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## THE RIGHT TO STRIKE IN HEALTH SERVICE

### MEDICAL PROFESSIONALS' RIGHT TO STRIKE AND THE SUBJECT OF LEGAL PROTECTION

Health care is an arena on which, most often, there are collective disputes between social partners, people employed in the health service and employers and entities employing doctors, nurses, lab technicians and other auxiliary health care workers. The legislator's care, regulating organizational and legal rules and procedures for resolving collective disputes, for satisfaction of two basic human rights, which are health and life, took the legal form of "inadmissibility of stopping work as a result of strike action at workplaces, devices and installations where abandonment of work is a threat to human life and health" (Article 19 section 1 of the Act of 23.5.1991 on the resolution of collective disputes<sup>1</sup>). The legal term – inadmissibility used by the legislator is vague. It has more than a hundred meanings in the Polish dictionary of synonyms. These are, among others the following words: "culpability", "reprehensibility", "inappropriateness" of a worker's behaviour and/or another person employed with health care services, who voluntarily, together with other persons employed with health care services, participated in the strike, and thus "refrained from doing work to settle the argument referring to his vocational, economic and social interests as well as union's rights and freedoms. The duty of a lawyer qualifying the conduct of

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<sup>1</sup> Uniform text, Journal of Laws of 2015, item 295 as later amended.

a doctor, nurse, lab technician and other persons employed in health care is to express an opinion on compliance or non-compliance with the provisions of the collective law in force in Poland, the right to form trade unions, negotiate and conclude collective labor agreements defining the terms of employment contracts, employment and remuneration for work. The basic international standards (ILO) and the European (Council of Europe) labor law apply to doctors, nurses, lab technicians and other health care professionals, guaranteeing the freedom of employees and their organizations to use their fundamental right to defend their economic interests. The right to strike deriving from the provisions of ILO Convention No. 87, adopted on 9.7.1948, regarding the freedom of association and protection of trade union rights (art.3)<sup>2</sup> and the Charter of Social Rights of 18 October 1961 (Articles 5 and 6 section 4)<sup>3</sup> “is one of the basic means by which employees and their organizations can act for their economic and social interests and defend them”<sup>4</sup>.

The Constitution of the Republic of Poland guarantees the trade unions and employers and their organizations the right to negotiate, conclude collective labor agreements and other normative agreements regulating the terms of employment and remuneration for work (Article 59, section 2). The Constitution of the Republic of Poland guarantees also the right to organize workers’ strikes and other forms of protest (Article 59, section 3). The limits of using this right are regulated by the Act on the resolution of collective disputes of 23.5.1991 on the resolution of collective disputes. The right to strike is granted not only to employees, but also to persons employed on the basis of civil law contracts.<sup>5</sup> It is necessary to consider to what the Constitution of the Republic of Poland authorized the legislator, the Sejm and the Senate in the Act of 23.5.1991: prohibition, restriction or conditional consent to the use of natural freedom of strike, vested in each employee. The scope of the „inadmissibility” of striking is beyond the scope of the author’s interest. Human health and life is the undisputed individual right of every citizen and the common value of the whole society. Confirmation of the legislator’s competence to determine the material scope of the limits of use by employees of freedom to strike is a novelty in the Polish collective labor law system. Previously binding Act of 8 October 1982 on trade unions<sup>6</sup> deprived the right to strike employees employed in health care and social care institutions, in pharmacies (Article 40 section 1). Case formed bans on the right to strike covering most areas of everyday life were justified - according to the commentators of the quoted provision of art. 40 section 1-3 of the Act of 8.10.1982 on trade unions - an enigmatic statement that the ban on a strike “is dictated by important socio-political reasons related to the necessity to provide services and resources

<sup>2</sup> A.M. Świątkowski, *Międzynarodowe prawo pracy*, Book I vol. 2 *Międzynarodowe publiczne prawo pracy – standardy międzynarodowe*, C.H. Beck, Warszawa 2008, p. 44 and following.

<sup>3</sup> *Idem*, *Karta praw społecznych Rady Europy*, C.H. Beck, Warszawa 2006, p. 322 and following.

<sup>4</sup> *Wolność związkowa*, *Międzynarodowe Biuro Pracy*, edition 5, Geneva 2013, p. 109.

<sup>5</sup> Judgment of the Constitutional Tribunal of 2.6.2015, K 1/13, *Journal of Laws of 2015*, item 791. Compared A.

<sup>6</sup> Świątkowski, *Konstytucyjna koncepcja pracownika*, *Monitor Prawa Pracy* 2016, No. 1, p. 8 and following.

<sup>6</sup> *Journal of Laws of 1982*, No. 32, item 216.

necessary for the normal existence of society”.<sup>7</sup>A strike essentially creates, because it must, difficulties in the normal functioning of society or at least its part. The chances of the strikers to achieve the intended goal for which they decided to organize and participate in the strike are largely dependent on social response. The strike itself is a disaster not only for the employer against whom it was organized, people participating in the strike, but also for the environment. The legal provisions governing the rules and procedures for exercising the freedom of strikes may not include the reservation that a strike should not limit the interests of third parties. Each strike almost always violates such rights of third parties in some way and to some extent. For this reason, in the applicable provisions of art. 19 (1) and 21 (1) of the Act of 23.5.1991, general terms were used. Basic legal rights have been mentioned which can not be violated following a strike action: health and human life.

## SPECIFIC SITUATION OF THE MEDICAL PERSONNEL DURING A STRIKE

The discussion on the ban on strike expressed in Art. 19 section 1 of the Act of 23.5.1991 should be illustrated by an example concerning a specific substantive strike of hospital staff - medical staff: doctors, nurses, laboratory technicians.<sup>8</sup>In order to assess the situation about the compliance or unlawfulness of a specific strike organized in a hospital, the number of people striking in each of the three mentioned substantive groups of medical personnel is significant. Certainly, the general participation in the strike of all employees belonging to the hospital medical staff would pose a threat to the health or life of patients, because there would not be a single employee in the hospital who would be able to take and carry out the necessary medical activities in the case of an emergency situation. The common practice used by trade unions organizing strikes of medical staff in hospitals is to refrain from performing the work of medical personnel except those who perform “emergency duty” – they are on standby to take the necessary rescue procedures in sudden and unexpected situations. “Emergency duty” is a commonly used technique of caring for health and life of hospital patients on days and hours non-working for medical personnel. Then pre-planned medical procedures are not performed. A hospital is an institution which should guarantee its patients that the obligation of the treatment will be carried out. With reference to the above the organizer of the strike is under the obligation to decide how many employees who belong to the substantive medical staff must be excluded from the planned strike in each of the three above mentioned occupational categories (doctors, nurses, lab technicians) so that the intended strike could be carried out according to the law without endangering the health and life

<sup>7</sup> G. Bieniek, J. Brol, Z. Salwa, *Ustawa o związkach zawodowych. Komentarz*, Warszawa 1988, p. 208 and following

<sup>8</sup> M. Kurzynoga, *Kwestia prawa do strajku lekarzy, Praca i Zabezpieczenie Społeczne*, 2012, No. 5, p. 18 and following.

of those treated. The evaluation of this situation may change. The organizer of the strike must reveal flexibility, involving the exclusion from the category of strikers and including in the group a certain number of employees of the medical personnel necessary to enable the management to carry out both scheduled and emergency activities related to the protection of health and life of patients. Most likely for these reasons in the Act of 5.12. 1996 on the professions of a doctor and a dentist<sup>9</sup> did not include the provisions on the right of doctors to strike. The Code of Medical Ethics passed in 1993, a set of ethical norms not recognized as the provisions of applicable law<sup>10</sup> requires the striking doctor to provide the patient with professional assistance in a situation where failure to comply with a moral obligation could endanger health or life. Each physician, both strikers and those who perform work, have a moral duty to care for the well-being of the patient under their care. Doctors, nurses, laboratory technicians, staying with a hospital in an employment relationship or employed there on a different basis than a contract of employment, participating in a legal strike, are obliged to provide the employer with all necessary information about the patient's situation, so that during their absence at work because of the strike, it was possible to ensure continuity of treatment without undue delay. According to labor law, the employee's participation in a legal strike is a justified reason for the absence of an employee at work. Only few criminal lawyers share the above view of specialists in the field of labor law<sup>11</sup>. A different approach to the strike of medical staff is made by other lawyers dealing with criminal law. According to some of them, the striking doctor may be released from responsibility for deterioration of health, serious damage to health, death of the patient under his care after finding that the hospital manager had a real opportunity to provide proper care to patients<sup>12</sup>. Thus, it is not clear whether the participation of medical staff in a strike organized in accordance with the law is only treated as a case of exercising the right guaranteeing the strikers a release from the obligation to perform work, or also acts as an immunity that protects the doctor from criminal liability.

## BAN ON STRIKES DUE TO THE NEED TO PROTECT HUMAN LIFE AND HEALTH

The work of medical staff employed in a hospital is considered to be an "indispensable service" that every sick person should be able to use. "Hospital sector" was mentioned in the first place in the catalog of essential services that should be met during the strike<sup>13</sup>. However, the above conclusion does not indicate a ban on general strikes by employees in this type of services. The ILO Unions Committee of Freedoms did not mention medical staff as employed, forbidden to strike, only

<sup>9</sup> Journal of Laws of 2011, No. 27, item 1634.

<sup>10</sup> Decision of the Constitutional Tribunal of 7.10.1992, U 1/92.

<sup>11</sup> E. Zatyka, *Lekarski obowiązek udzielenia pomocy*, Warszawa 2011, p.124.

<sup>12</sup> A. Zoll, *Obowiązek udzielenia pomocy lekarskiej a prawo lekarza do strajku*, *Prawo i Medycyna* 2008, No. 1, p. 11 and following.

<sup>13</sup> *Wolność...*, op. cit., p. 119.

ruled that there were no grounds for depriving the right to strike of workers and gardeners employed in hospitals<sup>14</sup>. This does not mean, however, that they said it would be acceptable to introduce a ban on strike by other medical staff. The protection of essential services provided by the substantive hospital staff is carried out by the legislator's obligation to perform certain activities necessary to keep the hospital covered by the strike in good condition. If the order to continue working during the strike can be equated with the ban on strikes, the phrase "inadmissibility to stop working" used in Article 19 (1) of the Act on the resolution of collective disputes could be identified with the ban on striking by some members of the hospital's medical staff. The beneficiaries of the above prohibition would be patients as well as employers, public and private ones, employing medical staff. The recipients of the above mentioned legal norm are employees and trade unions organizations. Strike bans relate to employees who have the right to fully take advantage of the freedom of strike and its guarantees, taking the form of the right to strike and to organize strikes guaranteed by the provisions of the Act of 23.5.1991. It includes both medical personnel employed on the basis of designations in hospitals run by organizational units of the state mentioned in Article 19 section 2 of the analyzed Act, public officials – medical personnel, deprived of the right to associate in trade unions, also employees benefiting from the guarantee of legal association and right to strike, which they will not be able to use because of the introduction of the prohibition of organizing strikes in Art. 19 section 2 of the discussed Act.

Can it be assumed that the provision of Art. 19 section 1 of the Act of 23.5.1991 is also addressed to the employer? If a positive answer to the above question is obtained, would it be possible to conclude that an employer whose facility has been included in the strike, has the right, and even an obligation to give to these medical professionals whom he considers necessary to implement the principle of protection of human life and health, to resign from strike and taking professional duties? The lack of an objective state authority, not directly involved in the collective dispute and the second dispute regarding the interpretation of Article 19 section 1 of the analyzed Act, makes it impossible to make an impartial assessment of the legal nature of the organized strike action as legal or illegal.

The abovementioned, variously interpreted by parties to a collective dispute, the strike ban is not intended to be universal in the sense of law. It does not apply to all medical employees employed by a particular employer – a hospital. It is not subjective in nature, because the legislator does not clearly specify which medical professionals are covered by the ban on strikes. In art. 19 section 1 of the presented Act, the subjective limitation of the right to strike was established. The ban on strike is only for those employees who during the strike action will prove indispensable for the functioning of the workplace – hospital in the sense that their absence from work because of participation in the strike may threaten the basic values protected by the legislator, health and human life. The prohibi-

<sup>14</sup> Wolność..., op. cit., p. 120.

tion formulated in this provision is therefore specific. It was established in such a way that it covers the situation before the strike begins, but its concretization is possible during the strike. The strike organizer is therefore obliged to assess the likelihood of threats to health and human life that may result from the participation of individual employees in the strike. The problem arises in the event of discrepancies in the assessments made by the employer and the organizer of the strike. The discussed Act of 23.5.1991 does not contain legal norms that could be used by interested social partners, the organizer of the strike – the trade union and the employer to solve the dispute over the legal compliance of the participation of individual medical employees in the strike. For some, participation in a legal strike will turn out to be lawful, whereas for others, the absence of which may pose a threat to the legally protected good, it will be a strike that is unlawful. The individual assessment of the nature of the strike can have a decisive impact on the assessment of the entire strike. Violation of one provision of the Act of 23.5.1991 determines the nature of the entire strike action: legal, illegal. No judicial authority has been authorized by the legislator to resolve such disputes. Interpreting the provisions of the Act of 23.5.1991 laying down a complete ban on strikes for employees in positions where work can not be interrupted due to the protection of health and human life, one can only use the hint adopted by the principle of interpretation of law *in dubio pro libertate*<sup>15</sup>. The above principle works in favor of the strikers. The difference of positions between strikers, strike organizers and the employer on the basic issue, or the participation of specific medical professionals in a strike causes a threat to health and life, makes it impossible to recognize the legal term contained in Article 19 section 1 of the Act of 23.5.1991 „it is unacceptable to stop work” as a synonym for the ban on participation in a strike by medical workers treated by the employer as necessary for the provision of medical services, whose abandonment constitutes a threat to health and life.

## RESTRICTIONS ON THE RIGHT TO STRIKE IN HEALTH SERVICE

A situation that can not be resolved by the interpretation of the inadmissibility of strikes as a ban on strikes and participation can be explained by recognizing that the term “inadmissibility” of cessation of work, addressed to employers, is synonymous with the word stressing the incongruity of behaviour of some medical professionals. Ethical considerations in the case of medical personnel are important, although they do not have to be identified with a legal assessment. In this context, the “inadmissibility” of strikes could be interpreted as limiting the use of legal guarantees for strikes, prerogative for every physician, nurse, technician and other substantive professionals employed in the hospital, except for those that may be necessary to protect health and life. The decision in

<sup>15</sup> Judgment of the Supreme Court of 7.2.2007, I PK 209/06; decision of the Appellate Court in Katowice of 14.3.2016, III APz 8/16.

this matter should be taken by parties to a collective dispute: an employer and a trade union organization. The “inadmissibility” of strikes, limiting the subjective rights of individual persons employed in a hospital, requires social partners in collective disputes on opposite sides to agree how many and who in the sense related to professional specialties may be necessary to ensure the maintenance of services on the required level.

In the Act of 23.5.1991, two separate types of restrictions on freedom of strike were formulated. One of them has a procedural nature. It comes from the outside. It was formulated by the legislator who carefully calculated the obligations imposed on the organizers of each strike, concerning voting, *quorum*, notifying the employer about the initiation of a collective dispute, warning about strikes, negotiations and mediation and possibly arbitration. For the second, voluntary restriction of freedom of strike, the source may be an agreement concluded by the social partners involved in a collective dispute at a given moment. Social partners may, in collective labour agreements, introduce provisions prohibiting or restricting freedoms and entitlements to strike guaranteed by collective labor law provisions. This is so called clause of “social peace”. Its meaning consists in submitting by the authorities of the trade union, being a party to the collective labor agreement, a statement on abstaining during the period of the collective labor agreement from making use of the entitlement to organize strike actions and to stop the represented employees from participating in such actions organized by another union organization not obliged to comply with the “social peace” clause<sup>16</sup>. If an agreement on the temporary suspension of the right to organize strikes can be concluded, it is possible – in accordance with the rule – *a maiorem ad minus* to agree before or during a strike, which employees will keep the functions of the workplace in motion so that the strike action organized in accordance with the law did not pose a threat to human health and life.

There are no legal obstacles for trade unions to limit statutory provisions guaranteed by the provisions of the commonly binding Act of 23.5.1991 to their rights and to expand strike procedures. The Act of 23.5.1991 contains a list of maximum restrictions and prohibitions that may apply to the positions of employees who are required to perform work during a legal strike, in which they should not participate – due to the need to protect health and life of people – all the employed. Increased restrictions on strike rights guaranteed universally by law may include prolonging the period of notifying the employer about the planned strike action, tightening the requirements necessary to make a decision to organize a strike (100% *quorum*, i.e. the obligation to participate in the voting of all employees in the workplace, which is covered by the strike, most qualified, two-thirds or three-quarters of those voting for organizing the strike). It should be noted, however, that in the hitherto existing strike practice in the country there was no case involving the adoption of a resolution on the “self-limitation” of the trade union organization in using the entitlements of trade unions to organize strikes.

<sup>16</sup> A.M. Świątkowski, *Gwarancje prawne pokoju społecznego w stosunkach pracy*, C.H. Beck, Warszawa 2013, p. 87 and following.

## AN *EX ANTE* CONTROLLED STRIKE WITH THE POSSIBILITY OF SELECTIVE OR DYNAMIC *AD HOC* CONTROL CARRIED OUT BY SOCIAL PARTNERS

The case of exclusion of the right to strike indicated by the social partners of medical professionals could be classified as a strike model controlled prior to the strike action, enabling the social partners to make and correct their choices in the part concerning quantitative and qualitative restrictions on striking by the medical professionals necessary to guarantee people's health and lives. Workplaces, equipment and installations are important from this perspective, which must function without interruption, because stopping such work can cause a health and life threat for people. In some situations, depending on external conditions on which a person has no influence, the *ex-ante* model can be supplemented with an *ad-hoc* model, consisting of selective and dynamic control of threats to life and health of the population. As an example, it is possible to include the ban on striking by workers of city cleaning plants during extraordinary heat. Lack of reaction by the relevant authorities to the planned strike actions planned by employees cleaning and tidying up the city as well as waste disposal may lead to an epidemic that threatens the health and lives of residents. Garbage disposal may become an indispensable service because of a threat to health or life if a strike in this sector exceeds a certain period or range.<sup>17</sup>

## CONCLUSIONS AND POSTULATES

The first act on trade unions of 8 October 1982 introduced far-reaching restrictions and bans on strikes at workplaces and in workplaces providing services to the public.<sup>18</sup> The assumption of "indispensability" of services did not correspond with extensive catalogs of types of work, workplaces, on which it was not possible to guarantee employees the freedom to make use of natural, eligible for each person employed, freedom of strikes and trade unions freedom to organize strikes. The Act on solving collective disputes, passed on 23 May 1991, guaranteed the social partners the right to: 1) establish and join trade union organizations by employees and the other employed; 2) negotiating collective labor agreements; 3) conducting collective disputes. Assessing the effective legal solutions concerning the restrictions of the right to strike because of the need to provide work during strike at work stations, at which work cannot be suspended due to the possibility of the threat to two most important human rights, which are health and life, I think that the choice made over a quarter of a century ago was right. The method of protecting these rights is also correct. It consists in the general limitation of the right to strike at work stations where work can not be temporarily discontinued due to the possibility of creating a threat to one or other

<sup>17</sup> Freedom., op.cit., p. 121.

<sup>18</sup> A.M. Świątkowski, *Kompetencje związków zawodowych w sporach zbiorowych pracy* (in:) *Kompetencje związków zawodowych*, PWN, Warszawa-Kraków, p. 329 and following



common right, or both at the same time legally protected, the most important values for people. The legislator defined *ex ante* the basic rights covered by legal protection formulated in the provisions establishing temporary restrictions on strikes. He did so by indicating not workers who should not use the freedom to strike, but to jobs at which employees should not participate in a legal strike. He enabled the organizers of strikes and employers involved in the strike action to make *ad hoc* decisions, depending on the situation and the degree of threat of strike to the basic rights under legal protection. The model of legal protection, on the one hand the basic freedom of the employee and representing his interests in the trade union organization to make decisions about organizing and participating in strike action, on the other hand, the obligation to protect human health and life is unique, because it combines the qualities typical of *ex-ante* and *ad hoc* selective and dynamic models, approved as the models of proceeding by state authorities accepted in all systems of collective labour law, aiming at guaranteeing a balanced compromise between those who want to strike but for the protection of two important common rights should not stop work, although they would have the right to do it.

The model adopted by the system of collective labor law could be reconstructed, in this way each party to the collective dispute could benefit from the collective action taken without detriment to the persons directly affected by the strike – patients of hospitals and the broadly understood society. It has three disadvantages. The first is that in the Act of 23.5.1991 on the resolution of collective disputes, no independent authority was found to settle disputes between the organizers of the strike and employees who intend to take part in a legal strike and the employer and his image on the number of jobs necessary to to guarantee protection of life or human life, *ad hoc* reduction of strikes should be ordered. Discrepancies between the parties to a collective dispute in this case are settled only when a judicial body authorized to apply sanctions to persons violating the provisions of the Act on solving collective disputes, specialized in criminal and non-employee cases, concludes that the strike has created threats to life or health of people, because it involves too much group of employees in it, some of whom should not interrupt work, because while continuing their work, they guarantee safety to protected legal rights.

The second concerns the lack of legal instruments guaranteeing the balance of parties to a collective dispute. In the event of discrepancies between the organizer of the strike – the trade union and the employer, who is of the opinion that striking employees are employed at work positions where they should not strike, due to the health and life protection, the employer, there is no possibility of putting pressure on the work organizer and workers to stop the strike. It seems that in such a case the employer's announcement about the defensive lockout could change the attitudes of strikers and strike organizers. In the Polish system for resolving collective disputes, lockout is a legal instrument not regulated in

the provisions of collective labor law<sup>19</sup>. Granting the employer the right to organize lock-outs in certain situations, without fear of being prosecuted for violating the provisions of the Act of 23.5.1991, would contribute to compensating for the imbalance in collective labor relations. It would also facilitate the reaching of agreement between representatives of parties to a collective dispute regarding which employees employed in positions, devices and installations subject to the strike ban are indispensable to employers to protect the health and life of people and therefore they can not participate in strike action. In art. 19 section 1 of the Act of 23.5.1991, the legislator declared inadmissibility of the cessation of work as a result of strike action on certain, generally defined, positions. He left the parties to a collective dispute, appearing in collective labor relations in the role of social partners, to solve the cases related to the issue of how many employees employed in jobs sensitive from the point of view of protection of the goods listed in this provision should not participate in a specific strike. Guaranteeing an equal position of parties in the collective labour law by granting the employer threatened by the strike an opportunity to organize a defensive lockout would contribute to the compensation for the imbalance in the final, non-peaceful resolution of the dispute, after cessation of mediation or arbitration. The awareness of employees of the opportunity of the employer affected by the strike to use the right to announce the lockout against the strikers should result in undertaking the negotiations. They would be restricted to the selected issue regulated by Art. 19 section 1 of the Act of 23.5.1991, they could, however, contribute to the implementation of the modern concept of social partnership also in the final stage of collective dispute<sup>20</sup>.

The last and most important postulate concerns the introduction in the legislation regulating the rights of the parties to a collective dispute in the sector of services necessary for the protection of health and life of the concept of virtual strike and lockout<sup>21</sup>. In contrast to the “real” strike, the social partners participating in the virtual strike would not be subject to the limitations currently laid down in art. 19 sec. 1 of the Act of 23.5.1991. The decision to stop the medical staff from striking would involve only the loss of remuneration of employees participating in the strike. The remuneration which the employer would have to pay to employees if they did not strike should be transferred to a specific social purpose, for example to equip the hospital. An employer who decides to issue a virtual lockout, aimed at exerting pressure on striking employees, would be obliged to transfer the income obtained to the same or similar social purpose, to which the remuneration not paid to the striking employees would be remitted. The presented concept of a virtual strike and lockout would improve the situation of parties to a collective dispute, would guarantee them unlimited legal freedom to

<sup>19</sup> A.M. Świątkowski, *Strajk i lokaut* (in:) *Prawo pracy. Refleksje i poszukiwania*, Księga Jubileuszowa Profesora Jerzego Wratnego, ed. G. Uścińska, Warszawa, p. 148 and following; The same, *Lokaut. Studium stosunków przemysłowych* (in:) *Studia z Zakresy Prawa Pracy i Polityki Społecznej*, Uniwersytet Jagielloński, Kraków, p. 31 and following.

<sup>20</sup> A.M. Świątkowski, *Gwarancje ...*, op.cit., p. 54 and following; 226 and following.

<sup>21</sup> A. Nicita, M. Rizzoli, *The case for the virtual strike*, Springer-Verlag, Port Econ. J Original Article 2009.

benefit from the freedoms regulated by the provisions of collective labor law. The greatest benefit would be achieved by the beneficiaries whose accounts would receive property benefits not due to social partners taking active part in the last phase of the collective dispute.

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**Summary:** The author presents a specific situation of the right to strike by health care professionals. The Act of 23.5.1991 on the resolution of collective disputes prohibits the right to strike because of the need to protect the human life. In the absence of the above threat, this law limits the power to strike by doctors, nurses and medical personnel, although the ILO and Council of Europe standards of collective labor law guarantee medical personnel the right to defend their economic interests. In order to adapt the Polish law to international standards, the author presents the concept of virtual strike, which is not subject to legal restrictions. According to this concept, the decision to strike would not result in the striking medical staff ceasing to perform work and would not be associated with the loss of the right to remuneration for ongoing work

**Key words:** medical professionals, law, health care, strike, loss of remuneration, virtual strike.

## PRAWO DO STRAJKU W SŁUŻBIE ZDROWIA

**Streszczenie:** Autor przedstawia specyficzną sytuację prawa do strajku pracowników służby zdrowia. Ustawa z 23.5.1991 r. o rozwiązywaniu sporów zbiorowych zakazuje prawa do strajku ze względu na konieczność ochrony życia człowieka. W przypadku braku powyższego zagrożenia ustawa ta ogranicza uprawnienia do strajkowania lekarzy, pielęgniarek i medycznego personelu, mimo iż standardy zbiorowego prawa pracy MOP i Rady Europy gwarantują personelowi medycznemu prawo do obrony interesów ekonomicznych. W celu dostosowania polskiego prawa do standardów międzynarodowych autor przedstawia koncepcję strajku wirtualnego, nie podlegającą prawnym ograniczeniom. Według tej koncepcji decyzja o strajku nie powodowałaby zaprzestania wykonywania pracy przez strajkujący personel medyczny i nie byłaby związana z utratą prawa

do wynagrodzenia za wykonywaną nadal pracę

**Słowa kluczowe:** pracownicy medyczni, prawo, służba zdrowia, strajk, utrata wynagrodzenia, wirtualny strajk.