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CONCEPT AND TYPES OF COLLECTIVE LABOR AGREEMENTS IN LIGHT OF THE POLISH LABOR LAW

GENERAL REMARKS

This article presents the concept and types of collective labor agreements in the Polish labor law. The law on collective labor agreements itself was reformed essentially in 1986 by the Act of 24 November 1986 amending the Labor Code Act - Journal of Laws No. 42, item 201) and then for the second time in 1994 by the Act of 29 September 1994 amending the Labor Code Act and amending certain Acts (Journal of Laws No. 113, item 547). The first change had the character of adjusting the legal regulations of collective labor agreements to the attempts undertaken to reform the command-and-distribution economy, while the reform of Section XI of the Labor Code, made in 1994, aimed at creating legal provisions fully adapted to the requirements of the market economy which was at the stage of development¹.

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¹ T. Liszcz, *Prawo pracy*, Warsaw 2011, p. 45.

In 1986, in addition to collective labor agreements, institutions of company's collective agreements were established to deliberately eliminate gradually the so-called arrangements on company's remuneration systems known from the Act of 26 January 1984 on the establishment of company's remuneration systems (Journal of Laws of 1990, No. 69, item 407)². In addition to collective labor agreements, company's collective agreements and arrangements on company's remuneration systems in workplaces in which trade unions operated, the whole pay systems could be regulated in the form of the so-called regulations provided for in Art. 23 of the Act of 26 January 1984³. At the time of the amendment of Section XI of the Labor Code, the company's collective labor agreements and the arrangements on the introduction of the company's remuneration system became by law company's collective labor agreements, while the issued regulations retained their binding power, until the entry into force of the company's collective labor agreement in a given enterprise, whereas as a result of the reform of the law on collective labor agreements realized in 1996 when the regulations issued in accordance with Art. 23 of the Act of 26 January 1984 became the regulations of remuneration in accordance with Art. 77² of the Labor Code⁴. The company's collective arrangements on the introduction of the company's remuneration system and the regulations issued in accordance with Art. 23 of the Act of 26 January 1984 ceased to apply⁵.

The Labor Code after the amendment does not provide a definition of a collective labor agreement, focusing on the way of the formation of the agreement, its content, contractual capacity and other issues. However, if we were to define what a collective agreement is, then it would be necessary to use initially the definition of Jan Herbert, in which he states that "A collective agreement is a normative arrangement, that is such a particular legal device that correctly associates the characteristics of each bilateral agreement with the characteristics specific for a general legal act."⁶

Collective labor agreements belong to autonomous sources of labor law as they arise through negotiations between the parties to the employment relationship, act as a regulator of employment conditions and an instrument by means of which conflicts in the field of labor relations are resolved⁷.

Art. 9 § 2 of the Labor Code defines the relations between the common (the Constitution, laws, regulations) and specific (collective agreements) sources of labor law in accordance with the principle of advantage. Art. 9 of the Labor Code

² J. Wrątny, *Układy zbiorowe pracy* [in:] J. Wrątny, K. Walczak (ed.), *Zbiorowe prawo pracy*, Warsaw 2009, p. 137-140.

³ *Ibidem*, p. 141.

⁴ E. Wronikowska, P. Nowik, *Zbiorowe prawo pracy*, Warsaw 2008, p. 75-94.

⁵ L. Florek, *Źródła prawa pracy w polskim systemie* [in:] L. Florek (ed.), *Źródła prawa pracy*. Seria monografie, 2000, p. 61.

⁶ J. Herbert, *Układy zbiorowe pracy*, Scientific Society of Organization and Management, Bydgoszcz 1997, p. 6.

⁷ *Ibidem*, p. 7.

specifies the mechanisms of application priority between the various acts of labor law. In § 2 the relations between the common and specific sources of labor law are defined according to the principle of advantage. The provisions of collective labor agreements, collective arrangements as well as regulations and statutes may not be less favorable for employees than the provisions of the Labor Code and other laws and implementing acts⁸.

On the other hand, Art. 9 § 3 of the Labor Code regulates the issues of internal normative relations within the framework of specific sources of labor law⁹. The dominant rule here is the principle of advantage, which means that the provisions of regulations and statutes may not be less favorable for employees than the provisions of collective labor agreements and collective arrangements¹⁰.

The provisions of the collective labor agreement are binding for all employees working in the workplace during the period of the agreement, even those who are not members of trade unions¹¹.

In light of the provisions of Art. 240 of the Labor Code the collective agreement determines:

- the conditions that the content of the employment relationship should correspond to, however the agreement can not infringe the rights of third parties.
- the mutual obligations of the parties to the agreement, including those relating to the application of the agreement and the compliance with its provisions
- other matters that are not regulated in the provisions of labor law in a mandatory manner.

Collective agreements may also specify:

- the way of publishing the agreement
- the distribution of its content
- the procedure for making periodic assessments of the functioning of the agreement
- the procedure for explaining the content of the agreement's provisions
- the resolution of disputes between the parties¹²

Adjusting to the employees' legal situation of a given workplace, the working conditions existing in it, and the responsibilities and rights of the employees being shaped, collective labor agreements in force in these conditions are a source of differentiation of rights and obligations. They are therefore a very important instrument for the correct adjustment of the legal situation of employees to changing working conditions, required qualifications, contributing to resolving conflicts in

⁸ K. Gonet, *Prawo pracy i ubezpieczeń społecznych*, Warsaw 2008, p. 84.

⁹ W. Sanetra, *Źródła prawa pracy w świetle Konstytucji RP*, [in:] L. Florek (ed.), *Źródła prawa pracy*. Seria monografie, 2000, p. 9.

¹⁰ *Ibidem*, p. 85.

¹¹ E. Osiecimski, *Branżowe układy zbiorowe pracy*, Wrocław 1976, p. 1.

¹² E. Wronikowska, P. Nowik, *Zbiorowe prawo pracy*, Warszawa 2008, p. 75.

the field of labor relations¹³. The Labor Code after the amendment does not provide a definition of a collective labor agreement, focusing on the way of the formation of the agreement, its content or contractual capacity¹⁴. However, one should adopt definitions that collective agreements are voluntary arrangements concluded between employers and employees represented by trade unions. They regulate the mutual rights and obligations of the parties to the employment relationship, including primarily working and pay conditions as well as other work-related benefits¹⁵.

In connection with the above-mentioned features of collective agreements, one can create the following definition in which the collective agreement is understood as “a normative arrangement” concluded between the employees’ representatives who are represented by trade unions and the employees’ representatives (here the employer or the organization of employees may be representatives)¹⁶. On the basis of the wording “normative arrangement”, different views are expressed concerning the very legal nature of collective labor agreements¹⁷.

The study of labor law assumes that the collective labor agreement is an act consisting of non-homogeneous parts in terms of the legal nature. It is a diverse act because in its legal structure some elements having the obligatory nature are interwoven, while the effects of the collective agreement have the normative nature, as it results directly from Art. 9 of the Labor Code, which included collective labor agreements into the provisions of labor law¹⁸.

The labor law doctrine itself distinguishes two theories on collective agreements. According to the first theory, collective labor agreements are defined as obligatory acts. The supporters of this theory point to the contracts of the agreement nature in which trade unions and employers form mutual rights and obligations on the basis of a bilateral declaration of will. Its nature is derived directly from the way of concluding the agreement, changing its content and resolving it. Its contractual nature is closely connected with the freedom of agreement, that is, the freedom of the parties to lay down the type of agreement, its subjective and objective scope, as well as with resolving the disputes directly connected with the conclusion of the agreement. But if we were to compare it with the principle of freedom, then its limited aspect is noticeable. The Code itself defines in which situations it is possible to proceed with negotiations and excludes certain issues in the scope of the agreement matter. It is worth noting here that certain employees can not be covered by the

¹³ I. Sierocka, *Układy zbiorowe pracy*, Białystok 1996, p. 8.

¹⁴ J. Herbert, *Układy zbiorowe pracy*, *Scientific Society of Organization and Management*, Bydgoszcz 1997, p. 6

¹⁵ K.W. Baran, *Swoiste źródła prawa pracy*, [in:] K.W. Baran, *Prawo pracy i ubezpieczeń społecznych*, Warsaw 2013, p. 88.

¹⁶ L. Florek, T. Zieliński, *Prawo pracy*, Warsaw 1997, p. 309.

¹⁷ *Ibidem*, p.9.

¹⁸ J. Herbert, *Układy...*, p. 7.

agreement and the parties only partially decide on the entry into force of the agreement, as it depends on the date of its registration¹⁹.

According to the second theory - the theory of the law - collective agreements are qualified as normative acts that regulate the rights and obligations of employees and employers. Its agitators emphasize the fact that the agreements derive their legal power from the law which directly sanctions the standards created on the basis of the social partners' arrangements. The normative nature of the agreement derives from the statutory authorization - the parties acting at their will can not change it²⁰. The provisions of the agreement are in force in the same way as the provisions of the law, as stated in Art. 9 of the Labor Code, according to which labor law is also understood as the provisions of collective labor agreements. The statutory nature is also manifested in the legal solutions which provide for detachment from the parties that concluded it - this refers above all to the obligation to apply the agreement regardless of the will of the trade union's employer and by imposing the obligation to apply it on the employer who is not the party to the agreement - at the time of taking over the workplace by another employer, the provisions of the agreement which employees were covered by prior to the takeover of the enterprise, are applied within one year from the acquisition date²¹.

Therefore, it can be said that collective labor agreements have both contractual and statutory nature. The contractual one provides conditions for regulating the issues of working and pay conditions, while the normative one provides the protection of employees and the order in labor relations²².

COMPANY'S COLLECTIVE LABOR AGREEMENT

The provisions of the Labor Code make it possible to create collective labor agreements also at the level of the workplace. This solution deserves recognition because:

1. In the conditions of a free market economy, each enterprise is autonomous because it has its own and independent bodies, in each of them a trade union can operate. Therefore, there are entities that have a contractual capacity, but there are no grounds for depriving them of their rights in this respect.
2. Company's Collective Labor Agreements approximate the bilateral law to their creators. Employees are required not only to enforce but also respect the law, and since agreements are not imposed from the outside, it may be presumed that they will fully comply with their provisions²³.

Therefore, collective labor agreements should be understood as a minimum bi-

¹⁹ Ibidem, p. 12.

²⁰ G. Goździewicz, *Szczególne właściwości norm prawa pracy*, Toruń 1988, p. 45.

²¹ I. Sierocka, *Układy...*, p. 12.

²² Ibidem, p. 12.

²³ G. Goździewicz, *Układy zbiorowe pracy*, [in:] W. Muszalski (ed.), *Kodeks pracy. Komentarz*, Warszawa 2011, p. 1052.

lateral agreements between the representatives of employees and the employer, in which the parties clearly define their rights and obligations as well as the consequences of their non-compliance. In exceptional situations a company's agreement may cover more than one employer if the employers are part of the same legal entity (Art. 241²⁸ § 1 of the Labor Code)²⁴. The Company's Collective Labor Agreement is signed for employees employed by a particular employer who, within the meaning of Art. 3 of the amending Act of the Labor Code is an organizational unit, even if it does not have legal personality, and at the same time by natural persons if they employ employees. These may also be state-owned and cooperative enterprises, mixed capital and private-owned companies. Powers in this regard are not entitled to employees employed in the public sector units, who can be covered only by a multi-establishment agreement²⁵.

In connection with the above, one can draw the following thesis that the company's contractual capacity is entitled to the employer and the union structures which in their statutes have been formed as company's trade union organizations. An inter-company trade union organization operating on the premises of the employer can sign or conclude the agreement. Accordingly, the following justification can be put forward that other entities and trade union authorities operating in the workplace are not entitled to conclude a collective labor agreement. This means that the founding committee that was set up to form a trade union or a multi-establishment structure does not have the company's contractual capacity²⁶.

The Collective Labor Agreement may be concluded when the employer is not covered by a multi-establishment agreement, as well as when he applies the provisions of such an agreement. In the first case, the provisions of the company's agreement, in accordance with the principle expressed in Art. 239 of the Labor Code, can not be less favorable than the provisions on the employment relationship. If a given workplace is covered by the provisions of a multi-establishment collective labor agreement, then according to Art. 241²⁶ of the Labor Code, the provisions of the collective agreement may not be less favorable than the provisions of a multi-establishment agreement. This rule should be observed throughout the entire period of the application of the company's agreement. At the time of its conclusion by the employer, he is covered by a multi-establishment agreement, and these provisions, which are less favorable, will be automatically replaced with more favorable provisions of the multi-establishment agreement²⁷.

Changes on the socio-economic and political ground that occurred in Poland made the situation of many economic entities dramatically deteriorate. As a result

²⁴ K.W. Baran, *Swoiste źródła...*, [in:] K.W. Baran, *Prawo pracy...*, p. 99.

²⁵ J. Herbert, *Układy...*, p. 18.

²⁶ I. Sierocka, *Układy...*, p. 15.

²⁷ *Ibidem*, p. 17.

of overcoming the difficulties, employers made and still continue making organizational, production, technological and economic changes that usually involve collective redundancies²⁸. In order to avoid or possibly limit redundancies for the above-mentioned reasons in Art. 241²⁷ of the Labor Code, a limited derogation is taken into account, which means that the parties to the company's agreement may conclude an arrangement suspending the application of this agreement or some of its provisions for a period not longer than one year. Consequently, the provisions of Article 241²⁶ § 1 of the Labor Code are not applied²⁹. Accordingly, legal provisions that result from a multi-establishment and a company's agreement - employment conditions and other acts constituting the basis for the establishment of an employment relationship, are not applied in this arrangement. The above arrangement should be reported to the register of agreements³⁰.

The content of the employment relationship itself in this period is governed by the provisions of the Labor Code and other legal acts. This limits employers in shaping the terms and conditions of employment contracts or other legal acts on the basis of which the employment relationship was established, thus ensuring compliance with statutory employee rights as a certain minimum.

Rules that provide for the creation of a collective labor agreement for one employer take into account an exception contained in Art. 241²⁸ of the Labor Code. Under this provision, a collective agreement may cover more than one employer if these employers form an economic organization - a legal entity. The above-mentioned provision applies especially to large, multi-employer enterprises in which internal organizational units use statutory, organizational or property separation and independence. Due to these considerations, they are treated within the meaning of Art. 3 of the Labor Code for employees or companies in which there are several employers. Under the above-mentioned provision individual workplaces may include a company's agreement or may be covered by an agreement concluded at the level of an economic organization³¹.

The Code does not directly regulate the effects of the dissolution of the economic organization of employees being a party to the company's agreement. In connection with the above, the following conclusion can be drawn that the consequences of dissolution of this organization for workplaces previously covered by it are the same as for economic entities covered by a multi-establishment agreement³². In connection with the removal or dissolution of the party to the agreement so far representing the workplaces collected in it, the conclusion arises that in such a case one should apply

²⁸ J. Wrątny, *Kodeks pracy. Komentarz*, Warsaw 2013, p. 455.

²⁹ J. Wrątny, *Ewolucja zbiorowego prawa pracy w Polsce w latach 1980-1991*, Warsaw 1997, p. 91.

³⁰ J. Herbert, *Układy...*, p. 22.

³¹ K. Gonet, *Prawo pracy i ubezpieczeń społecznych*, Warsaw 2011, p. 84.

³² J. Wrątny, *Kodeks pracy. Komentarz*, Warsaw 2013, p. 459.

the rule set out in Art. 241¹⁹ of the Labor Code that concerns the dissolution of the employers' organization who are the party to the arrangement³³.

At the time of the operation of the company's agreement, the parties to the agreement may undergo organizational changes which involve the division or connection of the workplace. The rules applied in such a situation in relation to a multi-establishment agreement also take place in the case of agreements that are concluded at a lower level. In the light of Art. 241²⁹ of the Labor Code, at the time of the division of the workplace, all rights and obligations of the parties to the company's agreement are transferred to employers or trade union organizations resulting from the division³⁴. They are obliged to comply with the provisions of the agreement. This obligation arises *ex lege*, without the need to submit any additional statements. At the moment of merging trade union organizations, all rights and obligations are automatically transferred to the newly created organization. At the moment when all trade union organizations are dissolved, the employer may withdraw from the application of the agreement in whole or in part after the expiration of the period of its termination. It is worth noting that the employer uses these rights only when one party to the agreement is missing, and therefore in the event of dissolution of all trade union organizations that are parties to the agreement, and not those that have concluded it³⁵.

The situations depicting the removal from the register are described in the Law on Trade Unions, namely Article 17 of the Act, which says that the Court deletes a trade union from the register when:

- 1) the body indicated in the statute has passed a resolution to dissolve the union;
- 2) the workplace in which the trade union has been operating so far has been removed from the relevant register due to the liquidation or bankruptcy of this workplace or its organizational and legal transformation, making it impossible to continue the activity of this union;
- 3) the number of union members stays below 10 for more than 3 months³⁶.

The deletion may also take place on the basis of Article 36 of the above-mentioned Act. It says:

„If the registration court finds that the trade union body conducts activities contrary to the Act, it sets a deadline of at least 14 days to adapt the activity of that body to the applicable law. Proceedings are initiated at the request of the competent regional prosecutor³⁷. In the event of ineffective expiry of the period provided for in paragraph 1, the registration court may:

³³ Ibidem, p. 85.

³⁴ K.W. Baran, *System prawa pracy*, vol. VI, Warsaw 2016, p. 277-282.

³⁵ L. Florek, *Kodeks pracy*, Warsaw 2011, p. 111.

³⁶ <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19910550234> [access: 10.03.2017].

³⁷ <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19910550234> [access: 10.03.2017].

- 1) order a fine in respect of individual members of the union body in the amount specified in Art. 163 § 1 of the Code of Civil Procedure;
- 2) designate the authorities of the union the date of the new elections to the union body referred to in paragraph 1, under pain of suspension of the activity of this body.
- 3) if the measures referred to in paragraph 2 will prove ineffective, the registration court, at the request of the Minister of Justice, decides to delete the trade union from the register. The decision may be appealed.
- 4) for matters referred to in paragraphs 1-3, the provisions of Art. 18 are applied respectively.
- 5) trade union deleted by a valid decision from the register in accordance with paragraph 3 is obliged to cease its activities immediately, and within three months from the validation of this decision, make its liquidation in the manner provided in the statute³⁸.

In summary, it should be said that a collective agreement can not regulate the conditions of employees and managers on the employer's behalf. Our legislator defines the concept of "the person managing the workplace on behalf of the employer". It is assumed that these are people who manage the workplace, e.g. board members, business executives. According to the Supreme Court's decision, the Company's Proxy may be recognized as a manager on behalf of the employer. Analyzing this part of the article, it should be emphasized that the special role of collective labor agreements is primarily due to the fact that, coming to fruition through negotiations, agreements concluded by the employer or employers' organizations with trade unions, they are of great importance, both social and legal, for shaping correct relations in the sphere of labor law. This is the way to the agreement of social partners without interference and participation of authorities and state administration³⁹.

MULTI-ESTABLISHMENT COLLECTIVE AGREEMENT

The provisions of the Labor Code provide for the possibility of creating multi-establishment collective labor agreements but do not specify at what territorial level they can be concluded. This concept of a multi-establishment agreement only indicates that it is to be a contract concluded for employees of more than one workplace. However, we can conclude that a multi-establishment agreement may be understood as a collective labor agreement set up by a competent statutory authority of a multi-establishment trade union organization and an employers' organization body⁴⁰.

³⁸ <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19910550234> [access: 10.03.2017].

³⁹ K. Jaśkowski, *Kodeks pracy: komentarz Lex: ustawy towarzyszące z orzecnictwem. Europejskie prawo pracy z orzecnictwem*, vol. 1 Warszawa 2012, p. 1063-1080.

⁴⁰ G. Goździewicz, *Układy zbiorowe pracy*, [in:] W. Muszalski (ed.), *Kodeks pracy. Komentarz*, Warszawa 2011, p. 1052.

Acting on the basis of Art. 241¹⁴ of the Labor Code the collective labor agreement is concluded by the employees' parties, the competent statutory authority of a multi-establishment trade union organization (a nationwide trade union, a trade union association or a nationwide inter-trade union organization commonly known as a confederation). On the part of the employers, the competent statutory authority of the employers' organization acts on behalf of the employers associated in this organization⁴¹. The Act (the Labor Code) itself does not specify what characteristic features the organization should be distinguished by. Most probably it is about the Act on employers' organizations and Art. 1, paragraph 2, which says: „An employer within the meaning of the Act is the entity referred to in Art. 3 of the Labor Code.” In connection with the above, it can be deduced that only employers who conduct business activity have the right to set up employers' organizations. This means depriving the entities that belong to other types of associations or organizations of their contractual capacity⁴².

The right to conclude a multi-establishment agreement is entitled *de facto* to nationwide business entities, on whose part the agreement may be concluded by the statutory bodies of these entities. The indication of these entities remains the responsibility of the Minister of Labor. From the wording of Art. 241¹⁴ § 2 of the Labor Code it follows that the Minister has complete freedom in choosing nationwide economic organizations that obtain the right to conclude multi-establishment agreements. Only some entities may be authorized to conclude agreements directly⁴³.

By a nationwide entity we mean an organizational unit that can act and acts as a separate legal entity, in particular if it has legal personality, and its activity covers the entire country and has organizational structures in its territory. An example in the 90s are such state entities as:

1. PKP (Polish State Railways),
2. Poczta Polska (Polish Mail),
3. Państwowe Gospodarstwo Leśne „Lasy Państwowe” (The State Forest Holding „State Forests”)⁴⁴.

The very interpretation of Art. 241¹⁴ of the Labor Code indicates the ambiguity of this term. The legislator uses the word “parties” in a very broad sense, as it defines employees and employers covered by the arrangement or narrower. The content of the provision itself may lead to the following conclusion that by “party” we mean an entity authorized to negotiate and conclude a collective labor agreement in the interest of employees⁴⁵.

⁴¹ Ibidem, p. 1053.

⁴² I. Sierocka, *Układy ...*, p. 37.

⁴³ Ibidem, p. 39.

⁴⁴ W. Sanetra, *Prawo pracy*, Białystok 1994, p. 234.

⁴⁵ Ibidem, p. 235.

According to Art. 241¹⁵ of the Labor Code the initiative to conclude the agreement may be made by an organization of employers authorized to conclude an agreement on the part of employers and each multi-establishment trade union organization representing employees for whom the agreement is to be concluded⁴⁶. Prior to the conclusion of the agreement itself, talks with trade union organizations are held in order to create a joint representation. The right to apply for such an initiative is entitled to all trade union organizations, even those that do not have contractual capacity. If one organization is entitled, then it can conclude an agreement, even if it is not a representative organization as it is understood by the Labor Code⁴⁷. If there are more organizations with such entitlements, they must within 30 days establish a joint representation or act together. According to Art. 241¹⁶ § 2 of the Labor Code it follows that organizations can enter negotiations only when, in due time, all organizations representing employees, not all trade union organizations, join negotiations under the procedure set out in § 1, trade union organizations that have entered negotiations are entitled to conduct negotiations⁴⁸. These negotiations are conducted in the manner set out in § 1. However, if they do so, and as a consequence the representation will disintegrate, representative organizations will not be entitled to continue the interrupted negotiations. The consequence is the collapse of negotiations and the absence of an agreement. The legislator imposed the obligation of conducting negotiations by all unions, and on representative organizations only under specific conditions. The latter will not accept common representation or joint action⁴⁹.

The representativeness of trade unions should be emphasized in negotiations regarding a multi-establishment collective labor agreement at the request of a non-union employee. This principle is described in the Law on Trade Unions, specifically in Art. 7 which says "In terms of the collective rights and interests trade unions represent all employees regardless of their union membership". This is more concretized in Art. 30 which, according to its content, says: "In a workplace in which more than one trade union organization operates, each of them defends rights and represents the interests of its members. A non-union employee has the right to defend his rights under the terms of employees who are members of a union if the trade union chosen by him agrees to defend his labor rights"⁵⁰. Adequately to Art. 7 paragraph 1 each trade union is representative for all employees. In the light of the resolution of the Supreme Court, a trade union is representative for employees in a multi-establishment labor agreement if it has structures associating employees of most workplaces on the territory of the Republic of Poland, regardless of the number of members⁵¹.

⁴⁶ Z. Salwa, *Źródła prawa pracy*, [in:] K.W. Baran (ed.), *Zarys systemu prawa pracy*, Warsaw 2010, p. 397.

⁴⁷ U. Jelińska, *Ponadzakładowy układ zbiorowy pracy: informacje, wyjaśnienia, porady*, Warsaw 1997.

⁴⁸ *Ibidem*, p. 399.

⁴⁹ I. Sierocka, *Układy...*, p. 45.

⁵⁰ K. Gonet, *Prawo pracy i ubezpieczeń społecznych*, Warsaw 2011, p. 85.

⁵¹ K.W. Baran, *Źródła prawa pracy*, [in:] K.W. Baran (ed.), *Prawo pracy*, Warsaw 2009, p. 99.

In the light of Art. 241¹⁸ of the Labor Code “At the joint request of employers’ organizations and multi-establishment trade unions that have concluded a multi-establishment agreement, the minister competent for labor issues may - when required by important social interest – extend, by regulation, the application of this agreement in whole or in part to employees employed by an employer not covered by any multi-establishment agreement, conducting business activity that is the same or similar to that of employers covered by this agreement, determined on the basis of separate provisions relating to the classification of business activities, after consulting the employer or the indicated by him employer’s organization and the trade union organization if it operates on the premises of the employer”. The extension of the application of a multi-establishment agreement is valid not longer than until the employer is covered by another multi-establishment agreement. This clause applies only to the normative provisions regulating the content of the employment relationship. At the time of withdrawal from the extension of the application of the agreement, the conditions of employment contracts or other acts constituting the basis for concluding an employment relationship do not automatically return to their original version but are valid until the expiration of the period of their termination⁵².

In the light of Art. 241¹⁹§1 of the Labor Code “In the event of a connection or division of a trade union organization or employers’ organization which has concluded a multi-establishment agreement, its rights and obligations are transferred to the organization resulting from the connection or division”. These consequences should be considered in three aspects:

1. towards employees associated in a given organization,
2. employers,
3. in relation to the party to a multi-establishment agreement.

The most serious consequences relate to the party to a multi-establishment agreement, because the division of the trade union organization that has concluded the agreement not only changes the circle of addressees of the mandatory provisions of the agreement, but also entities authorized to undertake activities related to the agreement. From the very content of Art. 241¹⁹ §1 of the Labor Code it follows that the connection or division of employers has the same consequences as in the trade unions. On one side of the multi-establishment agreement the same trade unions remain, but the new employers’ organizations become the other side. This new organization represents the interests of its members and can independently (without acting with other organizations of employers) carry out the Open Actions regarding this agreement with the consequences not going beyond that organization⁵³. The division itself means that in place of the previous agreement, there have arisen as many multi-establishment agreements as the given employers’ organization divided

⁵² Ibidem, p. 101.

⁵³ J. Wrątny, *Kodeks pracy. Komentarz*, Warsaw 2011, p. 884-887.

into, having previously been the party to this agreement. On the basis of Art. 241²⁹ of the Labor Code it may be deduced, that each employer individually becomes a party to the agreement because the agreement is a two-sided arrangement. Therefore, the conclusion is that such a division causes complications in the functioning of entities that are to follow the multi-establishment collective labor agreement⁵⁴.

Another problem in a multi-establishment agreement is the dissolution of the party, because as a result of this operation automatically one party to the agreement is missing. However, it will continue to apply until the expiry of the period for which it was concluded or until the end of the period of notice, yet, no changes can be made to it. In order to avoid complications, the employer must submit a relevant statement in writing to the other parties to the multi-establishment collective labor agreement.

In conclusion, it should be stated that multi-establishment collective labor agreements are the foundation for collective labor agreements. Their issues and components highlight the complexity of labor law.

INTERNATIONAL FRAMEWORK AGREEMENTS

In this subsection I will present the conditions related to the formation, development and implementation of framework agreements concluded on a global scale - otherwise referred to as international framework agreements (IFA – International Framework Agreements). In connection with the above, the question should be asked where the framework agreements having an international character come from?

Global development is widely perceived through the dynamics of the spread of supranational corporations. It is not entirely clear if this trend has a positive character from the point of view of the development of the world economy. However, it is an undeniable fact that supranational corporations employ millions of employees of different nationalities through their subsidiaries around the world. The result of this are far-reaching repercussions. One global manager, usually a single global operation strategy is implemented consistently at the local level. On the other hand, however, we also have different standards of employment and work, which is a derivative of the economic development of a given country, but also its ability to defend the collective interests of employees⁵⁵.

One of the responses of the employee representation to the increasing power of the corporations have been the attempts undertaken since the early 1960s of cross-border coordination of trade union cooperation between subsidiaries of the same concern. Some international secretariats of trade unions have undertaken this task.

⁵⁴ K.W. Baran, *Źródła prawa pracy*, [in:] K.W. Baran (ed.), *Prawo pracy*, Warsaw 2009, p. 102.

⁵⁵ S. Adamczyk, B. Surdykowska, *Międzynarodowe układy ramowe jako przykład dobrowolnie podejmowanych negocjacji między pracą a kapitałem*, [in:] Z. Góral (ed.), *Układy zbiorowe pracy*, Warsaw 2013, p. 132.

The visions of the leaders of the world trade union movement assumed that the deepening cooperation of trade unions will as a result lead to mutual support in protest actions. However, it turned out to be a complete misfire, because the negative approach on the part of corporate boards plus the trade unions themselves were not ready for such far-reaching restrictions of their trade union autonomy. The climate has changed radically, when the lack of global regulations have attracted attention of such international institutions as:

1. Organization for Economic Co-operation and Development (OECD)
2. International Labor Organization (ILO)⁵⁶.

The result was a document signed in 1976 under the name “Guidelines for Multinational Enterprises” revised in 2000 and then in 2006. The ILO adopted in 1977 a “Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy”. The appearance of these documents was a breakthrough in the perception of non-economic aspects of the activities of supranational corporations. The disadvantage of these texts was that they assumed the total voluntary compliance to their records. At the same time, a discussion was initiated on the legislative strengthening the powers of employee representation in supranational corporations. As a result, in 1988 a supranational framework was signed, entitled “Common Point of View”. It was not until 1994 that the creation of a Community legal framework for the institutions of the European Works Council became a real catalyst for the development of negotiation practice⁵⁷.

IFA was created as a result of imbalance between work and capital. It is visible in the global dimension. IFAs are concluded completely voluntarily, the question arises about the motive on the side of corporate boards. This is related to the so-called corporate social responsibility. The IFA’s negotiation itself is closely related to the employee side to spreading international labor standards. All standards are included in the ILO declaration. It is indicated in the declaration that all member countries are obliged to comply with them. These are such elements as:

1. freedom of association and the rights of collective bargaining,
2. elimination of all forms of forced or compulsory labor,
3. effective elimination of child labor,
4. elimination of discrimination in the field of employment and occupation⁵⁸.

In the literature itself, it is pointed out that the moment of signing the majority of IFA can be classified into one of several categories:

1. The situation of a deepening conflict between local management and local employee representation, which is “broken” by intervention from the headquarters

⁵⁶ Ibidem, p. 133.

⁵⁷ B. Surdykowska, *Kodeks dobrych praktyk*, Warsaw 2008, p. 129-130.

⁵⁸ S. Adamczyk, B. Surdykowska, *Międzynarodowe układy ramowe jako...*, [in:] Z. Góral (ed.), *Układy...*, p. 134.

having its roots in Europe (IFA becomes an element of subordinating the standards of relations with employee representation in the global dimension).

2. The signing of the international framework comes as a result of the development of trade unions' networking and exerting coordinated pressure.

3. It is the result of a combined social campaign conducted by the trade unions and non-governmental organizations⁵⁹.

We can define IFAs as the agreements that are important, social instruments of employment policy, preventing differentiation of standards in competing European locations and around the world, and strengthening the social responsibility of multinational enterprises. IFA, despite its global reach, is still recognized as a European "invention", because the overwhelming majority of agreements are still signed in the European area. However, it should be noted that the majority of IFA as a reference point adopts international acts relating to fundamental rights such as:

1. Respect for the Universal Declaration of Human Rights,
2. The rules indicated in the Global Compact,
3. ILO Declaration on Fundamental Rights,
4. OECD guidelines,
5. Tripartite ILO declaration,
6. Rio Declaration on Sustainable Development,
7. The UN Convention on the Elimination of All Forms of Discrimination against Women,
8. The UN Convention on the Rights of the Child,
9. ILO Code of Practice on HIV / AIDS⁶⁰.

IFA content can be divided into four areas:

1. Minimum labor standards and minimum human rights standards;
2. Elements regarding the content of the employment relationship;
3. Guidelines for negotiation at the level of individual locations "soft issues" such as OHS (health and safety), training and restructuring;
4. Other standards⁶¹.

I referred to the first area earlier. In the second one you can indicate, for example, a framework system in the Greek telecommunications concern OTE. It indicates the creation of stable employment through contracts for an unspecified period of time. In the third area, particularly advanced provisions concern training connected with the issue of restructuring and international and inter-corporation mobility, for example in Danone. The fourth area is the standards concerning for example ISO 14001 - environmental management. As for the IFAs' legal status itself, there is no such lively discourse. It results from two premises:

⁵⁹ <http://www.oecd.org/>.

⁶⁰ <http://www.mop.pl/html/index1.html>.

⁶¹ S. Adamczyk, B. Surdykowska, *Międzynarodowe układy ramowe jako...*, [in:] Z. Góral (ed.), *Układy...*, p. 135.

1. They are characterized by a far greater degree of generality of their records
2. There is no ambiguity in their case regarding the mandate of the signatories on the employee side⁶².

It should be emphasized that IFA is not perceived as part of the internal corporate order. There is a noticeable emphasis put on the desire to include in the content of agreements elements that are to create a tool for internal organizing. In texts of many IFA, there are records that explicitly signal this aspect. The key issue, however, is its proper implementation.

In conclusion, it can be stated that international framework agreements are created in a certain legal vacuum. However, despite this and the obstacles that are posed to them, their quantitative and qualitative development is observed. This shows the determination to overcome cultural, mental and geographical barriers in connection with the activities of corporations⁶³.

THE IMPORTANCE OF THE COLLECTIVE LABOR AGREEMENT

The genesis of collective labor agreements is related to the employees' striving to improve the pay and work conditions. They have their origin in 1911, where various agreements started to be given a normative character. Thus, collective agreements obtained the status of sources of labor law with the same power as the Act. This means that the contract can not depart from the provisions of the agreement to the disadvantage of employees, unless the Act provides otherwise. Thanks to this, an effective instrument for the protection of employees has evolved. The provisions of the agreements themselves may form the basis of employee claims. A collective labor agreement is considered to be a manifestation of social dialogue. In labor relations, it constitutes the clearest part of the dialogue, it leads to agreement and not only to an exchange of views. This results in giving the dialogue a legal form⁶⁴.

The very rules for running and concluding collective labor agreements are set out in Recommendation No.91 of the ILO of 1951 concerning collective agreements, according to which the procedure of a collective bargaining and dispute settlement resulting from the interpretation of the agreement should be established⁶⁵. Confirmation of the guarantee of negotiations is Article 59 paragraph 2 of the Constitution. This provision does not refer to the Act as the reason for this may be the fact that the right to bargain is primarily freedom from state interference in matters of bargaining and concluding collective agreements.

⁶² Ibidem, p. 147.

⁶³ S. Adamczyk, B. Surdykowska, *Międzynarodowe układy ramowe jako...*, [in:] Z. Góral (ed.), *Układy...*, p. 148-149.

⁶⁴ W. Szubert, *Układy zbiorowe pracy*, Warsaw 1960, p. 98.

⁶⁵ Ibidem, p. 99.

The collective labor agreement was shaped primarily as an element sustaining the achievements of employees (concessions of employers). They have contributed to the civilization of employment conditions. Genesis is associated with the organization of employees whose collectivity can better resist the employer's advantage. An important element of employee protection is collective security. The essential instruments of this protection are legal acts deriving from employers and trade unions. It is assumed that the protection of employee interests is an extension of union freedom. The agreement may regulate matters not covered by labor legislation as well as matters regulated by statutory provisions in a more favorable way than these⁶⁶. It allows employees to obtain higher privileges than those that could appertain to employees without the agreement, increase employees' privileges when the employer's profit increases, which by nature is not reflected in labor legislation.

When discussing collective agreements, it must be said that they are an integral part of the market economy. Agreements define part of the employment conditions of employees. The possibility to determine these conditions must be regarded as a manifestation of freedom of economic activity within the meaning of Article 20 of the Constitution. On the other hand, contractual conditions of employment are a reflection of the market situation. The consequences of employment costs and their impact on efficiency are taken into account. Therefore, it can be said that collective agreements are a link between the market and the level of employee rights. This applies in particular to remuneration for work constituting the essential subject of the agreements. The collective labor agreement can also be an instrument of individualization of employment conditions, in the sense of adapting them to the conditions of business activity of particular workplaces, which in the market economy are inherently different for individual enterprises. The agreement allows the employer to react to the changing market situation, including the crisis situation. In particular, the employer may unilaterally terminate it Article 211⁷ of the Labor Code, sometimes it is related to the necessity to adapt to market conditions⁶⁷.

It is more sensitive than the Act on economic reality, as well as related social problems, an effective instrument of order in collective labor relations and, in particular, maintaining social peace, which undoubtedly serves not only the interests of employers but also the entire economy. It makes the whole labor law more flexible. Four ways can be distinguished:

1. general authorizations to depart from the rules in an agreement
2. authorization regarding certain sections of labor law
3. authorization regarding certain provisions

⁶⁶ L. Florek, *Znaczenie układów zbiorowych pracy*, [in:] Z. Góral (ed.), *Układy zbiorowe pracy*, Warsaw 2013, p. 51.

⁶⁷ Ł. Pisarczyk, *Ryzyko pracodawcy*, Warsaw 2008, p. 185.

4. resignation from part of the statutory regulation⁶⁸.

A good example of expanding the freedom of agreement are the regulations adopted in the Hungarian Labor Code, which concern daily working hours, length of settling periods, breaks at work and night time. As a result, interest in signing collective labor agreements has increased. A separate aspect of the importance of collective agreements is linked to the implementation of international agreements and EU law. As a rule, international agreements do not provide for such regulations, however in Art. 33 paragraph 1 of the European Social Charter according to which in the Member States that are mentioned in this provision, the provisions of the Charter are the subject of agreements concluded between employers or employers' organizations and employee organizations. Many conventions of the International Labor Organization provide for the implementation of their provisions by means of collective agreements. A similar role may be played by collective labor agreements within the scope of EU directives. According to Art. 155 of the Treaty on the functioning of the European Union, agreements concluded at Community level are implemented in accordance with the procedures and practices specific to the social partners and Member States⁶⁹.

The agreement can be a means of making the Community law implemented in a given country more flexible. An example is Art. 18 of Directive 2003/88, on the basis of which derogations from the majority of the provisions of the directive may be introduced by means of collective agreements and arrangements concluded between the social partners at national or regional level or in accordance with the principles established by them in collective labor agreements⁷⁰.

FINAL REMARKS

In Polish law, the actual meaning of collective labor agreements is legally limited. It is dependent on many elements. The first one is the poor use of the agreements at a multi-establishment level – underdeveloped structures of multi-establishment trade unions. The importance of the agreement as an axis of flexibility of labor law depends on the situation in trade union movement. The agreements will command authority when the strength of trade unions increases. Flexibility of labor law in our conditions is problematic regardless of the legal solutions adopted. The atrophy of multi-establishment bargaining is quite often mentioned, because every union treats the agreement as a tool to protect their own interests and to strengthen their own position in the workplace⁷¹. Unfortunately, the importance of the agreements decreases

⁶⁸ L. Florek, *Znaczenie układów...*, [in:] Z. Góral (ed.), *Układy...*, p. 57.

⁶⁹ Journal of Laws of 1981, No 2, item 41.

⁷⁰ L. Florek, *Znaczenie układów...*, [in:] Z. Góral (ed.), *Układy...*, p. 63.

⁷¹ U. Jelińska, *Układy zbiorowe pracy po nowelizacji*, Warsaw 2001.

in connection with their replacement by collective arrangements. They are a more convenient form of a collective agreement for the parties, due to the lack of control over their compliance with the law, as well as the non-functioning of the principle of trade union representativeness and the freedom to shape the side of the labor market. Remuneration regulations, introduced in 1996, contribute to the weakening of the agreements. It is not subject to registration, which is connected with the control of compliance of the regulations with the law. Therefore, the employer and unions easily choose the regulations as a legal act easier to adopt. Replacing the agreements with remuneration regulations impoverishes the entire collective protection of employees, limiting it only to the conditions of remuneration for work⁷². This tendency is getting stronger and stronger, displacing collective labor agreements. The mere replacement of a collective agreement with a collective arrangement or remuneration regulations is a denial of the historical development of labor law sources. Polish labor law as a result of ill-considered legislation, lack of strong trade unions on the premises of many employers, as well as opportunism of representatives / social partners does not take advantage of the chance to restore the full meaning of collective labor agreements⁷³.

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⁷² P. Ciborski, *Nowe układy zbiorowe pracy*, Gdańsk 2001.

⁷³ K. Jaśkowski, *Kodeks pracy: komentarz Lex: ustawy towarzyszące z orzecznictwem, Europejskie prawo pracy z orzecznictwem*, vol. 1, Warsaw 2012, p. 1070-1080.

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Summary: In my work I wanted to present the concept and types of collective agreements in the Polish labor law. I took into account all known kinds of collective agreements in the Polish legal system (collective agreement, multi-employer collective agreement) and so called International Framework Agreements. At the same time, I have presented the agreements as an integral part of the market economy within the meaning of Art. 20 of the Polish Constitution. I've showed the Agreement as an element that allows employers to react to changing market conditions, including the crisis situation – Art. 211⁷ of Labor Code and as an element of making the Community law more flexible.

Keywords: labor law, collective agreements, multi- employer collective agreement, International Framework Agreements, corporate social responsibility, international standards of work, International Organisation for Work.

POJĘCIE I RODZAJE UKŁADÓW ZBIOROWYCH PRACY W ŚWIETLE POLSKIEGO PRAWA PRACY

Streszczenie: W niniejszym opracowaniu przedstawiono pojęcie i rodzaje układów zbiorowych pracy w świetle polskiego prawa pracy. Uwzględniono wszystkie rodzaje układów zbiorowych znane w polskim systemie prawnym (zbiorowy układ pracy, ponadzakładowy układ pracy) oraz tzw. międzynarodowe układy ramowe. Zaprezentowano jednocześnie układy jako integralną część gospodarki rynkowej w rozumieniu art. 20 Konstytucji. Przedstawiono ponadto układ jako element pozwalający pracodawcy reagować na zmieniającą się sytuację rynkową, w tym także na sytuację kryzysową – art. 211⁷ Kodeksu pracy oraz jako element uelastyczniający prawo UE.

Słowa kluczowe: prawo pracy, układy zbiorowe pracy, ponadzakładowe układy zbiorowe, międzynarodowe układy ramowe, międzynarodowe standardy pracy, znaczenie układów zbiorowych, Międzynarodowa Organizacja Pracy