

LEGAL ELEMENTS OF THE NEW SOCIO-ECONOMIC ORDER

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I

What augured the new socio-economic order in Poland were the August 1980 agreements between the State authorities and the mass movement of Solidarity.

Several years later, a next step was made in this direction: at the "Round Table" conference in April 1989,¹ various social forces reached a political compromise.² There were among those forces some that were guided by the ideas of a democratic version of socialism, as well as those inspired by Christianity, the ideological achievements of Solidarity, the peasant movement and other idealogical sources and traditions.

The agreement was based on the principles of the future political system that follow from the citizens' inalienable right to live in a State that fully realizes the nation's sovereignty.

Specifically, the following principles were adopted:

- political pluralism expressed first and foremost in the right of free association in political, social and professional organizations within the democratic constitutional order;

- freedom of speech, including the creation for the variety of political forces of possibilities of a genuine access to all kinds of the media;

- a democratic procedure of appointment of all representations of State authority where it is nobody but the voters who determine who should be in power;

- independence of courts and their statutory powers to review the rule of law and the public order;

- local government enjoying full rights and appointed in free elections.³

The new economic order is to be achieved basing on the principles adopted

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¹ *Rzeczpospolita* of April 7, 1989; "Round Table" Agreements. "Round Table" Agreements, the Varmia and Mazury Region of Solidarity, 1989: complete materials.

² The "Round Table" conference was held between: Solidarity Opposition on the one hand and Coalition Government on the other hand on February 5—April 5, 1989.

³ "Round Table" Agreements, p. 5.

during the “Round Table” conference by means of transformations that are to consist primarily in the following:⁴

- development of workers’ self-management and participation;
- free development of the structure of ownership;
- development of the market and competition;
- liquidation of the remains of the system of order and distribution and limitation of the central planning to the shaping of State economic policy implemented through economic instruments;
- uniform financial policy with respect to firms;
- subjection of the mechanisms of selection of managers to the criteria of professional competence.”

II

The shaping of a new socio-economic order requires radical changes of the legal order. New legal institutions and solutions have to be created which would contribute to the development of democracy and the introduction of market economy. The former statutory regulations might prove useful but to a slight extent, and that only after the necessary changes are introduced in them.

Thus law is an important element in the shaping of a new socio-economic order. Statutes define the new and equal political and economic subjects, their respective rights and duties, the principles of their functioning, entering into legal relations and responsibility, and also the principles and means of social control. The scope of statutory regulation of this sphere is very broad. The nature and importance of the statutory changes is manifested by examples that are worthy of attention. It would take a book to discuss the whole of the new statutory regulations.

Elements of the new socio-economic order are contained first and foremost in the statutory regulations changing the name of the State, establishing the Senate as a novel institution, establishing the office of President, changing the situation of courts and the Public Prosecutor’s Office, and establishing local government.

THE NAME OF STATE, SENATE, PRESIDENT, COURTS

The name of the Polish State was changed: the former name of Republic of Poland was restored, and the recently used one — Polish People’s Republic — abolished. The Constitution states that Republic of Poland is a State ruled by law which realizes the principles of social justice, and the supreme authority lies with the Nation. Observance of laws is the basic duty of all State agencies, and all agencies of State authority and administration base on the legal provisions in their activity. Political parties group citizens on basis of voluntary membership and equality with the aim to influence the shaping of State policy through democratic methods.

⁴ *Ibidem*, p. 24.

The Senate was established in 1989 by way of constitutional amendment as the other house of parliament beside the Sejm. It is composed of 100 Senators elected for the term of the Sejm. The Senate appoints its Speaker and Deputy Speakers from among its composition. Its role follows from the following powers it exercises: the Senate has the right of legislative initiative; the Senate examines statutes passed by the Sejm and may submit motions as to amendment or rejection of a statute within one month after the handing over of that statute by the Sejm; the Sejm refuses the Senate's motions by a majority of two-thirds of votes with at least a half of all deputies present; the Senate is part of the National Assembly which elects President of the Republic.

The importance of the institution of Senate consists not only in its competences but also in the fact that it amounts to enhancement of the participation of representatives of society in control of the Sejm's legislative function.

The institution of President of the Republic of Poland was established by way of constitutional amendment in 1989. The President is the supreme representative of Polish State in both internal and international relations. Abolished at the same time was the Council of State, a collective body formerly acting as the head of state. The President is appointed for a term of six years by the National Assembly composed of the Sejm and the Senate. Eligible are all citizens who enjoy full electoral rights.

The President exercises his powers and performs his duties on the grounds and within the framework of the Constitution and statutes. Should he infringe any of those acts, he may be brought before the Constitutional Tribunal by force of a resolution of the National Assembly, that is a resolution taken jointly by the Sejm and the Senate by the majority of at least two-thirds of votes of the Assembly's total membership. The Constitution provides for cases of the office of President becoming vacant before the proper time.

The President's rights and duties have been defined in constitutional provisions. In particular, the President: ordains elections to the Sejm, the Senate, and local government; appoints and dismisses representatives of State abroad; accredits and dismisses foreign diplomatic representatives; commands the Armed Forces of Republic of Poland; presides over the Committee for National Defence; moves to the Sejm for appointment and dismissal of Prime Minister and President of the National Bank of Poland; exercises the right to grant pardon; ratifies and terminates international agreements; has the powers to impose martial law and to proclaim the state of emergency (the conditions and legal effects of these latter decisions being specified in statutes).

The rule of law is guaranteed by the functioning of the following institutions: the Constitutional Tribunal; the Tribunal of State; the Supreme Court and common as well as special courts; the Public Prosecutor's Office; and Ombudsman who upholds civil rights and liberties as defined in the Constitution and other legal provisions.

Justice is administered by the Supreme Court and common as well as special courts. The courts guard the political system of Republic of Poland; protect the achievements of Polish nation, the rule of law, social property and civil rights; and punish offenders. Court cases are examined and settled with the participation of appointed lay judges.

The judges are appointed by the President on motion of the National

Council of the Judiciary; they are irremovable with the exception of cases specified in statutes. The judges are independent and amenable to the statutes only. The First President of the Supreme Court is appointed from among judges of that Court, as well as recalled, by the Sejm on motion of the President.

It has to be stressed that the Supreme Court is the chief judicial agency which supervises the activity of all the other courts as far as their decisions are concerned. The Constitution allows of no other State agency to supervise the judicial decisions.

The Public Prosecutor's Office⁵ guards the rule of law and watches over the prosecution of offenders. It is subordinated to the Minister of Justice who is also Public Prosecutor General. Before, the Office was a separate state agency independent of the Minister of Justice.

Attached to the Public Prosecutor General is the Council of Prosecutors composed of representatives appointed by the provincial assemblies of prosecutors, five representatives appointed by the Ministry of Justice, and five prosecutors appointed by the Prosecutor General. The Council's competences include among others: examination of draft instructions that point out the basic directions of activity of the prosecutor's office; appraisal of the state and development of the staff of prosecutors; periodical appraisal of the fulfilment of tasks by the public prosecutor's office; definition of steps aimed at improvement of professional qualifications. Attached to provincial public prosecutor's offices are provincial assemblies of prosecutors and councils of provincial offices; their tasks have been specified by statutes.

LOCAL GOVERNMENT

Local government has been recognized as a basic principle of the system. The Constitution guarantees its participation in the exercise of authority⁶ and freedom of its other forms of activity. The statute that deals first and foremost with the implementation of that principle is Act of March 8, 1990 on local government⁷ and Act of March 8, 1990: electoral regulations in elections to commune authorities.⁸ The Act provides that residents of a commune form a self-governed community by force of law (Art. 1). A commune has legal personality; its independence is protected by law (Art. 2). A commune performs public tasks in its own name and on its own responsibility. The competences and tasks of a commune have been defined by provisions of Art. 6 and 7 of the Act. The Act provides that competences of a commune include all public matters of local importance that are not statutorily reserved to other subjects. A commune's own tasks mentioned in the Act include among other things

⁵ Competences of the Public Prosecutor's Office are regulated by the Act of March 22, 1990 on amending Act on the Public Prosecutor's Office of Polish People's Republic, the Code of Procedure in cases of transgressions, and the Act on the Supreme Court (*Journal of Laws*, No. 20, item 121).

⁶ Act of March 8, 1990: amendment of the Constitution of Republic of Poland (*J. of L.*, No. 16, item 94).

⁷ *J. of L.*, No. 16, item 95.

⁸ *J. of L.*, No. 16, item 96.

matters related to: land development and administration and environment protection; communal roads, bridges, squares and organization of traffic; water-works and water supply; sewage system, removal and treatment; clean land and preservation of sanitary facilities; supply of electric and heat energy; local public transport; health protection and social welfare; communal building; education and culture; markets; communal lawns and parks; cemeteries; public order and fire-control. Obviously, the above list is not complete. Besides, it has to be mentioned that statutes may impose on a commune the duty to perform tasks commissioned by the central administration.

Authority has been vested in population of the commune who decide in a general voting (elections to the commune council and referendum) or through commune agencies. The agency to lay down regulations and to supervise on the commune level is the commune council (Art. 15); a commune's executive agency is its board (Art. 26).

The commune council is elected according to the principles specified in provisions of the electoral regulations in elections to commune councils. The elections are general, equal and direct; all Polish citizens who are 18 years old on the day of the elections have the right to elect members of the council. The elections are also secret; their legal protection is performed by courts.

The commune council appoints its chairman and one to three vice-chairmen from among its membership; the voting is secret.

The executive agency appointed by the commune council is the board composed of the head of commune or major of a town as chairman, his deputies and members of the board.

Competences of the commune council include all the matters within the commune's range of activities; its exclusive competences are matters specified by the provision of Art. 18 section 2 of the Act. They include among other things: adoption of the commune's charter; appointment and recall of the board; passing of the budget, economic and land development plans; resolving on takes and fees within statutory competences; resolving on definite matters concerning the commune's property; resolving on taking over the tasks commissioned by the central administration. The board implements the council's resolutions and performs the tasks specified by legal provisions. The board's tasks include among other things (Art. 30) preparation of draft resolutions of the council; administration of communal property; implementation of the budget; performance of the tasks commissioned by central administration.

The Act of 1990 restored communal property to rural and urban communes. The legal institution of communal property had been abolished in 1950, the property being included in the bulk of national property. Communes had then lost their legal personality and subjectivity as local governments. The new statutory regulation states (Art. 43) that communal property includes the ownership and other property rights of individual communes and communal unions as well as the property of other legal persons, enterprises included. The act defines the principles of communal financial economy.

Communal unions and agreements have been provided for in the Act (Art. Art. 64—75). According to those provisions, communes may form communal unions jointly to perform the public tasks of a commune. Instead, the duty to form an union may only be imposed by a statute.

Local government was established in communes only, and is absent in districts and voivodships. Yet the Act introduced (in its Art. 76 — 83) the institution of the so-called voivodship council: all communes of a voivodship are to appoint their joint representation in the form of a self-government council. Delegates to the councils are appointed by commune councils.

The voivodship council performs its statutory tasks (Art. 77) which include among other things: appraisal of the activities of communes; mediation in disputes between communes; appraisal of the activities of central administration in the province; representation of the interests of communes before the central administration. Attached to voivodship councils are appellate boards which decide in matters of appeals against individual administrative decisions taken by the head of commune or major in the sphere of the communes' own tasks.

Communal activities are supervised by the Prime Minister and voivode (Art. 86) as to their legality; in commissioned matters, the supervision includes also examination of expedience, honesty and economic soundness. Also worth mentioning are the following powers of the supervisory agency: deciding about invalidity of an illegal resolution of a commune agency (Art. 91); suspending the execution of a resolution of that agency due to its faultiness and transmitting the case back for re-examination; passing of a substitute enactment (Art. 95). In case a commune council's repeated infringement of the Constitution or statutes, the Sejm may resolve on motion of the Prime Minister to dissolve that council. The Act also provides for the Prime Minister's right to suspend the commune agencies and to appoint a commissary. The decision of the supervisory agency can be appealed against to an administrative court (Art. 98) in cases of its illegality.

III

The economic system has been changed radically and based on a new statutory regulation. The Constitution in its Art. 6 guarantees freedom of the economic activity irrespective of the form of ownership; that freedom may only be limited by a statute. Republic of Poland protects the right of inheritance and guarantees complete protection of personal property. Expropriation is only admissible for public aims and against just compensation. The former constitutional provisions were quashed which stated among other things that: the socio-economic system "is that of the socialist economy, based on socialized means of production and socialist production relations;" constantly developing is "the country's economic and cultural life based on the national socio-economic plan;" the national property "is subject to special care and protection of state and all citizens;" state "develops plans to consolidate the economic union of town and village basing on the brotherhood and cooperation of workers and peasants."

CENTRAL PLANNING OFFICE

The constitutional principles of national economy have been changed by a succession of statutes. What has to be mentioned first is the liquidation of

the State Planning Commission by force of the Act of December 23, 1989 on establishment of the Central Planning Office⁹ which was made different in nature from the former Commission. Its competences (Art. 2) are as follows: development of draft long-term plans, the national socio-economic plans and central yearly plans as well as plans for land development, and also preparation of analyses of the fulfilment of those plans.

The Central Planning Office¹⁰ is headed by Minister — Head of the Office who is appointed by the Sejm. He cooperates with the chief and central state administrative agencies in the sphere of development of draft plans; cooperates with the Minister of Finance and President of the National Bank of Poland; organizes the public consultations concerning the plans of land development as required by other provisions.

The Central Planning Office is a staff and not administrative agency of the Council of Ministers.

FREEDOM OF ECONOMIC ACTIVITY

The freedom of economic activity was guaranteed by the Act of December 23, 1988 on economic activity¹¹ which states (Art. 1) that the taking up and pursuit of economic activity is free and permitted to all and all enjoy equal rights in this respect provided they meet the conditions defined by legal provisions. As interpreted by the act, economic activity includes manufacturing, building, trade and services which activities the subject performs for profit and independently. Further, the subject involved in economic activity, that is the economic subject, can be any natural or legal person, and also an organizational unit with no legal personality but legally formed, provided its scope of activity includes the pursuit of economic activity.

The economic subject shall:

- satisfy legally established conditions for pursuing economic activity as protection against endangers for the human health and life are concerned, as well as other conditions provided by the law;

- ensure that works, occupations and businesses performed in the framework of the pursued economic activity were performed by duly qualified persons, provided such qualifications are legally required.

The economic subjects may:

- accomplish in the framework of the pursued economic activity any actions or operations not forbidden by the law;

- employ the unlimited number of employees without intermediary of the services of employment;

- associate on a voluntary basis in the organizations of the economic subjects.

The taking up of economic activity by natural persons and organizational units possessing no legal status requires reporting to the record of economic

⁹ J. of L., No. 41, item 327.

¹⁰ K. Pawłowicz, "Centralny Urząd Planowania" [The Central Planning Office], *Państwo i Prawo*, 1989, No. 5.

¹¹ J. of L., No. 41, item 324, No. 107, item 460.

activities held by the territorial state administration body; the body enters the file into the registry of economic activities. The registering body may take a decision (Art. 17) refusing to enter the file into the registry in case of the activity not covered by the provisions of the law. Certain kinds of economic activities are not subject to the duty of reporting and enregistering: these are incidental earnings, as well as production in the agriculture, gardening and pomiculture, economic activity taken up by legal persons or requiring licences. The law determines (Art. 11) the types of economic activity that requires a licence; this requirement concerns, among other things, exploitation and exploration of useful minerals that fall under mining law; processing of and trade in precious metals and stones; manufacturing of and trade in explosives, arms and ammunition; manufacturing of medical drugs, narcotics and psychotropic drugs as well as poisons; running of drugstores; manufacturing of tobacco products. Licences are granted, refused and withdrawn by a chief or central state administrative agency.

The enterprises on which the economic and social prosperity is based have been given legal grounds for activity towards market economy. This concerns state, cooperative and private firms.

ENTERPRISES AND COMPANIES

New legal grounds of activity of state enterprises were specified in provisions of the Act of March 9, 1990 on amending the Act on state enterprises¹². A state enterprise was defined as an independent and self-financing economic subject with legal personality. Provisions were also introduced to facilitate the transformation of such enterprises through fusion, division and liquidation, formation of commercial companies and entering into partnership. A new institution of "correctional proceedings" was also introduced (Art. Art. 63 — 72). It can be instituted by the founding agency in consultation with the Ministry of Finance and the employees' council if a firm fails to pay the dividend. A correctional commission is appointed which takes over the employees' council competences with definite exceptions. The commission recalls or suspends the firm's managing director, and appoints an interim manager. It develops a plan of improvement of the firm's situation. Having found the draft programme or its further implementation insufficient for the actual improvement, the correctional commission may move for the firm's liquidation.

The state enterprises that fall under the above valid act will be commercialized basing on the principles defined in separate statutory provisions. Transformation of the property relation towards privatization is planned¹³.

Foreign subjects in Polish firms are an important element in the shaping of a new economic system. The basic legal regulation in that sphere is provided by

¹² J. of L., No. 17, item 98.

¹³ The problem of transformation of the property relations in state enterprises has been discussed in numerous publications. See e.g.: J. Mujżel, "Alternatywa" [The Option], *Życie Gospodarcze*, 1990, No. 7; T. Jeziorański, "Trudne pytania — wywiad z prof. J. Mujżelem" [Difficult Questions — Interview with Prof. J. Mujżel], *Życie Gospodarcze*, 1990, No. 12; and T. Jeziorański, "Tęsknota za pluralizmem — wywiad z posłem R. Bugajem" [Missing Pluralism — Interview with R. Bugaj], M. P. J., *Życie Gospodarcze*, 1990, No. 8.

the Act of December 23, 1989 on economic activity with the participation of foreign subjects¹⁴. The act specifies the conditions of involvement and principles of pursuit of economic activity by those subjects. It can consist in manufacturing, building trade and services; it is pursued for profit. The economic activity can have the shape of a limited liability and a joint stock company of Polish and foreign subjects or of foreign subjects only. Provisions of Polish law, the Commercial Code of 1934 in particular, apply to the newly established companies.

Persons who establish a company are free to decide about their mutual relations and the internal relations within that company; the decision is contained in the company's deed of foundation. A licence issued by President of the Foreign Investment Agency is required, the Agency being a central state administrative agency subordinated to the Prime Minister. The Act defines the types of economic activity that require a licence (Art. 5) and the conditions in which a licence cannot be issued (Art. 6). A company is subject to registration at a register court. Companies can join the Foreign Investors Chamber of Industry and Commerce and other Polish chambers of commerce.

A foreign subject's contribution to the company's capital can be monetary and non-monetary (Art. 16).

The act regulates the company's functioning, taxes and fees, employment, transfer of the rights that result from a subject's partnership, and liquidation of a company (Art. Art. 33 — 35).

The pursuit by foreign natural and legal persons of economic activity in the field of small industries is regulated by the Act of July 6, 1982¹⁵. Foreign economic subjects can pursue economic activity in their own name and on their own account, and also become partners in a company with Polish economic subjects. The economic activity in small industries consists in manufacturing of products and rendition of services, trade, exports of own products and services and imports of such products and services.

Pursuit of economic activity requires a permit issued by the local state administrative agency (Art. 5) of provincial level. If the economic activity requires a licence, the permit is issued on consultation with a competent licensing agency. A company is included in a register kept by a court.

The Act specifies the general principles of the companies' activity, crediting, distribution of profits, and leasing of state-owned real estate.

ANTI-MONOPOLY OFFICE

Monopolist practices were found detrimental to national economy and inconsistent with the principles of the new socio-economic system. The Act of February 24, 1990 on control of monopolistic practices¹⁶ which replaced a former Act of 1987 defines the principles and procedure of controlling monopolistic practices of economic subjects and their unions.

As interpreted by the Act, monopolistic practices include among others: imposition of harsh conditions of contracts which lead to unjustified profit

¹⁴ J. of L., No. 74, item 442.

¹⁵ J. of L., No. 27 of 1989, item 148.

¹⁶ J. of L., No. 14, item 88, No. 89. item 403.

of the subject that imposes them; conditioning of a contract upon acceptance or rendition by the other party of another service which is not related to the actual subject of the contract; purchase of stock or shares of companies or property of economic subjects if such purchase might result in significant impairment of competitors; combination by one and the same person of the functions of managing director, member of the board, supervisory board or audit commission in competing economic subjects at least one of which has over 10 per cent shares in the market. Other types of monopolistic practices defined in the act are agreements that provide for e.g. division of the market, establishment or reduction of the size of production, limitation of access to the market, refusal to sell or purchase goods, dishonest influencing the shaping of prices. The monopolistic practices mentioned in the Act are forbidden. The Act stipulates that the predominant economic subjects should proceed as specified in its Art. 7. Decisions as to bans and orders mentioned in the Act are issued by the Anti-Monopoly Office subordinated to the Council of Ministers. In cases also specified in the Act, such decisions can be appealed against to the Provincial Court in Warsaw.

The Act regulates the impact of the Anti-Monopoly Office on the shaping of organizational structures of economic subjects, and defines the responsibility for monopolistic practices in the shape of monetary penalties.

It has to be mentioned that proceedings in cases regulated by the Act are initiated *ex officio* or on motion of an entitled person: the economic subject whose interest has been or might be violated through a monopolistic practice. State and social supervisory agencies and social organizations that have protection of consumer interests among their statutory tasks.

Control of anti-monopolistic practices was regulated in separate statutes. What should be mentioned here is the Act of February 24, 1990 on liquidation of the Hard Coal Union and the Power Industry and Brown Coal Union¹⁷ and amendment of a number of other statutes. By force of the above statute, huge and powerful economic organizations that were monopolistic in nature were liquidated. Thus the State enterprises formerly obligatorily included in the large monopolistic economic organizations regained independence.

THE COOPERATIVE MOVEMENT AND VOLUNTARY ASSOCIATIONS

Also in the case of cooperatives, State actions took place to fight monopolistic provisions and practices. The Act of January 20, 1990 on changing the organization and activity of the cooperative movement¹⁸ provided for liquidation of cooperative unions with its entering into force. This statutory regulation removed the legal grounds of obligatory cooperative unions which used to limit the activity of cooperatives. The unions led to administrative subordination of cooperatives to the orders of the union's authorities. The unions approximated in their activity the branches of State administration with which they cooperated.

Liquidation of a cooperative union is effected by liquidators appointed by

¹⁷ J. of L., No. 14, item

¹⁸ J. of L., No. 5, item

the Minister of Finance and heads of revenue offices authorized by the Minister (Art. 2). The liquidation proceeds according to the law on cooperative societies with consideration to special legal provisions.

Plants and material elements of property, with exception of those specified in the Act (Art. 3 section 5) can become, by force of a contract negotiated with the liquidator, property of the individual cooperatives grouped in the liquidated union, other cooperatives founded by those cooperatives and cooperatives founded by the staff of a plant with the aim to continue the economic activity of that plant. A plant can be handed over against partial or full payment and also gratuitously if the purchaser also takes over the liabilities according to the general principles. Plants and material elements of the property of a liquidated cooperative union that are not taken over by cooperatives as provided for in the Act (Art. 3) are sold (Art. 4). The Act provides for the duty to organize a sale by tender and defines the right of first refusal.

The financial means that remain after the liquidation of a cooperative union are divided between cooperatives in portions decided upon by a meeting of representatives in the liquidation plan, with the exclusion of means necessary to secure the performance of obligations. Such means are taken over by the Chief Cooperative Council for the period of security.

It has to be mentioned that the act provides for establishment of the Chief Cooperative Council that can be joined by cooperatives on a voluntary basis.

Voluntary association of economic subjects is among the important elements of market economy. For this reason, the Polish legislators created the legal grounds for such association in the Act of May 30, 1989 on economic chambers¹⁹. The act provides that economic subjects involved in economic activity may form economic chambers basing on that Act and their charter. However, the right to form chambers does not concern natural persons who pursue economic activity for casual profit.

The economic chamber is an organization of economic self-government which represents the economic interests of its members in the sphere of their manufacturing, trade, building or services, particularly before State agencies.

The chamber's range of activities as provided by the Act is quite broad. The chambers:

- shape and propagate the ethics of economic activity;
- are authorized to express their opinion about draft solutions concerning the functioning of economy and can participate in the preparation of draft legal acts in that sphere;
- can appraise the implementation and functioning of legal provisions concerning the pursuit of economic activity.

The economic chamber defines its own tasks independently in its charter within its statutory competences. It has to be stressed, too, that on an economic chamber's motion or upon its consent, the Council of Ministers may, by force of an ordinance, charge that chamber with performance of definite tasks that are normally reserved by law for State administration (Art. 5 section 3).

The economic chamber can be established (Art. 7) on the initiative of at least 50 subjects involved in economic activity in the territory of that chamber,

¹⁹ J. of L, No. 35, item 195.

that is a voivodship. Forming a chamber, its founders pass its charter. A chamber acquires legal personality upon its inclusion in a register that is kept by a court. The chamber's supreme authority is the General Assembly of Members (Art. 7 section 5). The chamber's agencies are specified in its charter.

Economic chambers can voluntarily join the National Economic Chamber which represents its members' joint interests. With the aim to perform common tasks in the sphere of promotion of foreign trade, the National Economic Chamber forms the Polish Chamber of Foreign Trade which is a separate agency both functionally and organizationally (Art. 12). In particular, it can:

- organize expositions and international fairs in Poland and abroad;
- cooperate with and join international and foreign organizations as well as establish its own foreign agency on consent of Ministers of Foreign Affairs and of Foreign Economic Relations.

Should the activity of an economic chamber prove illegal or against that chamber's charter, a minister who is competent for reason of the type of that chamber's activity or a voivode who is competent territorially can urge the chamber's competent authorities to remove those faults or move to the court for application of the statutory measures: admonition of the chamber's competent authorities; quashing of the resolution of those authorities that has been found illegal or against the chamber's charter; dissolve the chamber if its activity constitutes a glaring infringement of the law or provisions of its charter.

EMPLOYEES' SELF-MANAGEMENT AND PROFESSIONAL ORGANIZATIONS

Self-management is an important institution in the new socio-economic system. What should be mentioned first is the employees' self-management, that is self-management organization of the staff of state enterprises established in 1981, and professional self-management introduced by an Act of 1989. The establishment of employees' self-management expresses the recognition of subjectivity of the staff of an economic organization as a community of employees.

In state firms, employees' self-management was introduced by the Act of September 24, 1981 on self-management organizations of the staff of State enterprises²⁰. The Act provides (Art. 1) that the employees self-management has the following competences: deciding about important matters of the firm; expressing opinion, taking initiatives and submitting motions; and supervising the firm's activity. The matters to be decided by the self-government agencies have been specified in the statutory provisions, those of Art. 10 and 24 in particular. The Act provides that the authorities of employees' self-management perform their tasks independently of state administrative agencies, social organizations, trade unions and political parties.

²⁰ J. of L., No. 24, item 123. See also: L. Bar, "Koncepcja samorządu załogi przedsiębiorstwa państwowego w ustawie z 1981 r." [The Conception of Self-management of the Staff of State Enterprises in the Act of 1981], in: *Instytucje prawne w reformowanej gospodarce* [The Legal Institutions in the Economy under Reform], Ossolineum 1989; "Podmiotowość załogi organizacji gospodarczej" [Subjectivity of the Staff of an Economic Organization], *Państwo i Prawo*, 1990, No. 2; R. Sowiński, "Charakter samorządu załogi przedsiębiorstwa jako instytucji prawnej zarządzania gospodarką" [The Nature of an Employees' Self-management Organization as a Legal Institution of Economic Management], *Państwo i Prawo*, 1987, No. 4.

The authorities of employees' self-management include the general assembly of employees and employees' council, as well as the factory employees' council in a firm that consists of many plants. Employees' and factory councils are elected in general, equal, direct and secret elections. The employees' council of a firm represents the staff's self-management. It has to be stressed that in firms with over 300 employees, the functions of general assembly are performed by a meeting of delegates.

Employees' councils of different firms can enter into agreements with one another with the aim to cooperate or undertake joint actions (Art. 35). Basing on this provision, conferences are held, clubs operate, a forum is organized and organizations emerge that represent their member employees' councils.

The Act granted to the employees' council the right to suspend definite decisions taken by the firm's managing director; to oppose a decision; to bring the matter of dispute before the arbitration commission in the firm (Art. 45) and also before the court.

The Act provides for the managing director's right to suspend a decision of the general assembly of staff or the employees' council; all disputes are resolved by the arbitration commission.

The Act of 1981 does not apply to commercialized state firms and to companies.

Professional self-management has been operating in Poland for many years now. Thus there is self-management of the Bar, of counsels, of craftsmen. Recently, the Sejm has passed the act on medical doctors' self-management²¹. What is of particular importance as regards the shaping of the new socio-economic system, though, is the professional self-management established by the Act of May 30, 1989 on professional self-management of some economic subjects²². The Act lays down the principles of formation and operation of professional self-management of persons who are economic subjects involved in economic activity in the field of trade, catering, services, transport and other types of activity. Thus the economic subjects are free to join professional self-management organizations such as the trade and services associations, transport associations and associations of other organizations of economic subjects. The act does not apply to persons who have acquired the status of craftsmen.

An association is formed on the initiative of the statutory number of at least 50 persons involved in economic activity. A meeting of members passes the association's charter. The association is included in a register kept by the court (Art. 9). Upon registration, it acquires legal personality. The association is in particular to consolidate the professional circles of its members, their ethics and dignity of the profession, and also to render cultural, educational and social services to its members; to establish and run loan and relief funds; and to represent the interests of its members before State administrative agencies (Art. 4).

²¹ Act of May 30, 1989 on medical chambers (J. of L., No. 35, item 195, and No. 20 of 1990, item 120). For discussion, see: T. Koszarowski, W. Preiss, "Ustawa o izbach lekarskich" [The Act on Medical Chambers], *Państwo i Prawo*, 1989, No. 12.

²² J. of L., No. 35, item 194.

The associations can form national representations with names defined in the charters. A national representation of a given type of associations is formed on the initiative of at least 10 associations. The national representations are in particular to assist their member associations in performance of their statutory tasks; to develop socio-professional activities; and to represent the interests of members of the association in internal and international relations.

The range of activities of the association, its tasks, authorities and the competences and procedures of those authorities, the rights and duties of its members as well as the sources of financing its statutory activities are defined in the association's charter.

ECONOMIC COURTS

Common courts are competent in economic matters. The adoption in the new socio-economic system of the principles of market economy and the grant of equal rights to all economic subjects resulted in the abolition of the State economic arbitration and the transfer of economic cases to courts. This was made by the Act of May 24, 1989 on examination of economic cases by courts²³. As interpreted by the Act, the economic cases are those resulting from civil relations between economic subjects involved in economic activity basing on the principles defined in separate provisions. Besides, the Act (in its Art. 2 section 2) includes the following among the economic cases: cases resulting from partnership; cases against economic subjects for desistance from polluting the environment and restoration of the former state or for redress of the resulting damage and for a ban or limitation of the activity that threatens the natural environment; cases between the authorities of a State firm, and between a State firm or its authorities and its founding or supervisory agency; cases under the court's jurisdiction basing on the provisions on control of monopolistic practices in the national economy; cases from the sphere of correctional procedure in a State firm and of its bankruptcy; cases under bankruptcy law and the law on procedure.

It has to be stressed that in proceedings before the economic court, the capacity to be party in civil cases has also been granted to economic subjects that are merely organizational units without legal personality but have been created in accordance with legal provisions, if their statutory activities include the economic activity.

Examination of economic cases has been turned over to district and voivodship courts in which separate organizational units are created (economic courts). The economic courts keep registers: the trade register, register of co-operatives and their unions, of state enterprises, of foreign firms, of research centres, as well as other registers as provided for by other provisions. Economic cases are examined by voivodship courts with the exception of cases reserved for district courts. The procedure in economic cases is based on the Code of Civil Procedure with the participation of lay judges who are

²³ J. of L., No. 33, item 175. Discussed by S. Włodyka, "Ustawa o rozpoznawaniu przez sądy gospodarcze spraw gospodarczych" [The Act on Examination of Economic Cases by Economic Courts], *Państwo i Prawo*, 1990, No. 3.

particularly expert in economic problems : the exception are cases examined by one judge where no lay judges sit. Extraordinary appeal can be lodged if a decision is found glaringly to infringe the law.

Provisions of the act on examination of economic disputes do not apply if one of the parties is a natural person who personally pursues economic activity of the type that requires no registration and whose profit from that activity is but an additional profit, or an individual farmer in cases that pertain to his plant and animal production activities, gardening and fruit-culture.

Judicial decisions in economic cases are supervised by the Civil Chamber of the Supreme Court.

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The legal order of the new socio-economic system is still in the making; the legislative works are likely to go on for rather a long time. For this reason, the statutory regulations discussed in this paper are but fragments of that order. Yet, they help the reader understand the directions and nature of the legislation that is to serve political democracy and organization of market economy.

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