

**THE PACT ON STATE ENTERPRISE UNDER TRANSFORMATION
(Session of the Polish Industrial Relations Committee, Warsaw, 25 May,**

The Polish Industrial Relations Committee was formed in early 1993 as a Polish branch of the International Industrial Relations Association (IIRA). The Committee is a research agency which, however, also takes an interest in the practice; its composition is similar to the structure of the Tripartite Commission for Socio-Economic Affairs, with a strong representation of the scientific circles added. The Presidium of the Committee's Board includes: President, Prof. Maria Matey, Ph.D. (Institute of Law Studies, Polish Academy of Sciences), Michał Boni, A. Bączkowski (Undersecretary of State at the Ministry of labour and Social Policy), A. Wilk (President the Confederation of Polish Employers, and professors: A. Buchner-Jezierska (Institute of Sociology, Łódź University), K. Doktor (Institute of Philosophy and Sociology, Polish Academy of Sciences), and M. Socha (Faculty of Economic Sciences, Warsaw University). The Committee has already held several sessions. Therefore, the panel discussion on the Pact on State Enterprise under Transformation, held on 25 May, 1994 at the Ministry of labour and Social Policy, was another event in a series of scientific sessions.

Opening the session, Prof. Maria Matey greeted its participants, and among them the initiators of the Pact — former Ministers Jacek Kuroń and Michał Boni, as well as lecturers: Prof. H. Lewandowski, Ph.D. from the Łódź University ("Legal Nature of the Pact"), and Prof. K. Doktor, Ph.D. from Polish Academy of Sciences ("Sociological Aspects of the Pact"). According to the President, pronouncements of the guests and lecturers were to provide a specific authentic interpretation of the Pact and the introduction to a discussion on the basic problems of its legal and sociological nature.

Pointing to the discrepancy between social expectations in Poland and the need for building market economy, J. Kuroń discussed the factors that influenced the offer of the Pact and stressed the importance of negotiations carried out with the aim to agree on the transformations of state enterprises. They constituted an attempt at correlating the different interests revealed in the process, hosted jointly by all parties to the negotiations. J. Kuroń described the social forces as a necessary condition of success of the reform (privatization in particular); he also mentioned the postulated broad Pact on labour. Such agreements have not been concluded so far; not even the Pact on State Enterprise has been implemented to the full for that matter. The speaker found this fact, together with the decline of trade unions whose existence is of importance for anticipation and thus prevention of conflicts in the economy, to be most dangerous.

Unwilling to agree with the preceding speaker's pessimistic appraisal was M. Boni who warned against the error of reduction. He perceived the Pact's importance for the future of

industrial relations in three dimensions: political (transfer of disintegrated conflicts to the sphere of arranged actions strengthened by social backing); institutional and educational (arrangement of collective agreements and the relations between social partners without the pressure of strike demands); and socio-economic (appearing in the merits of the Pact). The speaker declared for the idea of negotiating at a variety of levels of the social life as the method of decentralization of conflicts in Poland, the role of state in their resolution reduced to its appropriate dimensions. He also stressed the need for preservation of balance between the actions of the Tripartite Commission and the functions of state agencies, the Parliament in particular.

Analyzing the legal essence of the Pact, Prof. H. Lewandowski cited the example of basic agreements, found more and more often in European relations. The speaker found such agreements to evidence the growing role of trade unions at the macrosocial level, and their tendency to apply the method of participation instead of demand; he stressed the state's ever greater willingness to become party to such agreements. Examined in its many aspects, the Polish Pact on State Enterprise reveals first of all its political nature; guarantees of the obligations it contains can be seen on the moral, political-organizational or social plane. Yet considering the notion of sources of law in a sufficiently broad perspective and including in it not only the elements from which claims can be deduced but also those which provide the grounds for further creative actions, the Pact has to be seen as a legal act even if it lacks the state sanction (its specific sanction being the possibility of going on strike). The consequences of this nature of the Pact include the duty to observe its provisions, imposed on state agencies irrespective of changes of the Cabinet.

Discussing the Pact in its sociological aspects, Prof. Doktor called it an example of a rational Utopia. Aware of its various strong points, the speaker nevertheless criticized the Pact as imperfect in terms of both the way of articulation of interests (formulated authoritatively) and an insufficient representativeness of its participants. Besides, the discussed agreement called undue attention to the manufacturer, diverting it from the consumer: thus the specific "conspiracy of elites" — which is what the Pact became — failed to open new chances for market economy. Nor did it resolve the question of vertical conflicts, or draw conclusions from the fact that at the level of state enterprises there is in fact a complete uniformity of interests between partners. According to Prof. Doktor, the efficiency of negotiating will be limited in Poland as long as the level of legal culture stays low.

The pronouncements of the initiators of the Pact, together with the papers delivered, gave rise to a lively discussion which focused on two main threads. The first of them was a critical analysis of the subjective and objective scope of negotiation and the resulting adjustments. Appraising the subjective aspects of the Pact, Prof. W. Sanetra (Wrocław University) pointed to what he found insufficient differentiation in that agreement of the functions of Government which — intent to act as an arbiter in relations between employees and employers — in fact largely preserved the function of a party. This circumstance may prompt modification of the statutes making up collective labour law which have been designed to heed the needs of already privatized economy; most certainly, it should also influence the way of conducting collective negotiations in which the position of state must necessarily depend on its performance or non-performance — and extent of performance — of the role of employer. Questioning the subjective scope of the Pact, A. Machalski from the Confederation of Polish Employers stressed also defects of that agreement resulting from the absence of a social infrastructure it needs, that is a real enterprise and a real employer (representing the interests of the capital). The succession of Cabinets failed to see to the formation of such infrastructure, and so did the

Pact which hardly contributed to giving a new shape to the state employer. According to K. Rączka, Ph.D. (Warsaw University and the Confederation of Polish Employers), the Pact was not based on a sufficiently studied conception (the lack of a clear industrial and social policy contributing to this situation); its subjective scope was unnecessarily limited; and negotiations — divided in terms of organization — focused on discussion of detailed legal solutions which was a mistake from the methodological viewpoint. Worse still, such solutions were changed unilaterally in the course of the legislative process. Yet none of the above-mentioned participants in the discussion questioned the very idea of negotiating which all found to have corresponded with the social needs.

A broader reference to this latter thought was made by the other thread of the discussion which dealt with appraisal of the Pact as a tool of social and economic transformations. Prof. W. Kozek (Warsaw University) perceived the Pact's defeat to have been an unduly instrumental approach to it; she considered the proper method to be that of agreements built from the ranks up, that is starting from enterprises where the discussed idea is most vivid. According to Prof. J. Kulpińska (Łódź University), this particular model of regulation of collective labour relations is indispensable for Poland as a country where the basic dispute concerns not the wages but rather the directions of systemic transformations. Although the authoritatively developed Pact was not error-free, it nevertheless became, according to Prof. A. Buchner-Jezierska (Łódź University), an important step in transition from a conflict-based model of industrial relations to the one based on negotiation. Anyway, as stated by E. Sobótka, (Ministry of Labour), the Pact cannot be considered separately from the reality in which it emerged; on the other hand, its importance for socialization of the decision processes and consolidation of observance of the law must necessarily be noticed. At the same time, as stressed by Prof. W. Morawski (Warsaw University), democracy means also the social readiness to submit to rationally constructed programs; it is the duties of the elites to create such programs and submit them to society for consideration. Yet Prof. S. Golinowska (IPISS) was doubtful about the following question: how should the programs of transformations towards democracy and market economy be presented as to make them generally understandable. Further, the future of agreements was discussed by Prof. K. Frieske (Warsaw University) who suggested that they should concern the general principles of division, among other issues.

The questions raised during the discussion were first commented upon by the two initiators of the Pact. Stating that the Pact had not been designed as an unfeasible general social contract, M. Boni stressed the systemic importance of the decision about its conclusion which arranged the relations between social partners and helped crystallize one of the parties to the Pact, that is the employers. According to M. Boni, the Pact paved the way for the idea of collective agreements, by no means eliminating it at the level of enterprises where — admittedly — transition to the model of employer's joint action with the union is rather difficult. J. Kuroń pointed to the fact that, despite the errors and problems mentioned in the discussion, the Pact had been concluded which is of importance — admittedly not too great, so far — not only for the process of transformation of state enterprises but also for the possibility of conducting negotiations in other areas (opened by the operation of the Tripartite Commission). It is possible to negotiate towards transformation; what is of special importance here, though, is the development of programs which helps create partners in negotiation and mobilize the social forces. Even preceded by conspiracy of elites, it performs a creative function in that it leads to an intellectual turning-point. The Pact on State Enterprise, which had precisely such effect, should therefore be considered a success.

Next, the lecturers took the floor. Once again stating that the Pact on State Enterprise is a source of law in the broad sense, Prof. H. Lewandowski stressed the importance of negotiations both for development of collective labour agreements and for the possibility of concluding other agreements pertaining to important issues of collective labour relations, such as e.g. employee participation. At the same time, he pointed to what he believes to follow from the right of coalition — the possibility of conducting collective actions in connection with disputes resulting from negotiations. Doubts raised as to this thesis by Prof. W. Sanetra that involved him in polemics with the lecturer as to the scope and conditions of the right to strike in the light of provisions of the statutes on collective disputes and on trade unions of 23 May, 1991. At any rate, Prof. H. Lewandowski found collective action of participants in negotiations to be an important sanction of agreements concluded. Prof. K. Doktor, stressed in his final remarks the problems faced by a sociologist trying both to describe and to evaluate the social reality of today's Poland. Closing the session the President, Prof. Maria Matey, suggested a program of activities of the Polish Industrial Relations Committee for the next future.

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