

LABOUR LAW AND UNEMPLOYMENT

(SCIENTIFIC CONFERENCE, WARSAW, APRIL 26, 1990)

The conference was organized by the Institute of Law Studies and the Union Research Centre of the Mazowsze Region of Solidarity. Beside the scientific circles, the participants included representatives of the Ministry of Labour and Social Policy, the Supreme Court, and trade unions.

In her opening speech, Prof. M. Matey (Institute of Law Studies, Polish Academy of Sciences) stressed the organizers' intention to define more accurately the legal problems related to unemployment through reference of those problems not only to provisions of the act on special principles of dismissal of employees for reasons arising from the workplace and the act on employment, but also to the social context of unemployment and the international standards in this sphere.

Prof. Matey addressed this latter problem in her paper "The Legal Regulations of 'Welfare Europe' in matters concerning unemployment" in which she discussed the West-European regulations of unemployment, and particularly Art. 48 — 51 and 117 — 122 of the 1957 Rome Treaty, the European Welfare Charter of 1961 and the declaration of 1989 under the same title.

Two papers dealt with the act on dismissals for reasons arising from the workplace. In his appraisal of the functioning of that act., L. Nawacki (head of department in the Ministry of Labour) stressed that the discussed regulation aimed at the introduction of guaranties which would lessen the negative effects of unemployment and shorten the search for a new job faced by the unemployed. He stated, though, that in spite of the protective steps, unemployment would remain a social problem in Poland. As estimated by the labour department, the number of the unemployed in search of a job would go up and amount to 800,000 approximately by the end of 1990. Hence the solutions included in the act and aimed at protection of employees deserve approval. They are not faultless, though, as far as both the technical legislative and the substantial spheres are concerned. Thus what requires appropriate interpretation and possibly verification are: the subjective scope of the act; the conditions of dismissal for reasons arising from the workplace; the legal nature of the regulation on severance payments; and the extent of protection against dismissal.

The notion of group dismissal, and chiefly the legal regulation of the reasons for admissibility of such dismissal, was discussed by M. Pliszkiwicz, LL.D. (Institute of Law Studies). He pointed to the problems of defining the reasons arising from the workplace that make it possible to exercise the powers provided for in the act, and stressed that the catalogue of those reasons is not a set of separate items. The situations it specifies tend to intersect. It would thus be more pertinent to base the conception of the act on a general clause, and to guaranty at the same time the possibility of verifying the reasons for group dismissal *ad casum*.

J. Kinowski discussed in his paper the functioning of the acts on special mode of dismissal and on employment as appraised by the Union Research Centre of the Mazowsze Region of Solidarity. He stated that the two acts failed to protect satisfactorily employees against dismissal. The act on dismissals for reasons arising from the employer provides for no sufficient guaranties of its enforcement, while that on employment fails effectively to prevent unemployment. The latter act is based on mechanisms of the administrative law and makes the Ministry of Labour and Social Policy competent in the whole of the matter. The Ministry, though, is languid in its activities aimed at creation of new jobs.

Pointing to the technical legislative defects of the two discussed acts, the authors did not postulate a prompt amendment of the provisions; instead, they focused rather on analysis of the legal instruments and solutions which might contribute *de lege lata* to a better and more effective protection against dismissal and the effects of unemployment. Expressing their satisfaction at the very fact of passage of the act on dismissals for reasons arising from the workplace, they stressed

at the same time that the protective mechanisms provided for by the law in force were not used to a sufficient extent by the employees' representations. This concerns above all the procedure of group dismissals (Z. Salwa, G. Goździewicz, E. Gienieczko, B. Skulimowska); the possible position and role of the workers' self-management in the planning of employment (W. Sanetra) and the role of the union in individual labour disputes (G. Goździewicz).

Also discussed was the problem of the manager's responsibility for violation of the act or provisions of the agreement on staff reduction (Z. Salwa, W. Sanetra, J. Kinowski, S. Bar, W. Uziak). The participants criticized the solutions that make a group dismissal possible without consultation with the unions: the wording of the employment agency's notification of the planned dismissals; the nature of the norm granting to an employee the right to be employed again (B. Skulimowska); the binding force of the provision regulating the amount of severance payments (G. Goździewicz, B. Cudowski); and the special protection against dismissal (G. Goździewicz, S. Perestaj, M. Pliszkiewicz, S. Bar).

Appraising the practice of group dismissals from the viewpoint of the union's powers, the participants stressed that the mechanism of such dismissals makes the union a co-organizer of staff reduction; thus instead of protecting the interests of employees, the union actually protects the employer (J. Kinowski, S. Bar, W. Uziak).

Analyzing the solutions contained in the act on employment, the authors focused above all on the nonconformity of its provisions to international labor law, and also to the current situation on the market due to ignorance of the actual size of the population of the unemployed (A. Rajkiewicz, W. Muszalski). It was also stressed that the instruments provided for in the act are inefficient as far as prevention of job reduction is concerned (S. Bar, J. Kinowski, Z. Salwa). They aim at lessening the effects of unemployment solely through the payment of benefits. At the same time, the principles of granting those benefits — particularly to those never employed before, the graduates included — give rise to many doubts. They might have a demoralizing impact on the attitude to work of the persons concerned (W. Muszalski). Much attention was also devoted to the amount and procedure of granting of loans (J. Kinowski, S. Bar, A. Rajkiewicz, Z. Salwa, W. Muszalski).

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