ABREVIATIONS * ABBREVIATIONS

C.C.P. — Code of Civil Procedure
J. des L. — Journal des Lois
L.C. — Labour Code

DROIT POLONAIS CONTEMPORAIN
POLISH CONTEMPORARY LAW
1990 n° 2 (86)
PL ISSN 0070-7325

DEMOCRACY, RULE OF LAW, AND CONSTITUTIONALITY IN POST-COMMUNIST SOCIETY OF EASTERN EUROPE

*Wojciech Sokolewicz**

1. Democracy, Rule of Law and Constitutionality: Mutual Relations;
2. Overcoming the Past: Contrasting Background of Reforms; 3. The Change of a System in *Statu Nascendi* — the Years 1989—1990; 4. Prospects and Forecasts.

Most generally speaking, the changes now in progress in the political systems of Eastern Europe[1] consist in transition from autocracy[2] to liberal democracy; from arbitrariness of the Communist Party-controlled State to unconditional subordination of State to the rigours of law; and from a loose system of sources of law, their hierarchy obscure in practice, to a coherent and strictly hierarchical

* Professor of Constitutional Law in the Institute of Law Studies of the Polish Academy of Sciences.

[1] I am using the term *Eastern Europe*, and not e.g. Central or East-Central Europe, for the reason that to me that term has first of all the political and not geographical and cultural meaning and thus seems more adequate as a collective name of a region which had special relations with its Eastern neighbour, that is the USSR, and whose societies share the experience of (authoritarian) *Real-sozialismus.*

[2] The term *autocratic* regime is more temperate than the commonly used category of totalitarianism and as such seems more adequate as a general name of political systems established in Eastern Europe in the name of fulfilment of the ideas of Marxism-Leninism. Not in all the countries involved did the regime then in power manage to preserve till its very end the traits attributed to totalitarianism in the now classical works devoted to this subject. For a brief characterization of totalitarianism, see C. J. Friedrich, Z. Brzeziński, *Totalitarian Dictatorship and Autocracy*, 2nd ed., New York—Washington—London 1966, p. 22. See also A. Walicki, "Czy PRL była państwem totalitarnym" [Was Polish People's Republic a Totalitarian State], *Polityka*, No. 29 of June 21, 1990, pp. 1 and 13. Answering the question contained in the title in the negative, the author quotes the theoretical construction of Z. Brzeziński, *The Grand Failure*, New York 1989

one, based on a stable foundation of the national Constitution treated as the basic statute and the supreme law.

The direction shared by all those changes is adequate to a profound revaluation of mutual relations between the individual, society, and State, executed parallel in the ideological sphere. The idea of the individual's submission to the laws of history (freedom as understanding of the necessity according to F. Engels) is being replaced with that of inalienable human rights, the philosophy of collectivism — by that of personalism, and the conception of State control — by one of civic society.

It is only against this background that the main thesis of this study becomes explicit: the aims assumed by East-European societies may and indeed are achieved owing to their understanding of the mutual relations between democracy, rule of law, and constitutionality, that is — to parallel reforms in all three spheres: this is actually what really happens to a large extent. Treated jointly, those reforms will manifest their importance for the individual's position in society and State; they will provide due guarantees of that individual's rights and freedoms; and will define the State's functions in relation to society as a whole and also to individuals who compose it.

A parallel implementation of reforms accelerates their progress in each sphere separately; on the other hand, it cumulates the effects of those reforms providing their mutual consolidation. Instead, a delay in one sphere (e.g., of democracy) sets back the progress in the remaining spheres (of rule of law and constitutionality) and limits the import of achievements in those spheres.

Let us now consider that mutual relationship between democracy, rule of law and constitutionality from the Eeast-European perspective and from the viewpoint of the changes now in progress in that region. What does that relationship consist in and how is it manifested?

I

1.1. Whichever of the many definitions of democracy we choose to adopt, its essence can be reduced to the decisive participation of the people in the equal and free deciding of the public authority which is an attribute of State as a rule.[3] If we confine ourselves to A. Lincoln's famous formula

[3] See J. Wróblewski, "Z zagadnień pojęcia i ideologii demokratycznego państwa prawnego (analiza teoretyczna)" [The Notion and Ideology of Democratic *Rechtsstaat* : Selected Problems (Theoretical Analysis)], *Państwo i Prawo,* 1990, No. 6, pp. 3—16, with the quoted literature.

("government of the people, by the people, and for the people" [4]), it appears straight away that the point here is to create structures and procedures of public authority which would make the people as a whole the subject of that authority, and not its separated part (a variously conceived élite); which would create conditions of genuine participation in that authority for all social groups of which that particular people is composed; and which would guarantee the adequacy of decisions taken with the interests of the people. The permanence and validity of this mechanism of public authority can be secured to the fullest if the rules that govern it are given the form of legal provisions binding to those in power at the moment. To quote another well-known formula — if the rule of law prevails over that of individuals.

Democracy can be realized to the fullest when power results from nothing but law and is subordinated to that law *(sub lege),* and when its main instruments are laws *(per leges).* Law secures for power its desired social effectiveness, defining its structures and procedures and the forms of social control over its uses. It guards those in power from the temptation, ever-inviting for all rulers, to make their rule discretionary and arbitrary and in consequence, to abuse their powers in order to extend the group or even individual authority beyond what is a socially accepted necessity. Instead, if power is not submitted to the rigours of law, the way is thus paved for a democratic rule to degenerate into an autocratic or even totalitarian one, or if the course of events is different, for democracy to be transformed into anarchy. But the above-mentioned function of law as a regulator and guarantor of democracy can only be performed effectively if law itself is created democratically, that is by agencies democratically authorized to create it, and in a way to make it possible for that law to represent the will and interests of the people as a whole, protecting the rights of minorities against "tyranny of the majority" and at the same time — the rights and freedoms of the individual against an intervention of society and State unwarranted by a superior interest. *What is therefore the supreme guarantee of democracy, indispensable though merely formal, is a law whose desired contents and form can only be guaranteed, in turn, by a democratic authority.*

1.2. The rule of law should not be reduced to legality interpreted formally as the requirement that public authority should be exercised on the grounds of law, by legally authorized agencies or institutions, and in a way provided by law. The requirement of observance of law is a value in itself, and a democratic political system obviously favours that observ-

[4] "Gettysburg Address," delivered on November 19, 1863, in : *Selected Writings*, New York, N. Y. 1962, p. 439.

ance. But the point is also that law should provide in its contents a possibly accurate definition of the structures and procedures of power on the one hand, and guarantee a duly broad sphere of inviolable civic liberties on the other hand. It is not enough to state that State may only do things that are allowed by law, while a citizen — everything that is not forbidden by law. If the range of things allowed in the first case and forbidden in the latter one is too broad or imprecisely defined, neither democracy nor human rights can be properly guaranteed. Thus conclusions about law-making have to be drawn from the postulate for the rule of law the accomplishment of which leads to the indispensable limitation of the "freedom" of State authority, and to nothing more than the necessary limitation of individual freedom.

Thus formal legality is an element of the rule of law but does not exhaust that notion to the full. What is more, a conflict may emerge between the two above-mentioned categories. If at any moment the coherence is severed between the democratic values that are immanent in the formula of rule of law and the contents of statutory law, that is if statutory law ceases to be a just one, a civil protest against that law and its makers becomes justified, its legitimation being precisely the trend towards rule of law and democracy. The conclusion can be drawn that rule of law means subordination of the rulers and the ruled not to any law whatever but to one that expresses definite democratic values: democracy, freedom and equality, that is to a just law in this interpretation.[5]

1.3. While rule of law is both a condition and a prerequisite of democracy, also constitutionality is in turn the best condition and guarantee of rule of law and democracy, at least within the discussed area of legal culture (the situation shaping differently in such countries as Great Britain, New Zealand, or Israel) and in the discussed period of history. I interpret constitutionality as constitutional legality, the requirement to lay down a written Constitution as the supreme law of State, and to create guarantees of its application by all State agencies, in all spheres and forms of their activity, law-making included. Constitutionality guarantees the rule of law to the extent to which a given Constitution arranges law into a hierarchic system of provisions subordinated to the values, also formulated in that Constitution, that are recognized to be supreme; specifies the competences of the separate State agencies in the sphere of law-making

[5] Concerned here is just one aspect of justice, and in one of that notion's meanings only, and not a settlement of the dispute about the contents that should be attributed to justice. Of the ample literature of this subject, it suffices to mention the famous work by J. Rawls, *A Theory* of *Justice*, Cambridge, Mass. 1973 and the references of justice to equality and freedom contained in that book.

and application of law; regulates the relation of the norms of domestic law to the international ones; creates a system of institutional guarantees of observance of law and of removal of contradictions between the contents of the separate legal acts, should such contradictions ever take place. Constitutionality also performs the function of guarantee in relation to democracy as it is in the Constitution that the most general but at the same time also the "strongest" definition (from the viewpoint of the legal force) is provided of the sphere of individual freedom protected against any State intervention whatever, and of the sphere of the civic, among them the political, rights which the State is obliged to guarantee. Also in the Constitution, a binding definition is contained of the main forms of accomplishment of State authority; the competences of the separate State agencies are delimited; and the forms of social control over the State's activity are established.

What remains open to discussion, instead, is the question whether "separation of powers" (Montesquieu's triple separation) is a logical and *necessary* consequence of rule of law and constitutionality. While it is self-evident that what has necessarily to be that consequence is the existence of a truly independent judiciary, the separation of powers between the executive and the legislative authority is theoretically less obvious, particularly if it were to mean not just mutual independence but also balance of those two segments of State authority.

2

2.1. The model of *Realsozialismus* (which was in fact authoritarian), implemented in Eastern Europe on the ideological inspiration of Marxism in its Leninist variation, and under an overwhelming suggestion provided by indiscriminately universalized experiences of the Soviet Union, included in its theoretical assumptions the principles of democracy (in the version of "socialist democracy"), of legality (in the version of "socialist" or "people's" legality[6]), and of constitutionalism, also in a specific crippled version. In the practice of their implementation, however, those principles were limited and subordinated to the authoritarian or even totalitarian nature of State power. Nevertheless, after a change of that nature and

[6] The opinion, that socialism rejected legality and rule of law in any form whatever out of its very nature—see e.g. S. Yoshino, "The Conception of Rule of Law and Independence of Judicature," *Journal of Behavioral and Social Sciences* (Tokai University, Japan), 1991, Vol. 35, p. 178—is exaggerated and fails to correspond with the facts.

removal of the above-mentioned limitations, *some* of the previously established *forms* of implementation of those principles (both institutions and procedures) may still be continued.

2.2. The "socialist democracy" assumed a broad participation of society in the exercise of power. Many forms of participation were established. But the freedom of the participants was limited in so far as they could not choose any option which would be different from the officially and centrally defined direction of State policy or get organized basing on such an option. A political system considered to be immovable was the monocentric one where the only centre to control and decide was the *Communist Party* which controlled through its machine the entire State mechanism as well as the extra-State forms of organization of society. *Other parties* existed in some countries of the bloc only, like Bulgaria, Czechoslovakia, Poland and the GDR, while a single-party system was introduced in Rumania, Hungary, and the USSR. But even if they did exist, such other parties constituted no political (programmatic and/or personal) alternative to the Communist Party. They were at most specific "pressure groups" in the sphere of decisions concerning the circles they represented; in essential matters, they cooperated with the Party and contributed to the fulfilment of its programme. Accordingly, also the elections to representations (both parliamentary and local) lacked the element of competition between the parties, and usually also between individuals.[7]

2.3. In the conditions of that monopolistic influence of the Communist Party on the whole of State authority, also legality was of a most limited importance as compared to its original sense; it was called "socialist" or "people's" legality. That limitation was most apparent in the following .spheres: 1) the State was governed not only by law but also, and first of all, by directives of the Party which lacked any legal force whatever but were given priority in practice over legal provisions; 2) the State intervened freely in the life of society and individual citizens, regulating it so as to make the rule easier and to petrify the existing relations;[8] 3) law in its essence corresponded with the doctrine of the Communist Party which had an unlimited influence in principle not only on law-making but also;

[7] In the 1980s this situation started to change rapidly, also in the extra-European socialist States—see below.

[8] At the same time, however, law created the conditions to contest the existing system, even if on a limited and controlled scale, which in definite conditions could have served not exactly homeostasis but rather destabilization of that system. The opinion of J. Wróblewski, *Zasady tworzenia prawa [Principles of Law-Making]*, Warsaw 1989, as to the homeostatic purpose of law-making are rightly criticized in this respect by J. Jabłońska - Bonca in her review of that book *(Państwo i Prawo*, 1990, No. 6, p. 103).

4) on its enforcement by the State adjudicating agencies (courts and competent agencies of public administration); in those conditions, independence of the judiciary which is an indispensable attribute of legality was of relative importance only, despite the official proclamation and recognition of that principle, and cases of its infringement were by no means exceptional;[9] 5) law was interpreted one-sidedly as an instrument of power, subordinated to its immediate needs, and its function of a guarantee of individual rights and freedoms was in fact neglected or situated in the background.

All the above limitations have been shown in their simplified form as is inevitable in the case of a brief discussion. In different periods and countries, their actual intensity and form varied. What matters for the present remarks, however, is the final conclusion.

The *autocratic socialism* in its extreme form of Stalinist totalitarianism of its very nature deprived the so-called socialist legality of all contents which might be of any importance for the citizen; gradually mitigated with time, it did accept some attributes and values of legality, but in both cases *ruled out the development of the formal "socialist legality" into a genuine rule of law of standard value.*

2.4. While the Constitution was attributed the import of the basic statute in theory—that is, of the basis and core of the system of law in general, and of the legal regulation of structures of State authority in particular,[10] it was treated in practice as a political document "unfit" for direct application by the adjudicating agencies,[11] and what is more, of little importance and reference in relation to other legal acts. Owing to the simple procedure of constitutional amendment (a qualified majority of votes is rather easy to obtain in a parliament that is dominated by one party), the Constitution was in fact amended quite often according to the

[9] This has been demonstrated extensively by A. Rzepliński, *Sądownictwo w PRL [Judicature in Polish People's Republic]*, 2nd ed., London 1990, who rightly points to the fact that though neglected, the principle of independence of the judiciary nevertheless managed to supplant that of independence of courts both in the doctrine and in law.

[10] What a historian of law may find interesting is the purely formal convergence of the Marxist doctrine's interpretation of the Constitution as the basic statute (initiated by J. Stalin, *Zagadnienia leninizmu [The Problems of Leninism]*, Warsaw 1947, pp. 483—484, and developed e.g. by S. Rozmaryn, *Konstytucja jako ustawa zasadnicza PRL [The Constitution as the Basic Statute of Polish People's Republic]*, 2nd ed., Warsaw 1967) on the one hand, with the Constitution being called the "supreme law of the land" (Art. VI Sec. 2 of Constitution of the United States of 1787) by the American Founding Fathers on the other hand.

[11] What may serve as an example here are the decisions of the Polish Supreme Court over many years.

current needs of ordinary legislation, instead of adjusting that legislation to constitutional principles.[12] This impaired both the authority and the legal import of the Constitution and of the principles of the system it proclaimed, democratic in the sense of "socialist democracy."

In its guarantee of the civic right, the Constitution gave priority to the socio-economic and cultural rights over the political and personal ones, to material over the formal (procedural) guarantees, to interests of society and State over those of the individual and citizen, invariably assuming, as its fundamental reason, that the basic source of individual rights and freedoms is the *will of State* expressed in the Constitution (and statutes), and what ultimately limits the exercise of those rights and freedoms is the *interest of the* ("socialist") *system* whose contents and extent were defined by the ruling Communist Party.[13] At the same time,, any possibility of international review of observance of human rights was emphatically denied and treated as an intolerable intervention in internal affairs of a sovereign State.

Basing on the assumption of sovereignty of the people—in its specific interpretation—the Constitution of a socialist State constructed the system of State agencies according to the principle of uniformity and unity of State authority which replaced the separation of powers, admitting and providing at the same time for a separation of competences between the individual agencies of that authority, uniform by definition as they were. The concept of unity of power—contrasted with the supposedly non-democratic doctrine of separation of power in any interpretation whatever—corresponded in its practical consequences with the monocentric nature of the political system (see Points 2 and 3 above). Based legally (formally) on the paradigm of unconditional superiority of the parliament (which was in fact, let us remember, just a facade for the Communist Party that controlled it) in the system of State agencies, and politically—on the leadership of the Communist Party which concerned all State agencies—the unity of power ruled out any possibility of disputes between the separate agencies as to the interpretation and application of the Constitution. All doubts in this sphere were to be resolved by the parliament as carrier of the supreme State authority, formally unrivalled in this capacity. * *

[12] Alas, this practice still continues, which is demonstrated by changes in the Polish Constitution introduced in March 1990 for the sole reason to adjust the reading of the Constitution to the local government reform, carried out at that same time by means of ordinary statutes.

[13] W. Soko1ewicz, "Über die sozialistische Auffassung von den Grundrechten und-pflichten," *Jahrbuch für Ostrecht,* 1978, Vol. XIX./2, pp. 11 Iff.

It stands to reason with this interpretation of the Constitution that the admissibility of judicial, that is extraparliamentary review of constitutionality was denied for a long time in the doctrine of law, and also in legislative practice; this trend was most marked in East Germany.[14]

2.5. What is worth noting and remembering, however, is that also under autoritarian socialism separate institutions emerged, as well as procedures, that served democracy, rule of law and constitutionality, both within and, so to say, as a consequence of the political system of that time, and against it in a way, as a result of activities of reformers who deliberatly aimed at weakening and then removing that system's non-democratic features.

On the other hand, the values and practical importance of those institutions for the individual's legal situation in society and State could not manifest themselves to the full until later when the system as a whole was changed (see below, mainly Point 3), the market economy introduced and foundations of a pluralist parliamentary democracy created.

And thus, as far as democracy is concerned, a variety of forms of social control over bureaucracy were established, such as for instance the general institution of the citizen's complaint against any decision of a State agency or official. Further, sometimes rather fragmentary institutions of the local, workers', and professional self-management were established; certain possibilities were created for the voters to select the candidates nominated in parliamentary and local elections;[15] and above all, some attempts were made to stimulate somewhat, to the extent possible in the conditions of those times, the activity of parliaments, through the adoption, among others, of some of the traditional forms of parliamentarianism (parliamentary commissions, interpellations, etc).[16] In the sphere of the *rule of law,* the supervisory functions of the prosecutor's office were extended with varying results; the administrative proceedings were regulated to provide for protection of the rights of the citizen concerned; and even the judicial control over administrative decisions was extended, whether by common courts (e.g. in the GDR and USSR), or by special administrative courts

---

[14] W. Soko1ewicz, "Constitutionality—Precondition of the Rule of Law. A Certain Dilemma of a Socialist State," in : W. Maihofer, G. Sprenger (eds), *Revolution and Human Rights*, ARSP Beiheft No. 41, Stuttgart 1990, p. 190*ff*.

[15] For a broader presentation of those changes, see W. Sokolewicz, "Podstawowe zasady prawa wyborczego i ich ujęcie w konstytucji" [The Basic Principles of Election? Law and Their Constitutional Formulation], *Państwo i Prawo,* 1937, No. 10, pp. 77*ff*.

[16] See e.g. W. Sokolewicz, "The Contemporary Polish State-Structures and Functions," in : L. S. Graham, M. K. Ciechocińska (eds), *The Polish Dilemma. Views from, Within,* Boulder, Col. 1987, pp. 48—49.

(Poland). The office of the Ombudsman was created, unprecedented in this part of Europe—the Polish Spokesman of Civic Rights, established in 1987. In the sphere of *constitutionality,* there was a gradual increase, though not without obstacles and set-backs, of the appreciation of the role of the Constitution as a primarily legal act; this resulted in the possibility being allowed for of submitting the constitutionality of law to extra-parliamentary review exercised by a constitutional court (tribunal). While initially that possibility was reserved for federal States only, with view to control the constitutionality and consistence with statutes of the federation as far as the laws of its components are concerned (this was the case in Yugoslavia, where the practice of constitutional courts soon took another direction for that matter; and in Czechoslovakia, where, however, the tribunal provided for in 1968 constitutional law was never actually created)—later on, a more general and fundamental need for judicial review of constitutionality was recognized which found its expression in the establishment of constitutional tribunals in Poland (1982, 1985), and recently also in Hungary (1989).

3

3.1. The break of the Communist Party's political monopoly was decisive for the whole of transformations. The monocentric system was thus replaced with pluralism in which political parties, movements and associations enjoy practically equal rights and compete with one another for social support. The Communist Party's special role was at first gradually reduced in practice and then lost its legal guarantee through changes in the wording of the relevant provisions of constitutional law. The constitutional clause that granted to the Communist Party the privilege of playing its "leading role" was replaced with the principle of freedom of formation of parties.

In all countries, political pluralism is still in the making. The basic political division—into those for and against the authoritarian socialism—is being gradually replaced with a differentiation of optional programmes. As far as the purely formal plane is concerned, instead, no explicit criteria have been elaborated as yet to distinguish such forms of political organization as parties, movements, and associations. What is more, a question appeared in the course of works aimed at a legal regulation (institutional-? ization) of the new pluralistic political systems—a question which is admittedly theoretical but has important practical effects—whether there is at all the need, nay the possibility, for that distinction in the face of

the present universal reduction of the role of parties as compared to that of political (social) movements which have a different organization. In fact such movements, anti-authoritarian in nature, perform more or less successfully the functions of political parties in most East-European countries. Their legal status remains unclear.

3.2. The repudiation of the authoritarian system and its replacement with a democratic one takes a variety of courses: it is either evolutionary, the changes being more or less radical and consistent (Bulgaria as opposed to Czechoslovakia, Poland, Hungary, as well as the GDR, the latter country's peculiarity taken into account), or revolutionary with all the consequences of that course (as in Rumania where the former autocratic regime verged on tyranny).

In all countries of the discussed region, free elections are taking place in 1990, with the aim to shape democratically the supreme national representations. An exception here is Poland where partly free parliamentary elections took place as early as 1989, resulting in a defeat of the Communist Party, still in power at that time, and leading to the formation of a Government which, despite its coalition make-up, is in fact dominated by the movement of Solidarity. The elections are to provide a democratic legitimation for State authority exercised by anti-autocratic political forces, and to result in the shaping of parliaments the composition of which would reflect the actual preferences of society. In practically all countries of the discussed region, the newly-elected parliaments are to perform the function of the Constituent Assembly (stressed to a varying extent): they are to prepare and pass an entirely new Constitution as foundation of the democratic order under the rule of law. The hitherto valid legal regulations of the system—those, of the constitutional rank included—are largely fragmentary and temporary. It is worth mentioning here that even before the elections, the parliaments—in their former composition or partly reconstructed according to a pre-electoral mode (as was the case in Czechoslovakia)—in many countries introduced changes in the executive authority (the President and Government in Czechoslovakia, changes of Government in the GDR and Hungary), appointing members of the former anti-Communist opposition to the top offices. The subsequent elections confirmed that direction of changes in principle. There were, however, two important exceptions. As a result of a number of circumstances the discussion of which exceeds the scope of the present paper, the democratic legitimation in Bulgaria and Rumania was obtained by political forces that are admittedly anti-authoritarian but not anti-Communist: quite the contrary,

those forces descend from the former Communist Parties, now reformed, and make no effort to disguise their Leftist tendencies.

3.3. Not everywhere, and not to the same extent in all countries concerned, the turn *from* autocratic socialism is one *towards* market economy and similarly conceived pluralistic parliamentary democracy respecting the rule of law. Admittedly, a step was taken in all countries concerned which was aimed at manifesting their will to break with the heritage of authoritarian *Realsozialismus:* a renouncement—as if to supplement the changes already introduced in the system and anticipating the future ones — of the State's constitutional characterization as socialist (the exception here is the USSR which is however a somewhat different problem). That renouncement, however, does not determine in itself the directions of policy of the democratically appointed Governments, and does not exclude the possibility that they might legally choose a strategy of development which would be convergent e.g. with the principles of democratic socialism. The adoption of that strategy is not rendered impossible, either, by the constitutional formula of a *democratic Rechtsstaat,* adopted in 1989 first in Hungary and then in Poland, and also in Bulgaria in 1990. It is worth mentioning here that this formula should be interpreted as proclaiming a democratic State and a *Rechtsstaat,* the two elements treated as equivalent and autonomous, though mutually related as regards the merits. The feature of democracy is by no means to limit that of the *Rechtsstaat* like before, when (see Point 2.2. above) "socialist democracy" was tantamount to a limitation of democracy as such. Quite the contrary, the democratic nature is to consolidate and guarantee the *Rechtsstaat.* Some Constitutions in their modified version openly suggest the Social Democratic option (that is, one of a democratic socialism): this is the case with the Hungarian Constitution which openly requires that the State should be guided by the principles not only of bourgeois democracy but also of democratic socialism, or with the Polish one which states that the democratic *Rechtsstaat* is to implement the principles of "social justice."

It has to be admitted that this problem is merely of theoretical importance in all countries but Bulgaria and Rumania. In most countries under discussion, there are neither the social nor the political nor—above all—the psychological conditions for the acceptance of any principles or slogans which would offer even a distant association with the past period of *Realsozialismus* and planned economy. The disappointment with the effects

[17] This notion is interpreted differently by S. Yoshino in his above-mentioned paper, which has induced me to make the above remarks.

of the former policy concerns socialism in all of its possible manifestations. After the economic collapse brought about by socialism in its form of *Realsozialismus,* hopes for improvement of the living standards are linked with market economy in its most liberal version. Until that economy reveals its weak points and proves to yield not only successes but also various side-effects burdensome for society, no programmes that bring socialism to mind—even the most civilized and democratic version of that system—stand the chance to gain acceptance of broader circles of society, and thus to be implemented as State policy in the system of parliamentary democracy.

In these circumstances, the renouncement of the State's constitutional characterization as socialist should be considered permanent and justified.

3.4. The change of the system also finds its legal expression and confirmation in the sphere of State symbols: the name of State, the national emblem, and national holidays. The pace and extent of corrections of the legal regulations were influenced by public opinion which in Eastern Europe has a great reverence for the national and State symbols. The question was, on the one hand, to provide a symbolic confirmation of the regained full sovereignty of State and of a reversal to national traditions, and on the other hand, to stress the transformation of State perceived in class categories, which was in practice tantamount to a State of a single party (the Communist one, of course) into one of the whole nation, a State as the national value. The official name of State was changed, all elements of its class characterization removed: the Hungarian *People's* Republic was renamed Republic of Hungary, the *Socialist* Republic of Rumania—Rumania, the Polish *People's* Republic—Republic of Poland, and the Czechoslovak *Socialist* Republic—Federal Republic of Bohemia and Slovakia. Also the changes of the national emblems took a similar direction: restoration of what was traditional and removal of elements related to the Communist ideology, or restoration of elements that had been considered contradictory to that ideology (like the crown on the Polish eagle's head). The traditional national holidays were reestablished (in Poland, Czechoslovakia and Hungary), and anniversaries associated with the introduction of the *Realsozialismus* order after World War II—abolished as national holidays.

Those changes took place in the atmosphere of a great interest on part of public opinion, and sometimes gave rise to disputes which concerned not exactly the general trend but rather the often secondary details. The importance of such changes was above all that they established the conviction in social consciousness that a qualitative and irreversible trans-

formation had taken place; that the renouncement of socialism is final and so is also the restoration of the State's full sovereignty.

3.5. Practically all of the post-Communist States tend towards the acceptance of the formula of a democratic *Rechtsstaat* which combines the values of democracy, rule of law and constitutionality with those of freedom and equality; the differences here concern the pace, forms, and articulation of those trends. The pluralist political democracy has become a fact.

Political transformations are accompanied by restructuring of the legal order. What originates during the period of changes that are sometimes called revolutionary, are but conditions for the introduction of rule of law in the sense adopted in this paper (see Point 1.2. above). The present days still hardly favour an establishment of rule of law in the full sense. Public opinion as well as the main political forces concentrate rather on the elimination of all that used to be the contradiction of legality and rule of law in the past.[18] This is done above all by means of guarantees of truly *independent judicial decisions,* such as for example the ban on the judges' membership of all political parties (which is sometimes questioned, however, as a restriction of their civic liberties), or the appointment of an agency for the judges' specific self-selection and self-appreciation, the National Council of the Judiciary in Poland. At the same time, *the police apparatus is being reconstructed,* that of the political police in particular. This was initially done with greater force in the GDR, and somewhat less vigorously in Czechoslovakia, Poland and Hungary; the relevant news from Rumania are rather undependable. But it was in Rumania of all countries that the spectacular trial of N. and E. Ceausescu was staged during revolutionary events, highly doubtful as regards its procedure from the point of view of consistence with the principle of rule of law. It remains for future historians to appraise to what extent the preference given to the interest of the revolution over the general moral principles, and with the generally accepted principles of judicial procedure, was justified in that particular case.

3.6. A legal consolidation of the introduced political changes is to be made in new Constitutions, prepared in all States of the discussed region, though at different speeds. Those Constitutions will no doubt proclaim the pluralistic and democratic nature of those countries' respective political systems and define in each case the specific model of organization

[18] This involves a re-interpretation of the whole of those countries' postwar history, including its most dramatic moments such as the Hungarian Insurrection of 1956 or the ruthless suppression of the opposition in Poland in the years 1944—1948.

of State authorities, conclusively chosen from among the numerous existing options. In the meantime, as has already been mentioned above, fragmentary changes are introduced that are absolutely indispensable for the separate reforms and define the most general and symbolic direction of those reforms (in Poland, such changes were introduced in April and December of 1989, and in March of 1990; in Hungary, they took place in November, and in Czechoslovakia—in December of the last year; in the latter case, the change was to make it possible to elect A. Dubchek, who was not yet deputy at the time, to the office of Chairman of the Parliament). Despite those fragmentary changes, a great deal of the revolutionary reforms go beyond the still valid tenor of the literally interpreted constitutional provisions which impairs for the time being not only the political import of the basic statutes in the countries concerned and the respect toward it on the part of the authorities and citizens, but also the legal weight of the Constitution. Its direct application as a normative act by courts, and also by cinstitutional courts in countries where such bodies have been created, is thus hindered.

4

4.1. The repudiation of authoritarian socialism, in Central and Eastern Europe is connected with a universal acceptance of the values of democracy, rule of law, and constitutionalism. The degree of that acceptance verges on a national consensus. This opinion finds a confirmation and consolidation in the new constitutional formulations where the above-mentioned values are granted the weight of the *legal principles* of the post-Communist political systems. In Poland, for example, among those who declare for "parliamentary" democracy, free democratic elections, political pluralism, and the rule of law, also the successor of the Communist Party can be found : the Social Democracy of Republic of Poland, created after the Party's dissolution. The new political and legal systems will no doubt base on those values, substantiating them and providing the guarantees of their observance throughout the system of law.

4.2. The establishment of many-party systems that represent the principle of political pluralism will progress, based on the assumed freedom of creation of parties and their equal rights in the competition for votes during the elections. The only measure of their actual influence, as well as the index of the degree to which they should participate in the exercise of power, would be their success or defeat in elections. Everywhere in the discussed region, the problem will emerge of adjustment to

the new conditions of the "historical" parties based on the ideological and political divisions from before World War II on, the one hand, and of new movements, hitherto united by their common negation of authoritarian socialism which may now be expected to undergo partitioning. Against this background, a legal problem arises : of the needs, scale, and forms of legal regulation (institutionalization) of political parties (already introduced in Czechoslovakia and Hungary, and to some extent also in Poland). The question is how to guarantee the freedom of formation of parties and at the same time to protect the young democracy against the threat of radicalism, whether leftist or rightist. It seems that the legal regulation of this sphere will have to result from a compromise between the interests of broad social movements, "open" as regards ideology and philosophy, aiming at the preservation to some extent of political and organizational coherence on the one hand, and the aspirationsi of the still weak classical (in the European sense) parties, characterized by ideological and philosophical inner uniformity but lacking a broader social base on the other hand. The dispute will have to be settled between advocates of different modes of legalization of parties (registration vs. notice), different ranges of State supervision over the existing parties (judicial vs. administrative supervision), and different admissible methods of financing of parties (from national only or national/international sources ; freedom vs. prohibition of profitable economic activity of parties). We still lack sufficient premises to answer the basic questions : will it prove possible to contain the whole of society's political activity in the legal and organizational form of a political party ? and, what will be the actual extent of the now declared political pluralism ?

While the adoption of democracy as the basic principle of political system of the East-European post-Communist societies is uncontroversial, the question of that democracy's institutional forms will have to be settled in the future Constitutions. Is it to be, as some would like, an exclusively (or nearly exclusively) representative democracy, or will the need be recognized for development of its other extrarepresentative manifestations from local governments to national legislative initiatives and referendums ? Disputes also concern the organization of supreme State authorities. The possible choices range from one extreme solution to the other : from the balance of power between the legislature and the executive, with its democratic authorization acquired in general elections, to parliamentary democracy in the strict sense, with the Parliament's absolute superiority over the executive. In the situation where both .a well-developed party system and a stable political life are missing, the problem of priority of democracy vs. that of effectiveness becomes particularly acute, the more so as the rebuilding of the economy towards

the market requires an energetic Government able to act effectively. Such a Government, in turn, can only be appointed (or approved) by a Parliament in which a distinct and stable majority has been shaped with a definite joint programme. A conflict arises here between the ambitions of small political parties to parliamentary democracy and such pragmatic reasons ; that conflict is reflected in discussions on the elections law as a dispute between the advocates of a full vs. a limited proportionality of the electoral system. Also discussed is the *structure of Parliament:* uni- vs. bicameral. Leaving the case of Czechoslovakia aside (where the bicameral parliamentary structure results from the country's federal system), the Senate as the other chamber was introduced in Poland and Rumania, though for different reasons. What remains doubtful is : what is to be the actual difference between representation in that chamber, and the one in the "first" one? what different interests is the Senate to represent? and consequently, how should the principles and mode of election of senators be formulated ? Further, is the other chamber really indispensable for rationalization of the parliamentary legislative process ? And, finally, the fundamental question : which parliament, the uni- or the bicameral one, is more adequate to the ideal of democratic State ? (this question, obviously, does not concern a federation which gives rise to different problems as regards the political system).

4.3. It may be expected that law will become stabilized and the formal guarantees extended of its observance by the citizens and application by the public authorities. Taking into consideration the already developed pre-eminence of the universal values (stressed several times by M. Gorbachev) and the future progress of European integration with the participation of countries of the Eastern region, one may expect an increased influence of international law and the standards it contains on domestic law of those countries. Adopting the standards accepted in the international (including the West-European) community with regard to human rights, for example, the discussed countries will probably also adopt the measures of control of the observance of those standards as provided by international law. This way, the possibilities will be opened up for a much broader interpretation of the rule of law, and for consolidation of the individual's status in relation to community, and also of that of smaller communities and groups in relation to the nation (people) as a whole. What will no doubt acquire special importance is the problem of securing rights to *national* (ethnic) *minorities* in a way so as not to jeopardize the territorial integrity of countries which—let us state this once more—are particularly sensitive to sovereignty after a long period of national and political dependence. Yet the international community seems to expect that those countries

not only respect the individual rights of those who feel affiliated to the national (ethnic) minorities, but also effectively safeguard the recognized rights of those minorities as *communities.*[19] This is just one of the many reflections of the nationalistic issue, swollen in Eastern Europe, and the underestimation of that issue by the separate States of that region may greatly contribute to their political destabilization.[19] [20]

4.4. The preparation of the new Constitutions will be decisively influenced by new, democratic and anti-totalitarian political forces. It would be both desirable and proper that they should express the idea of a broad national agreement and the "great compromise." For that reason, while defining the ways of exercising public authority in the State precisely and carefully, they should not determine beforehand the specific contents and directions of State policy in the sense that, in the sphere of economy for example, they should not rule out any of the possible options : neither the liberal nor—much less so—the interventionist one, although it might perhaps be advisable, to the extent at all feasible in the Constitution, to specify the minimum as well as the maximum range of State intervention. For this reason, when drafting the separate regulations, the legislators should see to it that the minority, submitting to the will of majority according to the rules of democracy, should not be totally helpless and void of all practical possibilities of vindicating its rights. Also from this point of view the actual accomplishment of the principles of democracy, rule of law and constitutionality in post-Communist States of Eastern Europe can be appraised. Only a complex formulation of those principles will bring those countries closer to the fulfilment of ideals of freedom, equality of justice in a variety of relations : between the individual and State, between the separate social groups, and between each of those groups and society as a whole and State subordinated to that society.

July 1990

[19] This trend is manifested in the activity of the Commission for Human Rights which is part of the UN. See A. Michalska, "Ochrona mniejszości etnicznych w świetle praktyki Komitetu Praw Człowieka" [Protection of Ethnic Minorities in the Light of Activity of the Commission for Human Rights], *Państwo i Prawo,* 1990, No. 6, pp. 26*ff*.

[20] This problem has been discussed extensively by Z. Brzeziński, "Eastern Europe—Postcommunist Nationalism," *Foreign Affairs*, Winter 1989/1990.

DROIT POLONAIS CONTEMPORAIN
POLISH CONTEMPORARY LAW
1990 n° 2 (86)
PL ISSN 0070-7325

LES ORIENTATIONS DES CHANGEMENTS EN DROIT FINANCIER POLONAIS

*Cezary Kosikowski**

1. LET AT ANTÉRIEUR AUX CHANGEMENTS ET LES CAUSES DE CES DERNIERS

A la fin des années soixante-dix, l'état du droit financier en Pologne était fortement critiqué[1]. Et cela à juste titre, car ce droit n'était pas codifié, on évitait de régler par la loi les problèmes financiers qui étaient régis principalement par les actes juridiques du gouvernement, du ministre des Finances et du président de la banque centrale d'État. Une partie des dispositions du droit financier n'étaient pas publiées dans les journaux officiels. Par ailleurs, les actes juridiques régissant les finances accusaient de nombreux défauts législatifs.

La réforme économique de 1981 et des années suivantes[2] avait offert des chances de modifications radicales et d'amélioration du droit financier polonais. Cette chance a été dans une grande mesure mise à profit[3], malgré de nombreuses perturbations dans la réalisation de la réforme économique. Il est vrai que le droit financier n'a pas été entièrement codifié, bien qu'un projet de telle codification ait été formulé dans la science de ce droit[4] dont certaines branches seulement ont été codifiées

---

* Professeur de droit financier à l'Université de Łódź.

[1] Cf. C. Kosikowski, *Problemy doskonalenia prawodawstwa finansowego PRL* [Les *problèmes de perfectionnement de la législation financière de la R.P.P.],* « Studia Prawno-Ekonomiczne », vol. XXVI, 1981.

[2] W. Baka, *Polska reforma gospodarcza [La réforme économique polonaise],* Warszawa 1983.

[3] C. Kosikowski, *Wpływ reformy gospodarczej na stan prawa finansowego PRL [L'influence de la réforme économique sur l'état du droit financier de la R.P.P.],* « Państwo i Prawo », 1983, n° 6.

[4] C. Kosikowski, *Problemy legislacyjne polskiego prawa finansowego i jego kodyfikacji* [Les *problèmes législatifs du droit financier polonais et de sa codification],* Wrocław 1983.

(droit budgétaire, droit bancaire, droit des changes, droit financier des entreprises d'État). En revanche n'ont pas été réglées les questions concernant des fonds à affectation spéciale, la planification financière, le droit fiscal, le droit monétaire. Le législateur n'a pas profité, à cet égard, des propositions formulées dans la science du droit financier et par le Conseil Législatif près le Président du Conseil des Ministres [5]. Du reste, l'absence d'effets économiques et financiers de la réforme économique avait entraîné de nombreuses modifications des dispositions du droit financier, par suite de quoi elles ont été privées de leur valeur originaire, notamment de consistance et de clarté. A la charnière des années 1988 et 1989 avait été amorcée une nouvelle modification du droit financier, mais par suite des changements essentiels dans la situation politique elle s'est avérée inutile.

Après les élections à la Diète et au Sénat, en juin 1989, à l'automne de la même année s'est formé un nouveau gouvernement qui a adopté une orientation politique et économique entièrement différente de la précédente. C'était nécessaire en raison de l'état catastrophique de l'économie et des finances publiques (le déficit budgétaire qui allait s'accentuant, la dette extérieure croissante, l'inflation galopante, le déséquilibre du marché, la baisse de la production, les revendications salariales croissantes des travailleurs des entreprises et institutions). En octobre 1989, le gouvernement a présenté un nouveau programme économique, convaincu que l'économie polonaise exigeait des changements systémiques essentiels ayant pour but l'édification d'un système de marché proche de celui qui fonctionne dans les pays hautement développés. Ce programme prévoit deux groupes d'activités, tendant les unes à stabiliser l'économie, et en particulier à maîtriser l'inflation, et les autres à transformer le système économique. La réalisation du programme doit se dérouler en deux phases, la première devant être relativement courte (jusqu'au milieu de 1990) et concerner principalement la stabilité de l'économie.

En même temps que les mesures visant à contrecarrer l'inflation et à stabiliser l'économie, on prévoit celles qui mènent à modifier le système économique. Cette modification consiste à mettre sur pied les institutions de l'économie de marché qui ont fait leur preuve dans les pays occidentaux développés. Cet objectif est à atteindre par les moyens suivants : 1° les transformations du régime de propriété le rapprochant de celui en vigueur

[5] V. *Raport o stanie prawa [Rapport sur l'état du droit]*, Warszawa 1985, et *Raport o stanie prawa finansowego i pożądanych kierunkach jego rozwoju w okresie realizacji II etapu reformy gospodarczej [Rapport sur l'état du droit financier et les directions souhaitables de son évolution pendant la réalisation de la II^e étape de la réforme économique]*, Warszawa 1988.

dans les pays hautement développés, 2° l'autonomie accrue des entreprises d'État, 3° l'installation complète du mécanisme de marché, en particulier la liberté des prix, la liquidation de la réglementation et de l'intermédiaire obligatoire, 4° la mise en place des conditions favorables à la concurrence intérieure au moyen de la politique antimonopoliste et de l'entière liberté de fondation de nouvelles entreprises, 5° l'ouverture de l'économie au monde par l'instauration de la convertibilité du zloty, ce qui permet de stimuler la compétition intérieure et rend possible une spécialisation rationnelle, 6° la refonte des finances publiques, y compris une réforme d'ensemble du système fiscal, 7° la poursuite de la réforme du système bancaire et des règles de la politique monétaire et du crédit, 8° la mise en oeuvre d'un marché de capitaux, 9° la mise en place d'un marché de travail.

Ces changements avaient commencé à être préparés dès la fin de 1989. A la même époque ont été prises plusieurs mesures tendant à maîtriser et à réduire l'inflation. Ce sont là des mesures typiques d'une période transitoire, car il n'est pas douteux qu'une telle période est inévitable, vu l'envergure des changements radicaux envisagés du système socio-économique de la Pologne. Il est certain que leur réalisation ne consiste pas à corriger le système jusque-là en vigueur et qu'il ne suffit pas de modifier quelques institutions juridiques. Il s'agit de changer de régime économique, notamment de modèle économique. Cela exige aussi des changements dans la suprastructure, donc dans les solutions constitutionnelles, y compris la conception de l'étendue et des formes de l'intervention de l'État dans les processus économiques. A nouveau modèle économique doit correspondre un nouveau modèle de gestion. Un grand rôle incombe à cet égard au droit financier, car par sa nature il est au service de la politique économique donnée.

Voici les principales orientations des changements dans le droit financier et l'état de leur réalisation à ce jour.

2. LA PLANIFICATION FINANCIÈRE ET LE DROIT BUDGÉTAIRE

Par paradoxe, l'économie polonaise — planifiée par principe — a manifesté le plus de faiblesse dans le système de planification. Ce système englobe les plans économiques (centraux, locaux et des agents économiques publics) et les plans financiers. Ces derniers ont des formes qui leur sont propres, et en même temps font partie intégrante des plans économiques. En théorie, la nécessité des liens entre les plans économiques et les

plans financiers semble évidente [6], mais dans la pratique elle n'a pas été respectée. Les plans économiques avaient la primauté par rapport aux pians financiers, ce qui limitait le rôle des finances dans la politique économique. Les propositions de la science de mise en ordre de la planification financière [7] n'ont pas été suivies.

L'économie polonaise compte une multitude de plans financiers publics. Ce sont : le budget de l'État et les budgets locaux, le plan des paiements entre la Pologne et l'étranger, les plans financiers des fonds centraux ou locaux à affectation spéciale non compris dans le budget, le plan financier de l'État (inscrit dans le plan économique annuel central), les plans quinquennaux du financement des tâches d'organes locaux, le plan financier pluriannuel de l'État, le bilan estimatif des recettes et dépenses budgétaires de l'État, la balance des paiements, la balance des revenus et des dépenses de la population, les principes de la politique monétaire et des crédits de l'État. En outre, avant 1990, on dressait un plan des crédits.

Quant à l'aspect législatif, les questions relatives à la planification financière sont réglées dans de nombreux actes[8] qui cependant ne les règlent pas complètement. Finalement, on est en présence d'une multitude de plans qui ne constituent pas cependant un système cohérent fondé sur une idée claire et consistante de leur rapport mutuel, de leur portée quant à objet, de leur caractère juridique, etc.

L'imprécision des critères séparant les différents plans financiers publics quant à leur objet est liée au partage compliqué des compétences de planification entre les divers organes de l'administration publique en matière d'élaboration et d'exécution de ces plans. Et cela empêche d'établir des critères uniques de la responsabilité juridique et politique pour l'exécution des plans.

Le caractère juridique des plans financiers n'est pas homogène, lui non plus. Certains opérationnels et directionnels, d'autres sont des bilans,

---

[6] Z. Fedorowicz, *Planowanie finansowe [La planification financière],* Warszawa 1974.

[7] Cf. N. Gaj1, *Budżet a Skarb Państwa [Le budget et le Fisc]*, Warszawa 1974 ; T. Dębowska-Romanowska, *Charakter prawny i funkcje centralnych planów finansowych [Le caractère juridique et les fonctions des plans financiers centraux],* « Państwo i Prawo », 1984, n° 5.

[8] En particulier dans la loi du 26 février 1982 sur la planification socio-économique (J. des L., 1987, n° 4, texte 26 et n° 33, texte 181 ; 1988, n° 20, texte 134 et n° 41, texte 237; 1989, n° 4, texte 22), dans la loi du 3 décembre 1984 — Droit budgétaire (J. des L., n° 56, texte 283 avec amendements postérieurs), dans la loi du 20 juillet 1983 sur le système des conseils du peuple et des collectivités locales (J. des L., 1988, n° 26, texte 183), dans la loi du 31 janvier 1989 — Droit bancaire (J. des L., n° 4, texte 21, modifiée 1989, n° 74, texte 439).

des pièces qui contiennent des comptes rendus ou des informations. Certains plans sont adoptés par le Parlement (sous forme de loi ou de résolution), d'autres sont des pièces intérieures du gouvernement, des différents ministres ou de la banque centrale d'État.

Le passage à l'économie de marché ne signifie pas le renoncement à la planification économique et financière centrale, mais les fonctions et les formes de la planification doivent être modifiées. Les fonctions de la planification dans le nouveau modèle économique se laissent résumer comme ceci : la participation à l'élaboration de la politique de l'État, la détermination des modes de réalisation de la politique économique adoptée en ce qui concerne l'intervention de l'État, la concertation des intérêts des différents groupes socio-professionnels. Ces fonctions doivent être mises en oeuvre moyennant les conceptions de développement à long terme et les plans économiques pluriannuels ainsi que les plans annuels financiers servant de base à la mise en oeuvre des moyens d'action conformément au plan pluriannuel. L'adoption de ces prémisses de base équivaut à la nécessité de simplifier sensiblement le système de planification financière jusque-là en vigueur, y compris la renonciation aux plans financiers pluriannuels, et au relèvement du rang des plans budgétaires.

C'est en ce sens que sont allées les premières mesures prises par le nouveau gouvernement. On a renoncé au plan économique central (y compris le plan annuel financier)[9]. Un projet de loi et un projet d'arrêté du Conseil des Ministres ont été préparés, concernant la liquidation ou l'insertion au budget de 32 fonds extrabudgétaires à affectation spéciale de portée nationale ou locale. Les travaux sur la réforme du droit budgétaire ont repris. On a renoncé à l'adoption par le Parlement d'un plan des crédits[10].

Il n'est pas douteux que pour régler la problématique de la planification financière il faut définir les principes de cette planification, le genre et le nombre de plans financiers publics, les rapports entre eux, le rang juridique des différents plans et leur construction, la procédure et les compétences en matière de planification, les principes du contrôle de leur exécution et les moyens tendant à les faire exécuter. Les mesures d'ordre législatif pouvant servir à atteindre ces buts sont : une loi spéciale concernant la planification financière, l'insertion des règles y relatives dans la loi sur la planification socio-économique ou dans plusieurs lois distinctes (p. ex. dans le droit budgétaire, dans le droit bancaire, etc.).

---

[9] La loi du 1er décembre 1989 concernant les règles spéciales de la planification socio-économique pour 1990 et modifiant certaines lois, J. des L., n° 64, texte 389.

[10] La loi du 28 décembre 1989 modifiant les lois : Droit bancaire et Banque Nationale de Pologne, J. des L., n° 74, texte 439.

C'est là une loi spéciale qui représente la solution la plus attrayante [11], mais le législateur polonais semble préférer le troisième moyen qui ne garantit pas la consistance du système.

Dans la pratique, le choix de la forme de la planification financière peut dépendre de celle d'un nouveau droit budgétaire. Un nouveau droit est nécessaire pour plusieurs raisons. Premièrement, on critique [11] [12] les dispositions de la loi de 1984 portant droit budgétaire [13]. Cette loi ne précise pas suffisamment la phase du budget dans le système de la planification financière et économique. Par ailleurs, les dispositions du droit budgétaire concernant les budgets locaux suscitent plusieurs réserves. Tous ces défauts n'ont pas disparu malgré les amendements de la loi. Deuxièmement, le passage au système des collectivités locales exige une réforme radicale du budget de l'État. D'autre part, la mise en oeuvre des mécanismes de marché implique la nécessité de modifier les principes et les formes de financement des sphères productive et improductive.

It faut que le nouveau droit budgétaire soit consacré avant tout au budget de l'État à côté duquel fonctionneront les budgets autonomes des collectivités locales. Il faut aussi prendre en considération les formes des liens entre le budget de l'État et les budgets locaux. Le nouveau droit doit aussi réviser l'objet des dépenses financées par le budget, car telles sont les conséquences de l'économie de marché (dès à présent les subventions budgétaires sont strictement limitées). Le nouveau droit doit aussi refléter le nouveau partage des tâches et des compétences financières entre les organes du pouvoir et de l'administration de l'État, et ceux des organes des collectivités locales. C'est là la matière constitutionnelle.

Il y a lieu de supposer que l'élaboration et l'adoption du nouveau droit budgétaire seront reportées à l'époque d'élaboration et d'adoption d'une nouvelle loi sur les collectivités locales et d'une nouvelle Constitution, car sans ces actes il n'est ni possible ni opportun de faire un nouveau droit budgétaire.

---

[11] Cette proposition a été avancée par le Conseil Législatif près, le Président du Conseil des Ministres en 1988.

[12] Cf. plus amplement N. Gajl, *Nowe prawo budżetowe. Niektóre zagadnienia metodologiczne [Le nouveau droit budgétaire. Certains problèmes méthodologiques],* « Państwo i Prawo », 1988, n° 9.

[13] La loi du 3 décembre 1984 — Droit budgétaire, J. des L., n° 56, texte 283, modifiée 1985, n° 59, texte 296 ; 1986, n° 42, texte 202 ; 1987, n° 33, texte 181 ; 1988, n° 19, texte 133 et n° 41, texte 325 ; 1989, n° 6, texte 32 et n° 34, texte 178.

3. *LE DROIT FISCAL ET LE DROIT DOUANIER*

Le droit fiscal polonais est Tun des plus faibles éléments constitutifs du droit financier. On voit se propager toujours davantage la conviction que les solutions fiscales en vigueur ne constituent pas un tout homogène, fondé sur une idée déterminée de ce qu'on veut obtenir, et comment, au moyen d'impôts.

L'analyse du droit fiscal actuel nous conduit à en donner une appréciation nettement négative[14]. Le droit fiscal ce sont de nombreux actes juridiques, fréquemment modifiés et difficiles à déchiffrer. Formellement, il est fondé sur des lois, mais ce sont les actes d'application qui dominent. Le droit fiscal matériel est divisé en branches selon le critère du genre de propriété des différents secteurs économiques, or ce critère devient dénué de sens avec l'égalisation de ces secteurs et l'adoption du principe de la liberté économique [15]. Formellement, le droit fiscal n'est pas codifié, tandis que la procédure fiscale est modelée sur la procédure administrative. Il faut unifier le droit fiscal de fond avec le droit fiscal formel, de façon à avoir un droit fiscal général.

La nécessité d'une réforme du système et du droit fiscaux a été aperçue et formulée dans le programme économique du nouveau gouvernement. On propose qu'elle se déroule en deux étapes. La première, transitoire, coïncide dans le temps avec 1990, tandis que la seconde, prévue pour 1991, serait celle de l'entrée en vigueur du nouveau système fiscal.

On prévoit une simplification de la fiscalité frappant l'activité économique, notamment l'adoption de la taxe sur la valeur ajoutée, l'abandon de l'impôt sur le chiffre d'affaires, l'imposition générale et uniforme des revenus, la renonciation aux autres impôts grevant les coûts de l'entreprise. On propose cependant de maintenir les principes distincts de l'imposition de l'agriculture et des agents économiques étrangers (régime préférentiel).

S'agissant de l'imposition de la population, on prévoit un impôt universel sur les revenus personnels avec la suppression simultanée de l'impôt sur les rémunérations et de l'impôt de péréquation [16]. Mais on ne voit pas le grave danger que présentent les taxes grevant la consommation ainsi que les nombreux impôts et taxes locaux. Ces derniers seront sans

[14] Cf. C. Kosikowski, *Kierunki reformy systemu i prawa podatkowego* [Les *orientations de la réforme du système et du droit fiscaux],* « Państwo i Prawo », 1990, n° 3.

[15] L'art. 7 de la loi du 23 décembre 1988 sur l'activité économique, J. des L., n° 41, texte 324.

[16] L'impôt de péréquation frappe les rémunérations élevées, mais la forte inflation fait qu'il est devenu un impôt général.

doute maintenus, voire étendus, en raison d'une base solide de revenus qu'il faut assurer aux collectivités locales.

Il faut rationaliser le droit fiscal formel, notamment édicter une loi portant droit fiscal général qui renfermerait les règles générales et les dispositions sur les obligations et la procédure fiscales[17].

En abordant, en 1989, la réforme de la fiscalité, on a modifié presque toutes les lois y relatives[18], sans que le système fiscal soit changé. En revanche, les charges fiscales ont été sensiblement augmentées comme mesure anti-inflationniste. Comme l'état législatif du droit fiscal s'est également détérioré, une réforme en profondeur du droit fiscal est toujours attendue.

Par contre, une nouvelle loi a réformé le droit douanier[19]. C'est une tentative réussie, sur le plan législatif, de codification des dispositions matérielles et formelles du droit douanier. Cependant certaines solutions de fond du nouveau droit douanier sont discutables, ne serait-ce que le fait qu'il est fondé sur les droits d'entrée et renonce aux droits de sortie. Or l'état de l'économie polonaise dicterait plutôt une solution inverse.

4. *LE DROIT BANCAIRE ET CELUI DES CRÉDITS, LE MARCHÉ DE VALEURS MOBILIÈRES*

La réglementation de ces matières demeure imparfaite. D'abord la Pologne ne possède pas de législation globale relative au régime monétaire. La loi de 1950 en cette matière ne règle pas les questions monétaires dans leur ensemble et beaucoup d'autres actes juridiques contiennent des dispositions y relatives. A part une réforme du régime monétaire, il nous faut aussi une loi y relative. Les mesures prises jusque-là ne concernent que l'instauration d'un cours unique des monnaies et de la convertibilité dite interne de la monnaie polonaise (du zloty).

Le droit bancaire polonais suscite de nombreuses controverses et critiques [20]. La pratique législative qui s'est développée en cette matière

---

[17] V. plus amplement H. Mastalski, *Interpretacja prawa podatkowego. Źródła prawa podatkowego i jego wykładnia [L'interprétation du droit fiscal. Les sources du droit fiscal et son interprétation],* Wrocław 1989, p. 131.

[18] La loi du 28 décembre 1989 modifiant certaines lois régissant les principes de l'imposition, J. des L., n° 74, texte 443.

[19] La loi du 28 décembre 1989 — Droit douanier, J. des L., n° 75, texte 445.

[20] Cf. C. Kosikowski, *Nowe zasady kredytowania przedsiębiorstw uspołecznionych. Aspekty prawne* [Les *nouvelles règles de l'octroi de crédits aux entreprises socialisées. Aspects juridiques],* « Przegląd Ustawodawstwa Gospodarczego », 1984, n° 7 ; M. Bączyk, *Założenia ogólne regulacji prawnej umów kredytowych « de*

consiste à régler par la loi portant droit bancaire les questions concernant avant tout l'organisation et le fonctionnement du système bancaire, et ensuite seulement — en quelque sorte occasionnellement — les questions inhérentes à la nature des actes bancaires. Il en a été ainsi avec les quatre lois successives de 1960, 1975, 1982 et 1989, accompagnées de lois sur la Banque Nationale de Pologne, datant de 1958, 1982 et 1989. Finalement,, le droit bancaire était un acte en blanc, renvoyant à des actes d'application, y compris règlements intérieurs et instructions bancaires. En même temps, les actes bancaires élémentaires, en particulier l'octroi de crédits et l'épargne, n'étaient pas réglés par le droit civil. Et cet état de choses persiste, bien que l'économie de marché exige tout autre chose.

La loi portant droit bancaire votée en janvier 1989 [21] a partiellement étendu l'objet de ses dispositions concernant les actes bancaires, mais n'en était pas moins un acte consacré principalement à l'organisation du système bancaire. En raison de nouvelles exigences de l'économie de marché, et surtout de la tendance à poser en Pologne les bases d'un marché de capitaux, la loi a été amendée à la fin de 1989[22]. Les modifications apportées visent à faciliter la fondation de banques de commerce et l'ouverture de filiales de banques étrangères en Pologne, la substitution de méthodes économiques de régler la quantité de monnaie au plan des crédits et aux formes administratives (au moyen de la modification du taux de l'escompte et du taux des réserves obligatoires), à restreindre l'étendue et les formes de l'ingérence administrative dans l'activité des banques de commerce, la mise en place d'un organe de contrôle bancaire hors de structure de la Banque Nationale de Pologne. Ces modifications ne signifient pas toutefois que la loi en question règle enfin les actes bancaires. La majorité de ces actes sont actes de droit civil, aussi faudrait-il envisager de les régler dans le Code civil (p. ex. le contrat de crédit bancaire). L'abandon de la conception de la banque en tant qu'organe de gestion de l'économie nationale[23] devrait entraîner des modifications bien plus sensibles du droit bancaire et de l'organisation des banques.

Sous la pression du programme économique du gouvernement, le législateur polonais est intervenu impérativement dans la sphère des

---

lege ferenda » [Les principes généraux de base de la régulation juridique des contrats de crédit « de *lege ferenda* »], « Państwo i Prawo », 1985, n° 7 - 8 ; W. Pyziół, *Umowa o kredyt bankowy [Contrat de credit bancaire],* Kraków 1986.

[21] La loi du 31 janvier 1989 — Droit bancaire, J. des L., n° 4, texte 21.

[22] J. des L., 1989, n° 54, texte 320 ; n° 59, texte 350 et n° 74, texte 439.

[23] Cf. R. Ciałkowski, *Kredyt w gospodarce narodowej* [Le *crédit dans l'économie nationale],* Katowice 1985, pp. 25 et suiv.

rapports de crédit contractuels, en décidant de les « mettre en ordre »[24]. A cet effet il a aboli les obligations imposées aux banques en ce qui concerne les privilèges et préférences concernant l'accès au crédit, l'intérêt du crédit et les conditions de son remboursement, ce qui a abouti à abolir les clauses des contrats de crédit déjà conclus. En même temps, 3e président de la banque centrale de l'État a fixé des taux d'intérêt nouveaux, plus élevés, des crédits bancaires. Ceci a provoqué de multiples perturbations économiques et sociales dont les effets se font déjà sentir, malgré un puissant drainage de l'argent et l'intérêt décroissant porté à la monnaie étrangère au profit de la monnaie nationale. Cette intervention suscite de nombreuses oppositions de la part des bénéficiaires du crédit (principalement des agriculteurs) et du Défenseur des Droits civiques (notre *ombudsman).* Mais ce sont là les conséquences du développement des rapports de marché dans le système bancaire.

Le développement de l'esprit d'entreprise et des initiatives tendant à créer de nouveaux agents économiques, et aussi la restructuration de l'économie nationale exigent un afflux de capitaux suffisants. Il s'agit d'un afflux de capitaux de l'extérieur ainsi que de circulation des capitaux entre les agents nationaux. En somme, il faut des prémisses juridiques et organisationnelles nécessaires à la formation d'un marché de capitaux.

Les bases juridiques d'un marché de valeurs mobilières se trouvent dans la législation concernant les lettres de change et les chèques, dans le Code de commerce de 1934 (notamment dans la partie consacrée aux sociétés anonymes), dans la loi de 1988 sur les obligations[25], et aussi dans le droit des changes. Mais ces textes ne sont pas suffisants, et c'est pourquoi on a l'intention, entre autres, de fixer un taux d'intérêt approprié des crédits et des dépôts ainsi que l'escompte des lettres de change par les banques. On prévoit également une loi sur les actions et les sociétés commerciales de travailleurs et une autre sur la bourse des valeurs mobilières. En attendant, seules ont été modifiées la législation des changes et les dispositions concernant l'activité économique des agents économiques étrangers (v. pts 5 et 6).

5. *LE DROIT DES CHANGES*

Ce droit a été révisé à deux reprises dans les années quatre-vingt. En 1983 ce fut une révision radicale[26], car elle abolissait la loi de 1952 qui

[24] La loi du 28 décembre 1989 sur la régularisation des rapports de crédit, J. des L., n° 74, texte 440.

[25] La loi du 27 septembre 1988 sur les obligations, J. des L., n° 34, texte 254.

[26] La loi du 22 novembre 1983 — Droit des changes, J. des L., n° 83, texte 288.

depuis longtemps ne correspondait plus aux défis économiques du présent. Cette révision a aboli l'interdiction des opérations de change, en laissant ces opérations se faire librement (sauf les cas prévus par la loi) en vertu des dispositions de la loi ou d'une autorisation générale ou individuelle de change. En revanche a été maintenu le principe de différenciation de la situation des résidents et des non-résidents ainsi que des agents de l'économie publique et des autres agents. En fin de compte, la loi est devenue une loi-cadre, car dans la pratique il y avait un droit des changes pour les agents de l'économie publique et un autre pour les autres agents (y compris les personnes physiques).

Cette division, toutefois, a perdu de son importance dès la fin de 1988 avec l'adoption du principe de l'égalité des secteurs économiques, et ce fut la raison pour laquelle une nouvelle loi relative aux changes a été votée au début de 1989 [27]. Cette loi maintenait le principe selon lequel les résidents et les non-résidents pouvaient effectuer librement les opérations de change, sous réserve des restrictions prévues par la loi. La division des droits et obligations en matière de change selon les secteurs économiques a été supprimée. Les décisions concernant les autorisations individuelles de change étaient désormais susceptibles de recours devant la Haute Cour Administrative [28].

Après la réorientation de la politique économique, le droit des changes demandait à être de nouveau modifié. Ce fut l'oeuvre de l'amendement de la loi de 1989 [29]. Les modifications apportées portaient avant tout sur les règles concernant les opérations de change, et avaient pour but la convertibilité, à l'intérieur du pays, du zloty en monnaies convertibles, tant en ce qui concerne les opérations effectuées par les agents économiques que les personnes physiques. Les règles d'acquisition des devises par les agents économiques ont été modifiées, ces agents étant en même temps obligés à revendre les devises acquises à une banque polonaise. Les restrictions au transfert de devises à l'étranger pour les agents économiques étrangers ont été maintenues. Certaines dispositions surannées ont été abrogées, p. ex. l'obligation pour les non-résidents de changer des monnaies étrangères pendant leur séjour en Pologne.

L'amendement du droit des changes devrait aboutir à mettre de l'ordre dans l'utilisation des devises par les agents économiques et à libéraliser les opérations de change effectuées par les personnes physiques, ce qui peut contribuer à une utilisation plus efficiente des devises.

---

[27] La loi du 15 février 1989 — Droit des changes, J. des L., n° 6, texte 33.

[28] Aux termes de la loi de 1983, seules certaines décisions en matière de change pouvaient être attaquées devant la juridiction administrative.

[29] La loi du 28 décembre 1989 modifiant la loi — Droit des changes, J. des L., n° 74, texte 441.

6. *LA RÉGLEMENTATION JURIDIQUE DES FINANCES DES AGENTS ÉCONOMIQUES*

Une des méthodes de direction de l'activité des agents économiques publics consistait à régler de façon détaillée leurs finances [30]. Le législateur précisait en effet les règles du partage des bénéfices, les règles et les sources du financement de l'exploitation des investissements et des activités sociales, les principes régissant les règlements de commerce extérieur, les règles du financement des salaires, etc. De nombreuses sanctions financières, voire pénales, menaçaient les atteintes à la discipline financière. Tout cela concernait notamment les finances des entreprises d'État et des coopératives, et aussi, quoique à une mesure moindre, ceux des agents économiques étrangers. L'autonomie juridique et économique des entreprises d'État proclamée par le législateur[31] était donc fortement limitée. C'était une conséquence du modèle économique en vigueur, mais surtout de ce que ces entreprises n'étaient pas propriétaires des biens de l'État qui leur étaient confiés.

Au cours de la réalisation de la réforme économique, on a cherché à limiter la réglementation juridique des finances des entreprises d'État, mais sans succès[32]. Au début de 1989 seulement d'importants changements ont été apportés[33]. Le législateur s'est borné à ordonner l'autofinancement des entreprises d'État et a institué deux fonds. L'un, appelé fonds (capital) de fondation, reflète l'état des éléments du patrimoine transférés à l'entreprise par l'État ou financés par le budget de l'État. L'entreprise a été obligée à verser annuellement au budget de l'État une portion de la valeur de ce fonds, appelée dividende. S'agissant de l'autre fonds, appelé fonds d'entreprise, l'entreprise en dispose librement. Cependant, si les ressources obtenues à Tissue de l'activité économique de l'entreprise ne suffisent pas à payer la dividende, l'entreprise peut être mise en état de faillite [34]. On voit donc qu'on a renoncé à une réglementation détaillée des finances

---

[30] Cf. plus amplement N. Gaj1, *Problèmes juridiques et financiers des entreprises socialistes*, Wrocław 1984.

[31] Cf. C. Kosikowski, H. Lewandowski, A. Rembieliński, M. Seweryński, *Przedsiębiorstwo państwowe i samorząd jego załogi. Komentarz [L'entreprise d'État et l'autogestion de son personnel. Commentaire]*, Warszawa 1987.

[32] La loi du 26 février 1982 sur les finances des entreprises d'État, J. des L., n° 7, texte 54 avec amendements postérieurs.

[33] La loi du 31 janvier 1989 sur les finances des entreprises d'État, J. des L., n° 3, texte 10.

[34] La loi du 29 juin 1983 concernant l'assainissement de la situation économique de l'entreprise d'État et sa faillite, J. des L., 1986, n° 8, texte 46 ; 1989, n° 3, texte 10.

des entreprises d'État, en se bornant à utiliser des instruments fiscaux, ceux de crédit, de change et douaniers.

Cette législation a été en principe pleinement maintenue après l'adoption du nouveau modèle de gestion [35]. Néanmoins, elle ne cadrait pas avec ce modèle et devrait être abrogée. Cependant l'économie des entreprises d'État attendait des réformes des régimes de propriétés et notamment une limitation sensible du secteur d'État. A cet effet on privatise des entreprises nationales, qui peuvent se transformer en sociétés du Fisc, auxquelles on peut acquérir des parts ou des actions. Une partie de ces entreprises doit être liquidée et donnée à bail à d'autres agents économiques intéressés (p. ex. aux collectivités locales, aux personnes physiques, aux agents économiques étrangers). Le statut juridique des entreprises d'État a été modifié par la loi[36].

En 1982 a été adoptée une nouvelle loi portant droit coopératif[37] [38] [39]. Elle a sensiblement modifié le système coopératif qui auparavant était fortement influencé par l'État et a perdu son caractère coopératif et autogestionnaire. Le système coopératif polonais était en réalité organisé par l'État, ce qui a abouti à la création de puissants monopoles coopératifs (principalement dans l'agriculture, le bâtiment et le commerce). L'État réglait les principes des finances des coopératives, en les assimilant à ceux en vigueur dans les entreprises d'État. En 1990 a été amorcée la démonopolisation du système [38], mais ce processus ne se déroule pas sans heurts. Il semble que seule la faillite des coopératives dictée par des motifs économiques et financiers peut aboutir à un résultat satisfaisant.

II convient de réserver une place à part aux solutions juridiques concernant l'activité économique déployée en Pologne par des agents économiques étrangers. L'économie polonaise a besoin d'attirer ces capitaux étrangers, pour des raisons économiques et politiques[39]. Cependant, à la différence des législateurs d'autres pays socialistes, celui de

[35] La loi du 27 décembre 1989 modifiant la loi sur les finances des entreprises d'État, J. des L., n° 74, texte 437.

[36] La loi du 25 septembre 1981 sur les entreprises d'État, J. des L., 1987, n° 35, texte 201 ; 1989, n° 10, texte 57 et n° 20, texte 107.

[37] La loi du 16 septembre 1982 — Droit coopératif, J. des L., n° 30, texte 210 avec amendements postérieurs.

[38] La loi du 20 janvier 1990 modifiant l'organisation et l'activité des coopératives, J. des L., n° 6, texte 36.

[39] V. plus amplement M. Królikowska-Olczak, *Przesłanki ekonomiczne i prawne działalności zagranicznych podmiotów gospodarczych na terytorium PRL [Les conditions économiques et juridiques de l'activité des agents économiques étrangers sur le territoire de la R.P.P.],* « Studia Prawno-Ekonomiczne », vol. XXXIV, 1985.

Pologne se montre étrangement réticent et inconséquent. En 1982 ont été posées les bases juridiques de l'activité juridique de l'exercice en Pologne par les personnes morales et physiques étrangères d'une activité économique dans le domaine de la petite industrie [40]. Ces dispositions n'étaient pas excessivement attrayantes pour les investisseurs étrangers et allaient se révéler peu stables dans les années qui suivirent. En 1986, on a décidé d'attirer les agents économiques à fonder des sociétés commerciales conjointement avec des agents polonais[41], mais l'état juridique en la matière n'a pas changé[42] et demeure instable[43].

En dépit des déclarations et d'évidents besoins économiques, le droit polonais n'offre pas de conditions encourageantes et stables pour les investisseurs étrangers. Le dualisme de l'état juridique et ses fréquents changements approfondissent l'insatisfaction. Le droit polonais ne laisse en effet pas une liberté entière financière aux agents étrangers[44], car il règle de façon détaillée le partage des bénéfices, l'amortissement du capital fixe, les crédits et l'imposition ainsi que les opérations de change des agents économiques étrangers. Les tentatives de libéralisation de ces dispositions s'avèrent peu efficaces dans la pratique.

7. *RÉSUMÉ*

L'économie polonaise se trouve dans une période transitoire, celle de la modification du modèle d'exploitation et de gestion. Cela nécessite une réforme essentielle du droit, à commencer par la Constitution. Les dispositions du droit financier ont, elles aussi, un grand rôle à jouer et doivent être modifiées plus encore que les normes du droit privé. Ce processus n'est qu'amorcé en droit financier. Pour qu'il puisse être

---

[40] La loi du 6 juillet 1982 sur les principes de l'exercice sur le territoire de la R.P.P. d'une activité économique dans le domaine de la petite industrie par les personnes morales ou physiques étrangères, J. des L., 1989, n° 27, texte 148.

[41] La loi du 29 avril 1986 sur les sociétés commerciales à participation étrangère, J. des L., n° 17, texte 88 ; 1987, n° 33, texte 181.

[42] La loi du 29 décembre 1988 sur l'activité économique avec participation d'agents étrangers, J. des L., n° 41, texte 325.

[43] La loi du 28 décembre 1989 modifiant la loi sur les principes de l'exercice sur le territoire de la R.P.P. d'une activité économique dans le domaine de la petite industrie par les personnes morales ou physiques étrangères et la loi sur l'activité économique avec participation d'agents étrangers, J. des L., n° 74, texte 442.

[44] Cf. W. O1szowy, *Niektóre problemy statusu prawno-finansowego zagranicznych podmiotów gospodarczych [Certains problèmes du statut juridico-financier des agents économiques étrangers],* « Studia Prawno-Ekonomiczne », vol. XXXV, 1989.

poursuivi, il faut adopter une conception cohérente d'ensemble ainsi qu'une réglementation préalable de nombreux problèmes constitutionnels et économiques. Voilà pourquoi la période transitoire pour les dispositions du droit financier en vigueur peut se prolonger. Néanmoins, il ne faudrait pas la retarder, car alors il y aura disparité entre le régime politique et le régime économique.

DROIT POLONAIS CONTEMPORAIN
POLISH CONTEMPORARY LAW
1990 n° 2 (86)
PL ISSN 0070-7325

LABOUR LAW AND UNEMPLOYMENT IN POLAND

Maria Matey *

I. THE ECONOMIC BACKGROUND OF UNEMPLOYMENT

The radical changes in the system that are taking place in Poland in the years 1989—1991 aim at transforming the now post-Communist country into one with a social type of market economy. Although this direction of changes is nearly generally accepted in Poland, some rather alarming phenomena emerge in the course of those changes, such as the increasing unemployment and the revaluation of principles of employment policy which is now in progress in the country. In the years that preceded the present transformations, the doctrine of labour law never had to do with the problems of unemployment in Poland ; it treated the right to work for granted and fiercely criticized the phenomenon of unemployment in the "capitalist" world. Today, the doctrine faces an entirely novel situation which concerns also other post-Communist countries beside Poland.[1]

The complexity of the problem is reflected on the political and parliamentary forum by controversies as to the following issue : is the new Constitution of the Republic of Poland, now in preparation, to proclaim the right to work among other socio-economic civil rights, or should it perhaps resign that right altogether under pressure of the market reality or formulate it so as to prevent it from raising any grounds for claims (subjective rights). This parliamentary controversy in 1991 remains unresolved.[2] It should be added that those decidedly for preservation of

* Professor of Labour Law in the Institute of Law Studies of the Polish Academy of Sciences.

[1] See E. J. Mestmacker, "Die Kraft des Freiburger Imperatives—Vom Sozialismus zum Kapitalismus : Wirtschaftssysteme im Übergang," *Frankfurter Allgemeine Zeitung*, June 2, 1990.

[2] Thus the Subcommission for the Socio-Political System which operates within the Constitutional Commission of the Sejm of Republic of Poland found it

the right to work in the new Constitution (that right was proclaimed in the 1952 Constitution) are the Leftist political forces, as well as the Catholic Left.

The socio-economic policy in Poland in 1990—1991 has been based on the following assumptions : 1) stabilization of the economy through curtailing inflation and restoring the economic stability ; 2) transition to the open market economy with the accompanying initiation of the process of transformations in the structure of ownership of the national property ; 3) soothing of the social afflictions that accompany the process of curtailing inflation, particularly in the shape of protection of and assistance to those temporarily unemployed.

In September 1991, the number of unemployed in Poland exceeded 1,700,000 persons ; the official forecasts mention two million such persons at the end of 1991, but the possibility of that figure going up to 2.5 million is also taken into account. According to appraisals made by the World Bank experts, recession in Poland must necessarily lead to massive dismissal of employees, while the process of restructuring of the industry may result in unemployment of about 3 million people. This extent of unemployment is namely necessary for the Polish economy to grow effective and able to come closer to the European standards in the mid-1990s.* [3] In any case, Poland has already crossed the "emergency line" in this sphere. A further unavoidable increase of unemployment in Poland is related to : 1) elimination—which is necessary in the market conditions—of overstaffing estimated at about 30 per cent of the total of employees in Poland ; 2) restructuring of the economy through liquidation of the big, antiquated and unprofitable economic subjects which have so far constituted the largest agglomerations of employees of great industries ; 3) commercialization of State companies and their progressive privatization ; 4) correction of the proportions of employment in agriculture in relation to other branches of the economy which will be necessary in the future but will release onto the labour market considerable amounts of manpower dismissed from agriculture.

---

inexpedient to preserve the right to work in the new Constitution, stressing only the need to provide a constitutional definition of the conditions for unemployment control, while the Subcommission for Civil Hights and Liberties considered the possibility of preserving the right to work in a formulation which would not give rise to claims. (See "Trudne pytania—jeszcze trudniejsze odpowiedzi" [Difficult Questions and Still More Difficult Answers], *Rzeczpospolita*, June 13—14, 1990).

[3] See "Bezrobocie—cztery scenariusze" [Unemployment—Four Scenarios], *Rzeczpospolita*, April 23, 1990.

II. *THE LEGISLATIVE CHANGES IN LABOUR LAW IN THE YEARS 1989—1991*

1. *Regulation of Individual Dissolution of Employment for Economic Reasons*

In the years 1989—1990, changes were introduced in the Polish labour law aimed at facilitating the initiated economic processes. They concerned first of all the system of universal protection of stability of employment relationship, operative since 1975 when the Polish Labour Code had entered into force. For the last several years, starting with the works on economic reform undertaken still in the late Communist system in Poland, opinions were voiced in managerial circles that the L. C. and the protection of employees against unjustified dismissal it provided for made it impossible for managers to pursue a rational staff policy in their firms. Those opinions lacked substantial justification : in the 1980s, the judicial interpretation of the notion of "unjustified dismissal" tended increasingly to exclude from this group dismissals resulting from the company's economic needs. Yet in 1989, in the atmosphere of the "Round Table" conference, the then—still Communist—Parliament decided to open up the maximum possibilities for reforms. The labour code amendment introduced by way of the Act of April 7, 1989[4] resulted in changes which made it easier for companies to dissolve employment with individual employees for economic reasons. In particular, the facilitations consisted in the possibility of reduction by the company of the statutory term of notice ; exclusion of a portion of such dismissals, from under the trade union supervision ; and limitation of the right of the faultily dismissed employees to be reinstated in their jobs. Thus under Art. 36(1) of the labour code, if the dismissal with notice results from staff reduction, changes in the structure of staffing, limitation of the company's tasks or range of activity, or liquidation of the organizational department in which a given person has been employed, the workplace may reduce the statutory term of notice of 3 months to one month only. (In that case, the employee concerned is entitled to indemnity to the amount of his wages for the remaining part of the statutory term, of notice.) Further, the new Art. 41 (1) introduced to the labour code in 1989 provides that in the case of declaration of bankruptcy or liquidation of the workplace, dismissals of employees are not liable to trade union supervision, and special protection of such categories of employees as e.g. members of boards of union organizations does not apply to such situations. Finally, according to the new reading of Art. 45 para 2 of the L. C., an employee's

[4] The Act of April 7, 1989 on amending the Labour Code and some statutes (*Journal of Laws*, No. 20, item 107).

demand that the notice be found ineffective or that he should be reinstated in his job may be refused if the court finds that this would be impossible or inexpedient due to the company's liquidation or bankruptcy or to changes in its organization or production related to staff reduction ; in such cases, the court may limit itself to awarding indemnity to the amount of wages for a period from two weeks to three months. The above rigours which affected the employees were soothed somewhat late in 1989 : if the economic reasons are the sole cause of dissolution of employment, persons thus dismissed are awarded severance pays and salary differentials on principles similar to those which apply to group dismissals (see below).

Late in 1989, also the protection of stability of employment relationship was reduced in the case of employees who had formerly enjoyed special protection against individual dismissal to the extent not affected by the L. C. amendment of April 7, 1989. Concerned here are cases of dismissal for economic reasons due to changes in organization, production, and technology, where such reasons are the sole justification of dissolution of employment. Such dismissals—impossible or most difficult before—became possible late in 1989 provided the factory union lodges no protest. Objectified and operative by force of law, the protection of stability of employment relationship of those special categories of employees now depends on the standpoint of the factory union organization which has to be expressed actively in the shape of a protest at that ; this means it depends on a factor which may function differently or not function at all in different situations. The general trend of the Polish legislation towards reduction and increased flexibility of the protection of employees against individual dismissals for economic reasons, present in the years 1989—1990, manifests itself most distinctly in the above reforms.

2. Legal Regime of the So-called Group Dismissals

a) The new acts and the notion of "group dismissal"

A radical legislative step, prepared by the first non-communist government and passed by the new Parliament elected in June 1989, is the regulation contained in two statutes of December 1989 : the Act on group dismissals of employees[5] and the Act on employment.[6] The acts regulate the following issues :

— the procedure and rules of group dismissals of employees ;

[5] The Act of December 28, 1989 on special principles of dissolution of employment for reasons arising in the workplace (Journal of Laws, No. 4/1990 item 19).

[6] The Act of December 29, 1989 on employment (*Journal of Laws*, No. 75, item 446).

— cooperation in matters of group dismissals with various agencies and organizations (trade unions, workers' self-management organizations, employment agencies) ;

— allowances to employees in virtue of dismissal ;

— assistance to former employees staying out of job ;

— creation of workplaces and assistance in finding a job.

The two acts, prepared rather hastily and passed by the bicameral Parliament as if by the way of passing an extensive package of the economic acts which constitute the basis for the so-called "Balcerowicz Programme," were fiercely criticized by the trade unions, both Solidarity[7] and the National Alliance of Trade Unions practically from the moment of their entering into force ; they also caused some disappointment in the scientific circles.[8] What speaks in their defence, though, is the fact that they are unprecedented in a post-Communist country as well as their experimental nature. Besides, both the Government and the Parliament are fully aware of the weakness of those regulations and introduce the necessary corrections by way of the already passed amendments[9] of those most recent acts ; further amendments are to take place shortly. Thus despite the two acts' substantial shortcomings and numerous technical legislative defects, the very fact has to be appreciated that the new authorities saw to the creation of legal instruments to limit the extent and soothe the effects of unemployment in Poland at the right moment.[10]

The notion of "group dismissal of employees," though not used in the acts of December 1989, has by now won a permanent position both in the common parlance[11] and in the legal language in Poland ; also the

---

[7] See M. Przybyłowicz, "Szybko naprawić !" [Prompt Correction Needed !], *Tygodnik Solidarność,* February 23, 1990.

[8] See "Report from the Scientific Conference" held at the Institute of State and Law, Polish Academy of Sciences, on April 28, 1990.

[9] See amendments of the Act on group dismissals of 26 January, 1990 (*Journal of Laws*, No. 10, item 59) of 13 July, 1990 (*Journal of Laws*, No. 51, item 298) and of 23 August, 1991 (not yet published) as well as amendment of the Act on employment of 9 February, 1990 (*Journal of Laws*, No; 9, item 57), and of July 27, 1990 (*Journal of Laws*, No. 56, item 323), the substantial and extensive amendment of the Law on employment is in Parliament in 1991.

[10] Senator T. Zieliński, Chairman of the Commission for Labour Law Reform, in an interview entitled "Między dwiema epokami—praca i kapitał" [Between Two Eras—Work and Capital] (*Rzeczpospolita*, March 27, 1990), treats the two acts as "transitional between the labour law of yesterday and the one that will be needed tomorrow."

[11] See e.g. "Nadchodzą zwolnienia grupowe" [Group Dismissals Are Near], *Gazeta Wyborcza*, July 17, 1990.

interest in the legal solutions in this sphere elsewhere in Europe,[12] particularly in the EEC countries[13] is growing in Poland.

The notion of "group dismissal of employees" lacks a statutory definition which, however, follows indirectly from the way in which the scope of application of the Act of December 28, 1989 has been specified by Art. 1 of that Act. It is based on mixed—objective and quantitative—criteria. A group dismissal is one that takes place for the following reasons : 1) due to liquidation, or bankruptcy of the workplace ; 2) for economic reasons or due to changes in organization, production, or technology, if such changes result in the need to dissolve employment contracts, on a single occasion or within a period of up to three months, with a group of employees constituting at least 10 per cent of the staff in companies with the staff of up to 1000 persons, or with a group of at least 100 employees in companies with the staff of over 1000 persons. The fact that the definition distinguishes liquidation or bankruptcy of the firm from other economic reasons of dismissal is of importance here as the Act of December 28, 1989 provides for differences in the legal regime of dismissals for each of the above two groups of reasons, assuming that a liquidated or bankrupt firm cannot possibly be obliged to render benefits to its dismissed employees of the nature and to the extent equal to the benefits required of a still functioning firm, even if it is in the precess of economic and organizational transformations. Those differences have been confirmed by the amendment of August 23, 1991.

b) The principles of cooperation with trade unions

Due to the fact that they constitute a social affliction, group dismissals involve special requirements as to cooperation with representations of the staff and with employment agencies. In most workplaces, it is the trade unions that are parties to such cooperation ; in exceptional cases of non-existence of a trade union in a given firm, its manager is obliged to consult the staff about group dismissals according to procedures adopted in that firm. As stipulated by the Act of December 28, 1989, cooperation with the unions in the field of group dismissals should result in an agreement concerning that issue. To this aim, the Act provides for a definite procedure that is obligatory for the manager. Namely, the manager is obliged to notify the factory union organization (or organizations, if there are several of them operating in the firm) in writing about

[12] See B. Skulimowska, *Rozwiązywanie umów o pracę z przyczyn leżących po stronie zakładu pracy [Dissolution of Employment for Reasons Arising from the Workplace]*, Instytut Pracy i Spraw Socjalnych, Warsaw 1989.

[13] See M. Matey, "Prawo 'Europy Socjalnej' w dziedzinie bezrobocia" [The Law of 'Social Europe' in the Sphere of Unemployment], *Rzeczpospolita*, May 18, 1990.

the intended dismissals 45 days at the latest before the scheduled date of that operation. The manager is also obliged to provide the unions with data about the reasons for group dismissals and to specify the number of employees and the professional groups designed to be dismissed. Upon notification, the union has the right to request to be informed by the manager about the firm's economic and financial situation and the planned number and structure of staff. The union has the right to submit to the manager proposals aiming at reduction of the planned extent of dismissals within 14 days ; have such proposals been submitted by the union, the manager is obliged to assume an attitude towards them within 7 days and to notify the staff about his standpoint.

Following these preliminary activities which might generally be called the stage of negotiations, but not later than within 30 days from their initiation, the manager and the union(s) should conclude an agreement, specifying the procedure to be followed when carrying out group dismissals, and particularly the criteria of selecting employees to be dismissed, the order and dates of dismissals, and also the firm's other duties related to vital matters of the group to be dismissed. In firms where more than one union operates, a joint agreement with all of those unions should be concluded. If the agreement cannot be concluded due to divergence of opinions, the manager is entitled to resolve the dispute by way of regulations which should include those principles of procedure which it proved possible to agree with the unions in the course of negotiations.

Has the procedure provided by the Act in cases of group dismissals been applied to the full, that is has an agreement been concluded concerning the expedience and extent of such dismissal, the manager is free from the duty, otherwise provided for by Art. 38 of the labour code, to consult the factory or national trade union organization about the planned dismissal. Whenever such an agreement could not be negotiated, that duty has to be fulfilled : thus in the sphere of trade union supervision over dismissals, this situation is treated as dismissal of a group of individuals.

Provisions of the Act of December 28, 1989 that concern the manager's duty to act jointly with the unions in matters of group dismissals of employees gave rise to conflicts before they actually became social practice. During the first year of the Act's operation, the unions—Solidarity as well as the National Alliance of Trade Unions—commonly found the firms' inobservance of the statutory rules of procedure which resulted to the equal extent from ignorance of law and from the wish to evade it. Also a specific trade unions' embarrassment with the very idea of "agreements on group dismissals" could be noticed.[14] The need arose

specially to make the union activists aware of the protective and not accepting function of those agreements, and also of the whole of the union's rights in this sphere which is novel in the Polish socio-economic life.[14] [15] Opinions are voiced in the union circles that the negotiations between the managers and the unions, started 45 days before the planned group dismissal, take place too late as a rule, that is after the actual decision has been made. Such negotiations should be initiated much earlier, in some cases even several years in advance, so as to make it possible for the employees duly to change their life plans for a more distant future. But in the conditions of the present radical economic transformations in Poland, it is impossible to start negotiations that much earlier, the firms being unable to appraise their possibilities and conditions of operation in any more distant future.

The manager is also obliged to notify the competent employment agency, that is the district labour office, of the planned group dismissal ; that notification has to be made not later than 45 days before the planned date of dismissal.[16]

c) Exclusions from group dismissals

A group dismissal for reasons specified in Art. 1 Part 1 of the Act of December 28, 1989, that is due to staff reduction for economic reasons or because of changes in the sphere of organization, production, or technology, cannot affect employees who come under the so-called special protection of the stability of employment, such as persons up to two years before the retirement age, pregnant women and women on maternity leave, and members of the board of the factory trade union

[14] The Act of December 28, 1989 failed to break in this sphere with the tradition, consolidated under the Communist rule in Poland, according to which the trade unions are expected to "cooperate" or "agree" with the managers, also in matters that are obviously against the employees' interests, such as group dismissals. The doctrine of labour law begins to notice the conflict between such cooperation and the union's basic function. (See K. Kolasiński, "Przedstawicielskie organy załogi, a związki zawodowe" [Representations of the Staff and the Trade Unions], in a publication prepared for the 9th Congress of Labour Law Departments of Universities, September 1990, p. 19.

[15] Thus the resolution of the 2nd National Congress of Solidarity (Gdańsk, April 25, 1990) stresses particularly the duty of factory Solidarity organizations to oppose group dismissals which lack economic justification or are carried out against the law. See also the new Law of May 23, 1991 on Trade Unions *(Journal of Laws*, No. 55, item 234).

[16] The fact should be stressed that the requirement of notifying the employment agency of the intended group dismissal 45 days in advance goes further than a similar requirement contained in the Guideline of the Commission of European Communities of February 17, 1975 on group dismissals of employees where a period of 30 days is mentioned *(Official Journal of the European Communities*, No. L 48/1975).

organization or employees' council during their term and one year after its completion. Should it prove impossible further to employ such persons in their former positions, the firm can only notice the termination of their former work and payment conditions (if this involves a reduction in wages, the employee concerned is entitled to a salary differential until the end of the period in which he comes under special protection). Provisions concerning special protection do not apply, however, in cases of group dismissals due to liquidation of the firm or declaration of its bankruptcy, which reflects the above-mentioned differentiation of the legal regime according to the kind of economic reasons for staff changes arising from the workplace, and to be exact, the economic and organizational situation of the workplace. Special protection has been introduced in August 1991 for members of Parliament and local communes councilors.

d) Severance pays and other means of *material provision of dismissed employees*

Employees dismissed according to the procedure of group dismissals for economic and organizational reasons, including also the cases of liquidation or declaration of bankruptcy of the workplace, are entitled to a severance pay to the following amounts : 1) one month's wages, if the person has been employed for under 10 years ; 2) two months' wages in case of employment for over 10 but under 20 years ; and 3) three months' wages in the case of employment for at least 20 years. Opinions are voiced in the trade union circles that the amount of severance pays should receive a more flexible treatment in the Act : for example, it might be left open for negotiations and adjustment between the unions and managers and would be included in the above-mentioned agreement on the principles of group dismissal (as many firms could actually afford it to pay out much higher severance pays).

If a person dismissed according to the procedure of group dismissal takes a job in another firm and his new wages prove lower than those in the firm he was dismissed from, he is entitled to a salary differential paid out by the new firm for a period of 6 months; to the amount of the difference between his former and present wages. The differential is paid out from the Labour Fund.

The two acts of December 1989, on group dismissals and on employment, create a system of provisions aimed at safeguarding social security of the unemployed. It is composed of employees' rights and benefits. The rights include :

— the right of persons dismissed for economic reasons to be reinstated if the workplace re-employs members of their professional group (Art. 12 of the Act of 28 December, 1989) ; it is, however, not a subjective

right and in fact resolves itself into the principle of priority in employment, if the former employee notifies the workplace of his intention to be reinstated within one years after dissolution of employment ;

— the possibility of earlier retirement irrespective of age, if at the moment of dismissal, a person has the definite period of employment, equivalent periods and periods included in employment counted ;[17] employees who do not have the full required period of employment may complete that period while waiting for a new job provided they register at the employment office and collect the unemployment benefit, that period being treated as equivalent to that of employment.

e) Unemployment benefits

Of basic importance among the allowances due to persons out of employment are the unemployment and training benefits. They are first of all to compensate for the lack of earnings, but they also perform another additional function : that of securing other allowances that supplement the unemployed person's protection in case of illness, disability, old age and maternity.

Unemployment benefit is due to a person who :

— is out of job, provided he has been employed for at least[1] 180 days during the 12 months that precede the day of his registration ;

— has registered at an employment agency as unemployed ;

— is not offered adequate job, training, qualification for a new job, and is not sent to intervention works or to a specially created job.

The dependence of the right to benefit on having worked for at least 180 days during the 12 months preceding registration at an employment agency was absent in the original wording of the Act of December 29, 1989 on employment—it was only introduced afterwards by an amendment of the Act made on July 27, 1990.[18] The amendment took place because it was found that during the first six months of the Act's operation unemployment benefits had been paid out to a large group of persons who admittedly were out of job but had never been employed before, and in fact did not intend to take a paid work (such as e.g. housewives) ; such persons treated the chance to collect the unemployment benefit as an unexpected bonus. The limitation of access to unemployment benefits, introduced in July 1990, is in fact not too rigoristic as a number of important exceptions have been provided in that same amendment : among

[17] See Ordinance of the Minister of Labour and Social Policy of January 26, 1990 on earlier retirement of persons dismissed from work for reasons arising from the workplace *(Journal of Laws*, No. 4, item 27).

[18] The Act of July 27, 1990 on amending the Act on employment *(Journal of Laws*, No. 56, item 323).

others, the above-mentioned requirement does not apply to persons dismissed according to the procedure of group dismissals ; to those under 18 ; to graduates of various schools and universities ; to sole family bread-winners, etc. In fact, the Polish regime of unemployment benefits still remains liberal as compared to many foreign regulations of this sphere. Moreover, no solution has been found of the problem of persons who collect the unemployment benefit but actually unofficially are active e.g. as street pedlars. This phenomenon is difficult to control both in the country and abroad.

Persons not considered to be unemployed include those who admittedly are out of job but collect the old-age pension, own a farm of over 1 hectare, pursue economic activities or are liable to social insurance by another virtue.

The unemployment benefit amounts to :

1) 70 per cent of wages during the first 3 months of unemployment ;

2) 50 per cent of wages during further 6 months, and

3) 40 per cent—on expiration of the period of 9 months of unemployment.

At the same time, the benefit cannot be lower than 95 per cent of the minimum wages nor exceed the average wages. Thus in September 1991, for example, the benefit could amount to 600,000—1,700,000 zlotys approximately (the average wages in Poland at that moment slightly exceeding 1,700,000 zlotys). Therefore, the amount of benefit to secure the unemployed person's maintenance depends both on his wages prior to dismissal and the length of the period of unemployment, and on the current average living standards of society as a whole. However, the above-mentioned system is in 1991 deemed to be too "generous" exceeding country's economic possibilities ; the amendment to the Law on employment discussed in 1991 in the Parliament has to reduce the amount of benefits.

Art. 16 of the Act on employment provides for the possibility of depriving a person of the right to unemployment benefit if that person refuses to accept two adequate jobs offered to him. one after the other within 30 days ; such person may only apply again for the benefit on expiration of the period of 30 days after the last offer. The right to benefit is also affected by a person's refusal to perform intervention works.

In the interpretation of the Act on employment, the notion "adequate job" means one that corresponds with the unemployed person's educational level, one in which that person has been trained or which he can perform after training or requalification ; the job also has to be adequate to the unemployed person's health, and the overall daily time

spent commuting to and from work by public transport cannot exceed 3 hours. While this interpretation of the "adequate Job" arouses no reservations, there are reasons to fear that, with deterioration of the situation on the Polish labour market, the range of such adequate jobs will be gradually extended to include jobs worse and worse from the viewpoint of kind and conditions of work : this would be tantamount to a negative adjustment of the criterion of adequacy to the situation on the labour market.[19]

It should be mentioned here that apart from the unemployment benefit, the set of benefits securing social protection to the unemployed in Poland includes also training benefits to the amount of 80—100 per cent of wages, as well as other benefits and allowances due in the period of requalification or training.

III. ASSISTANCE IN LOOKING FOR A JOB, ESTABLISHMENT OF NEW JOBS, ASSISTANCE IN STARTING INDIVIDUAL ECONOMIC ACTIVITY

The Act of 29 December, 1989 on employment established a network of local (provincial and district) agencies of State administration competent in matters of employment, the so-called "labour offices." The offices are submitted to the Minister of Labour and Social Policy. They perform current activities in the sphere of prevention of the negative effects of dismissals that affect the dismissed employees ; in particular, they search out the adequate jobs, retrain and requalify the unemployed, and establish jobs for the disabled; they also perform free employment agency and occupational guidance.

Attached to the Minister of Labour and Social Policy, there is the Chief Board of Employment, an advisory agency in matters of employment. It is composed in equal parts of representatives : of the national trade unions, employees' organizations,[20] State administration agencies, and local governments. Provincial employment boards operate attached to provincial labour offices.

The Act also created the Labour Fund administered by the Minister of Labour and Social Matters and composed of the obligatory contributions and payments made by firms, grants from the central budget, and returns

[19] See M. Szylko-Skoczny, "Bezpieczeństwo socjalne bezrobotnych w świetle ustawy o zatrudnieniu" [Social Security of the Unemployed in the Light of the Act on Employment], *Polityka społeczna,* 7/1990.

[20] Late in 1989, the first Confederacy of Polish Employers in post-Communist Poland was created. The Law on Employer's Organizations has been adopted on May 23, 1991 *(Journal of Laws*, No. 55, item 235).

from its own economic activity. The means of the Labour Fund are allocated to cover the unemployment, training and other benefits, the costs of organization of the training or requalification of the unemployed, the costs of establishment of new jobs, and the costs of occupational guidance, and to other purposes related to the activities of labour offices.

Free employment agency services are rendered to all persons looking for a job, and also ten firms, basing on the principles of voluntary access, equality, and openness. Voluntary access means that both parties are free to use the agency services or not. Equality concerns equal treatment of all persons looking for a job irrespective of their nationality, political affiliation, sex, religion, etc. Openness means that all jobs offered of which the labour office have been notified should be made known to those looking for a job.

The labour offices keep registers of the unemployed. They also keep registers of free jobs which is not a complete one, though, as the Act does not oblige firms to notify the labour offices of all free positions. The possible introduction of this duty of firms is considered by way of amendment of the Act on employment.

The labour offices, using the means of the Labour Fund, grant loans to the amount of up to 20 times the average monthly wages. Such loans are granted to :

— firms, to cover the costs of organization of extra workplaces ; the loan is subject to extinction in 50 per cent provided an unemployed person is given a job for 24 months ;

— the unemployed persons for individual economic activity ; the loan is subject to extinction in 50 per cent provided the borrower pursues such activity for 24 months.

Irrespective of the loans from the Labour Fund, a variety of actions are undertaken to provide financial support to establishment of new jobs within the so-called “small business.” “Agencies for support of local initiatives” and banks of socio-economic initiatives are established which grant cheap credits to persons who start individual economic activity on their own account but do not meet the requirements of commercial banks and thus cannot get a credit from such banks. Apart from the credit assistance, the agencies also render advisory services and assistance in establishing firms.

Also the trade unions (the Labour Protection Offices of the separate regional branches of Solidarity, as well as the Clubs of the Unemployed organized by the National Alliance of Trade Unions) take up various forms of assistance to the unemployed in finding a job, requalifying, and starting individual economic activity.

Despite the variety of developing forms of soothing its effects, unemployment still remains one of the most serious socio-economic problems in Poland. It can be expected to be a permanent phenomenon, as in the developed market countries. The new social policy which is still in the making in Poland will aim at its minimizing and at limitation of its social effects.[21] The steps taken to this aim today, as well as proposals of further legislative changes, are but the beginning of a long and painful road.

[21] See ‘‘Assumptions of the Programme of Activities in the Sphere of Labour and Social Policy Until the Year 2000” worked out by the Ministry of Labour and Social Policy in July 1990.

DROIT POLONAIS CONTEMPORAIN
POLISH CONTEMPORARY LAW
1990 n° 2 (86)
PL ISSN 0070-7325

*Stanisław Włodyka**

REFORM OF THE POLISH ADMINISTRATION OF JUSTICE

1. INTRODUCTION

The year 1989 was in Poland a period of extensive changes in both the political and the socio-economic system. One of their important elements was a reform of administration of justice. Two currents of that reform can be mentioned.

The first one, earlier though entangled with the current that followed, was related to a change of the economic model from centrally controlled planned economy to the so-called socialist market economy,[1] all of that, however, still within the framework of the socialist political and economic system. It involved liquidation of the State Economic Arbitration and establishment of economic courts.

The second and subsequent current accompanied the stage of the Polish State's relinquishment of the socialist system and reversion to Western-style democracy, and consisted in rejection of the socialist model of administration of justice interpreted as one of the planes of State activity, political and class in nature.

The two currents overlapped in time which is why it sometimes happened that the first of them was implemented with delay already during the period of relinquishment of the socialist system or had not been implemented at all till that time ; the latter concerns in particular a reform of the Polish civil procedure which should abolish the privileges of units of socialized economy in proceedings, etc.

The above two currents of reformatory activities result in a specific incoherence of the legislation and of the process of reforms itself ; they both, however, pursue one and the same aim, that is to relieve the

---

* Professor of Law at the Jagellonian University of Kraków.

[1] For more details, see S. Włodyka, "Prawne elementy modeli gospodarki socjalistycznej" [Legal Elements of the Model of Socialist Economy], *Przegląd Ustawodawstwa Gospodarczego*. 1988, No. 5—6, pp. 135*ff*.

Despite the variety of developing forms of soothing its effects, unemployment still remains one of the most serious socio-economic problems in Poland. It can be expected to be a permanent phenomenon, as in the developed market countries. The new social policy which is still in the making in Poland will aim at its minimizing and at limitation of its social effects.[21] The steps taken to this aim today, as well as proposals of further legislative changes, are but the beginning of a long and painful road.

[21] See "Assumptions of the Programme of Activities in the Sphere of Labour and Social Policy Until the Year 2000" worked out by the Ministry of Labour and Social Policy in July 1990.

DROIT POLONAIS CONTEMPORAIN
POLISH CONTEMPORARY LAW
1990 n° 2 (86)
PL ISSN 0070-7325

*Stanisław Włodyka**

REFORM OF THE POLISH ADMINISTRATION OF JUSTICE

1. INTRODUCTION

The year 1989 was in Poland a period of extensive changes in both the political and the socio-economic system. One of their important elements was a reform of administration of justice. Two currents of that reform can be mentioned.

The first one, earlier though entangled with the current that followed, was related to a change of the economic model from centrally controlled planned economy to the so-called socialist market economy,* [1] all of that, however, still within the framework of the socialist political and economic system. It involved liquidation of the State Economic Arbitration and establishment of economic courts.

The second and subsequent current accompanied the stage of the Polish State's relinquishment of the socialist system and reversion to Western-style democracy, and consisted in rejection of the socialist model of administration of justice interpreted as one of the planes of State activity, political and class in nature.

The two currents overlapped in time which is why it sometimes happened that the first of them was implemented with delay already during the period of relinquishment of the socialist system or had not been implemented at all till that time ; the latter concerns in particular a reform of the Polish civil procedure which should abolish the privileges of units of socialized economy in proceedings, etc.

The above two currents of reformatory activities result in a specific incoherence of the legislation and of the process of reforms itself ; they both, however, pursue one and the same aim, that is to relieve the

* Professor of Law at the Jagellonian University of Kraków.

[1] For more details, see S. Włodyka, "Prawne elementy modeli gospodarki socjalistycznej" [Legal Elements of the Model of Socialist Economy], *Przegląd Ustawodawstwa Gospodarczego*, 1988, No. 5—6, pp. 135//.

administration of justice of the burden of various deformations related to the socio-political system in force after the war.

In the discussion to follow, however, a division based on the merits has been adopted which is not in line with chronology of changes. This is why reforms of the system of agencies of administration of justice will be discussed first, followed by a discussion of a reform of the ways of settling economic disputes.

2. SYSTEM OF AGENCIES OF ADMINISTRATION OF JUSTICE

The system of agencies of administration of justice in Poland was based on the principles adopted from the Soviet model which resulted from Soviet ideology (class nature, etc.).[2] The point of departure for radical changes in this sphere was provided by decisions of the so-called "round table" conference. As regards the legislative changes themselves, they took place in three stages in 1989.

The first stage started with the Act of April 7, 1989 on changing the Constitution of Polish People's Republic *(Journal of Laws,* No. 19, item 101). Due to the elimination of the Council of State and establishment of the office of President of Polish People's Republic, the powers to appoint judges and the Public Prosecutor General and to hear the latter's reports, formerly granted to the Council of State, were now delegated to the President. At the same time, the Act provided for establishment of a complete novelty in the Polish system, that is the National Council of the Judiciary. Also the mode of appointment of the Supreme Court was changed. Finally, the new Art. 60 section 2 of the Constitution explicitly declared one of the basic quaranties of independence of the judiciary, that is irremovability of judges ; a suspension of that guaranty was to be possible in cases specified in the statute only. The new Art. 60 section 1 of the Constitution introduced the principle of appointment of judges by the President on motion of the National Council of the Judiciary, and at the same time referred to ordinary legislation in questions of that Council's powers, composition, and way of functioning. This way, both the constitutional grounds and the ordinary legislator's duty have been established to introduce the above-mentioned principles by means of specification of details related to their implementation.

That was effected during the second stage of reforms through the acts of December 20, 1989 passed by the Seym of a new term, that is the Act

[2] For more details, see S. Włodyka, *Ustrój organów ochrony prawnej [The System of Legal Protection Agencies]*, Warsaw 1975.

on the National Council of the Judiciary *(Journal of Laws,* No. 73, item 435) and the Act on changing acts on the system of common courts, on the Chief Administrative Court, on the Constitutional Tribunal, on the system of military courts, and on notaries public *(Journal of Laws,* No. 73, item 436) . They aim at freeing courts of the political element and securing their full separateness and the judges' full independence.[3] The changes are immense which makes it difficult to discuss them here to the necessary extent.

In the Soviet model, courts were explicitly political in nature which resulted in their separateness, and also in independence of the judiciary, being rather relative to say the least. The Polish acts of December 20, 1989 radically change that state of affairs.

What served this purpose above all was the Act of December 20, 1989 on the National Council of the Judiciary. The Council is the supreme supervisory agency of the court system ; its basic task is to guard independence of courts and of the judiciary (Art. 1 section 2). It is composed of : First President of the Supreme Court ; President of the Supreme Court in charge of the proceedings of the Court's Division for the Military ; two judges of the Supreme Court and one of the Chief Administrative Court (appointed by general assemblies of judges) ; nine judges of common courts (appointed by their respective general assemblies) ; four deputies and two senators (appointed by the Seym and Senate respectively) ; a person appointed by President of Republic of Poland; the Minister of Justice. Thus most of the Council's members are persons from without the group of administration of the whole department or of courts ; what is more, Chairman and Vice-Chairman of the Council are elected by the Council itself, and that post by no means falls to the Minister of Justice *ex officio.* The Council's term is four years. Its competences are broad and include two categories of matters. One of them are individual matters concerning the separate judges, such as proposals as to the appointment and transfer of judges, or approval of judges over 65 years of age still remaining in their office. The other group of competences concerns supervision of courts in general. The National Council of the Judiciary specifies the number of members of various disciplinary courts deciding in cases of judges ; it expresses its opinion about the principles of professional ethics of the judiciary ; it takes a

[3] See R. Łuczywek, "Katalog gwarancji (niezawisłość sędziowska)" [Catalogue of Guaranties (Independence of the Judiciary)], *Gazeta Prawnicza*, 1989, No. 22; K**.** Pędowski, "Nieusuwalność sędziów i problemy z tym związane (de *lege ferenda)"* [Irremovability of Judges and the Related Problems *de lege ferenda], Palestra*, 1989, No. 5—7.

standpoint as to changes in the system of courts ; it pronounces an opinion of lawyers training programmes, etc. What has separately to be mentioned in this group of matters is the hearing of information given by First President of the Supreme Court, Minister of Justice, President of the Chief Administrative Court and chairman of the High Disciplinary Court concerning the activity of courts, as well as the Council's right to express its opinion about the staff situation of the judiciary.

The other of the above-mentioned acts of December 20, 1989 introduced parallel radical changes in the system of all courts. The changes concerning common courts are of fundamental importance and will be discussed first and foremost further on. They follow several courses.

The first course consists in removal of the judges' and courts' political involvement and a reversion in this sphere to Montesquieu's classical conception. As far as the courts are concerned, the programmatic provision was repealed which stated that the courts guard people's rule of law ; the formerly valid ideology was expressed in the latter term. Also cancelled was the provision which imposed on courts such political and class tasks as "protection of the political and socio-economic system of Polish People's Republic, of social property ...," etc ; that provision had formerly served as the normative grounds for a privileged position in judicial proceedings of specific values which enjoyed priority in the former system. Finally, also the provision was cancelled which imposed on courts the duty to exercise educational influence from the viewpoint of those very above-mentioned values that enjoyed ideological priority, and also the duty of the so-called judicial notification, that is the court's obligation to notify the competent agencies and organizations, or even the prosecutor, of incidents of breaches of the law or other irregularities ascertained in relation to the case examined. As a result of these changes, the court system resumes its traditional function as an impartial agency whose only competence is the exercise of administration of justice. This function has also been strengthened through cancellation of a formerly valid provision which stated that courts should fulfil their task with active participation of the citizens. That provision expressed a programmatic idea whose actual implementation could have jeopardized the proper interpretation of the court's role as an agency of administration of justice. This does not mean, however, that the citizens' participation in administration of justice has been eliminated : the participation of lay judges still remains a principle but political parties have been deprived of the right to nominate candidates for lay judges. At the same time, a number of legislative changes have been introduced to free the position of the judges

themselves of its former political character. From the affirmation formula uttered by a judge on appointment to the office, all elements have been removed which might have infringed his political disengagement. In particular, the formulation has been deleted that the judge is to "guard the political, social and economic system, to protect the achievements of the working people, the social property, and the citizens' rights and interests protected by law, to guard people's rule of law and consolidate the citizens' legal consciousness, and to be guided by principles of social justice among other things." Instead, the new affirmation formula requires that the judge should faithfully serve the Polish Nation and uphold the law. Accordingly, also the provision concerning the judge's duties has been changed. Moreover, the provision has been introduced for the first time in the postwar history of the Polish court system that "while in office, the judge may not be member of any political party or take part in any political activity ; this ban does not concern the offices of deputy and senator only." Also deleted has been the provision which subjected the possibility of being appointed judge to the condition that the candidate "warrants a proper performance of duties of a judge in Polish People's Republic."

What also serves the strengthening of separateness of courts and independence of the judiciary is the new situation of agencies of judicial administration. The provision now in force states explicitly that their supervision of courts concerns the "administrative activities" only. This removes the previously existing doubts in this sphere which often resulted in the agencies of administrative supervision repeatedly encroaching on the courts' jurisdiction proper. Presidents and vice-presidents of courts are appointed with active participation of judicial self-management (general assembly and board of judges). As regards the way of exercising supervision, the provision has been deleted, formerly implemented on a large scale in practice, which gave the supervisors the right to "examine judicial decisions." Consequently, that supervision necessarily has to be limited to judicial administration and thus not the jurisdiction proper. The agencies of judges' self-management (general assembly of judges and board of the court) were given a new shape as well with the aim to consolidate their competences.

The other basic trend of the changes introduced by the acts of December 20, 1989 is consolidation of the principle of independence of the judiciary also in spheres other than the political disengagement.

What serves this purpose is first of all the establishment of the National Council of the Judiciary, and particularly the Council's competences in the sphere of appointment of judges (see above).

Independence of the judiciary is also to be strengthened by a new shape of the principle of permanence of the judge's profession. It was formally valid before, too ; in practice, however, its most relativistic interpretation made it difficult to say that it was actually applied. First of all, the principle of irremovability of a judge has been reformed. The notion of "removal" was entirely deleted from the act, and the only possibility that remains is a "recall of a judge." The fact itself is of some importance that today, only President of the State is authorized to recall a judge ; thus a corresponding right of the Minister of Justice has been eliminated as was partly the case before. What matters most, however, is the introduction of an explicit provision that "judges cannot be removed from their offices with the exception of cases specified in this Act." At the same time, the act now in force formulates those exception according to the model commonly accepted in Western democracies. Moreover, the former provision has been deleted which provided for the possibility of recalling a judge if that judge "failed to warrant a proper performance of a judge's duties." It was this very provision that serve as the grounds for removal of judges whom political authorities found inconvenient, and for exertion of political influence on courts by means of such removals. As is well known, an important guaranty of independence of the judiciary is the judge's material independence. The act of 1989 introduced fundamental novelties in this sphere : first, it formulates the principle of equal wages of judges of equal courts, the wages depending on the length of employment and the functions performed ; second, it provides that a judge's salary should amount to a multiple of the average salary in material production which means that a judge's minimum statutory remuneration should amount to at least twice the average salary. Finally, permanence of a judge's protection is also safeguarded by a new regulation of disciplinary proceedings, now carried out by autonomous and fully independent disciplinary courts.

Ultimately, what also serves the strengthening of indepence of the judiciary is the new shape of competences of the agencies of judicial administration, that is of the Minister of Justice and agencies of judges' self-management. All that might have jeopardized that independence in this sphere has been removed from provisions. As has been mentioned before, the supervision exercised by those agencies concerns only the administrative activities of courts. The former provision has been deleted which concerned the convocation by presidents of courts of conferences of judges devoted to appraisal "of the state of observance of law in the light of cases examined." Such conferences were a convenient forum on which the judges could be influenced as regards the way they decided in

cases under examination. Also deleted has been the provision which authorized the general assemblies and boards of judges to appraise the overall situation as regards a given court's judicial decisions and the activities of judges ; that provision also seriously jeopardized independence of the judiciary. Finally, the deleted provisions included also one which granted to agencies of administrative supervision the right "to examine decisions." Consequently, the courts jurisdiction proper has been completely excluded from the competences of agencies of administrative supervision ; it is now subject to review on the part of higher courts only. It should be added at last that presidents of courts have been deprived of the right to pronounce opinions on judges for the purposes of staff decisions.

The third of the discussed trends concerns the Supreme Court. The above-mentioned act of December 20, 1989 amended the Act of September 20, 1984 on the Supreme Court *(Journal of Laws,* No. 45, item 241). First, that amendment followed a direction analogous to the changes introduced in the sphere of common courts, that is aimed at securing a genuine independence of that Court and a full independence of its judges. Also the Supreme Court's relationship to supreme State authorities was changed parallel to that of common courts (among those authorities, the Council of State having been replaced by President and the National Council of the Judiciary). Second, the way of appointment and range of competences of the Supreme Court were fundamentally changed. As regards the former issue, the full composition of the Supreme Court, appointed for a period of five years before, is now elected with no term as is the case with judges of common courts. From the range of competences of the Supreme Court everything has been excluded which went beyond administration of justice interpreted as decision-making in definite cases. The Supreme Court has been deprived of the right to pass the so-called guiding principles for the judiciary, that is general instructions with no reference to any concrete case, formally binding for all courts ;[4] moreover, a provision has been cancelled by virtue of which the so-called legal principle resolved by the Supreme Court in a given case bound all benches of that Court.

Similar changes have also been introduced in the system of the Chief

[4] For more details, see S. Włodyka, *Wiążąca wykładnia sądowa [Binding Judicial Interpretation]*, Warsaw 1971, pp. 101*ff*, and S. Włodyka, "Specjalne środki nadzoru judykacyjnego Sądu Najwyższego" [Special Measures of Judicial Supervision of the Supreme Court], in: L. Garlicki, Z. Resich, M. Rybicki, S. Włodyka, *Sąd Najwyższy w PRL [The Supreme Court in Polish People's Republic]*, Warsaw 1983, pp. 208*ff*.

Administrative Court and military courts (the reform of the act on notaries public will not be discussed here as notaries public are not agencies of administration of justice).

The third stage of radical changes in the model of Polish administration of justice is related to the constitutional amendment made in the Act of December 29, 1989 on amending the Constitution of Polish People's Republic *(Journal of Laws,* No. 75, item 444). The act abolished subordination of the Prosecutor's Office to the President (formerly—to the Council of State) and included that office in the department of justice, subordinating it directly to the Minister of Justice. This way the Prosecutor's Office lost its nature, most typical of the socialist system, of a law enforcement agency which was supreme on the national scale and situated practically beyond any supervision whatever. At the same time, those provisions of the Constitution have been repealed which granted to the Office specific competences with a political and class tinge, modelled after the Soviet legislation. Naturally, those new constitutional provisions will have to be appropriately transposed to ordinary legislation.

3. ECONOMIC COURTS

What was a characteristic element of administration of justice in the model of centrally controlled socialist planned economy was the existence of the so-called State Economic Arbitration—an agency competent to settle disputes concerning property in the socialized sector, that is in relations between units of socialized economy.[5] That model treated the whole of socialized economy as a specific whole centrally controlled by the State and having its own legal regime, that is own and separate regulation of legal relations between units of socialized economy, as well as its own and separate agency to settle disputes in those relations, that is the State arbitration. At the same time, the arbitration played a double role : on the one hand, it was an agency to settle disputes, and on the other hand—one that jointly administered the socialized economy in its specific way.[6] This led to extreme conclusions as to the nature and function of State arbitration in the centralized variant of the controlled economy model : there,

[5] For more details, see S. Włodyka, *Arbitraż gospodarczy [Economic Arbitration]*, Warsaw 1985.

[6] For more details, see S. Włodyka, "Państwowy arbitraż gospodarczy w systemie zarządzania gospodarką socjalistyczną" [State Economic Arbitration in the System of Management of Socialist Economy], in : *Państwowy Arbitraż Gospodarczy w okresie XXX-lecia PRL [The State Economic Arbitration in the Thirty Years of Polish People's Republic]*, Warsaw 1975.

arbitration was considered to be an ancillary agency of State economic administration and had extensive competences as regards repression as well. In the discussed model's decentralized variant, that agency's nature and functions approached those of a court ; consequently, it became a quasi-judicial agency and lost its repressive powers.

In both its forms, that agency's peculiar feature was that neither the arbitration as a whole nor the persons who made decisions within it enjoyed the privilege of independence and the related guaranties.

The evolution of the socialist economic system towards the model of socialist market economy made a further existence of State arbitration pointless, and that mainly for two reasons : first, that the latter model's characteristic principle of equality of economic sectors removed the need for a separate legal regulation and deciding agency for the socialized economy ; second, that the principle of full independence and rights of the units of that economy required that the legal protection of their interests should be turned over to independent courts. It is therefore only natural that the transition to the model of socialist market economy resulted in liquidation of State arbitration in all of the socialist countries (that was the case in Yugoslavia in 1952 and in Hungary in 1972). It is just as natural that also the Polish reform of 1981 which tended in a similar direction also declared the abolition of that agency.[7] Yet despite that declaration, the State economic arbitration was to function in Poland till as late as 1989. This was caused partly by personal reasons ; to some extent, however, it expressed the conviction that as long as. there still were spheres not included in the operation of principles of market economy, the arbitration should have continued.[8] It was only the above-mentioned Act of May 24, 1989 on examination of economic cases by courts *(Journal of Laws,* No. 33, item 175) that fulfilled the postulate of liquidation of the State economic arbitration.[9]

The Act of May 25, 1985 liquidated the State Economic Arbitration and transferred the disputes that had previously failed under its competences (in principle, property disputes between units of socialized economy) to

---

[7] On the related projects, see S. Włodyka, "Sądownictwo gospodarcze (uwarunkowania i założenia)" [Economic Courts : Conditions and Assumptions], *Państwo i Prawo,* 1987, No. 5, pp. 21*ff*.

[8] Thus A. Klein, A. Rosienkiewicz, "Problem rozstrzygania sporów między jednostkami gospodarki uspołecznionej" [The Settling of Disputes between Units of Socialized Economy], *Przegląd Ustawodawstwa Gospodarczego,* 1983, No. 2, pp. 37*ff*.

[9] For more details, see S. Włodyka, "Ustawa o rozpoznawaniu przez sądy spraw gospodarczych" [The Act on Examination by Courts of Economic Cases], *Państwo i Prawo,* 1990, No. 3, pp. 14—28*ff*.

common courts. At the same time, however, it established separate organizational units within those courts, calling them economic courts, and excluded for their competence a special category of civil cases, the so-called economic cases. This expressed the legislator's conviction that economic cases have certain features in common which sufficiently distinguish them from among the bulk of civil cases. Namely, the economic disputes :

1) are related to economic activity pursued professionally, that is on a permanent basis and for profit, which is governed by its specific laws (e.g. planning) and by the strict rules of profitability and gain, the principle of quick returns, that of professional competence, protection of professional and trade secrets, etc. ;

2) are usually most entangled, both as regards the facts (accountancy and legal technicalities in particular) and the legal aspect ;

3) usually emerge in relations of regular co-operation which the parties generally wish to continue in spite of the dispute, treating that dispute as a temporary obstacle only ;

4) emerge in legal relations which should be fully subordinated to the principle of autonomous will of the parties ;

5) they are disputes where the parties wish not exactly a settlement fully consistent with the formal letter of law, but rather an economic decision which would be most reasonable and make continued co-operation easier.

The act provides for a twofold definition of the economic case. On the one hand, the general clause contains its statutory definition. According to that definition, cases are economic which : 1) result from relations under civil law ; 2) involve subjects engaged in professional economic activity ; 3) concern that activity only. The above formulations are insufficiently definite and as such may arouse doubts ; this concerns point 2 in particular from which it follows at any rate that we deal here with bilateral economic disputes only where both parties are subjects involved in professional economic activity, not necessary statutory in nature. Moreover, provisions of the Act extend the competences of economic courts to include additional cases generally specified in Art. 2 section 2 and in Art. 479^1 para 2 of the C. C. P. They are : 1) cases resulting from partnership ; 2) cases against economic subjects, concerning desistance from pollution and restoration of the former state of the environment or redress of the resulting damage, and prohibition or limitation of activities that endanger the environment ; 3) cases that fall under the competence of courts on the grounds of provisions on prevention of monopolistic practices in economy, provisions of the law on bankruptcy proceedings and composi-

tion agreement proceedings, etc. Besides, additional categories of disputes may be transferred to economic courts by force of a statute ; thus e.g. the recent amendment of the banking law[10] transferred to those courts some of the disputes between banks and President of the National Polish Bank resulting from the latter's supervision over banks, also in the case of banks with foreign capital share. A civil case which is not economic in nature falls under the competence of a "civil court" and is examined according to "normal" civil procedure.

The economic court is a court in the full sense, which functions within the system of common courts in practically all provincial courts and those of the district courts whose seat finds itself in the capital of a province. The competences of those courts include : 1) examination of economic cases ; 2) keeping registers of the activities of enterprizes ; 3) supervision of conciliatory courts in economic cases (examination of complaints against their decisions, etc.). The economic courts are also competent to carry out proceedings to secure claims in economic cases ; instead, the executive proceedings are always carried out by "civil" courts, that is also in the case of execution of decisions of economic courts. In principle, the function of the court of 1st instance is performed by a provincial court, and by a district court in exceptional cases only. The economic court generally decides with participation of lay judges who fall under the general provisions concerning lay judges in common courts. Qualifications of members of the bench are of essential importance. According to the provisions now in force, the judges and lay judges appointed to decide in economic cases should be particularly familiar with economic problems. Their appointment is based on the principle of specialization according to which they are to decide generally in economic cases only.

Passing to the mode of examination of economic cases, the fact should be mentioned to begin with that the Act of May 25, 1989 abolished, as if by the way, the former limitations contained in Art. 697 para 2 and 3 of the C. C. P. which concerned the admissibility of a written arbitration agreement of the so-called units of socialized economy (State enterprizes, cooperatives, etc). Thus today, also those units may bring their cases before conciliatory courts according to the general principles, that is "to the extent of their ability to commit themselves independently" (Art. 697 para 1 of the C. C. P.). This concerns also disputes with foreign subjects, as well as written arbitration agreements of subjects seated abroad.

As far as the examination of cases by economic courts is concerned, the now valid provisions specify three possible modes of procedure, that

[10] The Act of December 28, 1989 on amending the banking law and the act on the National Polish Bank *(Journal* of *Laws*, No. 74, item 74).

is : separate litigious proceedings in economic cases ; separate non-litigious proceedings in economic cases in the State-owned sector (disputes between agencies of a State enterprize, etc.) ; and proceedings based on the principles of general proceedings. The Act of May 25, 1989 introduced the first of the above forms and regulated it in detail from, the viewpoint of the above-mentioned specific features of economic cases and with the aim to secure : 1) full guaranties of a proper and impartial settlement of the dispute ; 2) deciding basing on law and nothing but law ; 3) the best possible protection of subjective rights of the parties to proceedings ;
4) protection of certain fundamental and superior economic values, that is independence of economic subjects, protection against abuses of the monopolistic position, protection of the natural environment and a proper quality of products and services ; 5) full equality of parties in proceedings (among others, the principle of equality of economic sectors) ; 6) full implementation of the principle of accusatorial procedure, free exercise by the parties of their rights, and adversary system in court proceedings ; 7) the highest possible promptness and the lowest possible cost of proceedings ; 8) the principle of priority of conciliatory (amicable) settlement of the dispute by the parties themselves ; 9) the principle of provoking no hostility between the parties and of facilitating their future undisturbed cooperation. The provisions that regulate the separate litigious proceedings in economic cases have been shaped accordingly.

The limits between the above-mentioned three types of proceedings in economic cases have been drawn in a way as to make the separate litigious "proceedings in economic cases" (Arts. 479^{1}—479^{27} of the C. C. P.) a rule, and the remaining two types—an exception. The proceedings based on "general principles" concerns those cases examined by the economic court which have not been enumerated as cases transferred by provisions to be examined in the remaining two types of proceedings.

It should be mentioned to conclude that the discussed reform of the way of examination of economic cases is also of considerable importance for foreign subjects, the foreign investors in particular, as economic disputes (as defined above) with their participation in principle fall under the competences of economic courts in the light of the legislation now in force in Poland. This way, the valid legal regulation secures to such subjects a better protection of their rights as compared to what was previously possible before the civil court and in civil proceedings based on the principles characteristic of the socialist system of administration of justice.

4. AT THE TRESHOLD OF FURTHER CHANGES

The 1989 reforms of the Polish administration of justice are a radical turning point on the road towards the model characteristic of Western democracies ; they are, however, just the first step in that direction.

The regulations that now find themselves in the final stage of the legislative process include a new act on Prosecutor's Office of the Republic of Poland which implements the above-mentioned constitutional changes of the end of 1989, as well as a radical amendment of the Code of Civil Procedure which removes from that code the institutions typical of the Soviet model (the privilege of units of socialized economy, special powers of the court, etc).

Also advanced are the works on an entirely new law on the system of courts and on judicial procedures which assumes a reversion to the traditional Polish court system of three instances, etc.

Advanced works on material civil and penal law should also be mentioned here ; a draft act on amending the civil code which implements the first stage of Polish civil law reform is now in the final stage of the legislative process.

Only after all these plans are fulfilled—which should take place in about two years—it will be possible to speak of a full democratization of the Polish administration of justice in the sense of its adjustment to Western democracies.

DROIT POLONAIS CONTEMPORAIN
POLISH CONTEMPORARY LAW
1990 n° 2 (86)
PL ISSN 0070-7325

*NOTES CRITIQUES * CRITICAL NOTES*

Maria Matey, *Labour Law and Industrial Relations in Poland,* Deventer - Boston 1988, Kluwer, 180 pages.

Le livre de Mme M. Matey a été publié dans une série encyclopédique de grande renommée, consacrée au droit du travail et aux relations industrielles, sous la direction de R. Blanpain de l'Université Catholique de Louvain. Le travail a été organisé selon un schéma imposé par le directeur de la série.

L'auteur, bien que limitée par le scénario imposé, a réussi à présenter les caractéristiques essentielles de toutes les institutions fondamentales du droit du travail polonais. Son ouvrage est une synthèse réussie du droit du travail polonais de l'époque d'entre-deux-guerres (1918 - 1939) et des années 1945 - 1988.

Les réflexions sur le droit du travail sont accompagnées de concises informations sur le système juridique en Pologne. L'auteur présente d'une façon très habile les informations sur les dispositions du droit du travail polonais et sa relation avec la situation économique et sociale de la Pologne dans la période précédant les accords politiques du premier trimestre 1989 qui ont ouvert la voie au processus des réformes politiques, économiques et juridiques. En ce qui concerne le droit du travail, ces réformes se sont surtout manifestées dans la restitution des droits des travailleurs licenciés pour motif d'activité syndicale et politique, considérées comme illégales à cette époque[1]. La nouvelle philosophie de l'économie polonaise, basée sur le marché libre, s'est exprimée, vers la fin de 1989, dans deux lois : sur les licenciements collectifs et sur l'emploi et les allocations de chômage[2]. L'auteur du livre n'a pu, évidemment, prévoir ces changements révolutionnaires du système politique, économique et juridique en Pologne. Il faut souligner néanmoins que son ouvrage permet de comprendre, en dépit des transformations souvent très profondes, les principes selon lesquels se forment en Pologne les rapports de travail ; il rend possible à un lecteur étranger la compréhension des normes du droit du travail polonais grâce auxquelles l'État, les organisations syndicales et les employeurs essaient de construire les relations industrielles.

L'ouvrage se divise en une large introduction, qui initie le lecteur aux problèmes de sources du droit du travail, et deux parties. Dans la première partie, l'auteur caractérise d'une façon très compétente toutes les institutions de rapport de travail (du droit du travail individuel). Dans la deuxième partie sont présentées les

[1] Cf. A. Świątkowski, *Right to Work Law : An Important Factor of Trade Union's Freedom as a Result of Political Round Table Negotiations in Poland,* ed. by K. - P. Tiitinen, Helsinki 1989, pp. 85 et suiv.

[2] Cf. A. Świątkowski, *Labour Laws Affecting Joint Ventures. Is Polish Labour Law An Employer or Still An Employee Oriented,* in : *Eastern-Bloc Joint Ventures,* ed. by D. Winter, London 1990.

institutions du droit du travail collectif : les dispositions de la loi relative aux organisations syndicales et à l'autogestion dans les entreprises d'État.

A mon avis, ce panorama du droit du travail polonais aurait été plus complet si l'auteur s'était décidée à consacrer plus de temps aux rapports de service et aux rapports de travail réalisés à la base de rapport coopératif de travail, ainsi qu'aux réflexions plus développées sur les dispositions relatives à la procédure dans les affaires du droit du travail et sur les décisions de la Cour Suprême dans le domaine du droit du travail.

Je me rends compte que l'auteur a été limitée par les éditeurs et je l'admire pour avoir réussi à présenter sur 180 pages, d'une façon très concise, l'essentiel du droit du travail, individuel et collectif, et des relations industrielles étant en vigueur en Pologne jusqu'à 1988.

Il est dommage que l'auteur ne se soit pas référée dans les notes aux ouvrages consacrés au droit du travail polonais, publiés en langues étrangères par les juristes polonais et étrangers[3]. Cette référence aux travaux accessibles à des lecteurs étrangers leur aurait permis de mieux connaître certaines institutions du droit du travail polonais.

Andrzej Świątkowski

[3] En 1989, la Chaire du Droit du Travail de l'Université Jagellonne de Cracovie a commencé à publier « Yearbook of Polish Labour Law and Social Policy », vol. I, 1989, p. 212.

DROIT POLONAIS CONTEMPORAIN
POLISH CONTEMPORARY LAW
1990 n° 2 (86)
PL ISSN 0070-7325

L'OCTOGÊN AIRE DU PROFESSEUR JERZY JODŁOWSKI

Le 8 mai 1990, à l'Institut de l'État et du Droit de l'Académie Polonaise des Sciences, le Conseil scientifique de l'Institut a tenu une séance solennelle à l'occasion de l'octogénaire du Professeur Jerzy Jodłowski, rédacteur en chef pendant de longues années du « Droit Polonais Contemporain ».

Parmi les nombreux représentants de la science et de la pratique assistant à cette séance se trouvaient Mme le prof. E. Łętowska, Défenseur des Droits civiques, le prof. T. Ereciński, doyen adjoint de la Faculté de Droit et d'Administration à l'Université de Varsovie, le prof. A. Łopatka, I[er] président de la Cour Suprême.

La séance a été ouverte par le prof. L. Kubicki, président du Conseil scientifique de l'Institut, qui a souhaité en des termes chaleureux la bienvenue au prof. Jodłowski. En évoquant les liens unissant celui-ci à l'Institut, l'orateur a rappelé que pendant de longues années le prof. J. Jodłowski avait été président du Conseil scientifique et avait activement participé aux travaux du Comité de Rédaction du mensuel l'« État et Droit » dès sa fondation. Il avait en même temps été rédacteur scientifique de la revue trimestrielle le « Droit Polonais Contemporain ».

Mme le prof. E. Łętowska a parlé des réalisations scientifiques du prof. J. Jodłowski. Elle a dit entre autres le plaisir qu'elle avait éprouvé de participer à la préparation des *Mélanges* en l'honneur de cet éminent juriste, spécialiste du droit processuel, organisateur de nombreuses recherches scientifiques tant en Pologne qu'à l'étranger. Par son immense savoir et un intense travail il a grandement contribué au développement de la science du droit. Son autorité scientifique en Pologne et à l'étranger est bien établie, aussi l'initiative de *Mélanges* en son honneur avait-elle rencontré un vaste et amical accueil dans toute la Pologne et dans de nombreux pays étrangers. Quarante et un éminents juristes y ont apporté leur contribution, dont M. Ancel et H. Batiffol.

Que le prof. J. Jodłowski se soit consacré avant tout aux problèmes du droit civil processuel, c'est là un témoignage de sa sagesse, car c'est précisément la procédure qui donne les garanties de la réalisation des droits offerts par le droit matériel. Sans procédure, le meilleur droit matériel ne serait qu'un recueil de droits et obligations.

Le prof. T. Ereciński a souligné les liens qui pendant longtemps avaient lié le prof. J. Jodłowski à l'Université de Varsovie, en particulier à la Faculté de Droit et d'Administration dont il avait été doyen pendant plusieurs années et où il avait dirigé la Chaire de Procédure civile. Les nombreuses matières qui intéressent le professeur, c'est l'un de ses traits caractéristiques à côté de son ardeur au travail et le don qu'il possède de communiquer son immense savoir aux étudiants et jeunes chercheurs.

Małgorzata Bednarek

DROIT POLONAIS CONTEMPORAIN
POLISH CONTEMPORARY LAW
1990 n° 2 (86)
PL ISSN 0070-7325

THE ROLE OF LAW IN THE POLITICAL SYSTEM POLISH-NORWEGIAN LEGAL CONFERENCE

(INSTITUTE OF LAW STUDIES, POLISH ACADEMY OF SCIENCES, WARSAW, JUNE 4, 1990)

On the occasion of a visit to Poland of a group of outstanding Norwegian lawyers who accompanied the official delegation of the Government of Norway, a scientific conference on the role of law in the political system was organized on June 4, 1990, at the Institute of Law Studies, Polish Academy of Sciences in Warsaw.

The ceremonious opening was attended, among others, by head of the delegation of the Government of Kingdom of Norway, Secretary of State at the Prime Minister's Office K. Eide and Ambassador P. Svennevig from Norway, and by President of the Polish Academy of Sciences Prof. A. Gieysztor, 1st President of the Supreme Court Prof. A. Łopatka, the Ombudsman Prof. E. Łętowska, and Under-secretary of State at the Bureau of the Cabinet J. Ciemniewski, LL.D. from Poland.

Beside the Norwegian guests, the meeting was attended by about 30 Polish lawyers, scientists as well as practicians, who represented Jagellonian University, Silesian University, Warsaw University, Wrocław University, and Institute of Law Studies, Polish Academy of Sciences, as well as Bureau of the Cabinet, Constitutional Tribunal, and Ministry of Foreign Affairs.

Opening the proceedings, head of the Institute of Law Studies of the Polish Academy of Sciences, Prof. J. Łętowski expressed his hope that the conference would promote the Norwegian guests' better understanding of the directions, mechanisms and political background of the structural transformations in Poland, thus contributing to the development of closer cooperation between the two countries. He also pointed to the importance of exchange of experiences and ideas with representatives of theory and practice from a country with an established democratic system for improvement of constitutional solutions in Poland which now builds its new political system.

In his introduction to discussion, the Secretary of State K. Eide expressed his conviction that the process of political revival of Central and Eastern Europe is a valuable inspiration for Western countries which should continuously seek more and more effective guaranties of democracy, freedom and human rights both on the national level and on that of European organizations and institutions. Recognizing separation of powers as the paramount guaranty against absolutization of State authority, K. Eide quoted the examples of struggles for realization of that principle in Norwegian constitutional history (in the 19th century, competences were divided between the King and Parliament ; today, they are divided between the Parliament and Government, the central and local administration). The mechanisms that secure balance between State agencies and between parties and other social forces participating in public life should be supplemented with purposeful activities of the State for the development of an active civic society. Referring to a Polish-

Norwegian seminar on trade and market economy, scheduled for the second day of the visit, K. Eide stressed the causality between political freedom and free market economy, introduced parallel in Poland.

The first subject discussed at the conference was the structure and functioning of the supreme State authorities. Vice President of the Norwegian Academy of Sciences and Literature Prof. C. Smith from the University of Oslo characterized the main principles on which the Norwegian Constitution is based : sovereignty of the nation, separation of powers, and respect to human rights. The Norwegian Constitution, passed in 1814, is often inadequate in practice to the requirements of governing a modern State. In many doubtful questions, the customary solution was adopted as valid. The post-war history of Norway includes a period (1945—1961) of indivisible rule of the Labour Party which was characterized by stability and debarment from power of the Opposition, followed (after 1961) by minority and coalition cabinets whose survival depended on forced cooperation and concessions to the Opposition which impaired the Government's position in the political system. C. Smith also spoke of the specific institutions of Norwegian political system : a lack of a constitutional disposition concerning dissolution of the Parliament ; the consultative referendum which is also not provided for by the Constitution but actually applied by the Parliament ; and judicial review of constitutionality of law, unprecedented in Europe at the moment of its establishment.

The paper delivered by head of the Legal Office at the Bureau of the Cabinet M. Graniecki was devoted to the position in the political system and organization of work of the Government of Republic of Poland. The author discussed the present system of functional connections of the Government with the two parliamentary chambers, the President, and local administration. He stated that according to the present state of law, the position of the Cabinet against the background of other supreme State authorities has grown similar to that taken by the Government in the Parliament-cum-Cabinet system. The Seym exerts a most intense supervision and influence on the Government. A novelty in Poland is the genuine character of the Government's political responsibility, as well as the deputies' most active approach to Government bills. Recapitulating, the author pointed to the transitory nature of the now valid solutions in the face of the forthcoming passing of a new Constitution.

Comparison of the systems of protection of civic rights was opened by the Parliamentary Ombudsman A. Fliflet who delivered a paper on supervision over State administration in Norway. The Norwegian Constitution regulated supervision over State administration but fragmentarily which is due to parliamentary responsibility of the Government and to the State-citizen relation designed to secure inviolability of rights and liberties to the latter. Important provisions concerning the citizen's legal status in proceedings before administrative agencies are contained in the Act on public administration. The institution of Storting Ombudsman for public administration provides for a supervisory procedure which is largely speeded-up and simplified compared to the judicial one. The Ombudsman who is elected by the Parliament ascertains an infringement of law by the administration to the detriment of a citizen basing on a complaint received, and addresses his remarks at the agency concerned (possibly also at a superior one or at the public prosecutor). Though not legally binding, the Ombudsman's comments are universally respected. The informal nature of complaint lodged with the Ombudsman is of particular importance for its popularity and hence also effectiveness.

Selected problems of protection of human rights in Poland were discussed by L. Kański, LL.D., from the Institute of Law Studies, Polish Academy of Sciences.

He described the still valid constitutional catalogue of civic rights and duties of 1952, and defined the institutions of Chief Administrative Court, Constitutional Tribunal, and the Ombudsman, established in the 1980s, as the framework of a system of civic rights protection. L. Kański discussed the works on the formulation of the problems of human and civic rights, liberties and duties in the new Constitution of Republic of Poland. Of basic importance here is the relation of the citizen's status—that is, of his rights and duties—to the conception of the State's political system, and settlement of the question of extent and the way of performance by the State of the protective and organizing function. L. Kański mentioned the predominant ideas of the new constitutional regulation, among them the treatment of the citizen first as a human being and only then as member of a social group ; protection of minority rights against domination of the majority ; renouncement of "mechanical" egalitarianism ; consistence of the constitutional regulation of rights and liberties with international norms.

Chairman of the Norwegian Human Rights Committee, attorney T. Böhler delivered a paper on the role of the Bar in a lawful State *(Rechtsstaat).* He expressed the conviction that in such a State, which fulfils the principle of separation of powers, special role falls to independent judges whose activity would be most difficult without participation of the Bar : "active and brave counsels for the defence who are independent of State administration." Norwegian Association of the Bar is solicitous for its members' professional and moral standards ; it represents the interests of the profession in contacts with the outside world ; it carries out training ; and passes its opinions about the valid and drafted law. Further in his paper, T. Böhler described cases of infringement of respect to human rights found in Norway, among them inequal access to legal protection due to its high costs ; hindered vindication of rights in the sphere of social insurance ; most strict immigration provisions ; the use of penal sanctions by administrative agencies.

During the discussion, M. Wyrzykowski, LL.D. (Warsaw University) discussed the importance of the constitutional amendment of December 1989 which had introduced the definition of Republic of Poland as "democratic lawful State." Prof. M. Grzybowski (Jagellonian University) pointed to the process of standardization of political system in the Scandinavian countries. Pronouncements of J. Pruszyński, LL.D. (Institute of Law Studies, Polish Academy of Sciences) and Prof. F. Kjellberg contained the statement that while the Norwegian political system is generally legitimized by the nation, the successive Governments enjoy a changing support. Prof. W. Sokolewicz (Institute of Law Studies, Polish Academy of Sciences) and Prof. C. Smith defined the admissibility and limits of delegation of the legislative powers to executive agencies as a political problem which lacks a legal solution. L. Kański discussed the views of the Polish doctrine on validity of international legal norms in the Polish legal order, and the practice of human rights protection which is still far from creating a consistent and efficient system.

The next block of problems under the title "Political Parties and Pressure Groups" opened Prof. H. Valen's discussion of the Norwegian political system. In Norway, competitive party system is a constitutional principle. In the past, what was considered to be a full realization of that principle was the proportional electoral system which admitted even small parties to seats in the Storting. This led to political break up and instability of Governments. Today, six parties are represented in the Parliament. The post-war changes in Norway's social structure—considerable growth in the size of the middle class—resulted in changes in the sphere of forms and ways of social influence. Political parties lost much of society's trust ; what

increased instead was the political influence of the media, television in particular. This fact imposes new requirements on the "political class" and thus shapes it indirectly.

St. Gebethner, LL.D. (Warsaw University) delivered a paper on the formation of the party system in Poland. Having discussed the stages of disintegration of the former party system, he stated that today's Poland is a special case of a State where the system of government functions without a definite party system. Discussing the changes that took place in the Seym's political spectre, St. Gebethner pointed to changes in alliances on the Left and between peasant parties, and also to political differentiation of the Civic Parliamentary Club. What should be the test of popularity of parties, among them also of many newly created ones that are still extraparliamentary, and thus the decisive element of formation of the party system, are fully free parliamentary elections. The local elections of May 1990, largely dominated by Civic Committees, failed to play that role, demonstrating instead the weakness of new parties. St. Gebethner expressed the opinion that transformations of the Polish political system, as of those in other post-Communist countries, are affected by the crisis of the institution of articulation of interests.

The discussion of the Norwegian political system was supplemented with pronouncement of G. Hernes from the Trade Unions Research Institute which concerned pressure groups. Beside the media, such groups complement the constitutionally defined scheme of the nation's exercise of power through its parliamentary representatives. Organized pressure groups, numerous in Norway, participate in State decisions through consultations and experts' opinions prepared for the Government, local authorities, and parliamentary commissions, to mention just one form of such participation. What provides an important foundation for this activity is the principle, formulated in the statutes of State administration, that the opinion of those concerned should be heard before a legal act is passed or amended. G. Hernes pointed to the advantages of a "double-track" political system where the citizens influence the political processes not only as voters but also as members of interest groups : the fact that opinions of the groups concerned are taken into account legitimizes the agencies that actually make the decision, and the steps and efforts (analyses, statistical studies, etc.) made by organizations in the process of preparation of that decision are a functional alternative to the solution where the State administrative machine is charged with such tasks,.

During the discussion that followed, H. Valen and G. Hernes provided additional information concerning the relations between parties and pressure groups. They stressed those groups' particular activity at the local level, and also pointed to political parties' inclination to win over the active leaders of pressure groups (e.g, of trade unions).

The subject to close the meeting was reform of the local government system in the two countries. Prof. F. Kjellberg from the University of Oslo discussed the evolution of that system in Norway in the 1960s—1980s, and stressed the profoundness of the recent reform which introduced a new division of functions between the central and the local level, aiming at flexibility, decentralization, integration as well as pluralism and democracy in communes. He pointed to the general values that are realized through the citizens' participation in government on the local level, such as freedom, participation, legitimation, effectiveness. Situated closer to the citizen, the local government directly fulfils the principle of democracy, participates in defence of that citizen's rights, renders political education possible and teaches local solidarity.

Discussing the Polish local government reform, M. Kulesza, LL.D. (Warsaw University) stated that the Act on local government is but the first stage of that reform : what is necessary for effective functioning of communes are new detailed provisions, and particularly arrangement and updating of the former regulation. What the speaker found to be the most important new elements of the system of local authorities is the fact that it has been based on the basal units ; abolition of political subordination and supervision ; and financial independence of the central administration. M. Kulesza discussed the arguments for and against the communes' economic activity that had been put forward during the parliamentary debate on the relevant bill. What speaks for such activity among others is the strategy of ownership transformations in Poland. Speaking of the prospects of functioning of local government agencies, M. Kulesza stressed the need to change society's approach to them.

With the aim to make the Norwegian guests understand the essence of the Polish self-government reform, a description of the Polish local administration in the past years was provided, the speakers defining it as based on Soviet models (M. Kulesza), centralized in order to facilitate industrialization (St. Gebethner), engaged in distribution of scarce goods and thus enjoying serious authority on the local scale which was often arbitrarily exercised (J. Pruszyński). Also discussed was the financing of local agencies in the two countries, that is problems such as relation of finances to the communes' tasks (T. Böhler, A. Fliflet, M. Kulesza) and transmission of the State's function of redistribution to the local level (F. Kjellberg, Prof. S. Zawadzki from the Warsaw University).

Closing the proceedings, head of the Institute of Law Studies J. Łętowski and Prof. C. Smith unanimously expressed their conviction that the lively discussion between the Polish and Norwegian lawyers, a proof of usefulness of the meeting, should be continued in the form of institutionalized scientific cooperation.

Ewa Popławska

DROIT POLONAIS CONTEMPORAIN
POLISH CONTEMPORARY LAW
1990 n° 2 (86)
PL ISSN 0070-7325

THE LABOUR CODE
LAW of 26 JUNE 1974
as amended in 1975, 1981, 1982, 1985, 1986, 1987, 1988, 1989 and 1990
(excerpts)

Part II. Individual Employment Relationship

CHAPTER 1

General Provisions

Article 22

1. On becoming a party to an individual employment relationship a worker shall commit himself to carry out work of a specific kind for the establishment, and the establishment shall commit itself to employ the worker for remuneration.

2. A worker may be any person who has reached the age of 18 years. Subject to the conditions specified in Part IX, a person who has not yet reached the age of 18 years may also be a worker.

3. A person who is limited in his capacity to effect legal transactions may become a party to an individual employment relationship and effect any legal transactions connected with that relationship without the approval of his legal representative. However, if the employment relationship is not consistent with that person's welfare, his legal representative may terminate the relationship after obtaining the permission of the court of wards.

Article 23

1. Legal transactions connected with an individual employment relationship shall be effected on behalf of an establishment by the head of the establishment or some other worker empowered for the purpose.

2. Where reference is made in this code to the head of an establishment, it shall be construed as including any other worker empowered to act on behalf of the establishment in any particular respect.

Article 23^1 (added 7 April 1989)

1. In the case of amalgamation of workplaces, the establishment originating as a result of that amalgamation shall become party to employment relationships to which the amalgamated workplaces were parties.

2. In the case of taking over of a workplace wholly or in part by another work-place, that latter workplace shall become party to employment relationships with the employees of the workplace that has been taken over.

3. In the case of partition of a workplace, the workplaces that result from that partition shall become parties to employment relationships with employees taken over from that workplace.

4. In the case of amalgamation of workplaces or of taking over of a whole workplace, the new workplace shall be responsible for the obligations resulting from employment relationships that originated before the organizational changes mentioned in § 1—3 ; in the case of partition of a workplace or taking over of its part, a joint and several responsibility for such obligations shall lay on the workplaces formed as a result of partition or participating in the interception.

Article 24

1. In cases where provisions of the Code or other provisions of law provide for the manager's duty to co-operate with the factory union, the manager whose employees are members of an inter-factory union shall co-operate with a body specified in the statute of that union.

2. The provisions of § 1 shall be appropriately applied to heads of organizational units in establishments made up of more than one factory, w'here the units are workplaces under Art. 3, if a joint trade union has been set up in the establishment in question.

CHAPTER 2

Individual Contract of Employment
Division 1. Conclusion of Individual Contract of Employment

Article 25 (as amended 7 April 1989)

1. A contract of employment shall be concluded for a definite period or the period required to carry out a specified piece of work.

2. Any of the contracts referred to in 1. may be preceded by a contract concluded for a trial period.

Article 26

An employment relationship shall be established on the date specified in the contract as the date for the commencement of work, and if no such date is specified, on the date on which the contract is concluded.

Article 27

A trial period shall not exceed two weeks, or three months in the case of a worker holding a managerial or other independent post or a post involving material liability for property entrusted to him.

Article 28 (cancelled 7 April 1989)

Article 29

1. A contract of employment shall be concluded in writing, with an explicit indication of the type and terms of the contract, and shall more particularly specify :

(1) the nature of work and the date of its commencement ;

(2) the remuneration corresponding to the nature of work.

2. A contract of employment shall also contain the worker's obligation to observe order and labour discipline.

3. Where a contract of employment has not been concluded in writing, the establishment shall immediately provide the worker with written confirmation of the type and the terms of the contract.

Division 2. General Provisions as to the Termination of Individual Contracts of Employment

Article 30 (as amended 7 April 1989)

1. An individual contract of employment shall be terminated :

(1) by agreement between the parties ;

(2) by a declaration by either of the parties, regarding the period of notice (termination with notice) ;

(3) by a declaration of either of the parties, without regard for the period of notice (termination without notice) ;

(4) on the expiry of the period for which it was concluded ;

(5) on the date of the completion of the task for which it was concluded.

2. A contract of employment for a trial period shall be terminated on the expiry of that period, and may be terminated with notice before the expiry of that period.

3. Any declaration by either of the parties terminating a contract of employment either with or without notice shall be made in writing.

4. Any declaration by an establishment terminating a contract of employment either with or without notice shall include an indication of the legal remedies open to the worker.

Article 31 (as amended 7 April 1989)

The Council of Ministers, after agreement with the All-National Inter-Union Organization may by order lay down other rules for the termination of contracts of employment conducted for the work of a seasonal nature.

Division 3. Termination of Contracts of Employment with Notice

Article 32 (as amended 7 April 1989)

1. Either of the parties may terminate a contract of employment with notice if the contract has been concluded for :

(1) a trial period ;

(2) (cancelled) ;

(3) an indefinite period.

2. The termination of a contract of employment shall take effect on the expiry of the period of notice.

Article 33

Where a contract of employment has been concluded for a definite period of more than six months, the parties may provide for the possibility of its premature termination with two weeks' notice.

Article 34

1. The period of notice for a contract of employment concluded for a trial period not exceeding two weeks shall be three working days.

2. The period of notice for a contract of employment concluded for a trial period with a worker holding a managerial or other independent post involving material liability for property entrusted to him shall be two weeks.

Article 35 (cancelled 7 April 1989)

Article 36 (as amended 7 April 1989)

1. The period of notice for a contract of employment concluded for an indefinite period shall be :

(1) two weeks—if the worker has been employed for less than one year ;

(2) one month—if the worker has been employed for at least one year ;

(3) three months—if the worker has been employed for at least ten years.

2. The period of notice referred to in clause (1) of 1. shall end on a Saturday.

3. The period of notice referred to in clauses (2) and (3) of 1. shall end on the last of the month.

4. The period of employment mentioned in § 1. shall include periods of employment in the person's former workplaces irrespective of the way of cessation of employment.

5. If the employee's position involves pecuniary responsibility for entrusted property, the parties may agree in the contract of employment that in the case mentioned in clause (1) of 1. the period of notice shall be one month, and in the case mentioned in clause (2) of 1.—three months.

6. If a party has given notice to terminate the contract of employment, the parties may agree upon a nearer date of termination of contract ; such an agreement shall not result in a change of the procedure of dissolution of employment contract.

Article 36[1] (added 7 April 1989)

1. If an employee is given notice to terminate an employment contract for an indefinite period for reasons of reduction of staff or structural changes of the staff, or limitation of tasks or scope of activity of the workplace, or closing down of the organizational unit in which that employee has worked, the workplace may reduce the statutory three-month period of notice, but not to less than one month ; in that case, the employee is entitled to indemnity in the amount of the salary for the remaining part of the period of notice.

2. The period for which the employee is entitled to receive indemnity shall be included in that employee's employment period if he has not taken a new job in that period.

Article 37

1. During the period of notice a worker shall be entitled to time off with pay to look for work.

2. The amount of time off shall be :

(1) two working days during a period of notice not exceeding one month ;

(2) three working days during a three-month period of notice.

Article 38 (as amended 7 April 1989)

1. When the head of an establishment intends to give notice of termination of a contract of employment concluded for an indefinite period, he shall inform the works trade union organization in writing, with an indication of the reasons of dismissal.

2. Where the works trade union organization considers that the dismissal would be unjustified, it may, within five days of being informed, notify the head of the establishment in writing of its reservations, with an indication of the reasons.

3. If the reservations submitted by the factory union organization in due time have not been taken into account, the manager shall submit the case to a national union organization which shall express its opinion about the reservations of the factory union organization within five days after the case has been submitted to it.

4. The provision of § 3 shall apply if the factory union organization is member of the national union organization.

5. Having examined the attitude of the national union organization, and also in the case of that organization's failure to assume an attitude within the established time-limit, the manager shall decide about the termination of the employment contact with notice.

Article 39 (as amended 7 April 1989)

A workplace cannot terminate a contract of employment with notice of an employee who will reach retirement age in under two years, if that employee's period of employment would enable him to acquire the right to a pension on reaching that age.

Article 40 (as amended 7 April 1989)

1. Article 38 and 39 shall not apply in the event of the worker's acquiring a pension entitlement in respect of group I or group II disability.

2. Article 38 shall likewise not apply in the event of the worker's reaching pensionable age.

Article 41

An establishment shall not terminate a worker's contract of employment with notice while he is on leave or while he is absent from his work for any other justified reason, if the period entitling the establishment to terminate the contract without notice has not yet expired.

Article 41[1] (added 7 April 1989)

1. In case of declaration of bankruptcy or liquidation of a workplace, provisions of Arts. 38, 39, and 41 do not apply ; the same concerns special provisions relating to protection of employees against termination with notice or dissolution of employment contract.

2. In case of declaration of bankruptcy or liquidation of a workplace, a contract of employment for a definite period or for the period necessary to perform a definite work can be dissolved by any of the parties with a two-week notice.

3 ..... (cancelled in January 1990).

4 ..... (cancelled in January 1990).

Article 42

1. The provisions as to the termination of contracts of employment with notice shall apply respectively to notice of cancellation of contractual conditions of employment or remuneration.

2. Notice of cancellation of conditions of employment or remuneration shall be deemed to have been given if proposals for new conditions have been made in writing to the worker.

3. Where a worker refuses proposed conditions of employment or remuneration, his contract of employment shall be terminated on the expiry of the period of notice given. If, before half the period of notice has expired, he does not announce his refusal of the proposed conditions, he shall be deemed to have accepted them ; the letter from the establishment giving notice of the cancellation of the conditions of employment of remuneration shall contain an indication to that effect. In the absence of any such indication the worker may announce his refusal of the proposed conditions at any time before the expiry of the period of notice.

4. No notice of the cancellation of existing conditions of employment or remuneration shall be required in the event of the worker's being entrusted, in cases where the requirements of the establishment so warrant, with other work than that specified in his contract of employment for a period not exceeding three months in a calendar year, on condition that it does not involve any loss of pay and corresponds to the worker's skills.

Article 43 (as amended *7* April 1989)

1. An establishment may give notice of the cancellation of conditions of employment or remuneration to a worker covered by Article 39 if it has become necessary on account of :

(1) the introduction of new rules of remuneration affecting all the workers employed in the establishment or a particular group of workers or on account of the liquidation of the department in which the worker is employed ;

(2) his incapacity, as certified by a medical practitioner, to do his previous work or on account of his ceasing through no fault of his own to have the necessary entitlement to do it.

2. A worker covered by Article 39 may be given notice by the establishment of the cancellation of his conditions of employment or remuneration where it becomes necessary to entrust him with different work for reasons other than those mentioned in 1. Where this involves loss of pay, the worker shall be entitled to a compensatory allowance.

3. Provisions of 1. and 2. shall apply respectively where the termination of a contract of employment is subject to restrictions in virtue of special provisions.

Division 4. Workers' Rights in Case of Unjustified or Unlawful Dismissal with Notice by Works Establishment

Article 44

A worker may lodge an appeal against the termination with notice of his contract of employment to the labour court referred to in Part XII.

Article 45 (as amended 8 April 1989)

1. If a termination with notice of a contract of employment for an indefinite period is found to be unjustified or infringes the provisions concerning termination of employment contracts, the court, according to the employee's demand, shall decide about ineffectiveness of the notice, or if the contract has already been dissolved, about that employee's reinstatement in his job on the previous conditions or about indemnity.

2. The court may dismiss an employee's request to recognize the notice of termination ineffective or to reinstate that employee in his job if it finds a compliance with that request impossible or inexpedient due to a liquidation or bankruptcy of the workplace or to organizational or production changes that involve reduction of staff ; in that case, the court shall decree indemnity.

3. The provision of 2. shall not apply to employees mentioned in Arts. 39 and 177 and in special provisions concerning protection of employees against termination with notice or dissolution of the employment contact.

Article 46 .... (cancelled 7 April 1989)

Article 47

1. A worker resuming his employment after being reinstated shall be entitled to his remuneration for the time when he was not employed, subject to a maximum of two months' pay or, when there was a three-month period of notice, subject to a maximum of one month's pay. Where the worker whose contract of employment has been terminated is covered by Article 39 or is a woman worker pregnant or on maternity leave, the remuneration shall be payable for the entire period for which this person was not employed ; the foregoing shall also apply where the termination of the contract is subject to restrictions by virtue of special provisions.

2. The remuneration referred to in 1. shall be reduced by the amount of any remuneration that the worker earned by taking up employment in some other establishment during the period in question.

Article 47[1] (added 7 April 1989)

The indemnity mentioned in Art. 45 shall be due in the amount of the salary for a period from two weeks to three months ; that amount shall not be smaller, however, than the salary due for the period of notice.

Article 48

1. An establishment may refuse to re-employ a worker if he does not, within seven days of his reinstatement, announce his readiness to take up his work without delay, unless the foregoing time limit is exceeded for reasons beyond the worker's control.

2. A worker who, before being reinstated, has taken up employment in another establishment, may terminate his contract of employment with that establishment within seven days of his reinstatement, without giving notice of termination, but subject to three days' warning. The termination of a contract in this way shall have the same legal effects as the termination with notice of the contract by the establishment.

Article 49

Where the period of notice observed is shorter than the period required, the contract of employment shall terminate on the expiry of the latter period, and the

worker shall be entitled to his remuneration until the contract terminates. The provisions of 2. of Article 47 shall apply respectively.

Article 50 (as amended 7 April 1989)

1. Where a contract of employment concluded for a trial period is terminated with notice in violation of the provisions governing the termination of such contracts, the worker shall only be entitled to compensation. Such compensation shall be payable at the rate of his remuneration for the period for which the contract was intended to last.

2 (cancelled 7 April 1989).

3. Where a contract of employment concluded for a definite period or for the period necessary to perform a definite work is terminated with notice in violation of the provisions governing the termination of such contracts, the worker shall only be entitled to compensation.

4. The compensation referred to in 3. shall be payable at the rate of the worker's remuneration for the period for which the contract was intended to last, subject to a maximum of three-months' pay.

5. Provisions of 3. shall not apply where a woman worker's contract of employment is terminated with notice while she is pregnant or on maternity leave. In such cases Article 45 in conjunction with Article 177, shall apply.

Article 51

1. Where a worker has resumed his employment after being reinstated, his period of employment shall include any period for which he was not employed but for which he was granted his remuneration. Any period for which he was not employed but for which he was not granted his remuneration shall not be reckoned as any break in his employment involving the forfeiture of any rights for which an uninterrupted period of employment is required.

2. Where a worker is granted compensation, his period of employment shall include any period for which he was not employed, in so far as it corresponds to the period for which the compensation was granted.

Division 5. Termination of Contracts of Employment without Notice

Article 52 (as amended 7 April 1989)

1. An establishment is entitled to terminate a contract of employment without notice through the worker's fault if :

(1) the worker commits a serious violation of his basic duties as a worker and more particularly, if he disturbs the order and peace of the workplace, is absent from his work without a justified reason, reports to work in a state indicating the use of alcohol or consumes alcohol during working hours or at the workplace or commits abuses in connection with the receipt of social security allowances or other welfare benefits ;

(2) the worker commits an offence during the currency of his contract of employment that renders his further employment at his post impossible, if the offence is manifest or has been established by a judgement with force of law :

(3) the worker ceases through his own fault to have the necessary entitlement for the performance of work at his post.

2. A contract of employment shall not be terminated without notice through the worker's fault after one month has expired since the establishment became aware of the circumstances warranting such termination.

3. The head of an establishment shall take the decision to terminate a contract without notice after seeking the opinion of the works trade union organisation, which he shall inform of the reasons justifying such termination. When the works trade union organization has reservations as to the grounds justifying the termination of the contract, it shall express its opinion without delay and in any event within three days.

4. (cancelled by amendment of 24 July 1985).

Article 53

1. An establishment is entitled to terminate a contract of employment without notice :

(1) if the worker is incapacitated for work on account of sickness and such incapacity lasts —

a. longer than three months, in cases where the worker has been employed in the same establishment for less than six months ;

b. longer than the sickness-allowances period, in case where the worker has been employed in the same establishment for at least six months, or where the incapacity was caused by an accident at work or occupational disease ;

(2) if the worker is absent from his work for more than one month for a justified reason other than those covered by clause (1).

2. A contract of employment shall not be terminated without notice where a worker is absent on account of his caring for a child or being placed in isolation because of a contagious disease, for such time as he is in receipt of an allowance on that account ;

3. A contract of employment shall not be terminated without the notice after the worker has reported for work on the cessation of the reasons for his absence.

4. The provision of 3. of Article 52 shall apply respectively.

5. Wherever possible an establishment shall re-engage a worker who, within six months of the termination of his contract without notice for any of the reasons mentioned in 1. and 2., announces his return to the establishment immediately after the reason ceases to exist.

Article 54

The declaration by an establishment of the termination of a contract of employment without notice shall indicate the reason justifying such termination.

Article 55

1. A worker is entitled to terminate his contract of employment without notice if a public health service institution confirms that his work is harmful to his health and the establishment does not transfer him within the time limit indicated in the medical certificate to some other job appropriate to his state of health and vocational skills.

2. The declaration by a worker of the termination of his contract of employment without notice shall be made in writing, with an indication of the reason for such termination.

3. The termination of a contract of employment for the reasons indicated in 1. shall have the same legal effects as the termination with notice of a contract by an establishment.

Division 6. Workers' Rights in Case of the Unlawful Dismissal without Notice by the Establishment

Article 56

A worker whose contract of employment has been terminated without notice in violation of the provisions governing the termination of contracts in this way shall be entitled to claim either his reinstatement on the previous conditions or the payment of compensation. A decision on such reinstatement or compensation shall be taken by an appeals committee for labour cases.

Article 57

1. A worker resuming his employment after being reinstated shall be entitled to his remuneration for the time he was not employed, subject to a maximum of three month's pay and a minimum of one month's pay.

2. Where a worker whose contract of employment has been terminated is covered by Article 39 or is a woman worker who is pregnant or on maternity leave, the remuneration shall be payable for the entire period for which such person was not employed ; the foregoing shall also apply where the termination is subject to restrictions by virtue of special provisions.

3. The remuneration referred to in 1. and 2. shall be reduced by the amount of any remuneration that the worker earned by taking up employment in some other establishment during the period in question. Provided that the remuneration due shall not be less than one month's pay.

4. Article 48 and 1. of Article 51 shall apply respectively.

Article 58

The compensation referred to in Article 56 shall be payable at the rate of the worker's remuneration for the period of notice. Where the contract of employment that is terminated was concluded for a definite period or for the period required to carry out a specific task, the compensation shall be payable at the rate of his remuneration for the period for which the contract was intended to last, subject to a maximum of three months' pay.

Article 59

Where a contract of employment concluded for a definite period or for the period required to carry out a specific task is terminated by an establishment in violation of the provisions governing the termination of contracts without notice, the worker shall only be entitled to compensation, if the period for which the contract was intended to last has already expired or his reinstatement would be inappropriate in view of the short time remaining until the expiry of that period. Such compensation shall be payable at the rate specified in Article 58.

Article 60

Where an establishment has terminated a contract of employment during the period of notice in violation of the provisions governing the termination of contracts without notice, the worker shall only be entitled to compensation. Such compensation shall be payable at the rate of his remuneration for the time remaining until the expiry of the notice.

Article 61

The provisions of 2. of Article 51 shall apply, respectively, to a worker who is granted compensation by virtue of this Division.

Article 62

Where the termination of a contract of employment without notice was justified, but was in violation of the provisions relating to the written form of the declaration (3. of Article 30), the permissible time limit for termination on condition that the time limit was not exceeded to more than an insignificant extent (2. of Article 52), the required procedure (3. of Article 52 and 4. of Article 53) or the indication of the reason for the termination (Article 54), the committee may reject application for the worker's reinstatement or the payment of compensation if its acceptance would be contrary to the rules governing the life in the community.

Division 7. Extinction of Contracts of Employment

Article 63

A contract of employment shall be extinguished in cases specified in this code and in special provisions.

Article 64

1. A contract of employment shall be extinguished if a worker abandons his job.

2. The extinction of a contract as a result of the worker's abandonment of his job shall have the same legal effects as the termination by the establishment of a contract without notice through the worker's fault, unless special provision is made for the effects to be wider in scope.

Article 65

1. The worker shall be regarded as abandoning his job where he wilfully avoids performing his work. He shall likewise be regarded as abandoning it if he fails to report for work without informing the establishment within the appropriate time limit of the reason of his absence.

2. The date for the extinction of a worker's contract of employment shall be deemed the date on which the worker ceased to do his job.

3. An establishment shall allow a worker to resume his job if he was unable to justify his absence at the proper time but complied with his duty immediately after the impediment ceased to exist.

Article 66

1. A contract of employment shall be extinguished after the worker has been absent for three months on account of his provisional detention, unless the establishment terminates his contract earlier without notice through his fault.

2. Despite the fact that a contract of employment has been extinguished on account of the worker's provisional detention, an establishment shall re-engage him if the criminal proceedings are discontinued or he is acquitted and announces his return to work within seven days of the judgement becoming final. Article 48 shall apply respectively.

3. The provisions of 2. shall not apply in cases where criminal proceedings are discontinued because of a limitation period or of an amnesty or where such proceedings are conditionally discontinued.

Article 67

Where an establishment fails to comply with the provisions of this Division, the worker shall be entitled to appeal to an appeal committee for labour cases. Division 6 of this Chapter shall apply respectively to such claims.

CHAPTER 3

Employment Relationships Established on the Basis of Appointment, Election, Nomination and Co-Operative Contracts of Employment

Division I. Employment Relationships on the Basis of Appointment

Article 68 (as amended 7 April 1989)

1. Employment relationships with heads of establishments and their deputies shall be established on the basis of appointment by the competent authority.

I [1].The employment relation mentioned in 1. shall be established for an in-definite period ; if the employee has been appointed for a definite period on the grounds of special provisions, the employment relationship shall be established for the period of appointment.

2. The Council of Ministers, after agreement with the All-National Inter-Union Organization, may by order prescribe other managerial posts in which the workers are employed on the basis of an appointment. Subject to the same procedure, the Council of Ministers may also prescribe certain categories of establishments in which provisions of 1. do not apply.

Article 68[1] (added 7 April 1989)

Appointment can be preceded by competition even if special provisions do not require that a candidate for the post should be appointed as a result of competition only.

Article 68[2] (added 7 April 1989)

1. The employment relationship based on appointment shall be established with the date specified in the act of appointment ; if that date has not been specified, the employment relationship shall be established on the day on which the act of appointment is delivered, unless special provisions provide otherwise.

2. Appointment should be made in writing.

Article 68[3] (added 7 April 1989)

If an employee appointed to a post as a result of competition finds himself in employment relationship with another workplace and is bound by a three-months period of notice, he is entitled to dissolve that relationship with a one-month period of notice. A dissolution of the employment relationship according to this mode involves the effects provided in labour law in the case of dissolution of the employment contract with notice by the workplace.

Article 69 (as amended 7 April 1989)

Unless provisions of the present Division provide otherwise, the employment relationship based on appointment shall be regulated by provisions that concern employment contract for an indefinite period, with exclusion of provisions that regulate :

1) the mode of procedure of dissolving contracts of employment,
2) examination of disputes arising out of employment in the part concerning decisions :
   a) about ineffectiveness of notices of termination,
   b) about the indemnity provided in cases of termination of employment contract with notice,
   c) about reinstatement in the job.

Article 70 (as amended 7 April 1989)

1. A worker employed on the basis of an appointment may at any time either immediately or with effect from a specified date, be removed from his post, by the authority that appointed him. This applies also to an employee who has been appointed to the post for a definite period on the grounds of special provisions.

1 [1]. Removal should be made in writing.

12. The employment relation with an employee who has been removal from his post shall be dissolved following the principles specified in the provisions of the present Division, unless otherwise provided by special provisions.

2. The removal of a worker from his post shall have the same force and effects as the termination of a contract of employment with notice. During the period of notice the worker shall be entitled to his remuneration at the rate payable prior to his removal.

3. The removal of a worker from his post shall have the same force and effect as the termination of a contract of employment without notice if it was ordered for any of the reasons mentioned in Articles 52 or 53.

Article 71

At a worker’s request or with his consent, an establishment may employ him during the period of notice on other work appropriate to his vocational skills, and employ him on the expiry of the period of notice, the conditions of work and payment agreed upon by the parties.

Article 72

1. Where a worker is removed from his post during a period of justified absence from work, the notice shall run from the expiry of that period. Provided that where

such justified absence lasts for longer than the period specified in 1. and 2. of Article 53, the authority that appointed the worker may terminate his employment relationship without notice.

2. Where a woman worker is removed from her post while she is pregnant, the authority removing her shall assure her another job appropriate to her vocational skills and, for a period equal to the period of notice she shall be entitled to her remuneration at the rate payable prior to her removal. Provided that where she does not agree to take up another job, her employment relationship shall be subject to termination on the expiry of a period equal to the period of notice, which shall run from the date on which another job is proposed to her in writing.

3. The provisions of 2. shall apply respectively where a worker who is not more than two years from pensionable age is removed from his post, if the period of employment will enable him to acquire a pension entitlement on reaching that age.

4. Where an establishment fails to comply with provisions of 1. to 3., the worker shall be entitled to appeal to an appeals committee for labour cases.

Division 2. Employment Relationship Established on the Basis of Election

Article 73

1. An employment relationship shall be established on the basis of a person's election if the election results in his duty to perform a work as worker.

2. An employment relationship established on the basis of a person's election shall be terminated on the cessation of his period of office.

Article 74

A worker who is placed on upaid leave as a result of his election shall be entitled to return to the establishment in which he was employed at the time of the election and to take up a post equivalent in terms of remuneration to his previous post, if he announces his return within seven days of the termination of the employment relationships established as a result of his election. Failure to comply with this condition shall imply the extinction of the worker's employment relationship unless the failure was due to reasons beyond his control.

Article 75

A worker who is not placed on unpaid leave as a result of his election shall be entitled to severance pay equal to one month's remuneration.

Division 3. Employment Relationship Established on the Basis of Nomination

Article 76

An employment relationship shall be established on the basis of a person's nomination in such cases as are warranted by the special nature of the work and as are prescribed in separate provisions or the provisions made under Article 298.

Division 4. Employment Relationship Established on the Basis of a Co-Operative Contract of Employment

Article 77

1. Any employment relationship between a work co-operative and any of its members shall be established on the basis of a co-operative contract of employment.

2. In so far as no provision to the contrary is made in the Decree concerning co-operative societies and their unions, the provisions of this code shall apply respectively to co-operative contracts of employment.

DROIT POLONAIS CONTEMPORAIN
POLISH CONTEMPORARY LAW
1990 n° 2 (86)
PL ISSN 0070-7325

The LAW of DECEMBER 28, 1989 on the Special Rules of Termination of Employment Contracts for Reasons Arising from the Employers and on Amending Other Laws

(Journal of Laws **of January 27, 1990, No. 4, item 19)**

Article 1

1. Provisions of this law shall apply to employing institutions where the personnel is reduced for economic reasons or due to organizational, production, or technological changes, including the situations where such changes are aimed at improvement of the working conditions or the natural environment, if they result in the need to dissolve, on one occasion or within a period of up to 3 months, the employment contracts with a group of at least 10 per cent of the staff in institutions employing up to 1000 persons, or of at least 100 persons in institutions employing more than 1000 persons.

2. Provisions of this law shall also apply to employing institutions that go bankrupt or are liquidated.

3. Provisions of this law shall apply to persons employed part time provided their wages earned in the employing institution mentioned in Paras 1 and 2 are their only source of maintenance or have been indicated by the person concerned as thç basic source.

Article 2

1. Manager of the employing institution shall inform the factory trade union organization in writing about the need to dissolve the employment contracts with employees for the reasons specified in Art. 1 Paras 1 and 2 not later than 45 days before the date of execution of notices to terminate employment, informing at the same time about the reasons justifying the need to effect the intended terminations of employment contracts and specifying the number of employees and the professional groups designed for dismissal.

2. On reception of the notification mentioned in Para 1, the factory trade union organization shall have the right to demand from the manager of the employing institution information about that institution's economic and financial situation and the plans concerning the level and structure of its personnel ; that organization shall also have the right to submit to the manager, within 14 days at the latest after having been notified of the intended dismissals, its suggestions aimed at a reduction of the extent of those dismissals. In that case, the manager shall be obliged to assume an attitude towards such suggestions within 7 days, and to publish his attitude for the personnel's information.

Article 3

The manager of an employing institution is also obliged to inform about the intended dissolution of employment contracts with workers for the reasons mentioned in Art. 1 Paras 1 and 3 the employment agency of the basic level, not later than 45 days before the date of execution of notices terminating employment.

Article 4

1. The manager of an employing institution and the factory trade union organization shall conclude an agreement within 30 days after the notification mentioned in Art. 2 Para 1. The agreement shall specify the procedure in cases concerning the employees designed for dismissal, and in particular the criteria for selection of employees to be dismissed, the order and dates of execution of dismissals, and the employing institution's duties to the extent that proves necessary to decide in other employees' matters related to the intended dismissals.

2. At an employing institution where more than one factory trade union organization operates, the manager shall conclude a joint agreement with all the trade union organizations.

3. In case the agreement cannot be concluded due to the parties' inability to adjust its contents, the principles of procedure in cases of employees designed for dismissal shall be defined by the manager of an employing institution by way of rules and regulations, with due consideration to adjustments made with the trade union organization in the course of adjusting the agreement.

4. At an employing institution where no factory trade union organization operates, the procedure in cases of employees designed for dismissal shall be defined by the manager of that institution by way of rules and regulations, having consulted the personnel according to the procedure accepted in that institution.

Article 5

1. The termination of employment contracts with notice for the reasons specified in Art. 1 Para 1, shall not follow the procedure specified in Art. 38 of the Labour Code and the provision of Art. 41 of that code, with the stipulation of exceptions provided in Paras 2—4, and also special provisions concerning the protection of employees against termination with notice of employment contracts, with the stipulation of exceptions specified in Art. 4.

2. When terminating with notice employment, and also the conditions of work and payment, provisions of Art. 38 of the Labour Code shall be applied in case of a failure to conclude the agreement mentioned in Art. 4.

3. The termination with notice of employment in the situations specified in Art. 41 of the Labour Code shall not be admissible during a leave of up to 3 months, and also during another exculpated absence from work of the employee concerned, provided the period entitling the employing institution to dissolve the employment contract without notice has not yet been accomplished.

4. In the situations specified in Art. 41 of the Labour Code, the employing institution may notice, if necessary, the termination of conditions of work and payment of an employee. In case this results in a cut in wages, that employee is entitled, for up to 6 months, to a salary differential calculated according to the principles regulated by provisions passed on the grounds of Art. 297 of the Labour Code.

5. In the situations specified in Art. 1 Para 1, employment contracts concluded for a definite period or for the period necessary to perform a definite work may be dissolved by any of the parties by a two-weeks' notice of termination.

Article 6

If for the reasons specified in Art. 1 Para 1 it proves impossible further to employ in their former positions the employees mentioned in Art. Art. 39 and 177 of the Labour Code, and also employees who are members of the board of the factory trade union organization or of the workers' council of a state enterprise—during their term of office and within one year after its expiry—the employing institution may only notice the termination of those employees' conditions of work and payment. If this results in a cut in wages, the employee concerned shall be entitled to a salary differential till the end of the period in which he comes within the special protection of job security ; the amount of that differential shall be calculated according to the principles regulated by provisions passed on the grounds of Art. 297 of the Labour Code.

Article 7

In the case of termination of the employment contract with notice, for the reasons specified in Art. 1 Paras 1 and 2, the employing institution may reduce the employee's statutory term of notice according to the principles specified in Art. 36^1 of the Labour Code.

Article 8

1. An employee with whom the employment contract has been dissolved for the reasons specified in Art. 1 Paras 1 and 2 shall be entitled to : 1) a severance pay, and 2) a salary differential.

2. The severance pay shall be due to the amount of :

a) one-month's wages if the employee has worked for the total of less than 10 years ;

b) two-months' wages if the employee has worked for the total of at least 10 years but less than 20 years ;

c) three-months' wages if the employee has worked for the total of at least 20 years.

3. The severance pay shall not be due to an employee who is entitled to an unreiterated severance pay in connection with retirement or a grant of a disability pension.

4. The salary differential shall be due to an employee who takes up a job at another employing institution and earns less than the wages received at the institution where his contract of employment has been dissolved for the reasons specified in Art. 1 Paras 1 and 2.

5. The salary differential shall be paid by the employing institution where the employee has taken up a job, for 6 months from the day of dissolution of the employment contract for the reasons specified in Art. 1 Paras 1 and 2, to the amount of the difference between the wages in the former and present employing institutions. The related expenses shall be borne by the Labour Fund.

6. The details of calculation of the salary differential shall be specified by way of an ordinance by the Minister of Labour and Social Policy in consultation with the all-national inter-trade union organization and the national trade union representing the employees of most employing institutions.

Article 9

The payment of severance pays to employees with whom the institution terminates employment contracts for the reasons specified in Art. 1 Paras 1 and 2 during their leave or another exculpated absence from work, or while they do not perform work on the grounds of separate provisions, shall take place according to the rules, that concern the whole of employees affected by dismissals.

Article 10

1. Provisions of this law, to the exception of Art. Art. 2—4, shall also apply respectively in cases where the manager of an employing institution takes individual decisions to dismiss employees for the reasons specified in Art. 1 Para 1, provided those reasons are the only cause of termination of the employment contract, and dismissals that take place in the period of not longer than 3 months do not concern more than 10 per cent of the staff in institutions where up to 1000 persons are employed, and not more than 100 persons in institutions with the staff of over 1000 persons, with the stipulation of provisions of Paras 2—5.

2. In cases of notices to terminate employment contracts and also the conditions of work and payment, provisions of Art. 38 of the Labour Code shall apply with the stipulation of provisions of Para 3.

3. A termination of employment contracts with notice with the employees whose employment is subject to special protection against notice or dissolution by force of provisions of the Labour Code or special provisions may only take place under the stipulation that the factory trade union organization does not lodge an objection within 14 days after the receipt of a notification about the intended dismissal. In case the factory trade union organization fails to lodge an objection within that time-limit, the manager of an employing institution shall decide on the dissolution of employment contract.

4. In the case of employees mentioned in Para 3, the manager of an employing institution may notice the termination of conditions of work and payment if their further employment in the previous posts proves impossible for the reasons specified in Art. 1 Para 1.

5. If a notice of termination of conditions of work and payment results in a cut in the wages of the employees mentioned in Para 4, those employees shall be entitled to a salary differential to the amount and according to the principles provided in Art. Art. 5 Para 4 and 6.

Article 11

Provisions of this law shall apply respectively in cases of dissolution of the employment contract for the reasons specified in Art. 1 Paras 1 and 2 by force of an agreement of the parties.

Article 12

An employing institution should reemploy an employee with whom it dissolved the employment contract for the reasons specified in Art. 1 Para 1 in the case of new employment of employees from the same professional group, if that employee informs that institution of his intention to be reemployed within one year after the dissolution of employment contract.

Article 13

In cases of unjustified or illegal notices to terminate employment contracts, provisions of Section 4, Chapter II, Part Two of the Labour Code shall apply respectively.

Article 14

Provisions of this law shall not concern employees transferred to a new employing institution created as a result of organizational and legal transformations of a former institution or part thereof.

Article 15

1. In justified cases, on motion of an employment agency, an all-national inter-trade unions organization or a national trade union representing employees of most employing institutions, the Minister of Labour and Social Policy may, in consultation with the Minister of Finance, suspend for a period of up to 3 months the execution of an intended decision of the manager of an employing institution concerning the reduction of staff at that institution in the situation specified in Art. 1 Para 1.

2. During the period of that suspension, the wages of employees who have not been dismissed owing to the fact that the manager's decision was suspended shall be financed from the Labour Fund.

Article 16

Provisions of this Law shall not violate the rights of the workers' self-management organization that follow from separate provisions.

Article 17

Provisions of this Law shall not apply to nominated employees. Those employees are however entitled to pecuniary allowances provided in Art. 8, if their contract of employment is dissolved in the circumstances specified in Art. 1 Paras 1 and 2 and the provisions that regulate their rights and duties fail to provide for such performances.

Article 18

In the Law of June 30, 1970, on the military service of soldiers in professional service *(Journal* of *Laws*, No. 16, item 134 ; of 1972, No. 52, items 341 and 342 ; of 1974, No. 24, item 142, and No. 47, item 282 ; of 1979, No. 15, item. 97 ; of 1983, No. 16, item 78 ; and of 1989, No. 20, item 104, No. 34, item 178, and No. 35, item 192), Art. 79^1 is hereby added following Art. 79 which reads :

''Art. 79^1. A soldier may be dismissed from professional military service if for important personal reasons he fails to consent to take up another corresponding or higher post in the situation where, due to an armed forces reform, the military unit where he has been serving is disbanded or its staff reduced."

Article 19

In the Law of April 10, 1974 : The Housing Regulations *(Journal* of *Laws* of 1987, No. 30, item 165, and of 1989, No. 10, item 57, No. 34, item 178, and No. 35, item 192), the following changes are hereby introduced :

1) Art. 57, Part 3, Point 2 shall read :

"2) dissolution of the employment contract by force of an agreement of the parties",

2) following Art. 57, Art. 57[a] shall be added which reads :

"Art. 57[a] 1) In the case of a merger of employing institutions, the service appartments previously administered by those institutions shall become service appartments of the newly-created institution.

2) In the case of partition of an employing institution, an agreement should be negotiated concerning the taking over of the individual service apartments by the institutions created as a result of that partition.

3) To tenants with whom employment contracts have been dissolved in connection with a merger or partition of employing institutions and who have not been employed at the newly-created institutions, the respective provisions of Art. 57 Para 1 Point 1 and Para 3 Point 1 (a) shall apply.

4) In the case of liquidation of an employing institution or an announcement of its bankruptcy, the service apartments administered by that institution shall lose their former character ; the tenants of such apartments shall maintain for an indefinite period the rights acquired by force of the contract of lease.

5) Provision of Art. 4 shall apply respectively to tenants of apartments in buildings turned over by employing institutions to the municipal authorities."

Article 20

In the Law of June 26, 1974 : The Labour Code *(Journal* of *Laws,* No. 24, item 141 ; of 1975, No. 16, item 91 ; of 1981, No. 6, item 23 ; of 1982, No. 31, item 214 ; of 1985, No. 20, item 85, and No. 35, item 162 ; of 1986, No. 42, item 201 ; of 1987, No. 21, item 124 ; of 1988, No. 20, item 134 ; and of 1989, No. 20, item 107, and No. 35, item 92), the following changes are hereby introduced :

1) Art. 41[1] paras 3 and 4 are deleted,

2) in Art. 177 para 4, first sentence, the wording "liquidation of the employing institution" is replaced with "announcement of bankruptcy or liquidation of the employing institution,"

3) Art. 196 point 2 shall read :

"2) announcement of bankruptcy or liquidation of the employing institution."

Article 21

1. The allowances provided in Art. 8 shall also be due to employees whose contracts of employment have been dissolved for the reasons specified in Art. 1 Paras 1 and 2 in the period from September 1, 1989 till the day of coming into force of this Law.

2. The provision of Para 1 shall apply respectively if the dissolution of employment contract takes place after the day of coming into force of this Law as a result of a notice given before that date.

Article 22

Provisions of this Law shall not apply to employees whose employment contracts have been dissolved due to the bankruptcy or liquidation of a State enterprise on the grounds of Art. 1 point 2 (c) of the Law of May 11, 1988, on extraordinary rights and powers of the Council of Ministers *(Journal* of *Laws,* No. 13, item 98), or on

the grounds of Art. 4 Para 3 of the Law of February 1989, on same conditions of consolidation of the national economy and on changes of some laws *(Journal* of *Laws*, No. 10, item 57), if the announcement of bankruptcy or liquidation of the enterprise took place before September 1, 1989.

Article 23

This Law shall enter into force on the day of its publication.

DROIT POLONAIS CONTEMPORAIN
POLISH CONTEMPORARY LAW
1930 n° 2 (86)
PL ISSN 0070-7325

The LAW of DECEMBER 29, 1989 on Employment

(Journal of Laws **of December 31, 1989, No. 75, item 446)**

CHAPTER 1

General Provisions

Art. 1. 1. The Law regulates the State's activity in the sphere of employment.

2. The Law shall apply to persons who look for and take up a job based on employment relationship. Provisions of the Law shall apply respectively to persons employed on the grounds of a contract for home industry or an agency contract.

Art. 2. 1. Whenever the Law mentions :

1) an employing institution, that term stands for a workplace in the interpretation of the Labour Code, and a natural person who employs workers for profit,.

2) employment agencies, that term stands for local agencies of State administration of the appropriate level, with a special competence in matters of employment,

3) the minimum wages, that term stands for the minimum wages paid to workers employed by the socialized employing institutions, published by the Minister of Labour and Social Policy in the Official Gazette of the Polish People's Republic *Monitor Polski* on the grounds of separate provisions,

4) the average wages, that term stands for the average monthly wages paid to employer of the units of socialized economy, published by the President of the Chief Statistical Office in the Official Gazette of the Polish People's Republic *Monitor Polski* on the grounds of separate provisions,

5) wages, that term, with the reservation of Para 2, stands for the monthly wages earned at the last employing institution, calculated according to the principles provided for the calculation of the financial equivalent for the annual leave, the remuneration for overtime work excluded,

6) benefit, that term stands for the unemployment benefit,

7) training benefit, that term stands for the benefit paid to the unemployed during their training in a profession or requalification,

8) an unemployed person, that term stands for a person who is able to work and willing to take up a job based on employment relationship but finds himself out of job and is registered at his local employment agency of the basic level,, provided that person :

a) does not receive the old-age pension ;

b) is not owner or possessor (whether independent or dependent) of a farm ;

c) does not pursue economic activities or is not entitled to social insurance by any other right ;

9) additional post, that term stands for a post created by the employing in-

stitution on motion, of the employment agency of the basic level and intended for the unemployed,

10) intervention works, that term stands for performance, for a period of up to six months, of work initiated or organized for the unemployed by the employment agency of the basic level,

11) college graduates, that term stands for college graduates who completed intramural studies, in the period of 12 months from the day of graduation, to the exclusion of graduates from colleges administered by the Minister of National Defence or the Minister of Internal Affairs, and of persons directed to college by military agencies as candidates for soldiers in professional service,

12) vocational school graduates, that term stands for :

a) graduates, in the period of 12 months from the day of graduation, from intramural studies at : higher vocational schools, post-secondary studies included, vocational grammar schools, and elementary vocational schools ;

b) persons who during the last 12 months graduated from evening elementary vocational schools for young persons, or grammar-school graduates with certified professional qualifications, to the exclusion of graduates from schools administered by the Minister of National Defence or the Minister of Internal Affairs ;

13) foreigners, that term stands for persons with neither the Polish citizenship nor the right of permanent residence in Poland ;

14) an appropriate job, that term stands for a job suiting the unemployed person's educational level, a job in which that person has been trained or which can be performed after a training or requalification, provided that job is suitable in view of the unemployed person's state of health, and the overall daily travel to work and back by public means of transport does not take longer than 3 hours.

2. The provision of Para 1 Point 5 shall not apply to wages mentioned in Art, 13 Para 1 Point 1, Art. 15 Para 6, Art. 18 Point 3, and Art. 24 Para 1 Point 2.

CHAPTER 2

Employment Agencies and Councils of Employment

Art. 3. 1. The duties stated in the Law shall be fulfilled by the Minister of Labour and Social Policy, and by the local agencies of State administration with a special competence in matters of employment.

2. The head of the provincial employment office shall be the local agency of State administration with a special competence in matters of employment of the provincial level.

3. Having consulted the local agencies of State administration of the basic level with the general competence, the voivode (head of province) shall set up district employment offices whose heads shall fulfil the duties of the local agency of State administration of the basic level with a special competence in matters of employment for several territorial units of the basic level.

Art. 4. The duties of the head of provincial employment office shall include in particular :

1) co-ordination of the activities of heads of district employment offices in the province,

2) preparation of analyses and appraisals of the problems related to employ-

ment in the province for the Minister of Labour and Social Policy and councils of employment,

3) co-operation with the council of employment and heads of district employment offices in activities aimed at prevention and mildening of the negative effects of dismissals from work, in particular at procuring the appropriate posts, training and retraining courses for the unemployed, and posts for the disabled,

4) submission to the Minister of Labour and Social Policy of suggestions concerning the plans of the Labour Fund, and of accounts of the use of the Fund's resources,

5) allocation to heads of district employment offices of resources from the Labour Fund, and supervision of the use of those resources,

6) direction of persons to work abroad on the grounds of international agreements mentioned in Art. 26 Point 1,

7) reception of notifications from persons employed abroad on the grounds of individual contracts with foreign employers,

8) licensing the employment of foreigners by employing institutions, with consideration to the situation in the labour market in the province,

9) organization and supervision of translocation of personnel.

Art. 5. 1. The Chief Council of Employment is hereby set up attached to the Minister of Labour and Social Policy as an advisory and consultative body in matters of employment.

2. The competences of the Chief Council of Employment shall include in particular :

1) assessment of draft legal acts concerning employment and moving for the passing of new provisions or changes in the valid ones,

2) assessment of the plans of the Labour Fund and of the Fund's yearly reports,

3) giving opinions about the purchase of shares or bonds or the contribution of shares from the Labour Fund's resources to companies, and also about credits and loans to be negotiated by the Labour Fund,

4) submission to the Minister of Labour and Social Policy of periodic accounts of the Council's activities and the activities of provincial councils of employment.

Art. 6. 1. Provincial councils of employment are hereby set up attached to the heads of provincial employment offices as advisory and consultative bodies.

2. The competences of provincial councils of employment shall include in particular :

1) assessment of employment trends in the province,

2) appraisal of rationality of administration of the Labour Fund's resources,

3) giving opinions about financial plans prepared by the provincial employment offices and about the accounts of fulfilment of those plans,

4) inspiring steps aimed at a full and rational employment in the province,

5) assessment of periodic accounts of the activity of provincial and district employment offices, and submission to the Chief Council of Employment of periodic reports and motions in matters of employment.

Art. 7. 1. The Chief Council of Employment shall be made up of 24 persons, including equal proportions of representatives of : all-national inter-trade union organizations and national trade unions that represent the employees of most employing institutions, organizations of employers, agencies of State administration, and local self-governments.

2. Provincial councils of employment shall be made up of 16 persons, including equal proportions of representatives of the following, bodies that operate in the given

province : trade union organizations, employers' organizations, agencies of State administration, and local self-governments.

3. Members of the Chief Council of Employment and provincial councils of employment shall be appointed by the Minister of Labour and Social Policy for the period of 4 years. Members of the Chief and provincial councils of employment shall perform their functions without pay.

4. The Minister of Labour and Social Policy shall define the organization and procedure of the Chief Council of Employment and provincial councils of employment.

CHAPTER 3

Labour Exchange and Services of Employment

Art. 8. 1. Labour exchange consists in assisting persons who look for a job in finding an appropriate job, and employing institutions—in finding adequate workers. Labour exchange shall be carried out by employment agencies of the basic level.

2. Labour exchange shall be free of charge and based on the following principles :

1) access to employment services for all persons looking for a job and for employing institutions,

2) voluntary character, that is discretionary use of employment services for both parties concerned,

3) equality, that is the employment agencies' duty to render assistance to all persons looking for a job, irrespective of their nationality, membership of political and social organizations, sex, religion and other circumstances,

4) openness which means that all vacancies of which the agency mentioned in Para 1 has been informed should be made known to persons looking for a job.

Art. 9. Employment agencies of the basic level shall keep a register of the unemployed.

Art. 10. In case it proves impossible to provide the unemployed with appropriate jobs, employment agencies of the basic level shall :

1) organize professional training or requalification of the unemployed, grant and pay training benefits during that training or requalification, and finance those activities,

2) initiate the creation of additional jobs at employing institutions, and assist those institutions financially in this sphere,

3) initiate or organize, as well as finance intervention works,

4) grant and pay benefits.

Art. 11. 1. The professional training or requalification mentioned in Art. 10 Point 1 shall be organized for the unemployed in the following cases :

1) lack of professional qualifications,

2) the need to requalify due to a lack of jobs which would suit the unemployed person's qualifications and state of health,

3) loss of capability to work in the former profession.

2. The professional training or requalification should not take longer than 6 months ; that period may be extended by the employment agency to 12 months in cases justified by the training programme.

Art. 12. 1. The training benefit shall amount to 80 per cent of wages, and to 100 per cent of wages for persons who lost the capability to perform their former

job as a result of an accident at work or on the way to or from work, or an. occupational disease.

2. The benefit mentioned in Para 1 shall not amount to less than 40 per cent of the average wages.

3. The training benefit paid to persons who have never been employed before shall amount to 125 per cent of the minimum wages.

4. The benefit mentioned in Para 1 shall be raised each time, from the day of publication by the President of the Chief Statistical Office of data concerning the average wages in the preceding three months, by the proportion of raise in those wages.

5. The following services shall be due to persons who receive training benefits according to the principles provided for employees :

1) family allowances,

2) benefits in virtue of accidents at work and occupational diseases,

3) performances rendered by the public health service on the grounds of entries in the social insurance cards made by employment agencies of the basic level..

Art. 13. 1. Employment agencies of the basic level shall grant the following loans from the resources of the Labour Fund :

1) to employing institutions, for organisation of additional posts, and in particular for the purchases or hire of machines and for salaries and social insurance rates for the unemployed directed to those posts,

2) granted once to the unemployed who wish to go in for economic activities..

2. The loans shall be granted to the amount of twenty times the average wages,., according to principles defined in contracts.

3. The loans shall be remissible in 50 per cent provided that :

1) the employing institution gives work to the unemployed person for 24 months« (Para 1 Point 1), or

2) the unemployed person pursues economic activities for 24 months (Para 1 Point 2).

Art 14. Employment agencies of the basic level shall refund the costs borne by employing institutions in relation to intervention work given to the unemployed ; the refunding shall amount to the rate of basic pay in the job the unemployed person held, the social insurance rate, and any additions and other performances due to that person while employed at that institution.

Art. 15. 1. An unemployed person shall be entitled to receive benefit on the expiry of a period of 7 days from the day of registration provided that no appropriate job, professional training, or requalification can be offered to him and he cannot be directed to intervention works or a specially created additional post.. The benefits shall be paid monthly on the last day of the month.

2. The benefit shall amount to :

1) 70 per cent of wages during the first three months of unemployment,

2) 50 per cent of wages during the further 6 months, and

3) 40 per cent of wages after 9 months of unemployment.

3. The benefit shall not amount to less than the minimum wages or exceed the average wages.

4. The unemployed who have not been employed before are entitled to benefit to the amount of the minimum wages, with the reservation of Para 5.

5. Unemployed graduates who have not yet worked are entitled to the following amounts of benefit :

1) college graduates :

a) 200 per cent of the minimum wages during the first 3 months of unemployment,

b) 150 per cent of the minimum wages during the further 6 months, and

c) the minimum wages after 9 months of unemployment ;

2) vocational school graduates :

a) 150 per cent of the minimum wages during the first 3 months,

b) the minimum wages after 3 months of unemployment.

6. The benefit shall be reduced by 50 per cent if the unemployed person has taken up a job part time as compared to the full-time standards of the given employing institution, or home work, and his wages do not exceed the minimum wages. No benefit shall be due in the case of higher wages.

7. The unemployed who receive benefits shall be entitled to performances mentioned in Art. 12 Para 5 Points 1 and 3.

Art. 16. 1. An unemployed person who :

1) fails to appear on the appointed day at the employment agency of the basic level in order to be offered a job, and cannot justify that failure,

2) in a period of 30 days, declines two- consecutive offers of an appropriate job, professional training, or requalification necessary to find a job,

3) refuses, without justification, to perform intervention works,

4) receives pension resulting from social insurance,

5) receives pecuniary allowance resulting from social insurance due to illness or maternity, or

6) receives an allowance paid to mothers- of small children, shall not be. entitled to a benefit.

2. In case the unemployed person has lost the right to benefit for any of the reasons mentioned in Para 1 Point 2, he may reapply for benefit on the expiry of a period of 30 days from the day he was offered a job, professional training, or requalification the last time.

Art. 17. The periods of drawing the benefits mentioned in Art.

Art. 12 and 15 shall be included in the period of employment required to acquire or preserve the employee's rights to the maximum extent of 24 months, provided the unemployed person drawing the benefit has taken up a job within one month from the day of completion of professional training or requalification, or within. 12 months from the day he was granted the benefit

Art. 18. Persons who come within the provisions of the Act of December 28, 1989 on the special rules of termination of employment contracts for reasons arising from the employing institutions, and on amending other laws *(Journal of Laws,* No. 4, item 19) shall be entitled to :

1) a training benefit mentioned in Art. 12 Para 1, to the amount of 100 per cent of wages during professional training or requalification, the provision of Art. 12 Para 4 included,

2) a benefit to the amount of 75 per cent of wages but not less than the minimum wages, if those persons are aged at least 55 bn the case of women and 60 in the case of men ; the benefit is due provided the unemployed person cannot be offered an appropriate job ; provisions of Art. 12 Para 4 and Art. 15 Paras 6 and 7 shall apply respectively,

3) a salary differential (a compensatory supplement) paid for a period of up to 3 months if the employee has been engaged in professional training or requalification, and amounting to the difference between the sums of the training benefit and

the wages at the new institution ; the amount of that differential shall be determined basing on the last training benefit paid, raised according to the principles defined in Art. 12 Para 4.

Art. 19. 1. Employment agencies shall run vocational guidance aimed at assisting adolescents out of school and adult candidates for jobs in choosing or changing their profession or job.

2. In particular, vocational guidance shall consist in :

1) informing about professions, the working conditions in employing institutions, the possibilities of professional improvement,

2) individual vocational guidance according to the needs of persons about to take up a job or professional training,

3) cooperation with employing institutions in organizing posts for the disabled according to the indications and contraindications given by commissions for disability and employment.

3. Medical certification required by the agencies of vocational guidance shall be carried out by the public health service.

Art. 20. 1. The Minister of Labour and Social Policy shall define the detailed rules of labour exchange and employment service.

2. The Minister of Labour and Social Policy may :

1) appoint agents for the fulfilment of specific tasks resulting from the Law,

2) authorize other agencies or organizations to carry out labour exchange, defining the conditions and scope of that exchange and the related duties.

3. In case of inobservance of the conditions and duties specified in the authorization mentioned in Para 2 Point 2, the Minister of Labour and Social Policy may withdraw the authorization.

4. Labour exchange and employment service carried out as economic activity shall be banned.

CHAPTER 4

Allowances Due to Persons Who Take up Jobs away from Their Place of Residence

Art. 21. 1. The following allowances may be granted by the competent local self-government to persons who take up jobs forcing them to leave their former place of residence :

1) unreiterated loan for settling down,

2) a loan covering a person’s own contribution which conditions the grant of credit according to the provisions on the general principles of crediting housebilding, if the employing institution fails to provide an appartment for that person.

2. An employment agency of the basic level shall reimburse the local self-government for one fourth of the loan mentioned in Para 1 Point 1, but not more than three times the average wages, after the borrower has been employed for at least 12 months.

3. The loan mentioned in Para 1 Point 1 shall be remissible on the grant of a loan by a local self-government.

Art. 22. An employment agency of the basic level shall issue to a person directed to work away from his place of residence a credit ticket for a journey to the future place of work with the cheapest means of public transport.

CHAPTER 5

Stimulation of the Disabled to Professional Activity

Art. 23. Employment agencies of the provincial level shall prepare annual projects of employment of the disabled, co-operating in this sphere with employing institutions, organizations of the disabled, welfare institutions and other bodies operating in their territory and involved in the fulfilment of such projects.

Art. 24. 1. Employment agencies of the basic level shall reimburse the employing institutions for the following expenses :

1) expenses related to the creation of posts for disabled persons directed to work, to the amount of thirty times the average wages for each post created,

2) the wages paid to disabled persons directed to work and their social insurance rates for 18 months from the day of employment.

2. An employing institution which gives work to disabled persons directed to work shall employ those persons for at least three years.

3. An employing institution shall be obliged to separate or create posts for its employees who lost capability to work in their former job due to an accident at work or an occupational disease and have been included in any of the three disability classes.

4. In case an employing institution fails to separate or create a post for the person mentioned in Para 3, it shall be obliged to make a payment to the Labour Fund to the amount of forty times the average wages.

5. Employing institutions run on a self-supporting basis shall make the payment, mentioned in Para 4 from their profit after taxes or from the balance surplus.

6. Employing institutions which give work to the disabled shall be exempt, to the extent of such persons' wages, from tax on salaries, tax on wages, and tax on the raise in wages, according to principles specified in separate provisions.

7. In cases justified by the kind of disability of the unemployed, employment agencies of the basic level may purchase equipment required to adjust a specific post to that type of disability, and turn that equipment over free of charge to employing institutions within the limits of the reimbursement mentioned in Para 1 Point 1.

Art. 25. The Minister of Labour and Social Policy, in consultation with the Minister of Health and Social Welfare, shall specify the requirements to be met by posts for the disabled.

CHAPTER 6

Employment of Polish Citizens Abroad at Foreign Employers and Employment of Foreigners in Poland

Art. 26. The employment of Polish citizens abroad at foreign employers shall be based on :

1) international agreements,

2) contracts negotiated by the authorized directing bodies with the Polish citizens directed by those bodies to work abroad at foreign employers,

3) contracts negotiated by Polish citizens with foreign employers.

Art. 27. 1. The directing of Polish citizens to work abroad at foreign employers shall take place on the grounds of authorizations granted to the directing bodies by the Minister of Labour and Social Policy.

2. In case of inobservance of the conditions and duties resulting from the authorization mentioned in Para 1, the Minister may withdraw that authorization.

3. The directing to work abroad by directing bodies shall take place on the grounds of contracts negotiated by those units with the citizens directed to work abroad and regulating :

1) the period of employment abroad,

2) duties of the directed person and the directing body,

3) reimbursement of the expenses related to directing to work abroad, particularly of :

a) the formalities related to going abroad,

b) insurance of the directed persons against accidents and tropical diseases,

c) expenses related to the handling of other matters commissioned by the person directed to work abroad.

Art. 28. 1. The period of employment of Polish citizens abroad on the grounds of the contracts mentioned in Art. 26 Points 1 and 2 shall be treated as a period of employment in Poland as regards those persons' employees' rights and in the meaning of provisions on old-age pensions for employees and their families, on social insurance and family insurance, and on pecuniary allowances in case of accidents at work and occupational diseases.

2. The benefits mentioned in Art. Art. 12 and 15 for persons returning from work abroad (Art. 26) shall be calculated basing on the average wages with the reservation of Para 3.

3. The provision of Para 2 shall apply to the persons mentioned in Art. 26 Point 3 provided they meet the requirements specified in Art. 30.

Art. 29. The directing body which effects employment on the grounds of the contracts mentioned in Art. 26 Point 2, shall be obliged to pay :

1) to the account of the Social Insurance Institution, the social insurance rate for each of the persons directed to work abroad, assessed from the average wages to the amount provided for workers employed in Poland,

2) to the Labour Fund, a sum amounting to 12 per cent of the average wages for each consecutive month of duration of the social insurance of a person directed to work abroad, according to the procedure and principles provided for social insurance rates.

Art. 30. 1. Unless otherwise provided by international agreements, the periods of employment of Polish citizens abroad on the grounds of the contracts mentioned in Art. 26 Point 3 shall be recognized, with the reservation of Para 2, as periods of employment in the territory of Poland in the interpretation of provisions on old-age pensions for employees and their families, on social and family insurance, and on pecuniary performances in case of accidents at work and occupational diseases.

2. The periods mentioned in Para 1 shall be recognized provided the relevant documentary evidence of those periods has been supplied, and the employees' social insurance rates have been paid to the amount required of workers employed in Poland from the declared amount which shall however not be lower than the average wages.

Art. 31. The period of documented employment abroad on the grounds of the contracts mentioned in Art. 26 Point 3, negotiated by Polish citizens with foreign

employers, shall be treated as a period of employment in Poland as regards the employees' rights from the day the person concerned has informed his local employment agency of the provincial level of his employment abroad at a foreign employer, and provided that person makes monthly payments to the Labour Fund of a sum amounting to 12 per cent of the average wages.

Art. 32. The Minister of Labour and Social Policy shall specify, by way of an ordinance :

1) the procedure of making the payments mentioned in Art. Art. 20 Point 2 and 31,

2) the procedure of paying the social insurance rates mentioned in Art. Art 29 Point 1, 30 Para 2, and 37 Para 1 Points 2 and 5.

Art. 33. 1. Employing institutions may employ foreigners in the territory of the Polish People's Republic provided they secure the consent to do so of an employment agency of the provincial level ; passing its consent, that agency shall give due consideration to the situation in the labour market.

2. Whenever separate provisions condition the practising of a profession on a consent of a competent agency, the employing institution shall be obliged to secure such consent previous to approaching the agency mentioned in Para 1.

3. The Scientific Secretary of the Polish Academy of Sciences shall specify the conditions of employing foreigners at agencies of the Polish Academy of Sciences.

4. The provisions of Paras 1 and 2 shall not violate any separate regulations concerning the conditions of employing foreigners or involving a ban on the employment of foreigners.

CHAPTER 7

The Labour Fund

Art. 34. 1. The Labour Fund, called the Fund further on, is hereby set up.

2. The Fund shall be administered by the Minister of Labour and Social Policy.

Art. 35. 1. The Fund's proceeds shall include :

1) obligatory rates paid by employing institutions from payments basing on which the social insurance rates are assessed, to the amount specified by the Council of Ministers by way of an ordinance,

2) payments made by employing institutions, mentioned in Art. 24 Para 4,

3) grants-in-aid from the central budget as supplementation of the Fund's resources reserved for the payment of obligatory allowances, after the means from the rates mentioned in Point 1 have been used up,

4) proceeds from the Fund's shares in companies,

5) proceeds from economic activities,

6) means from other sources according to separate provisions,

7) other proceeds.

2. The Fund may add to its means through the negotiation of credits and loans.

3. The rates mentioned in Para 1 Point 1 shall be paid to the Fund by employing institutions from their own resources for the period of duration of social insurance of every individual employee, according to the procedure and principles provided for social insurance rates. The rates to the Fund shall be collected by the Social Insurance Institution together with the social insurance rates, and the amounts

collected by virtue of rates shall be transferred to the Fund quarter-yearly in the first month of the next quarter.

4. Co-operatives of the disabled and of the blind, as well as the training and production works of the Polish Association of the Deaf shall be exempt from the rates mentioned in Para 1 Point 1.

Art. 36. 1. The Fund's proceeds shall include also :

1) payments made by directing bodies and by citizens employed by foreign employers in cases mentioned in Art. Art. 29 Point 2 and 31,

2) payments made by foreign partners by virtue of recruitment of Polish workers employed on the grounds of international agreements.

2. The means mentioned in Para 1 Point 2 shall be accumulated on the foreign currency account administered by the Fund.

Art. 37. 1. The Fund's resources shall be allocated to finance :

1) the costs of professional training or requalification of the unemployed,

2) the training benefits mentioned in Art. Art. 12 and 18 Point 1, and the social insurance rates,

3) the loans mentioned in Art. 13,

4) the costs of organizing the intervention works mentioned in Art. 14,

5) the benefits mentioned in Art. Art. 15 and 18 Point 2, and the social insurance rates for the persons who draw those benefits,

6) the repayment of a loan according to the principles specified in Art. 21 Para 2,

7) the salary differentials mentioned in Art. 18 Point 3,

8) the credit tickets mentioned in Art. 22,

9) the costs of creation of posts, wages, and social insurance rates mentioned in Art. 24,

10) salary differentials due to persons who come within the Law on the special rules of termination of employment contracts for reasons arising from the employing, institutions, and on changes of other acts,

11) the introduction and development of a data system and vocational information, necessary for the accomplishment of labour exchange and vocational guidance, and the tasks related to the employment of candidates away from their place of residence,

12) the wages paid to adolescent workers employed on the grounds of contracts of employment in order to receive professional training, and social insurance rates for those workers,

13) the financial equivalents paid to students of vocational schools who study in the intramural system, during the practical professional training at school workshops or employing institutions where such training takes place on the grounds of a contract negotiated by the school and the employing institution,

14) additions and bonuses paid to employees for the performance of functions of apprentices' tutors,

15) the shares contributed to companies,

16) the purchase of shares or bonds.

2. The expenditure mentioned in Para 1 Points 12 and 13 shall be finansed from the Fund to the amount of the lowest payments specified in separate provisions.

3. The Minister of Labour and Social Policy, after consultation with the Chief Council of Employment and in agreement with the Minister of Finance, may specify purposes to which the Fund's resources are to be allocated other than those mentioned in Para 1.

4. The payment of wages financed from the Fund shall not be included in the

tax assessment basis as regards the tax on salaries, on wages, and on the raise in wages.

Art. 38. The Fund's takings shall be exempt from income tax.

Art. 39. In cases not regulated by the present Chapter, provisions of the budget law concerning the administration of funds for specified purposes shall apply respectively.

CHAPTER 8

Transitional and Concluding Provisions

Art. 40. In 1990, the Minister of Labour and Social Policy shall create, for a period of 2 years, the Chief Council of Employment made up of 18 persons, iincluding equal proportions of representatives of : national trade union organizations and national trade unions representing the employees of most employing institutions, organizations of employers, and agencies of State administration.

Art. 41. The Fund shall take over the means assigned in 1990 for the State Fund for Professional Activation together with the replenishment proceeds on the day of that Fund's liquidation.

Art. 42. Until the establishment of provincial and district labour offices, but for not longer than 6 months from the day of the coming into force of the Law, the tasks resulting from the Law shall be fulfilled by the existing local agencies of State administration with special competence in matters of employment.

Art. 43. 1. The Minister of Labour and Social Policy shall submit to the Council of Ministers a settlement of accounts of the resources administered by the State Fund for Professional Activation for the period till the coming into force of the Law.

2. The obligations of the State Fund for Professional Activation which arose "before the day of coming into force of the Law shall be met from the Labour Fund.

3. Female college graduates drawing benefits from the State Fund for Professional Activation according to the rules specified in regulations concerning leaves for mothers of small children on the day of coming into force of the Law shall be repaid those benefits from the Labour Fund according to the hitherto valid principles.

Art. 44. Provisions of the Law shall not apply to persons looking for a job to the extent regulated by the Law on employment on board the merchant sea vessels.

Art. 45. 1. Repealed are :

1) decree of August 2, 1945, on employment offices *(Journal of Lazos,* No. 30, item 182 ; of 1948, No. 24, item 161 ; of 1950, No. 13, item 124 ; and of 1956, No. 13, .item 95),

2) Law of October 26, 1982, on the treatment of persons evading work *(Journal* of *Laws,* No. 35, item 229),

3) Law of December 14, 1982, on the employment of graduates *(Journal of Laws,* No. 40, item 270),

4) Law of December 29, 1983, on the State Fund for Professional Activation *(Journal of Laws,* No. 75, item 334 ; of 1985, No. 37, item 174 ; and of 1989, No. 35, item 192).

2. The still unclosed administrative proceedings in cases mentioned in the act quoted in Para 1 Point 2 are hereby discontinued, and the final decisions passed in those cases shall expire on the day of coming into force of the present Law.

Art. 46. This Law shall enter into force on the day of its publication.

Książki i czasopisma Ossolineum można nabywać w placówkach własnych Wydawnictwa:

50-106 WROCŁAW, Rynek 6
50-106 WROCŁAW, Rynek 9 (sprzedaż wysyłkowa)
50-227 WROCŁAW, ul. Kleczkowska 44 (magazyn hurtowy — sprzedaż)
61-745 POZNAŃ, ul. Marcinkowskiego 3
80-855 GDANSK, ul. Łagiewniki 56 (książki i muzykalia)
70-551 SZCZECIN, pl. Żołnierza Polskiego 1
90-447 ŁÓDŹ, ul. Piotrkowska 181
31-110 KRAKÓW, ul. Św. Jana 28 (sprzedaż detaliczna i hurtowa)

oraz w księgarniach Ośrodka Rozpowszechniania Wydawnictw Naukowych PAN:

50-071 WROCŁAW, pl. Wolności 7, I p.
00-901 WARSZAWA, Pałac Kultury i Nauki
31-020 KRAKÓW, ul. Św. Marka 22
61-725 POZNAŃ, ul. Mielżyńskiego 27/29
40-077 KATOWICE, ul. Bankowa 14, paw. D, I p.
20-031 LUBLIN, pl. M. Curie-Skłodowskiej 5
15-082 BIAŁYSTOK, ul. Nowotki 13
90-268 ŁÓDŹ, ul. Piotrkowska 48.

Ponadto sprzedaż edycji ossolińskich prowadzą większe księgarnie naukowe, w szczególności zaś: 31-042 KRAKÓW, Rynek Główny 4; 00-068 WARSZAWA, Krakowskie Przedmieście 7.

Ossolineum zaprasza do współpracy księgarzy, agencje kolporterskie i odbiorców indywidualnych. Oferujemy możliwość zakupu handlowej ilości książek po cenach hurtowych bezpośrednio od Wydawnictwa na następujących warunkach: odbiór następuje własnym transportem lub przesyłką pocztową na koszt odbiorcy, a rozliczenie należności — gotówką lub czekiem potwierdzonym w banku (wpłata bezpośrednio do kasy Wydawnictwa lub przelewem na konto Ossolineum w terminie do 14 dni od chwili otrzymania towaru). Konto: Wielkopolski Bank Kredytowy IV O/Wrocław, 359209-1078.

OSSOLINEUM —YOUR CHEAPEST AND MOST RELIABLE SUPPLIER OF ACADEMIC BOOKS AND PERIODICALS

Ossolineum Publishing House offers a wide spectrum of periodicals, serial publications and books covering various fields of contemporary scientific research.

For orders containing more than 10 titles (copies) a rabatę of 15—20% will be granted, by purchase of 50 titles (copies) the rabatę will increase to 40%. For booksellers — 50% rabatę. Subscriptions — 30% rabate.

The invoice is payable upon receipt. Individual and wholesale orders for Books and periodicals published by Ossolineum, should be sent directly to the publishers. Export Department, Rynek 9, 50-106 Wrocław, Poland. Our bank account for foreign currencies: Wielkopolski Bank Kredytowy, IV O/Wrocław, 359209-1078-151-6787.