precise, electronic and electrical engineering industry, transport equipment, food, textiles and clothing industry. Extraction and processing of mineral resources is also of significant importance.

In terms of production and economy innovations, Polish enterprises are among the least active in the European Union. In 2009 Polish enterprises were on the 23rd place among the 28 Member States of the European Union. The Summary Innovation Index (SII) for Poland in 2009 was 0.317 while the EU average was 0.478. However, the innovation of the Polish economy is growing faster than in many other EU states – in 2007 the SII was 0.270 while the average was 0.450.

According to Eurostat, unemployment in Poland is 8.2% (Labour Force Survey in Poland), and according to the Polish Central Statistical Office (GUS) it is 13.5% (Employment, main characteristics and rates – annual averages). In April 2015 the unemployment was 11.3%, and in August 2016 it was 8.5% (Money.pl, 2016-11-05).

In terms of GDP, Poland is the sixth economy of the European Union and the 20th economy in the world (in 2009). The nominal domestic product per capita in 2009, according to the calculations of the IMF, was 11,288 dollars and when measured with purchasing power parity it was 18,072 dollars and accounted for 61% of the EU average. The economic growth rate ranks Poland among the fastest growing European countries – in 2009 the GDP increased by 1.7% which was the only positive result in the European Union (the average was – 4.1%). According to OECD, the increase of GDP per capita in Poland in the years 1992–2002 was among the highest in the world and amounted to 216%, from 4994 dollars in 1992 to 10,800 dollars in 2002 according to purchasing power parity. The service sector generates 67.3% of the entire GDP, industry 28.1% and agriculture 4.6%. In terms of wealth, since 2010 Poland is considered a “highly developed” country. It is ranked 25th among 48 European states. It lags behind countries of Western Europe (except [Portugal](#) and [Andorra](#)) and three post-communist countries (Slovenia, Czech Republic and Estonia). On an EU scale, Poland is ranked the 20th (*ex aequo* with Lithuania), which is a better result than a majority of the states of so called new European Union – apart from the 3 abovementioned EU members, the only remaining state ahead of

Poland is Cyprus. Poland's wealth is comparable to Portugal, Hungary and Estonia. According to 2011 data, 6.7% of inhabitants in Polish households had expenses below the extreme poverty line (below the living wage).

1.3. LEGAL FRAMEWORK

Polish individual and collective labour law system is based on the Constitution, laws enacted by the Parliament (*Sejm*) and regulations issued by the Council of Ministers and in labour law, social security and social policy matters, by a minister competent in labour law matters. Currently it is a Minister of Family, Labour and Social Policy. A characteristic feature of the Polish labour law which belongs in the legal systems of continental Europe based on law established by the state legislative authorities (*Sejm* and *Senate* - the lower and upper chamber of the Polish parliament) as well as by the central state executive authorities is a constitutionally guaranteed right of social partners, a collectivity of workers and employers, to negotiate collective agreements and other arrangements governing the working conditions, wages and any other issues not governed by the generally applicable mandatory labour laws. Since the period of the Second Polish Republic a principle is applied according to which social partners may exercise the right to conclude collective agreements which may regulate all labour law, social security and social policy issues of their interest in a manner more favourable than the provisions of the generally applicable laws enacted by the state legislature. Restrictions to this rule were laid down in article 240 § 1 (2)-(3) of the Labour Code of 26.6.1974¹ They relate to mandatory provisions, including norms governing occupational health and safety and other legal norms which define rights of third parties. The principle of inviolability of rights of third parties laid down in the Labour Code restricts the freedom of the social partners to bargain collectively and to conclude collective agreements. Within the meaning of the labour laws, social partners are employees represented by trade unions and an employer or employers who may bargain collectively alone or through employers' organisations. Collective agreements are concluded by trade union organisations representing workers employed in all, public and private, establishments, except employees employed directly by the state organisational units included in the central or local government administration and listed in article 239 § 3 of the Labour Code. These include civil servants, employees of state services (officials) employed not under a contract of employment but under election, appointment or nomination, as well as local government employees.

Court rulings, including rulings of the Supreme Court, do not play a law-making role in the European continental legal system based on the Roman law. Also,

¹ Official Journal – OJ consolidated act – 2014, item 1502 as amended.

lawyers do not consider them precedents. They are binding only upon the parties in the case in which they were delivered. Only because of the role of the rulings of the Supreme Court in the system of national law they may influence jurisdiction in identical or similar cases. They are used as arguments which may be invoked by the parties in disputes in the course of interpretation of law.

1.4. THE STATUS AND ROLE OF COLLECTIVE LABOUR RELATIONS

In the labour law system this expression is understood to mean relations between social partners, employees and employers, in which everyone may exercise his natural freedom of association in organisations representing his interests and defending his rights. Employees as well as persons employed under civil-law contracts enjoy the freedom of association in trade unions. The above right may be exercised only by employees and other employed persons listed explicitly by the legislature. Employers may become members of employers' organisations without any restrictions. A role of trade unions is to represent interests and defend occupational and social rights of workers. Employers' organisations defend rights and represent interests, in particular economic interests, of employers. Unlike trade unions entitled to represent interests and defend rights of workers who are not members of a trade union organisations concerned, the employers' organisations represent and defend rights and represent interests of their members only. In the collective labour and employment relations the right to bargain collectively and to participate in collective labour disputes may be exercised both by employers' organisations and by individual entrepreneurs who are not members of employers' organisations. The philosophy of association of workers in trade unions is based on the idea of freedom of negotiation and initiation of collective disputes to exert pressure on employers so that the latter satisfy workers' interests concerning wage and working conditions, social benefits and trade unions rights and freedoms. The collective labour laws established by the state lay down the terms and conditions of exercise of the above freedom.

1.4.1. TRADE UNIONS

According to the latest statistical data, in 2014 there were 14.4 million employees employed in Poland. There are 12,900 active trade union organisations with 1.6 million members. Members of trade unions are: employees (17 %), persons employed not under an employment relationship (11%) and pensioners (8 %). The most unionised public employment sector is mining and extraction (67%), electricity and gas (31 %) and education (25 %). Poland has one of the lowest trade union membership rates in Europe (12% – data of 2014). Trade unions organised in three trade union confederations: NSZZ 'Solidarność' (*the Independent and Self-Governing Trade*

Union Solidarność - Solidarity), Forum Związków Zawodowych (*Trade Unions Forum*) and Ogólnopolskie Porozumienie Związków Zawodowych (*All-Poland Alliance of Trade Unions*) unite mainly workers employed in state establishments. More than twenty trade unions are not associated in any of the three trade union headquarters mentioned above. A majority of trade unions, 67%, have from 15 to 149 members. Large trade unions with more than one thousand members account for only one percent of all trade unions. Therefore a trade union movement is dispersed and, moreover, particular trade union organisations compete with each other.

1.4.2. EMPLOYERS AND EMPLOYERS' ORGANISATIONS

In 2014 there were more than three hundred employers' organisations in Poland. According to data of the Ministry of Family, Labour and Social Policy there are four main active federations of employers' organisations:

– **Pracodawcy RP (*Employers of Poland*)** – it is a politically independent and non-profit organisation which unites employers' organisations and federations as well as enterprises which are employers of national importance. Pracodawcy RP (*Employers of Poland*) unite about 40 regional and sector employers' unions as well as enterprises of national importance. The objective of the Employers of Poland is representation of employers' interests towards the government, public authorities of all levels and social partners - both at the nationwide and regional level.

– **Konfederacja Lewiatan (*Lewiatan Confederation*)** – is a voluntary, self-governing, independent, social and economic organisation uniting employers' associations, federations of employers' associations and employers with a special economic position and importance in labour relations. The main objective of the Polish Confederation of Private Employers (PKPP) "Lewiatan" is representation of private employers from all over Poland, from various branches of economy and development of economic governance through participation, guaranteed by law, in the law-making processes and in the social dialogue.

– **Związek Rzemiosła Polskiego (*Polish Craft Association*) (ZRP)** – is a nationwide social, professional and economic organisation of craft association uniting 490 guilds, 271 craft cooperatives, 27 chambers of crafts and entrepreneurship. A major task of the ZRP is to provide its member organisations with assistance in fulfilment of their statutory tasks, development of business activity and socio-cultural activity of crafts and small businesses, provide them with comprehensive assistance and support and legal protection, and to represent interests of crafts and small businesses in Poland and abroad.

– **Business Centre Club – Związek Pracodawców (*Business Centre Club - Employers' Association*) (BCC-ZP)** – is an employers' association the activity of which is coordinated by Instytut Lobbyingu BCC (*BCC Lobbying Institute*). The main objectives of

the BCC include: provision of club services to the Club members, representing interests of business community, creation of business lobbies and business community bonds.

According to 2014 data, the mentioned organisations had 16,300 members. Most of them (63 %) conducted a nation-wide activity. Almost three quarters (74 %) of entrepreneurs who belong to one of the 300 employers' organisations are legal persons. The remaining 26 % of members of the organisations were natural persons running business activity. On average, one employers' organisation had 57 members – entrepreneurs. Half of the mentioned 300 employers' organisations had not more than 24 members. Entrepreneurs associated in employers' organisations operated in the following sectors of economy: healthcare (21 %), services (20 %), consulting (15 %), information technology and communication (15 %), industrial processing (12 %) and construction (12 %). The smallest part of the employers' organisations included entrepreneurs dealing with energy and water supply (2 %) as well as mining and extraction (3 %). A comparison of the areas of activity of organisations representing social partners, trade unions and employers' organisations clearly shows that interests of collectivity of workers and trade union organisations representing such collectivity differ visibly from the interests of entrepreneurs and employers' organisations representing the entrepreneurs.

1.4.3. DATA CONCERNING STRIKES

Polish Yearbooks of Labour Statistics provide information on strikes organised in the Second Polish Republic, in the 1930s. At the beginning of the decade the number of strikes exceeded 300 per year: 1930 – 312 strikes, 1931 – 357 strikes. In the second half of the mentioned decade the number of strike actions increased significantly. In 1935 – 1156 strikes, 1936 – 2056 strikes, 1937 – 2078 strikes².

The Yearbooks of Labour Statistics of the period of the Polish People's Republic did not include any data on strikes. Press informed casually on 'unauthorised breaks from work'. After the change of the political system, because of the possible consequences, the information posted on the internet regarded only some, most important political protests. Therefore, it is difficult to collect and cite, in the introduction to the study on strikes in essential services, credible information on the number and causes of strikes in the last period of the socialist regime in Poland.

In the Third Polish Republic there were significant fluctuations in the number of strikes during consecutive years. In 2008 there were 12,765 strikes organised and in 2009 there were 49 strikes (Labour Statistics, 2010, table 6/72). In 2008 strikes were most often organised by workers employed in the transport and storage sector (51), mining (27) and healthcare (80). In 2013 – there were 93 strikes organised and in 2014 – only 3 strikes (Labour Statistics, 2016, table 6/73). In 2014 strikes were most often organised in mining (31) and transport industry (37). The abovementioned economic

² Labour Statistics, GUS, Warsaw 1938, no. 3.

sectors and services: mining, transport, education and healthcare are nowadays the areas where collective disputes between social partners are most frequent.

2. COLLECTIVE LABOUR RELATIONS RIGHTS: THE RIGHT TO ORGANIZE, THE RIGHT TO BARGAIN COLLECTIVELY AND THE RIGHT TO STRIKE

2.1.1. THE CONSTITUTION OF THE REPUBLIC OF POLAND OF 2.4.1997 GUARANTEES A FREEDOM OF ASSOCIATION IN TRADE UNIONS, SOCIO-OCCUPATIONAL ORGANIZATIONS OF FARMERS AND IN EMPLOYERS' ORGANIZATIONS [ARTICLE 59 (1)]

All entitled persons may benefit from the abovementioned guarantee of association. Employees and other employed persons who are not employers may form and join trade unions. Also the unemployed and pensioners maintain the right to belong to trade union organisations. Individual farmers who are not in employment relationship, who are engaged in self-employed business activity, who use help of their family members, have the right to associate in socio-occupational organisations of individual farmers. Employers are guaranteed the right to form and join employers' organisations. Article 58 (1) of the Constitution of the Republic of Poland guarantees 'to everyone the freedom of association'. The above fundamental principle of freedom, considered one of the fundamental human rights, 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 (article 59 (4) of the Constitution). Law prohibits only such associations the purpose or activity of which is contrary to the Constitution of the Republic of Poland or to law enacted by the Parliament. Only courts may decide on the refusal to register an association, a trade union, an organisation of individual farmers or employers' organisation [article 58 (2)]. Trade unions, socio-occupational farmers' organisations and employers' organisations enjoy a specific status and are not subject to the act of 7.4.1989 – Law on Associations (OJ 2/89, item 104 as amended) or to the forms of administrative supervision of state prescribed by the Law.

2.1.2. CONSTITUTION OF THE REPUBLIC OF POLAND GUARANTEES TO TRADE UNIONS AND EMPLOYERS AND THEIR ORGANIZATIONS THE RIGHT TO BARGAIN COLLECTIVELY AND TO CONCLUDE COLLECTIVE AGREEMENTS AND OTHER NORMATIVE ARRANGEMENTS REGULATING WAGE AND WORKING CONDITIONS [ARTICLE 59 (2)]

Under article 59 (3) of the Constitution, trade unions shall have the right to organize workers' strikes or other forms of protest. The limits of the above entitlement are laid down in the act on resolution of collective disputes of 23.5.1991 (consolidated act – OJ 255/15,

item 295 as amended). The mentioned article 59 (3) of the Constitution confirms the competences of legislative authority (Sejm and Senate) do adopt an act which may restrict, in the interest of the 'public good' the organisation of strikes or establish a prohibition on the organisation of strikes by certain categories of employees in 'certain areas' which means spheres, sectors, scopes or domains of the activity. The above legal regulation of collective labour relations is nothing new in the Polish system of collective labour law. It was applied during the interwar period in the Second Polish Republic. After the change of the system resulting from incorporation of Poland into the sphere of influence of the former USSR, in the changed political and economic conditions the last element of the triad – collective labour disputes, in particular strikes, disappeared. The freedom to strike was again recognized by the state authorities in the last decade of the Polish People's Republic (PRL). The act of 23.5.1991 on resolution of collective disputes restored the balance between the core relationship – the right to organize, the right to bargain, the right to strike, on which collective labour relations are based in a free and democratic state. This will be discussed further in paragraphs 2.1.2a), 2.1.2aa) and 2.1.2aaa).

2.1.2a) During the Second Polish Republic collective labour disputes in the agricultural sector were regulated by the following legal acts: an act of 1.8.1919 on resolution of collective disputes between employers and agricultural workers (*ustawa o załatwianiu zatargów zbiorowych pomiędzy pracodawcami a pracownikami rolnymi*)³, a regulation of the Minister of Labour and Social Protection adopted in cooperation with the Minister of Justice of 4.12.1920 on resolution of collective disputes between employers and agricultural workers (*rozporządzenie w przedmiocie załatwiania zatargów zbiorowych pomiędzy pracodawcami a pracownikami rolnymi*)⁴, an act of 18.7.1924 on the competences of the Minister of Labour and Social Protection to appoint extraordinary conciliation commissions for resolution of collective disputes between employers and agricultural workers (*ustawa w przedmiocie uprawnień Ministra Pracy i Opieki Społecznej do powoływania nadzwyczajnych komisji rozjemczych do załatwiania zatargów zbiorowych pomiędzy pracodawcami a pracownikami rolnymi*)⁵, a regulation of the Minister of Social Protection of 5.11.1932 on determining the composition of conciliation commissions appointed for resolution of individual disputes between employers and agricultural workers (*rozporządzenie o ustalaniu składu komisji rozjemczych, powoływanych do rozstrzygnięcia sporów indywidualnych pomiędzy pracodawcami a pracownikami rolnymi*)⁶. Collective disputes between employers and workers employed in industry and trade were regulated several years later by a regulation of the President of the Republic of

³ OJ 90/31, item 706.

⁴ OJ 55/21 as amended.

⁵ OJ 71/24, item 686.

⁶ OJ 106/32, item 883.

Poland of 27.10.1933 on the extraordinary conciliation commissions for resolution of collective disputes between employers and workers employed in industry and trade (*rozporządzenie o nadzwyczajnych komisjach rozjemczych do załatwiania za-targów zbiorowych pomiędzy pracodawcami a pracownikami w przemyśle i handlu*)⁷. Provisions implementing the above regulation were included in a regulation of the Minister of Social Protection of 24.1.1934 adopted in cooperation with the Minister of Justice and the Minister of Industry and Trade on implementation of the regulation of the President of the Republic of Poland of 27.10.1933⁸. Nearly two years before the World War II the abovementioned regulation of the President of the Republic of Poland was amended by the act of 14.4.1937⁹.

2.1.2aa) In the Polish People's Republic (PRL) the above triad: trade unions, collective agreements and collective disputes – strikes, was undermined by the socialist state. The then political authorities maintained that the popular democracy in which the power is vested in labourers and peasants does not need legal provisions setting out the rules of exercise of the employers' freedom to initiate collective disputes and organise strikes. Workers' interests relating to the terms and conditions of employment, remuneration for work, social benefits and trade union rights and freedoms were represented by the working class ruling the state. Therefore, the applicable laws governed merely the rules concerning exercise of the freedom of association of workers in trade unions. In the Polish People's Republic the right of coalition was governed by: a decree of 8.2.1919 on temporary provisions on trade unions (*dekret w przedmiocie tymczasowych przepisów o związkach zawodowych*)¹⁰, a decree of 6.2.1945 on establishment of works councils (*dekret o utworzeniu rad zakładowych*)¹¹, act of 1.7.1949 on trade unions (*ustawa o związkach zawodowych*)¹². The latter act was replaced after the general workers' strikes organised in the years 1980-81 by the act of 8.10.1982 on trade unions¹³. A freedom to form trade union organisations and to join the existing trade unions was controlled by the state. There applied a mandatory principle according to which in one public undertaking (there were no other undertakings than public) there could be only one trade union organisation. Formation of trade unions was controlled even more efficiently by a trade union confederation – Central Council of Trade Unions (*Centralna Rada Związków Zawodowych – CRZZ*), which was under control of the ruling political party. It was not possible to form a trade union organisation which would be independent of the state, of the governing political party or of the formal headquarters of the trade

⁷ OJ 82/33, item 604.

⁸ OJ 13/34, item 104.

⁹ OJ 39/37, item 313.

¹⁰ OJ 15/19, item 209.

¹¹ OJ 8/45, item 36.

¹² OJ 41/49, item 293.

¹³ OJ 32/82, item 216.

union movement – CRZZ. The first independent and self-governing trade union was established and registered by a court in Warsaw upon signature of post-strike agreements between state authorities and labourers in 1980. It was the Independent Self-Governing Trade Union ‘Solidarity’ (‘Solidarność’). The workers on strike and their legal advisors took advantage of the lack of regulation of collective disputes in the laws enacted by the state and used it as a key argument preventing application of any legal sanctions for mass organisation of strikes. Those on strike made use of the natural freedom guaranteed by the ILO Convention no. 87 adopted on 9.7.1948 in San Francisco during the 31st General Conference of the Organisation. Poland ratified the Convention on 25.2.1957¹⁴. The general nature of the trade union freedom which was guaranteed in the People’s Polish Republic by not regulated, therefore not limited by the state, rules of exercise of the abovementioned freedom, effectively blocked the possible ideas of the authorities to hold the workers on strike liable.

After the political thaw, after 1956, the trade unions’ possibility to bargain collectively, liquidated in the 1940s, was restored. The legal basis for the restored possibility to bargain collectively was an act of 14.4.1937 on collective agreements (*ustawa o układach zbiorowych pracy*) adopted under the previous political regime during the Second Polish Republic¹⁵. The act was replaced by the provisions of chapter eleven ‘Collective agreements’ of the Labour Code. The mentioned provisions are still applicable in the Third Polish Republic. In the 1980s the former political regime started to formally respect the foundations of collective labour law such as the freedom of association, freedom to bargain collectively and freedom to organise strikes.

2.1.2 aaa) In the Third Polish Republic, after the change of the political and economic system, there were three separate acts adopted on 23.5.1991: the act on trade unions (*ustawa o związkach zawodowych*)¹⁶, the act on employers’ organisations (*ustawa o organizacjach pracodawców*)¹⁷ and the act on resolution of collective disputes (*ustawa o rozwiązywaniu sporów zbiorowych*)¹⁸, which guaranteed to employees and employers the right to form and to join trade unions and employers’ organisations, respectively. The purpose of the legally guaranteed freedom of association is to regulate the foundations and legal framework enabling representation of separate interests of social partners and protection of their rights in amicable manner and, ultimately, in a legal form of collective disputes.

¹⁴ OJ 29/58, item 125.

¹⁵ OJ 31/37, item 242.

¹⁶ Consolidated act – OJ 167/2014, item 167 as amended.

¹⁷ OJ 55/91, item 235 as amended.

¹⁸ Consolidated act – OJ 295/2015, item 295.

2.2. THE RIGHT TO ORGANIZE, THE RIGHT TO BARGAIN COLLECTIVELY AND IN PARTICULAR THE RIGHT TO STRIKE DERIVE FROM INTERPRETATION OF THE PROVISIONS OF INTERNATIONAL LAW AND LABOUR LAW STANDARDS OF THE COUNCIL OF EUROPE – THE EUROPEAN SOCIAL CHARTER OF 18.10.1961

The Committee of Freedom of Association of the Governing Body of ILO considered that the right to strike is an inherent consequence of employees' right to organise in trade unions protected under article 3 of ILO Convention no. 87 on the Freedom of Association and Protection of the Right to Organise¹⁹. The right to strike is one of the essential legal instruments through which employees and trade unions may effectively pursue and protect their economic and social interests. An identical standpoint was taken by the European Committee of Social Rights of the Council of Europe which interprets article 5 of the Charter of Social Rights of the Council of Europe – the right to organise – in connection with article 6 (4) of the above Charter which clearly stipulates that the Contracting Parties ratifying the provisions of the Charter shall 'recognize the right of workers (...) to collective action in conflicts of interest, including the right to strike (...)'. Poland ratified the ILO Convention no. 87 and the Charter²⁰ Given the above, the state authorities, already during the previous political period, adopted provisions on trade unions which adapted the national system of collective labour law to the international standards.

3. THE RIGHT TO STRIKE

3.1. The freedom to strike is different from the right to strike in that the former is not limited by any formal and legal requirements established by applicable labour laws. The act of 23.5.1991 on resolution of collective disputes (*ustawa o rozwiązywaniu sporów zbiorowych*) currently in force regulates in chapter 4, 'Strike' (articles 17-27), the procedures of legal exercise by the workers of the right to strike and of organisation of strikes by trade unions. The Polish legislature differentiates between the right to strike, which is an individual right of every employee whose freedom to strike was not limited by applicable laws, from the right to organise strikes. The latter is granted only to trade union organisations. The above monopoly of trade unions to organise strikes and other industrial actions was criticised by the Council of Europe as being not in compliance with article 6 (4) of the European Social Charter. The Council of Europe revised the abovementioned critical view fol-

¹⁹ A.M. Świątkowski, *Międzynarodowe prawo pracy, tom I: Międzynarodowe publiczne prawo pracy – standardy międzynarodowe, volume 2 [International labour law, Volume I, International public labour law – international standards, volume 2]*, Warsaw 2008, p. 44.

²⁰ A.M. Świątkowski, *Charter of Social Rights of the Council of Europe*, Alphen aan den Rijn 2007, s. 189.

lowing determination of easy-to-meet conditions for entry of an established trade union organisation into a register stipulated in the act on trade unions of 23.5.1991. Chapter 4 of the act on resolution of collective disputes titled 'Strike' does not lay down any restrictions on the exercise of the right to strike but it sets out formal and legal requirements which should be met by a trade union – an organiser of a strike²¹. These include: 1) voluntary cessation of work by a group of employees (article 17 (1) in connection with article 18); 2) use of statutory procedures for amicable resolution of a collective dispute: bargaining and mediation. Strike is a last resort measure. Basically, with two exceptions laid down in the said provision, a strike cannot be legally organised if legal instruments for amicable resolution of a collective dispute have not been exhausted [article 17 (2)]; 3) consideration by the organiser of strike of proportionality of the demands put forward by a trade union and losses which will be caused as a result of interruption of work [article 17 (3)]; 4) prohibition on the participation in a strike by workers employed in the work positions, operating equipment or supervising installations where stoppage of work poses risk to human life and health or jeopardises the state security [article 19 (1)]; 5) prohibition on the organisation of strikes in public institutions listed in article 19 (2) (army, police and other militarized and paramilitary organisations); 6) prohibition on strike action by employees who do not enjoy the right to strike, employees employed in the public authorities, central and local government administration, courts and prosecution service [article 19(3)]; 7) a statutory obligation of an organiser of a strike to obtain consent of a majority of voting employees employed at the establishment where the strike is to be organised. In the case of an undertaking which consists of two or more establishments, the consent for organisation of a strike must be given by a majority of voting workers employed at the establishments which are to be covered by the strike. The strike referendum should be attended by at least 50% of employees employed at the establishments where the strike is planned [article 20 (1)-(2)]; 8) an employer should be informed of declaration of a strike at least five days before its commencement [article 20 (3)]; 9) a strike cannot restrict a manager of the work establishment and other employees who do not participate in the strike in performing their duties relating to the protection of property of the establishment and uninterrupted work of facilities, equipment and installations the disruption of which might pose risk to human life or health or might prevent resumption of regular operations of the establishment after the strike ends [article 21 (1)]; 10) organisers of strike are obliged to cooperate with a manager of the work establishment in the fulfilment of the obligations set out by the legislature in article 21 (1) of the act on resolution of collective disputes. The jurisprudence has extended the legal restrictions on or-

²¹ A.M. Świątkowski, *Ustawa o rozwiązywaniu sporów zbiorowych [Act on resolution of collective disputes]* [in:] *Zbiorowe prawo pracy. Komentarz [Collective labour law. Commentary]*, eds. J. Wrątny, K. Walczak, Warsaw 2009, p. 245.

ganisation of strikes not in compliance with law. The ban on strike applies to strikes which are legal but pose risk to life or health of persons who participate in such strike. Such strike is a hunger strike prohibited by the Supreme Court²² because of a disproportion between potential benefits and losses which may occur as specified in article 17 (3) of the act on resolution of collective disputes.

3.2. The act of 23.5.1991 mentions two types of strikes organised in compliance with its provisions: 1) strike and 2) sympathy (solidarity) strike. The former may be organised exclusively in the case of a collective dispute initiated by employees represented by a trade union (article 2), concerning working conditions, social benefits, trade union rights and freedoms of workers or other groups of employed persons who are entitled to associate in trade unions (article 1). The jurisprudence of collective labour law specifies the following types of strikes: 1) basic (classic) strike; 2) warning (preventive) strike; 3) sympathy (solidarity) strike²³. The act of 8.10.1982 on trade unions previously in force introduced a prohibition on the organisation of political strikes [article 37 (5)]. However, it did not set out the criteria enabling differentiation between political strikes and strikes organised for the protection of economic and social interests as well as trade union rights and freedoms²⁴. For that reason the act in force does not provide for a prohibition on organisation of strikes aimed at achievement of political purposes. It was recognized that strikes accepted by the legislature, organised for the achievement of specific benefits in the categories of matters listed in article 1 of the act of 23.5.1991 on resolution of collective disputes – working conditions, social benefits, trade union rights and freedoms, may be – and usually are – related to political issues. Economic, social and occupational interests cannot be separated from political issues. For that reason, the laws governing strikes currently in force do not include the prohibition on organisation of strikes for political purposes. The division of strikes in the Polish legislation and labour law jurisprudence into two types and several kinds of strikes distinguished in terms of their organisational form and methods does not allow distinguishing a strike to which all employees are entitled, regardless of the kind and place of work or type and profile of the employer. Identical right to strikes is granted to all employees whose freedom to strike was not restricted by the legislature. The above means that the legislature cannot divide the legal guarantees resulting from the freedom to strike, granted with no exceptions to all employees, into broader and narrower guarantees. The act of 23.5.1991 on resolution of collective disputes does not provide for the situations in which some employees could enjoy the freedom to strike

²² A judgment of 27.11.1997, I PKN 393/97, OSNP 1998, no. 17, item 511.

²³ J. Żołyński, *Strajk i inne rodzaje akcji protestacyjnych jako metody rozwiązywania sporów zbiorowych* [Strike and other industrial actions as the methods of resolution of collective disputes], Warsaw 2013, p. 231.

²⁴ A.M.Świątkowski, *Kompetencje związków zawodowych w sporach zbiorowych pracy* [Competences of Trade Union in Collective Labour Disputes], [in:] *Trade Unions' Scope of Power*, Warsaw – Cracow 1984, p. 329.

to the full extent while others could enjoy it only to a limited extent. Regulations governing strikes applicable during the period of the Polish People's Republic – the act of 8.10.1982 on trade unions and acts and regulations adopted during the interwar period in the Second Polish Republic – also listed in paragraph 1.5.1. of this study - did not differentiate between the scopes of guarantee of exercise by the employees of the right to strike. In the Polish pre-war, socialist and the current labour law system, the legislature either confirms the possibility to exercise the freedom to strike by granting legal guarantees of exemption from liability for participation in a legal strike or explicitly excludes the guarantees to some categories of employees mentioned in the provisions of the collective labour law.

3.3. In practice, the following types of strikes, which are not regulated by the act on resolution of collective disputes, can occur: sporadic strikes, competence strikes, rotating strikes, intermittent strikes, general strikes, “pearly” strikes, active, black, absenteeism, demonstration strikes, temporary strikes, permanent, sit-down, work-to-rule strikes, Japanese-style strikes, hunger strikes, obstructionist strikes, secret strikes.

3.4. The act of 23.5.1991 is generally applicable. It regulates strikes and other industrial actions organised at public and private establishments. The above applies both to legal and ‘wildcat’ strikes. The legal guarantees of free exercise of trade union freedom apply in both sectors of employment, private and public. However, it should be noted that the public institutions mentioned in article 19 (2)-(3) of the act of 23.5.1991 on resolution of collective disputes: the Internal Security Agency (*Agencja Bezpieczeństwa Wewnętrznego*), the Intelligence Agency (*Agencja Wywiadu*), the Military Counterintelligence Service (*Służba Kontrwywiadu Wojskowego*), the Central Anti-Corruption Bureau (*Centralne Biuro Antykorupcyjne*), police units and unit of Armed Forces of the Republic of Poland, Prison Services, Border Guard, Customs Guard and fire protection organisational units, were considered by the legislature to be establishments at which all the employed persons, both public officers and civil staff performing work under contracts of employment, were deprived of the legal guarantees of the freedom to strike [article 19 (1)]. The right to strike was denied also to employees employed in the public authorities, central and local government administration, courts and prosecution service [article 19 (3)]. The same law – the act of 23.5.1991 – applies to strikes organised in the private and public sector, however the public sector employees listed in article 19 (2)-(3) of the said act do not enjoy the legal guarantee granted to the private sector employees to organise and to participate in strikes. As regards initiators of strikes organised in state institutions listed in article 19 (2)-(3) not in compliance with law (illegal) and other employees who fail to fulfil the obligations laid down in the act concerned, the provisions of chapter 5 ‘Liability for breach of provisions of the act’ will apply (article 26 and 27). Employees participating in an illegal strike do not enjoy the immunity guaranteed under article 23 (1) of the act of 23.5.1991 on resolution of collective disputes. The mentioned provision prohibits the employer from classifying participation of an employee in a legal

strike as infringement of duties on the part of the employee. Therefore, participation of a state employee in illegal strike amounts to infringement of duties (misconduct). Depending on the assessment of gravity of the infringement, an employer may impose disciplinary penalties, including immediate dismissal of the insubordinate employee.

4. THE EXPERIENCE WITH STRIKES IN ESSENTIAL SERVICES

4.1. The act of 8.10.1982 on trade unions previously in force denied the right to strike to the employees employed directly in the positions connected with national defence and security and at the establishments which produce, warehouse or supply food, in healthcare and social assistance facilities, in pharmacies and in educational and pedagogical facilities [article 40 (1)]. The right to strike was denied also to persons employed on oil pipelines and gas pipelines, to operators of transit lines, operators of facilities for international transport and communication and transit operations, facilities for international and inter-city communications and special services. The right to strike was denied also to employees of radio stations and operators of road and air transport systems [article 40 (2)]. Workers employed in the public undertaking – Polskie Koleje Państwowe (*Polish State Railways*) and in other transport establishments, in communication organisational units, in undertakings which supply water, electricity, heat and gas could exercise the freedom to strike only where necessary national defence and security services were provided and essential civilian needs were met [article 40 (3)]. The act of 8.10.1982 no longer in force guaranteed to such employees a conditional right to strike. According to the commentators of article 40 (1)-(3) of the act of 8.10.1982 on trade unions, casuistically formulated bans on strike relating to most of the areas of daily life were justified by enigmatic statement that the prohibition to strike is 'dictated by important social and political reasons connected with the necessity to provide benefits and resources necessary for a normal existence of the society'²⁵. A strike inherently causes, because it must cause, difficulties in a normal functioning of the society or at least a part of the society. Chances of the persons on strike to achieve an intended purpose for which they have decided to organise and participate in the strike are highly dependent on social response. A strike itself is an inconvenience not only to the employer against which it is organised and to persons who participate in the strike but also to the environment. Provisions governing the rules and procedures for exercise of the freedom to strike must not include a reservation that a strike should not limit the interests of third parties. This is because every strike will always in some way limit and to some extent violate the interests of third parties. For that reason, the applicable provisions of article 19 (1) and article 21 (1) of the act of 23.5.1991 use general terms. They mention the essential legal interests which cannot be violated as a result of a strike action: human life and health, state security and resumption of normal operations of the establishment where the strike takes place.

²⁵ G. Bieniek, J. Brol, Z. Salwa, *Komentarz do ustawy o związkach zawodowych* [Commentary to the act on trade unions], Warsaw 1988, p. 208.

4.2. Economic transformations, privatisation of state undertakings, outsourcing, technological advancement and structure changes did not contribute significantly to the increase of strike activity in Poland. The mentioned changes occurred under a 'guardianship' of 'Solidarność' ('Solidarity') social and political movement and were implemented by the changed state authorities following a different political orientation. 'Solidarność' and the new state authorities were supported by the society.

4.2.1. The provisions of article 40 (2)-(3) of the act of 8.10.1982 on trade unions generated widespread criticism in Poland. The society became aware of the powerful force of a strike as an instrument of pressure on the state employer. The society was also aware of the privileged legal situation of workers and public officers employed directly in the organisational units of state authorities. Already during the interwar period, during the Second Polish Republic (II RP) the society was used to accepting privileges enjoyed by workers and public officers. The best known benefit resulting from direct employment in one of the units of state authority was a guarantee of stable employment. State employees and public officers could be dismissed following completion of a separate disciplinary procedure which determined commission of offences specified in separate laws governing their professional status. A public officer who did not commit an offence was guaranteed employment until the date of acquisition of pension rights. The 'long life employment' principle was respected in the socialist system. It applies also after the change of the political system. In exchange for the benefits, the state employer expected the state employees to waive some of the fundamental rights laid down in the provisions of international, European and domestic labour law, the right of association in trade unions, the right to conclude collective agreements and first of all, the freedom to strike. The state employees and public officers could not be covered by the laws enacted by the state which guaranteed the right to exercise the triad of the previously mentioned and strictly connected freedoms: the freedom of association, freedom to bargain collectively and freedom to strike. In some instances the employees employed directly by the state could exercise a substitute right of association in social and professional organisations. This was a situation of police officers during the Polish People's Republic. In the socialist system they could not form trade unions but they could exercise the right to establish works social organisations entitled to address to the employer - the municipal or regional police structures - non-binding opinions regarding their working conditions. The social and professional organisations of state employees were not entitled to bargain with the state employer in matters governed by legal provisions which were enacted unilaterally by the central state authorities, laying down the rights and obligations of the parties to the service relationships as well as the amount of remuneration. The service relationships of state employees and public officers resemble the relations called 'master and servant law' which existed earlier between the employers and the employed.

4.2.2. In my opinion, it is useless to seek a relevant connection between the right to strike which is now considered a fundamental human right and the obligation to continue

work while other employees employed by the same employer are on strike – imposed on majority of employees employed directly by the state and by its specialised organisational units as well as on certain employees which perform work in the private sector of economy, trade and service. In the Polish traditional culture there exists a firmly grounded truth reflected by a saying ‘while some must sleep, some must watch.’ The legislature rightly considered the human life and health, state security and a material substance of the work establishment employing the workers on strike a ‘common good.’ Therefore, a disproportion between public services and essential services is not considered by the state employees concerned and by trade unions representing employees of the private sector to be in violation of the sense of social justice. The argumentation relating to the conviction that employees of public sector may accept or contest the legitimacy of a division of employees into two unequal categories one of which, employed in the private sector, has a guaranteed right to strike while the other, employed directly by the state, is deprived of this right, does not seem to be appropriate if it is based on arguments relating to democratic rules of distribution of funds by the state legislative bodies. In my opinion, the ‘public services’ *versus* ‘essential services’ dilemma cannot be resolved through such argumentation. The state and public officers do not participate, even indirectly in substantive terms, in the legislative process. It can be observed that some employees employed in the state authorities make attempts to develop ‘substitutes’ of the right to strike of which they were deprived by the act of 23.5.1991 on resolution of collective disputes. The above applies to judges deprived of the right to strike under article 19 (3) of the mentioned act. Courts and judges employed at the courts are responsible for administration of justice. Their work consists in resolving matters. Suspension of performance of this basic duties and replacing it with preparatory activities such as reading files or studying case-law on the days when court hearings usually take place can be treated as ‘collective refraining from work in order to resolve an interest dispute.’ This is how a strike was defined in article 17 (1) of the act on resolution of collective disputes. Judges, prohibited by law from organising strikes, were raising claims against their employer – state justice authorities – demanding increase of their remuneration for work. Article 178 (2) of the Constitution of the Republic of Poland obligates the state employer to provide judges with appropriate working conditions and the remuneration consistent with the dignity of their office and the scope of their duties. Disputes initiated or supported by the social and professional organisations of judges met the conditions laid down in the act of 23.5.1991 to be considered collective disputes. This is because they related to wage and working conditions. The only obstacle to recognition of such disputes as collective disputes within the meaning of article 1 of the mentioned act is a condition introduced by the legislature which refers to employees or other groups of employed persons having the right to associate in trade unions. The Law on the system of general courts of 27.7.2001²⁶ does not prohibit judges from joining trade unions. A trade

²⁶ Consolidated act – OJ 2016, item 2062.

union of employees of the judicial authorities represents professional and social interests of judges and defends their rights. Therefore there are no legal obstacles to initiation of collective disputes in the judicial authorities. The prohibition on the exercise of the freedom to strike laid down in article 19 (3) of the act on resolution of labour disputes may be circumvented by declaration of 'days without case list' on the days when judges are obliged to hold public court hearings.

5. STATUTORY RESTRICTIONS ON THE RIGHT TO STRIKE OF EMPLOYEES IN ESSENTIAL SERVICES

The prohibitions and restrictions laid down in article 19 (1), (2) and (3) and article 21 (1) of the act of 23.5.1991 on resolution of collective disputes take a legal form of: 1) the prohibition on cessation of work by the employees employed in the positions, on installations and equipment where stoppage of work poses risk to human life and health or jeopardises the state security [article 19 (1)]; 2) the prohibition on organisation of strikes by state employees mentioned in article 19 (2); 3) the prohibition on strike by state employees mentioned in article 19 (3); 4) the prohibition on refraining from work by the employees on strike who are obligated by the legislature to ensure protection of employer's property and uninterrupted operation of the facilities, equipment and installations, the disruption of which might pose risk to human life or health or prevent resumption of regular operations of the establishment (article 21 (1)). According to the provisions of collective labour law mentioned above, the essential services are protected by the obligation of certain employees to continue work during a strike, the prohibition on organisation of strikes by all state employees mentioned by the legislature, depriving other employees mentioned by the legislature of the right to strike and an obligation to perform certain activities necessary to maintain in proper condition or resume the operations of the establishment where the strike is organised. The beneficiaries of the abovementioned prohibitions and restrictions are employers. The prohibitions laid down in article 19 (1) and article 21 (1) serve to protect interests of all employers, both public and private. On the other hand, the prohibitions laid down in article 21 (1), (2) and (3) apply only to public employers, primarily the institutions which protect public security and organisational units of judicial authorities. The addressees of the mentioned legal norms are employees and trade union organisations. The prohibitions laid down in article 19 (1) and article 21 (1) apply to employees who enjoy the right to fully exercise the freedom of strike and its guarantees which take a form of the right to strike and to organise strikes guaranteed by the provisions of the act of 23.5.1991. The prohibition laid down in article 19 (2) of the act of 23.5.1991 does not apply to employees mentioned there but to trade union organisations which are exclusively authorised to organise strikes of certain category of employees they represent. The problem is that the state institutions listed in that provision employ public officers who enjoy a limited right

of association in the trade unions listed by the legislature (for example police officers may currently join only police trade unions) and other state employees who constitute a majority and who are deprived of the right of association in trade union organisations. Professional soldiers of Armed Forces of the Republic of Poland are not entitled to form or join trade unions. Article 19 (2) lays down a prohibition on organising strikes in state institutions in which trade unions cannot be formed and therefore a strike cannot be legally organised. A grammatical interpretation of the analysed provision may lead to a conclusion that public officers employed in state institutions listed in that provision might exercise the right to strike if there existed a trade union organisation entitled to organise a strike. The above example is not impossible to imagine. The Armed Forces of the Republic of Poland as well as other state institutions mentioned in the analysed provision employ not only public officers, including professional soldiers, but also civil employees of the army. The latter may be in an obligation relationships of employment with the army concluded under a contract of employment. Such persons may fully enjoy the freedom of association and the related rights, in particular the right to strike. Article 19 (2) of the act of 23.5.1991 is addressed to all persons employed in the public institutions listed in this provision. It applies both to persons who do not have the right of association in trade unions and are therefore deprived of the possibility to organise a strike and to employees who enjoy the legal guarantee of association and the right to strike which cannot be exercised by them because of the prohibition on organising strikes laid down in article 19 (2).

5.1. SECURING ESSENTIAL SERVICES BY EXCLUSION FROM COLLECTIVE LABOUR RELATIONS RIGHTS

5.1.1. COMPLETE EXCLUSION EX ANTE PARTICULAR GROUP OF EMPLOYEES

Article 19 (1) of the act of 23.5.1991 imposed a prohibition to strike on all employees employed in work positions, on installations and equipment where stoppage of work poses risk to human life or health or jeopardises the state security. The above prohibition to strike is not of a general nature. It does not apply to all employees employed by a particular employer. It is not a personal prohibition since the legislature clearly indicates which employees are subject to this prohibition. It is a material exclusion. It applies only to the employees who during a strike appear to be necessary for the operations of the establishment in such sense that their absence from work caused by participation in a strike would threaten fundamental values protected by the legislature that is human life and health and state security. The prohibition laid down in this provision is specific. It was established in such a manner that it covers a situation before commencement of a strike however it may further be specified during the

strike. An organiser of the strike is therefore obliged to assess the likelihood of risk to human life and health or to state security which may arise as a result of participation of particular employees in the strike. A problem arises when the assessment made by the employer and this made by the organiser of the strike differ. The discussed act of 23.5.1991 does not include any legal norms which might be used by the social partners concerned, the organiser of the strike – trade union and the employer, to resolve a dispute on the legal nature of the strike: whether the strike is legal or illegal. No judicial authority was authorised by the legislature to resolve such disputes. While interpreting the provisions of the act of 23.5.1991 establishing a total prohibition on strike as regards employees employed in the positions in which work cannot be stopped because of the need to protect human life and health or the state security, it is only possible to use a guideline adopted under the *in dubio pro libertate* principle²⁷.

5.1.1.a) Deliberations on the prohibition to strike laid down in article 19 (1) of the act of 23.5.1991 should be illustrated by an example concerning a specific strike of professional hospital employees – medical staff: doctors, nurses, laboratory assistants²⁸. A factor which is essential for the assessment whether a strike organised in a hospital is legal or not is the number of persons on strike in each of the three abovementioned groups of medical personnel. Undoubtedly a general participation in the strike by all medical personnel of a hospital would pose risk to life or health of patients since there would not be any member of hospital staff who could undertake and perform the necessary specialist medical operations in the event of threat to life or health of patients. A common practice followed by trade unions organising strikes of medical staff in hospitals is refraining from work by the members of staff except the personnel on emergency duty who remain on standby, ready to undertake the necessary emergency operations in sudden and unexpected situations. The emergency duty is a common way of taking care of life and health of patients during days and hours which are days and hours off for the medical personnel. At that time no previously planned medical treatments are performed. A hospital is an institution which should guarantee fulfilment of the obligation to provide treatment to sick persons. Therefore, an organiser of a strike must decide how many members of operational staff should be excluded from the planned strike in each of the three abovementioned professional categories (doctors, nurses, laboratory assistants) so that the planned strike can be organised legally, without a risk of being accused of endangering life or health of patients. The assessment of the situation may change. An organiser of strike must be flexible which means that he should include into and exclude from the category of employees on strike a certain number of members of operational medical staff necessary to allow the management to perform both planned and

²⁷ A judgment of the Supreme Court of 7.2.2007, I PK 209/06; a decision of a Court of Appeal in Katowice of 14.3.2016, III APz 8/16.

²⁸ M.Kurzynoga, *Kwestia prawa lekarzy do strajku*[Doctors' right to strike], „Praca i Zabezpieczenie Społeczne” 2015, no. 5.

emergency operations connected with protection of life and health of patients²⁹. Most likely for these reasons the act of 5.12.1996 on the profession of doctor and dentist³⁰ does not contain provisions on the doctor's right to strike. Medical Code of Ethics adopted in 1993, a collection of ethical standards not considered applicable law³¹, requires that a doctor on strike should provide professional help to a patient in a situation where non-fulfilment of the moral obligation might cause threat to life or health. Every doctor, both the one on strike and the one who performs work, has a moral obligation to secure the well-being of his patient. Doctors, nurses, laboratory assistants who are employed by the hospital, under a contract of employment or otherwise, and who participate in a legal strike must provide their employer with all the necessary information on the patient's situation in order to ensure continuance of treatment during their absence from work caused by the strike. Under labour law, participation of an employee in a strike constitutes a justified reason of employee's absence from work. Only some of the criminal lawyers share the above opinion of labour law specialists³². Other lawyers specialising in criminal law present other views concerning strike of medical personnel. According to some of them, a doctor on strike may be exempted from liability for ill health, serious damage to health or death of his patient if it is established that a manager of the hospital had a real possibility to ensure appropriate care to the patients³³. It is therefore not clear whether the participation of medical personnel in a strike organised in compliance with law is treated as exercise of a right which guarantees to the persons on strike a leave from duties or it also plays a role of an immunity protecting a doctor from criminal liability.

5.1.1.aa) Temporary prohibitions on strike may be introduced in relation to certain categories of employees under provisions suspending certain personal rights of individuals, including the right to strike, in specific situations: 1) external threat to state caused by terrorist activity or acts in cyberspace, military aggression on the territory of Poland – martial law³⁴); 2) a natural disaster or a technical failure the consequences of which pose risk to life or health of a large number of persons, to a property in large size or to the environment in large areas – a state of natural disaster³⁵; 3) a particular risk to the constitutional order, safety of citizens, public order - state of emergency³⁶.

²⁹ A.M. Świątkowski, *Kontrolowany model gwarancji prawa do strajku w służbie zdrowia [Controlled Model the Right to Strike in Medical Services]*, „Prawo i Medycyna” 2017, no. 2, p.5.

OJ 27/2011, item 1634.

³⁰ OJ 27/2011, item 1634.

³¹ A decision of the Constitutional Tribunal of 7.10.1992, U 1/92, OTK 1986-1995, vol. III, 1992, part. 2, item 38.

³² E. Zatyka, *Lekarski obowiązek udzielenia pomocy [Doctor's obligation to provide medical assistance]*, Warsaw 2011, p.124.

³³ A. Zoll, *Obowiązek udzielenia pomocy lekarskiej a prawo lekarza do strajku [Obligation to provide-medical assistance and doctor's right to strike]*, „Prawo i Medycyna” 2008, no. 1, p. 11.

³⁴ Act of 29.8.2002, OJ, 2014, item 1815 as amended.

³⁵ Act of 18.4.2002, OJ, 2014, item 33.

³⁶ Act of 21.6.2002 – consolidated act – OJ 2016, item 886.

Employees which may not strike are those employed in: the President Office, the Sejm Office, the Senate Office, the Prime Minister Office, particular ministries, national and central offices, such as for example: the Central Customs Office (*Główny Urząd Celny*), the General Customs Inspectorate (*Generalny Inspektorat Celny*), the National Security Bureau (*Biuro Bezpieczeństwa Narodowego*), the Securities and Exchange Commission (*Komisja Papierów Wartościowych i Giełd*), the National Atomic Energy Agency (*Państwowa Agencja Atomistyki*), the State Election Commission (*Państwowa Komisja Wyborcza*), the Office of the Committee for European Integration (*Urząd Komitetu Integracji Europejskiej*), the Pension Fund Supervision Office (*Urząd Nadzoru nad Funduszami Emerytalnymi*), the Public Procurement Office (*Urząd Zamówień Publicznych*), the Office for War Veterans and Victims of Oppression (*Urząd do Spraw Kombatantów i Osób Represjonowanych*), the Office of Technical Inspection (*Urząd Dozoru Technicznego*), the National Employment Office (*Krajowy Urząd Pracy*), mining authorities – State Mining Authority (*Wyższy Urząd Górniczy*) and Regional Mining Authority (*Okręgowy Urząd Górniczy*), the Patent Office (*Urząd Patentowy*), the Office of Competition and Consumer Protection (*Urząd Ochrony Konkurencji i Konsumentów*), the Office of the Surveyor General of Poland (*Urząd Głównego Geodety Kraju*), the Central Standardisation Inspectorate (*Centralny Inspektorat Standaryzacji*), the General Civil Aviation Inspectorate (*Główny Inspektorat Lotnictwa Cywilnego*), the Central Office of Measures (*Główny Urząd Miar*), the National Reserve Board (*Główny Zarząd Rezerw Państwowych*), the Chief Inspectorate of Environmental Protection (*Główny Inspektorat Ochrony Środowiska*), the General Customs Inspectorate (*Generalny Inspektorat Celny*), the Office of the Inspector General for the Protection of Personal Data (*Biuro Generalnego Inspektora Ochrony Danych Osobowych*), the General Directorate of State Forests (*Dyrekcja Generalna Lasów Państwowych*), the Central Flood Control Committee (*Główny Komitet Przeciwpowodziowy*), the National Council of the Judiciary of Poland (*Krajowa Rada Sądownictwa*), the National Broadcasting Council (*Krajowa Rada Radiofonii i Telewizji*), the National Rescue Coordination Center (*Krajowe Centrum Koordynacji Ratownictwa*), the State Insurance Supervision Office (*Państwowy Urząd Nadzoru Ubezpieczeń*), the Polish Committee for Standardisation (*Polski Komitet Normalizacyjny*); government administration offices (such as voivodeship offices); specialised administration offices (such as tax offices and tax chambers, customs offices and the bodies of the National Labour Inspectorate (*Państwowa Inspekcja Pracy*), the National Inspectorate of Environmental Protection (*Państwowa Inspekcja Ochrony Środowiska*), the National Trade Inspectorate (*Państwowa Inspekcja Handlowa*), the National Veterinary Inspection (*Państwowa Inspekcja Weterynaryjna*), the Main Inspectorate of Plant Health (*Państwowa Inspekcja Ochrony Roślin*), the National Telecommunications and Posts Inspectorate (*Państwowa Inspekcja Telekomunikacyjna i Poczta*), the State Agency for the Protection of Monuments (*Państwowa Służba Ochrony Zabytków*); local government administration offices, such as: commune offices, powiat offices and mar-

shals' offices; municipal guards; courts of general competence, administrative courts and the Supreme Court; the general and military prosecution units.

Employees that may join trade unions but have no right to bargain collectively are those who have the status of public officers – civil servants and employees of state offices employed under nomination or appointment, local government employees employed under election, nomination and appointment in marshal's offices, poviats offices, commune offices, offices of associations of local government units. Local government administration means a part of the public administration operating at all levels of the basic country's territorial division - commune, poviat, voivodeship, performing de-centralised portion of public tasks. Local government administration comprises bodies which constitute local government units, which include a commune council, poviat council, voivodeship assembly (*sejmik*), executive bodies of the local government units: heads of communes, mayors, management boards of poviats with their chairmen, starosts and mayors, including the auxilliary offices – commune offices, poviat starosties, marshal's offices. The state law does not recognize employees that may join union and bargain collectively but not allowed to strike.

5.1.2. A liability for organising an illegal strike is governed by the act of 23.5.1991 on resolution of collective disputes. Article 26 (1) of that act applies to persons leading a strike organised contrary to the provisions of the act in question. Only an organiser of an illegal strike can be punished by a fine or restriction of liberty. An organiser of an illegal strike is also liable under article 415 of the Civil Code for the damage caused by a tort which is the illegal strike. The organiser is liable solely for the consequences of results of actions which are in adequate causal link with the illegal strike. Employees participating in an illegal strike do not enjoy the immunity against liability for breach of duties.

5.1.3. – 5.1.5. Because of the lack of data concerning punishment of employees who do not respect the prohibition on organisation of strikes, it was not possible to present the applicable practice.

5.2. CONTROLLED STRIKE MODEL

5.2.1. The example of exclusion of the right to strike relating to medical employees described in paragraph 5.1. could be classified in the category of controlled strike model. However, since the legislature did not indicate in article 19 (1) of the act of 23.5.1991 an entity entitled to order the organiser of a strike and/or employees participating in a strike to stop the strike and to take up their duties, this provision cannot be classified in the category of restrictions on strike listed in paragraph 5.2.1. of the outline according to which a national report was developed.

5.2.2. Article 19 (1) and article 21 (1) of the act of 23.5.1991 does not include a list of essential jobs in which employees are not entitled to strike. Such list was

included in the act of 8.10.1982 previously in force. However article 47 (1)-(3) of the act did not list specific establishments, except for the Polish State Railways (*Polskie Koleje Państwowe*), where employees were not entitled to strike. For example, it was indicated that the right to strike is not granted to employees employed in the undertakings which produce, warehouse and supply food. It was necessary to explain whether the prohibition on strike covers employees employed in state farms, milk processing establishments, bakeries and slaughterhouses. The Polish Supreme Court, in its ruling of 2.2.1983³⁷ held that production of food is not limited to processing of foodstuffs for direct consumption but it includes all activities connected with production of food such as: plant cultivation, breeding of food-producing animals. On that basis the Supreme Court ruled that the right to strike is not granted to all employees of every agricultural establishment. Because of the fact that article 47 (3) of the previous act did not limit the exclusions of the right to strike of employees employed at establishments producing food, it was considered that the prohibition to strike applies to employees employed in wholesale and retail sales outlets which sell food and catering establishments (restaurants). The Supreme Court held that a state-owned company *Przedsiębiorstwo Transportowe Handlu Wewnętrznego (Internal Trade Transport Company)* should be considered an undertaking which supplies food and therefore its employees could not strike. The prohibition on strike applied also to education facilities. According to the Supreme Court these meant all employees, both operational (teachers and educators) and auxiliary personnel (administrative services) and prohibited strikes by all employees employed in nurseries, kindergartens, primary schools, secondary schools and universities³⁸.

5.2.3. The act of 23.5.1991 does not authorize any state authority to define or declare a service as 'essential'. That is one of the major problems of that regulation.

5.2.4. Ex-ante and selective dynamic definition is applied. The work positions, facilities and installations which must function without interruption are of major importance since suspension of such work may cause risk to life and health or to state security. In some situations which are dependent on external conditions beyond human control, the ex-ante model may be complemented by ad-hoc model, selective and dynamic. For example, it may be a situation where employees of an urban sanitation facility are prohibited from striking during extreme heat. If the competent authorities did not respond to the planned strike of employees responsible for town cleaning, sanitation and waste disposal, it might result in outbreak of epidemics threatening life and health of the inhabitants.

5.2.5. Apart from the mentioned risk to human life and health and to state security, provisions of the act of 23.5.1991 do not lay down more specific criteria and do

³⁷ I PRZ 2/83, OSNCP 1983, no. 9, item 5.

³⁸ A ruling of the Supreme Court of 31.10.1983, I PRZ 81/83, OSNCP 1984, no. 6, item 101); 15.5.1983, I PRZ 17/83; 15.7.1983, I PRZN 31/83.

not establish procedures which should be followed in taking ex-ante or ad hoc decisions on deprivation of employees employed in “sensitive” jobs of the right to strike.

5.2.6. According to the labour law legal writings, the essential services include: hospitals, supplies of electricity, fire-fighting services, police, prisons, army, and air traffic control. Neither the act of 23.5.1991 nor a case-law provide for a list of such services.

5.2.7. The act of 23.5.1991 does not provide for any substantive restrictions on the exercise of the right to strike except the previously mentioned material prohibitions on strike in the work positions, on installations and equipment the operation of which cannot be stopped without a risk to human life and health and to state security. As regards procedural restrictions, the cases of strike of operators of essential equipment and installations the stoppage of which poses risk to human life and health or to state security and the prohibitions and restrictions of the right to strike are subject to the previously mentioned procedural requirements relating to voting (balloting), quorum, notification of an employer of commencement of a collective dispute, cooling off period, bargaining, mediation and arbitration.

5.2.8. Employees who participate in a legal strike cannot bear any consequences. On the other hand, participation in an illegal strike may be considered by the employer equal to infringement of duties (article 23 (1) of the act of 23.5.1991). In such situation the employer may apply any and all penalties for breach of order in the workplace or disciplinary penalties governed by the provisions of the Labour Code or specific provisions applicable to employment relationships of a particular category of workers.

Employees may be criminally liable to a fine or restriction of liberty if: 1) in connection with the position held or a function performed, they hinder initiation of a collective dispute or disturb lawful collective dispute (article 26 (1)(1) of the act of 23.5.1991); 2) they fail to comply with the obligations laid down in this act (article 26 (1) (2)); 3) they lead an illegal strike (article 26 (2)). An organiser of an illegal strike – a trade union - is liable under civil law to compensation for damage caused (article 26 (3)).

5.2.9.-5.2.12. There are no data concerning challenge of the prohibitions and restrictions on the right to strike, decisions on imposition of penalties, effectiveness of sanctions and achievement of the intended purpose – limitation of strikes.

6. THE QUID PRO QUO FOR DENYING OR LIMITING THE RIGHT TO STRIKE

(1) The act of 23.5.1991 does not provide for alternative instruments which could be used by the employees who were not guaranteed the right of association in trade unions and/or the right to bargain collectively; (2) The same applies in a situation where employees have the right to strike guaranteed but the applicable laws restrict the possibility to exercise such right because of the need to meet the essential public interests – protection of human life and health and state security.

6.1.1. The national social policy in matters relating to remuneration for work takes into account the necessary adjustment of wages depending on the level of inflation. However, the above cannot be considered alternative instruments in relation to the category of employees who are not affected by the prohibitions and restrictions on joining trade unions, collective bargaining and organising strikes in order to persuade the employer to increase wages. In the case of state employees the only alternative instrument applied by the state under the act of 23.12.1999 on establishment of wages in the public sector³⁹ is the Council of Social Dialogue (*Rada Dialogu Społecznego*) appointed by the President of the Republic of Poland. The legal basis for the operations of the Council is the act of 24.7. 2015 on the Council of Social Dialogue and on other social dialogue institutions (*ustawa o Radzie Dialogu Społecznego i innych instytucjach dialogu społecznego*)⁴⁰. Previously, the tasks of the Council were performed by a Tripartite Commission (*Komisja Trójstronna*). The Council is composed of representative trade union organisations and employers' organisations. The Council may give opinions and submit proposals on the adoption and amendment of legal acts. As regards wage policy, the Council agrees upon average annual rates of wage increases for employees in the public sector which are employees who are not entitled to bargain collectively. Moreover, under the act of 10 October 2002 on the minimum remuneration for work (*ustawa o minimalnym wynagrodzeniu za pracę*), the Council agrees⁴¹, on an annual basis, the rates of the minimum remuneration for work for all employees. As regards the employees who do not enjoy the right of association, to bargain collectively and to strike, the Council is an alternative legal and organisational instrument.

6.1.2. The Polish Ombudsman (*Rzecznik Praw Obywatelskich RP*), acting under the act of 15.7.1987 on the Ombudsman⁴² safeguards the freedoms and rights of persons and citizens, and not interests. Therefore he cannot be treated as an alternative legal and administrative instrument for the protection of citizens who are not members of trade unions and who are not entitled to bargain collectively and to organise strikes.

6.2. The prohibition on strike of employees employed in the positions which must be operated without interruption for the sake of protection of human life and health and state security are not deprived of the right to initiate collective disputes and to use the methods of amicable resolution of such disputes. Similarly to the employees who enjoy the freedom to strike guaranteed by the act of 23.5.1991, the employees employed in the positions listed in article 19 (1) of the act concerned and trade unions representing their interests are entitled to bargain with the employer, submit the dispute to mediation and eventually take an attempt to resolve the dispute by submitting it for resolution by a so-

³⁹ Consolidated act – OJ 79/2011, item 431.

⁴⁰ OJ 2015, item 1240.

⁴¹ OJ 200/2002, item 1679.

⁴² Consolidated act – 2014, item 1648.

cial arbitration panel (*kolegium arbitrażu społecznego*). Only a trade union may apply for submission of the dispute to the social arbitration panel. The social arbitration panel is presided by a judge of a labour court and it consists of six members, three of them designated by one party and the other three by the other party to a collective dispute. The ruling of the arbitration panel is adopted by the majority of votes. It is binding upon the parties unless either of the parties decides otherwise.

6.2.1. Virtual strike is a legal construct not known in the Polish labour law system. According to a legal definition of strike laid down in article 1 of the act of 23.5.1991, a strike means an actual and not virtual cessation of work by the employees⁴³.

6.2.2.- 6.2.3. Externally imposed binding or non-binding dispute resolution process was known in the Polish legislation of the Second Polish Republic during the interwar period. A regulation of the President of the Republic of Poland of 27.10.1933 on the extraordinary conciliation commissions for resolution of collective disputes between employers and workers employed in industry and trade (*rozporządzenie o nadzwyczajnych komisjach rozjemczych do załatwiania zatargów zbiorowych pomiędzy pracodawcami a pracownikami w przemyśle i handlu*)⁴⁴ authorised a Minister of Social Care to appoint an extraordinary conciliation commission in a collective labour dispute which could not be resolved by the parties themselves. A ruling of the commission was taking effect if it was accepted by the parties to a dispute or after its contents were approved by the Minister of Social Care. The conciliation commission was entitled to issue a ruling only for a specified period. If it was determined that a ruling of the commission has an 'economically prevailing importance in a labour sector', the Council of Ministers was authorised to declare such ruling, in a form of a regulation, generally applicable in the sector concerned in the whole area for which the administratively 'generalised' ruling was issued.

The act of 23.5.1991 currently in force does not provide for the possibility to dictate to the parties in a collective dispute the procedure for amicable resolution of such dispute.

6.2.4. The act of 23.5.1991 does not provide for an obligatory submission of a collective dispute for resolution to a social arbitration panel. If an agreement resolving a collective dispute is not reached in a mediation procedure, a trade union is entitled to commence a strike (article 15). However, a trade union representing workers' interest in the dispute may, without exercising the right laid down in article 15 of the act in question, attempt to resolve the dispute by submitting it for resolution to the social arbitration panel [article 16 (1)].

6.2.5. According to information of the department of social dialogue of the Ministry of Labour and Social Policy (MPPiPS), in 2014 there were 32 collective disputes while in 2015 – 51 disputes. In 2014 the parties to disputes concluded agree-

⁴³ A.M. Świątkowski, *Strajk – synteza zjawiska [Strike – a synthesis]*, „Monitor Prawa Pracy” 2011, no. 2, p. 69.

⁴⁴ OJ 82/33, item 604.

ments in 19 disputes that is in nearly 60 % of cases. Discrepancy reports (*protokoły rozbieżności*) were drawn up in 12 cases which represents 37.5 % of disputes. In 2015 agreements were concluded in 33 disputes that is in nearly 65 % of cases and in 15 disputes (nearly 30 % of cases) the parties drawn up discrepancy reports. Some cases which ended with drafting discrepancy reports were referred to the next stage of the procedure - the mediation. According to data of the Ministry of Labour and Social Policy (MPiPS), in 2014 there were 36 disputes (more than 75 %) which ended in the mediation procedure. Therefore, it may be concluded that the system of voluntary resolution of collective disputes with the use of irenic methods of resolution of disputes, direct negotiations and mediation, deserves a positive assessment.

7. SECURING ESSENTIAL SERVICES BY OTHER MEANS

7.1.-7.3. In emergency situations regulated by the provisions of the previously mentioned acts on natural disasters, on the state of emergency and on the martial law, employees' right to strike may be suspended or prohibited in general or in relation to certain employees or certain areas of activity (article 21 (1)(17) of the act on natural disasters, article 19 (1) of the act on the martial law, article 16 (1)(4) of the act on the state of emergency). According to the latter act a prohibition on formation and registration of new trade union organisations and employers' organisations may be issued [article 16 (1) (6)]. A state of natural disaster may be declared by the Council of Ministers upon request of a voivode while the state of emergency and martial law – by the President of the Republic of Poland upon request of the Council of Ministers.

The jurisprudence, general courts, the Supreme Court and the Constitutional Tribunal do not resolve collective dispute matters except trade union rights and freedoms, since such disputes are not rights disputes but interests disputes. The social arbitration panels presided by judges are not considered judicial authorities. Criminal courts authorised to impose fines on natural persons, institutions and legal persons rule on imposition of a fine on persons who violate the provisions of the act of 23.5.1991 on resolution of collective disputes.

7.4. Social partners may introduce in collective agreements the provisions which prohibit or restrict the freedoms and rights to strike guaranteed under collective labour laws. It is a so called 'social peace' clause. According to it, bodies of a trade union which is a party to an applicable collective agreement may submit a declaration in which they undertake to refrain from exercising their right to organise strike actions during the term of the collective agreement and to prevent the represented employees from participating in such actions organised by another trade union organisation not bound by the 'social peace' clause.

There are no legal obstacles in place that would prevent trade unions from restricting, in the union's by-laws, their rights guaranteed by the generally applicable

provisions of the act of 23.5.1991 and developing the strike procedures. The act of 23.5.1991 includes a list of maximum restrictions and prohibitions which may apply in the positions and to employees in such positions who are obliged to perform work during a legal strike in which they should not participate because of the need to protect human life and health and state security. The increased restrictions of the right to strike guaranteed under generally applicable laws may consist in extension of the period to notify the employer of the planned strike or strengthening the requirements necessary for a decision on organisation of a strike to be taken (a 100% quorum, which means that all persons employed at the establishment concerned must participate in the voting; qualified majority, two thirds or three quarters of votes cast for organisation of a strike). However, it must be emphasized that so far there has been no single case in which trade union organisations would impose 'self-restrictions' upon themselves as regards exercise of their right to organise strikes.

8. PERFORMANCE EVALUATION

Nearly forty years ago, at the beginning of the 1980, strikes organised by persons who were not members of the 'official' trade unions were common in Poland. 'Solidarity' was a mass social movement which then transformed into nationwide confederation of trade unions. The movement was based not only on dissatisfaction with wage and working conditions. More than 10 million members sought to change the political and social system in the country. Most of the workers participated in strikes, also those who were obliged to protect the essential goods such as human life and health and state security. For that reason, the first act on trade unions of 8.10.1982 introduced far-reaching restrictions and prohibitions on strike in the positions and at the establishments which provided social services. The assumption of the 'essential nature' of the services does not correspond with the developed catalogue of types of job, positions in which employees should not be guaranteed a natural right to exercise their freedom to strike and trade unions should not be guaranteed the freedom to organise strikes. The act of 23.5.1991 on resolution of collective disputes, still in force, strictly connected with two other acts adopted on the same date: 1) on trade unions and 2) on employers' organisations and the Labour Code which in 1974 guaranteed to the social partners the right to bargain collectively, meet the requirements laid down in the international law (ILO) and in the European labour law (Council of Europe) regarding the interdependence between the right to: 1) form and join trade unions granted to workers and other employed persons; 2) bargain collectively; 3) conduct collective disputes. In evaluating the legal mechanisms currently in force, regarding restriction of the right to strike justified by the need to perform work during a strike in the positions in which work cannot be ceased because of a possible risk to the goods of major importance for people: 1) human life and health and 2) state security, I think that the choice made more than a quarter of

a century ago, in the act adopted in 1991 and concerning protection of the mentioned essential goods, was the right choice. The method of protection of such goods was also appropriate. It consisted in a general specification of prohibitions on strike in relation to the positions in which work cannot be temporarily ceased because of the possible risk to one or the other common goods, or two legally protected, most important values at the same time. The legislature defined in general terms, *ex ante*, the essential goods which were subject to legal protection laid down in the provisions establishing temporary prohibitions on strike. The laws indicated not the employees who should not exercise the freedom to strike but the positions in which participation in a legal strike was prohibited. The organisers of strike and employers affected by the strike action could take *ad hoc* decisions, depending on the situation and the level of risk for the fundamental, legally protected goods. The model of legal protection of, on one hand, the fundamental freedom of a worker to decide on participation in a strike action, and on the other hand, the obligation to protect human life and health and state security is unique as it combines the characteristics of selective and dynamic *ex-ante* and *ad hoc* models accepted in all systems of collective labour law as model conduct aimed at ensuring a balanced compromise between those who want to strike but for the protection of two important common goods should not stop their work even if they could do it.

However, the model adopted by the collective labour law system is not complete. The act of 23.5.1991 on resolution of collective disputes does not indicate an independent body to resolve disputes between organisers of strike and workers who intend to participate in a legal strike and the employer and his idea of how many positions necessary to guarantee protection of human life and health and state security should be subject to an *ad hoc* prohibition to strike. A divergence in this respect between the parties to a collective dispute is resolved only where a judicial authority specialising not in labour law but in criminal law, authorised to impose sanctions towards persons who violate the provisions of the act on resolution of collective disputes, finds that a strike posed risk to human life or health or to state security because a too large group of employees participated in it and some of these employees should not have stopped their work because by continuing their work they guaranteed security of goods protected by law.

The second critical argument relates to the lack of legal instruments which would guarantee balance to the parties in a collective dispute. In the event of diverging opinions between an organiser of a strike – trade union and an employer who believes that the employees on strike are employed in the positions in which they should not strike for the sake of protection of human life and health and state security, the employer has no possibility to exert pressure on the organiser of the strike to stop the strike. It seems that in such case the attitude of the persons on strike and organisers of strike could change if the employer declared a defensive lockout. In the Polish system of resolution of collective disputes lockout is a legal instrument not regulated in the collective labour laws. If employers were granted the right to organise lockout in certain situations, without a fear

of criminal liability for breach of provisions of the act of 23.5.1991, this would contribute to restoration of balance in the collective labour relations. It would also facilitate agreement between the parties to a dispute regarding determination which employees employed in the positions, on installations and equipment covered by the prohibition to strike are needed by the employer to safeguard human life and health or state security and therefore cannot participate in a strike action. Article 19 (1) of the act of 23.5.1991 provides that work cannot be stopped as a result of strike action in certain, generally described, work positions. Therefore, it was left to the discretion of the parties in a collective dispute, acting as social partners in the collective labour relations, to resolve matters relating to determination how many workers employed in sensitive jobs in terms of protection of the goods mentioned in that provision should not participate in a strike concerned. If provisions of collective labour law guaranteed equal status to the parties by granting the employer threatened by a strike a right to organise a defensive lockout, it would contribute to restoration of imbalance in the last, non-irenic stage of resolution of a dispute, following the end of mediation or arbitration. If employees were aware that the employer affected by the strike may exercise his right to declare lockout against employees on strike, this should result in opening of negotiations. Such negotiations would be limited to selected issues regulated under article 19 (1) of the act 23.5.1991, however they might contribute to implementation of a modern concept of social partnership also at the last stage of a collective dispute⁴⁵.

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⁴⁵ A.M. Świątkowski, *Gwarancje prawne pokoju społecznego w stosunkach pracy* [Legal guarantees of social peace in labour relations], Warsaw 2013, p. 245.

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Summary: The purpose of this report is to explain is to present collective labour law in the broad political, economic, social and legal context. Although this analysis deals with strikes in Poland between the Great Wars, socialist Poland and the current third Polish Republic this study tries to explain an importance of statutory regulations of the right to strike as well as the right to organize strikes both in the capitalist system (1918-1939), at the beginning of the last decade of social Poland (1981-1989) and after the both political and economic changes had been introduced (since June 1989 until now). The Author must admit, though, he did not try to identify labour law as a political subject rather than a really legal one. He was under the obligation imposed by the German-Israeli leading team of the world wide research network to provide the most comprehensive responses to the questions posed.

Keywords: collective labour law, collective labour disputes, freedom to strike, legal obstacles to organize strike, right to strike

POLSKI RAPORT NA TEMAT STRAJKÓW

Streszczenie: Celem tego raportu jest prezentacja współczesnego zbiorowego prawa pracy w szerokim kontekście politycznym, gospodarczym, społecznym i prawnym. Chociaż autor analizuje sytuację „strajkową” w Polsce w dwudziestoleciu międzywojennym, w Polsce „ludowej”, jak również po roku 1989, jest to przede wszystkim studium na temat strajków przedstawia rolę i znaczenie ustawodawstwa dotyczącego prawa do strajku i prawa do organizowania strajków w systemie kapitalistycznym w Polsce, w początkach ostatniej dekady socjalizmu, jak również po dokonaniu zmian ustrojowych i gospodarczych w czerwcu 1989 r. Autor musi jednak zaznaczyć, iż nie próbował identyfikować zbiorowego prawa pracy jako dyscypliny z dziedziny nauk politycznych, a nie prawa. Był natomiast zobowiązany do udzielenia odpowiedzi na pytania postawione przez niemiecko-izraelskie kierownictwo grupy badawczej, w której uczestniczył.

Słowa kluczowe: spory zbiorowe, wolność organizowania akcji strajkowych, prawne ograniczenia strajków, prawo do strajku, zbiorowe prawo pracy