

INDUSTRIAL DEMOCRACY IN POLAND IN THE 1990s*

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I. THE NOTION OF "INDUSTRIAL DEMOCRACY"

Industrial democracy is the notion that first appeared in the 19th century¹, developed and consolidated in this, reaching its end, century and marking the further perspectives of humanity. Avoiding strict definitions, it is usually considered that we have to do with "an expression with a number of meanings and usages all concerned with the role and status of workers in industrial society and all implying, to a greater or lesser extent, the participation of those who work in industry in determining the conditions of their working lives" or, more generally, that it is the matter of "any theory or scheme as long as it is based on a genuine concern for the rights of workers in industry"². One should pay attention to the ideological element comprised in the above explanations: not every model of collective labour relations³, concerning the relations among the State, employers and employees as well as organizations of both the "social partners", may be called an industrial democracy; only the model taking into account the necessary minimum of rights and interests of the weaker partner — the workers — and accepted by them, may be called an industrial democracy, as the examples of undemocratic models of collective labour relations are not few in our century. For instance, the industrial relations in Poland, as long as they were marked by the predominant role played by the State Political and administrative authorities, had been dependent on the ruling communist party in consequence of virtual absence of employers and their organizations and the weaknees of the official trade unions. Free trade unions did not appear in Po-

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¹ S. and B. Webb, *Industrial Democracy*, 1898.

² That is the definition of "industrial democracy" in: A. I. Marsh, E. O. Evans, *The Dictionary of Industrial Relations*, London 1973.

³ The notion of "collective labour relations" entered the Polish language of law in the 1980s. See W. Szubert, "Kierunki rozwoju zbiorowego prawa pracy" [Trends of Development of the Collective Labour Law], *Państwo i Prawo*, 1981, No. 6; T. Zieliński, "Idea zbiorowego prawa pracy w socjalistycznym porządku prawnym" [The Idea of the Collective Labour Law in the Socialist Legal Order], *Państwo i Prawo*, 1980, No. 10; J. Jończyk, *Zbiorowe prawo pracy [Collective Labour Law]*, Wrocław, 1983, M. Matey, *Labour Law and Industrial Relations in Poland*, Kluwer, the Netherlands 1988.

land before 1980, and even then they were soon suppressed and forced to operate clandestinely until the "Round Table" Agreement was reached in 1989. The term "collective labour dispute" entered into the official vocabulary in 1980—1981. The right to strike was then made legal; however, in 1982 it was subject to restrictions, as a rule disregarded by the strikers, until new legal regulations in that field were adopted in the post-communist Poland in 1991.

Poland did not begin to form its post-communist system of industrial relations until the beginning of the 1990s. Will it meet the criteria of "industrial democracy"? —the question remains open and every effort should be made to maintain that particular trend in Polish transformation. Important reasons seem to justify the hope for the adequate, democratic form of the industrial relations that are being created in Poland at present: 1) the trade union origin of Solidarity, backed, on the one hand, by the socialdemocratic ideas still vivid in Poland⁴, on the other hand by the new social doctrine of the Catholic Church, 2) the broad support for the conception of social market economy, 3) the influence exerted by the European Community, to whose full membership Poland decidedly aspires, the programme of European Community, consisting in "economic and social cohesion", strengthened by the decisions made in Maastricht as well as the influence of West-European patterns of labour system based on three-sided negotiations, 4) Polish obligations arising out of the ratification of the UNO International Covenant on Economic, Social and Cultural Rights and the fundamental ILO conventions. In the reliable milieus exerting an influence upon the formation of the system of industrial relations there is a prevalent belief that those relations system should be formed as a social labour system, i.e. such a system within the State in which employers are absolutely free to act within the limits of the rule of law and the workers are protected against exploitation and they are vested with the necessary guarantees of social security⁵. So understood social labour system, if attained in Poland, will certainly meet the criteria of industrial democracy.

The collective labour relations in Poland at the beginning of the 1990s are governed by the following new statutes;

- a) the Trade Unions Act of 23 May, 1991⁶,
- b) the Employers' Organizations Act of 23 May, 1991^{7,8},
- c) the Solving Collective Labour Disputes Act of 23 May, 1991⁸,
- d) the Labour Code, in the part relating to collective labour agreements⁹ (the new Act relating to collective labour agreements is being drafted at present), and

⁴ An interview with R. Bugaj, the head of "Solidarność Pracy", ("Solidarity of Labour") published in the daily *Gazeta Wyborcza* of 25 May, 1991; see also W. Lamentowicz, "Od państwa 'represyjnego' do 'socjalnego państwa prawnego'" [From the Repressive State to the Social State of Law], published in the daily *Rzeczpospolita* of 25 — 26 April, 1992.

⁵ Prof. T. Zieliński, the Head of the State Commission for the Labour Law Reform: *Założenia ustroju pracy w systemie gospodarki rynkowej, materiał roboczy Komisji z 1991 r.* [The Assumptions of Labour Constitution in the System of Market Economy], working material of the Commission, 1991), not published.

⁶ Dz. U. (*Journal of Laws*) No. 55, item 234.

⁷ Dz. U. No. 55, item 235.

⁸ Dz. U. No. 55, item 236.

⁹ Amendment to the Labour Code introduced by the Collective Labour Agreements Act of 24 November, 1986 (Dz. U. No. 42, item 201).

e) the State enterprises' staff self-management Act of 25 September, 1981, still in force¹⁰.

II. THE COMPONENTS OF THE INDUSTRIAL DEMOCRACY SYSTEM IN POLAND

1. The Trade Unions

a) Organization

The following three basic groups of trade unions operate in Poland in 1992;

— the Independent Self-governing Trade Union "Solidarity", established in 1980 and then counting about 10 million members, delegalized in 1982, again legalized after the "Round Table" Agreement; at present counting about 2 million members (according to its own estimations);

— All-Poland Alliance of Trade Unions (OPZZ), established in 1982 during the martial law, now counting about 5 million members (according to its own estimations);

— trade unions not connected with the above mentioned country-wide trade union organizations, among them the trade union "Solidarity 80", Polish Teachers' Association, etc.

In spite of shortage of the exact data it is believed that about 40% of all the employed people are associated in trade unions. That proportion is particularly low in private enterprises.

The trade union "Solidarity" operates on the grounds of the statute of 1990 with later amendments, introduced in February 1991, as well as the most recent one adopted in June 1992. The following are the all-union authorities: a) the Assembly of Delegates, b) the National Commission, c) the Supervisory Board elected for 3 years. The headquarters of the trade union are located in Gdańsk. The trade union is organized according to the territorial principle, based on division to the so called Regions (for instance Warsaw is the seat of Mazowsze Region of Solidarity). The following are the regional authorities of the union: a) General Assembly of the Region delegates, b) the Region Board, c) the Supervisory Board. The statute allows to establish vocational and industrial sections both at the Region and all-country level which, in the first period, constituted a slight deviation from the territorial principle. With the lapse of time and with the present forms of the trade union activities taking shape strong tendencies to strengthen the industrial (branch) element within the trade union organization have been observed and now one can hear opinions that the organizational principle should be changed in that very direction and that this may happen soon.

The All-Poland Alliance of Trade Unions (OPZZ), an organization of the post-communist Left political orientation, pursues its activities on the grounds of the statute adopted in 1990. The following are its bodies: a) the Congress, b) OPZZ Council, c) the Presidium of the Council, d) the Supervisory Board. The majority of trade unions associated in OPZZ are industrial (branch) unions or their organizations; according to the statute association in OPZZ does not

¹⁰ Dz. U. No. 24, item 123.

deprive them of their independence nor self-government within the limits determined by their statutes and programmes. It is allowed to create local representations of OPZZ and that does not violate the fundamental industrial principle of organization. OPZZ has its seat in Warsaw.

b) Provisions of the Trade Unions Act of 23 May, 1991

The Trade Unions Act of 23 May, 1991 has replaced the former Trade Unions Act of 8 October, 1982, enforced at the beginning of martial law in Poland. The 1982 Act delegatized Solidarity and all other then existing trade unions (the Act theoretically acknowledged trade unions pluralism, however suspended it for an indefinite time which ended, in practice, when the "Round Table" Agreement was reached. ;

The new Trade Unions Act was the result of a year's preparatory works based on the draft worked out and presented to the Sejm by Solidarity; however, that does not mean that the Act strictly reflects the initial draft prepared by Solidarity.

After the first year of the Act being in force various critical opinions appeared. Its final shape is not satisfactory to trade unions, each of which notices different negative sides. However, the Act is mainly criticized by managers who perceive there the philosophy of a syndicalist state¹¹ in which every important economic decision must be first approved by trade unions, and that makes economic activity inefficient and impairs the principles of parliamentary system.

The basic unit of a trade union, according to the Act, is a trade union organization within a workplace (one can hear opinions among managers that the trade unions should be taken out from workplaces). In those work establishments where there are more than one trade union organizations, and usually there are at least two — Solidarity and a trade union associated in OPZZ—each of them protects the rights and represents interests of its members. An employee not being a member of either of them may choose the trade union to protect his rights against the employer, provided the trade union consents to do it. If it does not, the employer will be released from the duty of consulting individual matters of such a worker with the trade unions. In the matters relating to collective rights and interests trade union organizations may form a common representation; so far the trade unions are too much politically antagonized to make such common representations possible.

The all-Poland trade unions (Solidarity and OPZZ) are vested with the right to give their opinions on proposals and draft Acts, as well as on the relevant lower level provisions within the scope of their activities; they also have the right to submit their own drafts or applications to adopt relevant legislative acts through members of Parliament or bodies having the right of legislative initiative, however, they are not vested with the legislative initiative of their own. The trade unions have the right to engage in collective disputes and to conclude collective labour agreements as well as any kind of collective agreements relating to labour relations.

¹¹ R. Matyja, K. M. Ujazdowski, "Krytyka państwa pracy" [Critically on the Labour State], the daily *Nowa Europa* of 21 April, 1992.

There is nothing like the notion of “the most representative trade union” provided by the Polish law so far; the would be difficult because of the present distribution of powers among the basic trade unions. In relation to OPZZ, due to its federation-like character, the Act applies the notion “all-Poland inter-trade union organization”, while with respect to Solidarity — the notion of “all-Poland trade union representing the workers of the majority of work establishments”.

The right to associate in trade unions is vested in all workers irrespective of the grounds of their employment relationship; it is also vested in other, specified under the Act, persons being actually in analogical situation as workers — this relates to, among others, the unemployed, the pensioners, the Police officers and Frontier Guard; however, that right is not vested in professional soldiers nor those drafted for military service.

Trade unions are formed by virtue of the resolution relating to their formation, adopted by at least 10 persons. They are subject to registration in court and when registered, gain legal personality¹². Therefore, according to the Act both the registered and unregistered trade unions may operate in Poland, although the latter ones cannot exercise the powers reserved, by the Act, for the registered trade unions¹³. When the present Act was being drafted there was a controversy between the supporters of the “notificational” character of registration and those supporting its “legalizing” character which was characteristic under the previous legislation relating to trade unions in communist Poland. The adopted solution is of an intermediary character, consisting in a significant, as compared with the previous state, reduction of the matters subject to control by the court during registration (the court may refuse registration only in case the trade union seeking registration fails to meet the requirements relating to the procedure, specified under the Act, of the trade union formation and fails to keep its statute complying with the law in force) and in allowing for legal existence of the unregistered trade unions.

2. Employers' organizations

Employers' organizations are a new phenomenon in Poland. During the 45 year period of the communist Poland true employers were totally absent; in the centrally managed economy there actually was one employer —the State. The first presage of the new economic organization: the Confederation of Polish Employers, appeared in November 1989; it assembled both the new and the previous initiatives, among which the groups of directors of State-owned enterprises played a considerable role. At the same time many bodies similar to employers' organizations were established, for instance the Federation of Small and Medium-sized Enterprises. With the extension of private economy the Confederation of Polish Employers gained more and more features of an employers' organization¹⁴, although with respect to its importance and the

¹² Art. Art. 14 and 15 of the Trade Unions Act of 23 May, 1991; see also the Regulation by the Minister of Justice, on the procedure of trade unions registration, of 2 August, 1991 (Dz. U. No. 77, item 340).

¹³ See W. Masewicz, “Nowe prawo o związkach zawodowych” [The New Law on Trade Unions], *Praca i Zabezpieczenie Społeczne*, 1991, No. 10, p. 7.

¹⁴ M. Seweryński, “Organizacje (związki) pracodawców” [Employers' Organizations

scope of activities it still fails fully to perform the role similar to employers' organizations in the countries of well developed market economy.

Legal regulations provided by the Employers' Organizations Act of 23 May, 1991 were to promote more dynamic development of that participant in the industrial democracy system in Poland. When the above mentioned Act was being drafted, as well as during the parliamentary debates, its purposefulness was considered, as at that stage, when most enterprises were still State-owned, real employers were practically absent. Anyway, the private employers already operating were not really interested in associating to protect their interests¹⁵; that was the consequence of their privileged position as a social partner, as compared with the State-owned enterprises (they had much better possibilities of offering higher wages to their workers), as well as of their unawareness of the advantages resulting from the association in the employers' organizations. However, the belief in promotional role to be played by the Act with respect to the new employers' movement in Poland prevailed.

In the meaning of the Act an employer is a natural person or an organizational unit employing workers, whose objects consist in carrying on economic activity. Employers are vested with the right to freely associate in unions or join the existing ones, without the necessity of obtaining any previous consent. The fundamental task of an employers' organization is to protect the rights and represent interests of the associated members in relation to trade unions, authorities, the State administration and local governments' bodies.

An employers' organization is formed by virtue of a resolution stating its formation, adopted by at least 10 employers. Such organizations must be registered in court¹⁶ and as a result of registration — gain legal personality. The court may refuse registration if an organization fails to meet the requirements relating to the procedure of its formation specified under the Act, or if its statute is incompatible with the law in force.

According to the statute of the Confederation of Polish Employers, adopted in September 1991, there are the following bodies of the Confederation: a) the General Assembly, b) the Executive Board, c) the Presidium of the Executive Board, d) the Supervisory Board.

3. The Role of the Government

It has been assumed, in the model of industrial democracy taking shape in Poland, that the responsibility of the State and the government consists in the creation of the institutional and legal frames for that system operation¹⁷. On

(Unions)], *Acta Universitatis Wratislaviensis*, No. 1258, Wrocław 1990; See also J. Jończyk, "O rolach pracodawcy i charakterze stosunku pracy" [On the Employer's Role and the Character of Employment Relationship], *Polityka Społeczna*, 1991, No. 9.

¹⁵ R. Semerak-Nebeś, "Ustawa o organizacjach pracodawców" [The Employers' Organizations Act], *Praca i Zabezpieczenie Społeczne*, 1991, No. 8/9.

¹⁶ Art. 9 and 10 of the Employers' Organizations Act of 23 May, 1991; see also the Regulation by the Minister of Justice, on the procedure of the employers' organizations registration, of 2 August, 1991 (Dz. U. No. 77, item 341).

¹⁷ That type of activities has been reflected, among others, by the Order No. 1 by the President of the Council of Ministers on creation of the Polish Three-Parties Committee for Cooperation with the International Labour Organization and the Scope of Its Operation, of 6 January, 1990; The Committee consists of the representatives of the governmental side

the contrary, the State bodies should refrain from performing the role of an employer, which was a common practice under the previous political system. It is believed, however, that performing the mediatory and conciliatory function with respect to both the employers' and workers' organizations makes the proper role for the State administration bodies. And indeed, in 1990 — 1991 the Ministry of Labour and Social Policy appeared in that role many times, taking part in negotiations and assisting in settling the disputes relating to various branches of economy, however, quite often the Ministry is not able to refrain itself to the role of a mediator and the elements of its position of a "collective State employer" may be distinctly seen. That is to a large extent the result of the so far weak position of the employers' organization as a social partner against the determination and power of trade unions (the necessity of the parallel but separate negotiations with two powerful trade unions: Solidarity and OPZZ, should be emphasised as being an additional trouble). In early months of 1992 Ministry of Labour and Social Policy is in the course of preparation of an educational programme for social partners pertaining to the methods and techniques of collective negotiations, such a programme is to be realized in cooperation with the "Social Dialogue" Foundation sponsored by the International Labour Office and by the Commission of European Communities.

III. NEGOTIATIONS AND COLLECTIVE AGREEMENTS

Poland may boast a long tradition of collective agreements and the Collective Agreements Act of 1937 was thought, in the pre-war Europe, to constitute an exemplary pattern of legal regulations in that field. After World War II the collective agreements went through the stages of development as well as regression. In the face of shortage of labour law codification before 1975, the agreements played an important role in forming both the individual employment relations and labour law in general. The Labour Code overtaking the detailed regulation of the employment relations drastically limited both the contents and the importance of the collective agreements, which was considerably supported by the communist command of economy. On the grounds of the Labour Code provisions then in force, 77 industrial collective agreements were negotiated, a part of which is formally still in force (although with many modifications), despite their total inadequacy to the present economic and political system.

The amendment of the part of the Labour Code relating to collective agreements, performed in 1986, failed to improve the situation considerably, as it still reflected the centrally commanded State economy. It maintained the scope of collective agreements limited to the matters relating to remuneration and working conditions connected with particular properties of a given industry or trade and also empowered the Ministers of particular industries to sign the agreements on behalf of employers; it also provided for excessively complicated procedure of approvals of the contents of an agreement on the employer's side

(20 persons), the employers' organizations (10 persons) and the employees' organizations (10 persons).

creating obstacles¹⁸ difficult to overcome in order to conclude the collective agreements. That faulty legal regulation of 1986 is still in force, blocking the process of concluding collective agreements (however, two important agreements have been concluded recently — for metallurgists and coal miners) and forcing the social partners to violate this inadequate¹⁹, but still binding law.

The considerable faultiness of the statutory provisions of 1986 relates also to making the collective agreements registration conditional not only on its compatibility with the law, but also on its conformity with the social and economic policy of the State as well as with the principles of determining the remuneration by the Council of Ministers. In case the Minister of Labour would question the agreement from that point of view, a special parity commission is empowered to solve the matter. Such a solution was justly criticized by the ILO Committee of Experts for implementation of the ILO conventions and recommendations.

The need for a new statutory regulation of collective agreements is felt the more painfully and important steps leading to that solution have already been undertaken. A new Act has been drafted by the Commission for Labour Law Reform²⁰, and simultaneously parallel suggestions are being drafted by the trade unions. However, it becomes very distinct that working out a new conception of collective agreements is conditional upon the development of economic system and formation of new collective labour relations more than any other solution to be adopted by the labour law. Having no strict vision of the development in those areas (and that has been the so far situation in Poland) one is not able to suggest any rational conception for the collective agreements in the period of economic transformation. And so, for instance, Solidarity was in favour of the collective agreements within workplaces, now with the structural industrial trends strengthening, it opts for the negotiations and agreements at the level of industries and branches of economy.

On the other hand, the conceptions of regional-industrial collective agreements (for instance for Lower Silesia, for Greater Poland, Masovia, etc.) showing a concern to keep the standards of justice and the specified standards identical or similar within a region, have been recently worked out, reflecting the political trends to regionalization of the country.²¹

The so far ongoing works on the draft of the new Collective Agreements Act have revealed a number of problems whose solution is not being clearly perceived at the moment. There are the following controversial problems:

¹⁸ M. Matey, "Rokowania, układy i spory zbiorowe pracy w nowym modelu prawa pracy w Polsce" [Labour Negotiations, Agreements and Disputes in Poland in the New Model of Labour Law in Poland], in: *Przesłanki reformy prawa pracy* [The Assumptions for the Labour Law Reform], collective work edited by Z. Salwa, Institute Of Labour and Social Matters, Warsaw 1990.

¹⁹ J. Wrątny, *Ewolucja zbiorowego prawa pracy w Polsce w latach 1980 — 1991* [Evolution of the Collective Labour Law in Poland, 1980 — 1991], Warszawa 1991.

²⁰ H. Lewandowski, "O projekcie ustawy o zakładowych układach zbiorowych pracy" [On the Draft of Workplace Collective Agreements], *Praca i Zabezpieczenie Społeczne*, 1991, No. 10.

²¹ J. Jończyk, „Przyczynek do dyskusji o nowym modelu układu zbiorowego pracy” [Contribution to the Discussion on the New Model of Collective Agreement], *Rzeczpospolita* of 10 April 1992.

- a) introduction of country-wide basic agreements, which might be three-sided, with the participation of the Government;
- b) determination of mutual relations of multi-level agreements: one or many work establishments, to a particular industry or country-wide ;
- c) admission of unlimited scope *ratione materiae* of agreements;
- d) admission of derogative clauses (temporary deviations to the workers' detriment from the standards introduced by the State;
- e) determination of the employer's side in collective agreements relating to many work establishments;
- f) determination of the workers' side in the conditions of trade unions pluralism, in the situation where there is no uniform attitude of the trade unions (a possibility to empower one trade union which: 1) would be elected by the workers by ballot with at least half of them taking part, 2) having the biggest number of members among those working in the said work establishment, 3) which would be the first one to terminate negotiations to conclude a collective agreement, is being taken into account).

It should be emphasised that the delay, even if because of justified reasons, in drafting the new Collective Agreements Act, results in a painful gap in the package of statutes forming the system of industrial democracy in Poland, while the three other elements of the said package (the trade unions, the employers' organizations and the collective labour disputes) have already had their statutory regulation passed on 23 May 1991.

IV COLLECTIVE LABOUR DISPUTES

The political doctrine of communism did not allow the possibility of any conflict between the working class and the communist State, therefore the notion of the "collective labour dispute" could not appear in the official vocabulary in Central and East Europe until 1980, as a result of Social Agreement signed in Gdańsk.²² The right to strike was legalized in Poland with the moment the statute of Solidarity was registered in 1980. In the period of martial law the Trade Unions Act of 8 October, 1982²³ maintained the legality of the right to strike, however, subjected it to several restrictions and procedural rigours which deserved the name "paper fortifications". The procedure imposed for collective disputes under martial law was commonly disregarded and violated in the situation of social unrest and spontaneous strikes at the end of the 1980s. The works on new, simplified regulation of the procedure of settling collective disputes, undertaken in 1990, led to adoption of the Settling the Collective Disputes Act of 23 May, 1991.²⁴ Legislative works on this Act were based on

²² See M. Seweryński, "Reglement des conflits collectifs du travail dans les pays de l'Europe de l'Est", *Rapports Nationaux*, Theme II, XIII World Congress of Labour Law and Social Security, Athens, September 1991.

²³ Dz. U. No. 54, 1985, item 277 with later amendments. See L. Florek, "Rapport National Polonais", *Rapports Nationaux*, Theme II, XII World Congress of Labour Law and Social Security, Athens, September 1991.

²⁴ See: L. Florek, "Prawo strajkowe" [The Right to Strike], the daily *Rzeczpospolita* of 11 September, 1991; see also Z. Salwa, "Nowa regulacja rozwiązywania sporów zbiorowych" [New Regulation of Settling the Collective Disputes], *Praca i Zabezpieczenie Społeczne*, 1991, No. 8/9.

the draft prepared by the Commission for Labour Law Reform, however, the attitude of trade unions as well as parliamentary debates exerted an important influence upon the final contents of the Act. According to initial assumptions the regulation relating to collective disputes was to constitute a part of the Trade Unions Act, however the opinion that subordination of collective disputes to trade unions was improper prevailed, therefore that issue has been excluded into a separate statute.

According to the Act by a collective dispute one should understand a dispute relating to working conditions, remuneration or social benefits as well as the rights and freedoms arising out of membership in a trade union. A collective dispute is not allowed to support individual claims of workers; such matters should be settled by the courts. Collective rights and interests of workers are represented by trade unions, while those of employers — by relevant employers' organizations. A collective dispute — in the meaning of the Act — may arise in any work establishment, either State-owned, owned by a co-operative, or constituting the property of private or mixed capital.

The Act envisages three basic stages of the collective dispute: a) negotiations, b) mediation and arbitration, c) strike. Negotiations and mediation are obligatory, i.e. without carrying them on a trade union cannot exercise its right to strike. Arbitration is thought as a facultative instrument.

If the party initiating the dispute supports the submitted claims, the dispute will be further carried on with the participation of a mediator guaranteeing impartiality. The mediator will be appointed jointly by the parties, he may be selected from the list prepared by the Minister of Labour and Social Policy in agreement with the workers' and employers' organizations. The mediation proceedings are terminated with an agreement signed by the parties, and if the agreement is not reached — with a record of divergencies specifying the attitudes of the parties. Failure to reach an agreement in consequence of the mediation proceedings gives right to commence a strike.

However, a trade union may, not exercising the right to strike, undertake another attempt to settle the dispute by submitting it to the board of social arbitration. If neither of the parties reserves the non-binding character of arbitration decision before lodging the dispute to the board, its decision will be binding, i.e. will exclude the possibility of strike.

Collective disputes relating to one work establishment are heard by the boards of arbitration at provincial courts; those relating to many work establishments are heard by the Board of Social Arbitration at the Supreme Court. The board is composed of a chairman appointed from among the judges of the relevant court by the president of the court and of six members appointed by the parties (each of the parties appoints three members of the board) from among the persons not interested in the dispute. The decision of the board is made by the majority of votes.²⁵

According to the statutory definition of a strike — it consists in collective refusal by workers to perform their work, in order to settle the collective

²⁵ See Regulation by the Council of Ministers on the Detailed Proceedings Before the Social Arbitration Boards, of 16 August, 1991 (Dz. U. No. 73, item 324).

dispute. A strike is a final measure and cannot be proclaimed without all the possibilities of settling the dispute through negotiations and mediation being previously exhausted. The lockout is not legally regulated in Poland (however, it has been proposed in the draft of the Law, but disappeared during the Parliamentary debate). However, a strike may be proclaimed irrespective of the above-mentioned principles if unlawful action on the part of the employer made collective negotiations or mediation impossible and also in the case when the employer terminated employment relationship with the trade unions activist carrying on the dispute. The Act stipulates that the trade union, while making the decision on proclaiming the strike, should take into account the commensurability of claims and the losses arising out of the strike.

The strike may be proclaimed by the trade union organization after having obtained the consent of the majority of the voting workers, provided at least half of all the workers employed in the given work establishment participated in voting. The strike should be proclaimed at least five days before it is commenced. Participation in a strike is voluntary. If the strike is organized in compliance with the provisions of the Act, participating in it does not constitute violation of workers' duties. During the strike workers maintain their right to social security allowances, as well as their rights arising out of employment relationship, except the right to remuneration. However, they may get allowances from the strike fund created and run by trade unions.

Despite a considerable simplification, as compared with the regulations of 1982, of the procedure of settling the collective disputes, and particularly of organizing the strike, it appears that the habits of disregarding and omitting the statutory procedures are being transmitted also to the newest regulation of 1991; numerous cases of spontaneous strikes, "illegal" from the point of view of the rules introduced under the Act, have been observed. The mere existence of statutory requirements, in particular the obligatory character of mediation and the binding decisions made by social boards of arbitration in case the parties fail to make prior reservations, is being evaluated by a part of the labour law academic milieu as raising doubts: any procedures should only facilitate the parties' attempts at settling conflicts, they should not constitute an imposed and obligatory element, restricting the freedom of social partners' activities. It seems that the development of industrial democracy system in Poland will tend to further considerable flexibility of legal requirements in that field.

V. WORKERS' PARTICIPATION

Since 1956 the workers' participation has been deemed to be a characteristic trait distinguishing Poland — on a par with Yugoslavia — from among other Central and East European countries under communist rule. Unexpectedly, the long awaited return to democratic system did not necessarily mean the continued development and strengthening of workers' participation patterns. Formation of market economy and privatization proceedings ongoing in this country mark a turning point in workers' participation.²⁶

²⁶ See M. Matey, "Workers' Participation in Poland on the Crossroads", *Bulletin of Comparative Labour Relations*, 1992, No. 23, Kluwer, the Netherlands.

Poland has had workers' participation since as long as 1956, defined as workers' self-government system, although in the 1960s and 1970s it became merely a formal institution, deprived of its natural and authentic character. In 1980 Solidarity's demands for economic reforms and genuine representation were followed by demands for authentic workers' self-government. The Workers' Self-Management Act was negotiated and adopted on 25 September, 1981,²⁷ along with the State-owned Enterprises Act. It reflected the broad public opinion's demands and expectations in the field of industrial democracy. However, full enforcement of the Act has been then hampered by the imposition of martial law.

In 1990 — 1992 in the State-owned enterprises maintaining their former status, the workers' self-management system has continued to operate according to the Act of 1981, unless some modifications have been introduced to the system, along with the process of the so called "commercialization" of State-owned enterprises. The bodies of the workers' self-management are as follows:

- 1) the general assembly of workers in the enterprise,
- 2) the workers' council.

The workers' self-management bodies constitute formal organs of the enterprise, according to the State-owned Enterprises Act which specifies the following bodies of an enterprise:

- a) the general assembly of workers,
- b) the workers' council,
- c) the director of the enterprise.

The workers' self-management bodies are vested with a number of decision-making prerogatives, as well as the consultative and supervisory powers. The scope of decision-making prerogatives of the workers' self-government bodies is presently being regarded as too extensive, even for a State-owned enterprise. The faulty arrangement of powers within an enterprise among its management, the bodies of the workers' self-management and trade unions, allegedly totally paralysing the possibilities of an enterprise operation, is ominously called the "Bermuda triangle." In the broad public opinion most competent managers rather than workers' participation are supposed to be able to push the Polish economy towards Europe. However, the idea of workers' self-management is still supported by a part of the academic milieu;²⁸ it is also backed up by a part of social-democratic political and parliamentary groups and mainly by the political group "Solidarność Pracy" ("Solidarity of Labour").

In the process of forming the market economy in Poland it is hard to find any reference to workers' participation as an important factor in the new system. The Privatization of State-owned Enterprises Act of 13 July, 1990²⁹ clearly replaced the workers' self-management in the privatized enterprises by the system of the employees' shareholding.

²⁷ Dz. U. No. 24, 1981, item 123.

²⁸ L. Bar, "Bezbronna idea samorządu" [The Helpless Idea of Self-government], *Polityka*, 1988, No. 26; by the same author: "Prawne formy reprezentacji załogi jednostki gospodarczej" [The Legal Forms of Representation of the Economic Unit Staff], *Państwo i Prawo*, 1991, No. 9.

²⁹ Dz. U. No. 51, 1990, item 298 with later amendments.

The Privatization of State-owned Enterprises Act has established the procedure of transformation of a State-owned enterprise into a company. According to Art. 24 of the Act the employees of a State-owned enterprise transformed into a company are entitled to purchase 20% of shares in the company on preferential conditions — at half the normal price. They also may buy more shares, however at full price. The preference shares must be offered to the employees not later than two months after the selling of shares on normal conditions begins. The employees' right to buy preference shares expires one year after the sale is commenced. However, the Act sets a limit to the employees' rights to buy preference shares: the total value of reductions cannot exceed the product-quotient of the average wage in the State economy for 12 months and the number of employees purchasing the shares.

Along with the employees' shareholding system the Privatization Act provides (Art. 17) for the creation of boards of directors (as well as supervisory boards) in companies formed out of the privatized State enterprises: one-third of the total number of members should be elected by the staff, possibly from among the employees of the company. Those elected to the board are protected against dismissal.

In this way, according to the programme of further formation of market economy in Poland, along with further ownership transformation (mass privatization) the system of workers's self-management is to be transformed into the system of financial participation of the employees. It seems, however, that even with the fullest enforcement of such a programme (which is doubtful in the next few years) the Polish solutions will not fall below the standards designed within the European Community, ensuring the employees the right to consultation and information.³⁰ Further events in that field in Poland are, at present, difficult to foresee.

³⁰ Amended Proposal of 20 September, 1991, of the Commission for a Council Directive on the establishment of European Works Council in Community-scale undertakings or groups of undertakings for the purpose of informing and consulting employees (*Official Journal of the European Communities*, No. C 336/11).