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# Labour Market and Labour Relations in Poland. Part II

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## Abstract

*The evolution of modern labour relations is taking place in the environment of a changing labour market and high unemployment, accompanied by globalisation of the economy and a discussion about new forms of employment, including flexibility. New phenomena such as the end of domination of large production establishments and the development of small enterprises that operate mainly in the services sector as well as the application of new ICT solutions form the context for the discourse about the future of the labour law and the new features of labour relations. Various elements of a labour relationship are changing and these changes include the nature of the legal ties, the location and time for perfoming work, the way work is organised, with new elements such as flexibility of labour relations emerging. These changes stem out from the revision of important principles labour law, namely the certainty and stability of employment. The social dialogue is a key mechanism for supporting reforms on the labour market.*

**Keywords: labour relations, social dialogue, changing of labour market, unemployment, globalisation, new forms of employment, flexibility of labour relations, labour law.**

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# Flexible Forms of Employment and Labour Relations

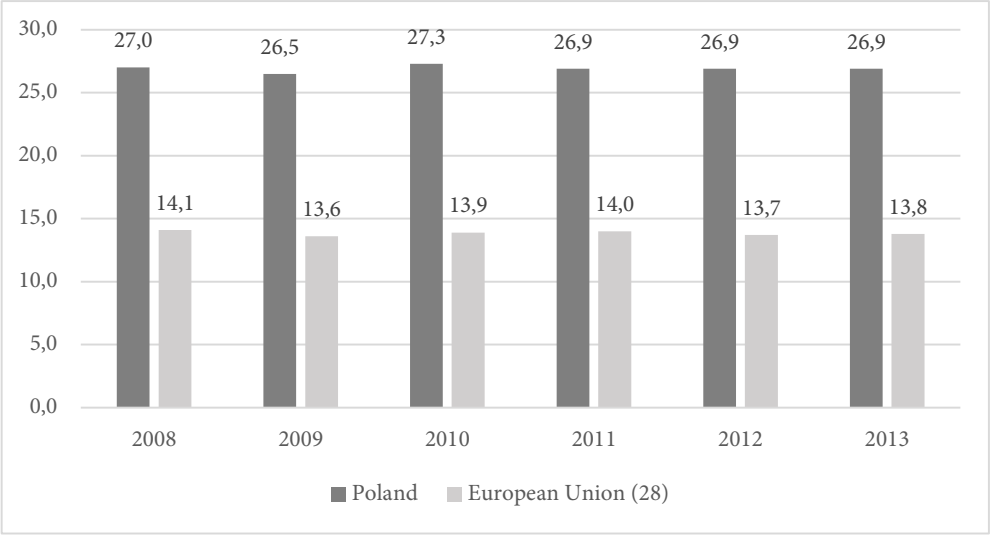
The situation on the labour market and new characteristics of labour relations in Europe was influenced by economic and social processes leading, among others, to deregulation of labour market, but also to the strengthening of investments in human capital and increased labour-productivity (Wiśniewski 2003: 56–61; Pocztowski 2004: 191–196). Peter Drucker defined them as a process of moving from an industrial society to post-industrial or post-capitalist society, where knowledge and effective use of information are becoming the main factor in increasing productivity. Thus, they constitute the most important resource in the process of generating wealth, the main source of competitive advantages and international competitiveness of a country (Drucker 1999: 22–60).

High costs of labour, but also searching for methods of reducing unemployment and supporting the labour market has become the basis of a search for new forms of employment. Performing work based on principles other than an employment contract for indefinite period of time and full-time belongs to non-standard forms of employment (Chobot 1997). The research demonstrates that standard forms of employment are most desirable among employees, due to the nature of the legal relationship, durability, and protection. However, the situation on the labour market and needs of employers, as well as preferences of many employees related, for example, to combining employment and education or maternity, have this result that the need for non-standard forms of employment exists also on their part *(Elastyczne formy zatrudnienia…* 2003). The most frequently used new forms of employment include: fixed-term employment contracts, part-time work, employment in the frames of flexitime systems, leasing of employees, but also temporary work, civil law contracts, and self-employment (Chobot 1997). These forms also include work subject to specific working time and organisation regulations, such as task-based work system, telework, replacement work, and weekend employment.

Fixed-term employment contracts, i.e. engaging into fixed time labour relations make it possible for employers to flexibly adjust the level of employment to the needs connected with the enterprise's operation. Employment is based on provisions of the Labour Code, thanks to which employees enjoy the same guaranteed rights as those employed for indefinite period of time, e.g. the right to equal treatment in employment, the right of association in trade unions, the right to holiday and maternity leave, full scope of social insurance. The difference is related mainly to

protection of durability of the labour relationship which is significantly limited. The percentage of those employed under fixed-term contracts in Poland is more than twice as high as in other EU member states.

**Figure 12. Share of employees with contracts for specific time among all employed, Poland – EU (in %)**




Source: Own study based on the data from the Central Statistical Office.

The increase in the number of fixed-term contracts observed in Poland, exceeded the increase in such contracts in other countries of the European Union. They significantly grew in popularity – if in Poland in the 1990s the percentage of such contracts featured among the lowest in European countries and it did not exceed 5%, then in 2008 only Spain recorded a higher number of them[1]. In 2011, per 7,884.4 thousand full-time employees, 1,622.1 thousand were employed under fixed-term contracts.

Another non-typical form of employment, significant in terms of the size of this phenomenon, is self-employment – a single person economic activity. Three groups of people decide to engage in this form of employment:

[1] In Spain, excessive percentage of fixed-term contracts resulted in adoption of countermeasures: employers who decide to replace fixed-term contracts with contracts for indefinite time receive tax relief from the state.

- those wishing to create a company from scratch, develop it, and this way generate income and obtain professional satisfaction
- those wishing to treat their activity as a free profession, be a freelancer providing services to many commissioners, taking advantage of the freedom offered by independent organisation of work
- those who in connection with anticipated economic benefit or persuaded by an employer engage in or continue their professional career operating in the frames of non-agricultural economic activity.

Development of self-employment was an effect of introduction of tax solutions advantageous for people conducting economic activity – in 2004 a 19% flat tax was introduced. Self-employment in Poland is higher than in other countries of the European Union, despite a certain downward tendency, observed since 2002. The growing scale of application of this form of employment may result, among others, from the fact that a part of employers persuade their employees to enter self-employment in order to lower extra-wage costs of labour. This entails depriving these employees of the rights that hired workforce is entitled to. Yet, the scale of the self-employment phenomenon consisting in adopting a formal status of an entrepreneur by a hitherto hired labourer is difficult to determine.

Part-time employment is a solution that is not so frequent in Poland. The share of part-time employment contracts in the EU did not exceed 18% in 2008. This solution enjoyed particular popularity among women, every third of them engaged in this form of employment, whereas in Poland not more than 8% of all employed worked shorter, while among women only every tenth one.

As the statistical data demonstrate, Polish labour market is dominated by traditional forms of employment such as employment contracts for indefinite time, however, it is possible to observe an increase in atypical forms of employment such as contracts for specific time, civil-law contracts, or self-employment. It is possible to expect that in time the role of such forms as part-time work or telework, the popularity of which is still rather limited, will increase. The share of flexible forms of employment is still small. The economy is still dominated by contracts for unspecified and specified time, while such forms of employment as part-time work, task-based working system, seasonal work, temporary work or work at weekends merely mark their presence and affect a small number of employees (Grołkowska, Socha, Sztanderska 2007: 181 et seq). This means that Polish companies to a limited degree take advantage of possibilities of flexible employment.

Flexible forms of employment may improve the situation on the labour market, as attested by experience of the 'old' EU states, where they constituted an alternative

to unemployment *(Elastyczne formy zatrudnienia…* 2003). This is why a discussion on flexible forms of employment should not pertain to the question whether to implement them, but how to implement them so that they are advantageous for both parties to the labour relation. Much speaks in favour of a thesis that dominating economic trends, such as development of new IT technologies and intensive global division of labour, with shrinking human capital resources will require from labour market players a higher adaptation capacity than needed today. Such a development of the situation on the labour market in majority of EU countries stirs little doubts. In the highly developed economies, the world of labour ceases to be dominated by traditional large industrial plants. In turn, we are witnessing an expansion of services, organised along market economy principles and provided mostly by small and medium-sized enterprises (*The Evolving World:* 41 e seq).

Unlike in the shrinking industrial sector, in the increasingly more important services sector, possibilities of inter-enterprise flexibility are limited by specificity of products (inability to store, seasonality) and smaller number of plants (e.g. smaller possibilities of sale). This forces a flexibilization of institutional frames, in order to facilitate development of the services sector, which in developed economies is already the dominant employer.

To satisfy the growing need for freedom of action in terms of HR policy on one hand, and to avoid extremely negative social effects on the other, in theory two ways of shaping new labour relations are possible. The first method may pertain to direction in which modernisation of labour law norms is planned in terms of employment security guarantees leading to reduced security for employees. The second approach would ensure security of employment, while offering more freedom in shaping flexibility of wages and working time, e.g. by means of open clauses in collective labour agreements and agreements concluded at the workplace level and by extending parties' autonomy in the shaping of the content of the labour relations. The first concept of increasing flexibility assumes that the current level of employment security would be questioned *de iure* and the principles of protecting the permanent nature of employment relationship would be restricted. Greater freedom in termination of labour relations, i.e. 'more market on the labour market' seems possible if – as in the case of Denmark or Holland – acceptable trade-offs in the *flexicurity* model would be allowed; if employees are required to consent to lower stability of employment, then their social security must not suffer, i.e. an efficient social security system must be in place next to active labour market policies (Compare: Mimeo, Decent… 2008).

The second concept is based on maintaining the current level of protection for employment relation but it requires for employees to consent in return to more flexible

working hours and to an adequate differentiation of wages, while mechanisms of social dialogue form a certain guarantee as in the end they determine the conditions and principles for the wages and working time flexibility.

Analyses comparing situations in various countries suggest that employment security is *de iure* positively correlated with employees' mobility. However, for the involved parties – i.e. employers and employees alike – a fluctuation on a micro- or macroeconomic level that is connected both with costs, e.g. of seeking an employee and training him or her to work, and profits, e.g. new ideas of new employees and their better allocation, which is conducive to increasing the company's competitiveness (*Wandel der Erwerbsarbeit*…: 39–45). In turn, flexibility as regards working hours and wages may have a negative impact on reconciling family and professional life while impacting positively on employment stability and professional development.

In face of changes on the labour market, labour law revisions should better consider interests of outsiders – people not pursuing paid employment and marginal groups, pushed out of the labour market or experiencing difficulties in entering it. Higher mobility of employment resulting from a labour law reform would not only open more possibilities for outsiders to engage in work, but it would also alter the direction in social expectations – from being oriented on maintaining the existing employment to being interested in new types of employment, which would be conducive to structural changes which are so indispensable for Poland in the face of challenges posed by present times. The times when success of employment policy was measured by decreasing unemployment rate are over, now the objective is to stimulate growth of employment. The labour market problems absolutely necessary to be addressed are: structural unemployment, low employment to population ratio in general, but especially among women, people 50+, and people with disabilities. One of the methods for handling the stimulation of growth in employment is flexibility in labour relations. The debate on flexibility of labour relations may not be reduced to a narrow discussion on non-typical forms of employment on one hand or stabilisation in labour relations on the other. It would be fitting to review and assess labour relations and regulations in force, both in the area of labour relations law, working time, and manner of shaping company sources of labour law, as well as the context of the functioning of the labour market and labour market policy, and the social insurance system. Only a holistic view on the system of labour relations will provide a perspective for compromising in this area by means of social dialogue.

The issue of extensive use of fixed-term contracts or employment without a contract, as well as civil law contracts and self-employment in Poland constitutes

a subject of criticism coming from trade unions demanding from employers and government broader protection of traditional employment in the form of contracts for unspecified time. Employers' organisations on the other hand draw attention to significant limitations of Polish law in the scope of flexible management of working time and demand increased flexibility in working time management. The significance of social dialogue in development of flexible forms of employment beneficial for the employer, but with preservation of certain guarantees and protection for employees constitutes the best method for deregulating labour law on the national level, but also on a workplace level. Positive models may be sought if only by the *flexicurity concept*, which by way of social dialogue is to combine flexibility of employment with employees' social security Męcina 2009: 334–342.

## Development of Law and Labour Relations

Changing political, social, and economic conditions required adjusting the law to new reality. Also the law regulating labour relations required changes. Whereas not only the shape of the labour law is of importance, but also its observance. Observance of the labour law falls in the category of employer's most significant obligations, while for employees it is a *sine qua non* condition for a minimum of satisfaction from performed work. On one hand, labour law is this area of law which is exposed to critical opinions from parties to the labour relations – entrepreneurs and employees, whereas on the other hand, it is a very significant element for the shaping of the sense of rule of law, social justice, social security, but also assessment of conditions of conducting economic activity by employers. Each change of the *status quo* signifies a disturbance of certain balance which forms against the background of legal solutions in force and factual assessment of the situation by an employer and employee, and usually it weakens the position of one of the parties, while reinforcing the other.

Changes to the labour law, sectoral and industry-specific changes, labour market characteristics, relations along the line employer – employees, as well as the condition of social dialogue and its impact on labour relations are important issues accompanying the systemic transformation. A risk of high unemployment influenced attitudes of both employers and employees. It signified increased efforts on the part of employees aimed at stabilising employment. In the case of elderly people (50+), it

frequently boiled down to taking advantage of all possibilities of obtaining the right to social insurance benefits, which were easy to obtain in connection with restructuring of enterprises, and conditions for acquisition of rights to earlier retirement.

The labour law has undergone far reaching changes during the entire process of transformation and integration with the EU. In 1989 a complex and long-lasting process of departure from full-time, centrally managed by order-and-distribution methods towards market economy commenced in Poland. The choice of evolutionary way in many spheres of economic and social life signified a slow shift in regulations hitherto in force or supplementing them in order to adjust them to the conditions of a new socio-economic system. Changes in the labour law system during the last 25 years constitute an example of 'revolution through evolution'. On one hand a number of new and important labour law institutions has been introduced, including mass lay-offs, organisational and legal transformations of enterprises, or the Guaranteed Employment Benefit Fund, while on the other hand, regulations 'tested' in the previous system have been kept. Although many provisions required no changes, e.g.: majority of labour relation law elements, principles of material liability of employees, labour protection and claims from the labour relationship, still the majority of institutions of labour law had to be subjected to critical assessment of their adequacy in new economic and social conditions and their compliance with the European law.

Characteristic is the fact that within this period the labour law has undergone tens of changes and amendments, but has not lived to see a thorough reform, although such postulates were formulated, and even an attempt at preparing an in-depth reform was embarked on (Zieliński 2006: 8).

Frequent changes of the labour law, sometimes very detailed, extremely negatively impacted the sense of stabilisation of labour relations and rights of parties – both employees and employers. In turn, its low flexibility and over-regulation rendered it maladjusted to the needs of modern market economy. These changes, sometimes performed even several times per year, in the greatest extent affect small companies without specialist HR departments which also may seldom count on permanent legal services. Instability of law affects employees, too. Difficulties in application of provisions are confirmed by studies into the SMSE sector, as well as statistics of the National Labour Inspection (PIP) [Sprawozdanie Głównego Inspektora Pracy], and the number of given advice, but also applications and orders. Finally, lack of cohesion of changing provisions of law is further confirmed by an analysis of case-law of the Supreme Court, indicating entirely different consequences of regulations, different from assumptions, different from conclusions possible to draw from substantiation

of the changes. The Constitutional Tribunal also examined the constitutional nature of changes on numerous occasions.

A characteristic phenomenon accompanying changes in the labour law is the growing activity of social partners, who increasingly more often directly engage not only in the process of providing opinions, but also agreeing on directions of changes. In connection with Polish membership in the European Union, this activity will continue to grow (Męcina 2005: 38–42).

In the times of the People's Republic of Poland, the role of social partners in shaping norms of labour law was negligible for obvious reasons. In Western Europe, labour law was to a large degree regulated by collective agreements concluded by free trade unions and employers or their organisations. Changes in Polish labour law transpiring along with the process of transformation during the first years were of strictly governmental and specialist origin, while trade unions or economic groups' attempts at influencing the legislative process led to chaos and difficulties in precisely determining directions of changes. Numerous postulates for changes have been formulated for years, frequently drastically differing in terms of objectives and motives, but formulated with equal intensity by both trade unions and entrepreneurs. These postulates usually have opposite vectors, but what is even worse, both trends use arguments rooted in labour market practices, yet originating from two opposite points of view. Both parties are convinced about priority of their rights, while treating the other party's arguments more like an attack against – respectively – economic freedoms or employee rights, rather than search for a compromise in the process of reforming labour law.

Parties' attitudes are justified by an extremely dynamic situation on the labour market and high intensity of changes and never realised announcements of a thorough reform of this area. Conducting a full analysis of changes to-date and recapitulating them is difficult. In terms of input conditions, it is necessary to highlight lack of stabilisation and sense of imbalance in labour relations signalised by both parties – the trade unions and employers. This process overlapped with so-far unheard-of structural changes in economy, in particular privatisation and emergence of the SMSE sector, which has already become an employer for more than a half of all employed. Differences in size of enterprises, ownership sector, and level of unionising influence the characteristics of labour relations.

In Poland, changes in the labour law were connected to an increasingly stronger influence of the European labour law system. Attempts at supplying a recapitulation of these changes may be seen both in the literature of the subject, government's activities, assessments and postulates formulated by trade unions,

employers' organisations, experts, and public opinion. It is worth taking a critical look at dynamics of labour law development through the prism of new conditions of operation, but also advantageous and disadvantageous phenomena observed in labour relations on the grounds of daily application of these regulations. The analysis is focused on several planes, i.e. it pertains to the changes in the labour law resulting from the new nature of labour relations in market economy and labour market requirements, harmonisation of Polish labour law with the European law, and finally, from the new role of social dialogue in exercising an influence on labour law regulations.

Transformations of the economic structure were ongoing in parallel. On one hand they consisted in privatisation of state-owned enterprises by Polish and foreign capital, on the other – in direct domestic and foreign investments and impetuous increase in the number or newly created small and medium-sized enterprises, especially micro-enterprises, and self-employment. It is possible to put forth a thesis that insofar as all entities are subject to identical labour law standards (the only exception is exclusions for companies employing fewer than 20 employees in the scope of shaping of company labour law sources and application of provisions on mass redundancies), then the scope of application of working standards differs from one sector to another. Working conditions and observance of labour law provisions are assessed to be the best in the public sector as well as in large and medium-sized private and foreign companies. In turn, observance of the labour law raises the most reservations in the sector of small and micro-enterprises. It is also this sector that most frequently indicates burdens stemming from provisions of labour law and extra-wage costs of employment and a hiatus between provisions of the labour law and realities of operating a small company (Gardawski 2009: 278–284).

Problems of the Polish labour market extremely strongly influenced solutions in the area of labour law, but also made a substantial impact on employees' situation. During the entire period of transformation the weakening of employees' position on the labour market could be observed, whereas in the area of labour law it was also possible to see a tendency for compensating the employee's weakening position by means of developing protection and increasing employer's costs related to employment and professional activation. The costs of employment and bureaucratic obligations pertaining to labour relations increased significantly within a relatively short period of time. This included the introduction in 1989 of mandatory severance for employees made redundant for reasons attributable to the employing institution, creation of the Labour Fund in 1990 with the employer's contribution equalling 2.45% of the insurance contribution assessment basis per each employee, introduction in

1991 of the obligation of the employer giving employment to at least 50 workers to pay contributions for the State Fund for Rehabilitation of Disabled Persons; since 1998 this obligation has been extended to include employers employing at least 25 workers (Cf. Misiąg, Malinowska 2002).

In 1992, the social insurance contribution was raised by 2% – from 43% to 45%, and in 1994 the Guaranteed Employment Benefit Fund was established with the mandatory contribution initially amounting to 0.5% of the social insurance contribution assessment basis, in time decreasing to 0.1%. Since 1995, for the time of being incapable of work as a result of a disease during a total joint duration period of 35 days within a calendar year, since 2003 reduced to 33 days, the employee retains the right to 80% of remuneration paid by the employer. Another burden introduced since 1996, is the employer's duty to establish a deduction for the Company Social Benefits Fund (ZFŚS), which presently concerns only employers giving work to the personnel exceeding fifty workers, however employers employing personnel of fewer than 50 and who have not established the Company Social Benefits Fund, once a year pay their employees a vacation benefit. Since 1996, each employer is obligated to pay an employee a retirement severance equalling 1 monthly remuneration. The balance of costs generated by these changes signifies an average increase of the personal fund by 30%, which substantiates companies' arguments regarding increased costs of employment, but at the same time it directly impacts the phenomenon of an increasing grey zone (Męcina 2003).

Another direction of changes that generated costs of employment and conduct of economic activity included mandatory outlays on Occupational Health and Safety. The costs of preparing machinery and devices to OHS standards in connection with Poland's accession to the EU aside, the last 25 years have seen an introduction of a number of changes generating direct personal costs. Obligations to form an occupational health and safety service, to cover costs of periodical medical tests of employees working in hazardous conditions, and medical control tests (1991) were imposed on enterprises employing the personnel of more than 10. An obligation of carrying out tests and measurements of factors posing threat to health in the working environment at least once per 2 years, whereas in the case of exceeded Maximum Concentration and Maximum Intensity values – on ce every 6 months (1993). Employers giving employment at production, storage, and commerce in comestibles were obligated to obtain qualifications in the scope of basic hygiene-related issues (1994). Employers cover costs of preliminary, periodic, and control tests of all employees, they have the duty to provide specific employees and managing personnel with preliminary and basic occupational health and safety training, and to

appoint OHS committees (1996). The obligation to equip employees operating stations with screen monitors in sight-correction glasses was introduced in 1998, whereas the year 2004 brought an introduction of the obligation of performing employee's occupational risk assessment. The seburdens, although in majority substantiated, contributed to increasing costs of running economic activity and confirm the thesis that subsequent changes in the labour law and in the social insurance generate additional costs. Although the need to create safe and harmless working conditions remains beyond any doubt, accumulating these obligations within the period of only several years constituted a palpable burden for many Polish companies, particularly in the SMSE sector.

The third direction of changes which also contributed to an increase in costs of operation, are obligations related to costs of labour and costs of changes in provisions on working time and holiday leaves. The year 2004 saw an introduction of employer's additional information obligations in terms of the content of the labour relation and planned organisational changes. The assessment of these solutions substantiates an opinion that during the entire analysed period, by increasing working standards, labour law generated costs, which although substantiated, did not remain without influence on the situation of companies and labour market. In the analysed period, especially in the years 1999–2003, when the unemployment level was high as a result of a radically deteriorating economic situation, a dangerous phenomenon of violating employee rights and employers' reneging on their obligations towards employees was observed in labour relations. The most crucial issues included untimely payment of remuneration and use of civil law agreements and self-employment instead of concluding employment contracts. In conditions of high unemployment, abusing civil law agreements may have led to social marginalisation of weaker professional groups. Therefore, a change to labour law provisions was made with the view of limiting negative phenomena, among others by introducing into the Labour Code limitations in the scope of transforming employment contracts into civil law relationships, including self-employment (Article 22 of the Labour Code). Since the times of the international crisis, that is the end of the first decade of the 21st century, trade unions' postulates, next to wage-related issues, have been focused on such changes to the labour law which will limit the possibility of using fixed-term employment contracts in favour of employment contracts for indefinite time or employment without contract as an alternative for a labour relation. An analysis of employment without contract will be conducted in the following chapter.

Analysing changes in the labour law to have occurred within last 25 years, we most often look at them from the point of view of adjusting this area of the law to European standards. Studying this process, W. Sanetra divides the time which has lapsed since 1989 into three periods. The first of them covers the years since the entry into force of the treaty of association between the Republic of Poland and European Communities and their Member States, which was concluded on 16th December 1991, but entered into force only on 1st February 1994. The second period commenced with the moment of opening of our country's EU membership negotiations, that is at the end of March 1998. The third period commences with negotiations, signing of the accession treaty, and Poland's accession to the European Union on 1st May 2004 (*Europeizacja polskiego prawa pracy…* 2004: 15–30).This division should probably be supplemented with the fourth period, coinciding with negative outcomes of the financial crisis, which painfully affected the entire EU. Although in this period Poland avoided a recession, nevertheless, the effects of the slowing down were felt both in Polish economy and on Polish labour market in the years 2009–2013. During this period, the most important change consisted in introducing solutions in the scope of flexitime, with the possibility of extending settlement periods, and regulating flexible or intermittent working time. Prolonging the maternity leave and regulating parental leave to the total of 12 months was another important change. Also in 2014, the works commenced with the aim of limiting the use of fixed-term contracts and introducing obligatory social insurance contributions on contracts of mandate, as the most widespread form for replacement of employment in the frames of the labour relation with an employment without a contract. Undoubtedly, it is possible to state that the period of the financial crisis resulted in the growth of unemployment and deterioration of labour quality, among others by an increase in various forms of employment without a contract. The entry in 2014 on the path of economic development and improvement of the situation on the labour market commences the period of discussion about improvement of labour law in Poland.

Undoubtedly, standards of the European Union to an increasing degree shape both the content and the vision of development of labour law and system of labour relations in Poland. This opens a perspective for new changes to labour law, both individual and collective, which will facilitate the improvement in quality of employment, while maintaining flexibility of Polish labour law. Therefore, in the area of changes to labour relations, the policy of flexicurity will be gaining in significance; to be effective, this policy requires not only adaptive processes in the labour law, but also in the employment law, i.e. functioning and solutions of the labour market policy.

Negative effects of the financial crisis and deteriorating quality of employment along with the observable growth of unemployment impacted the quality of labour. It can be expected that as of 2015 more attention will be paid to the question of the quality of work in Poland.

## Influence of Social Dialogue on Regulating Labour Relations

Social dialogue is considered one of the attributes of a democratic society and the best way to resolve conflicts as well as an important mechanism of influencing legislative process, in particular in the fields of labour law and social policy (Baccaro 2001). Social dialogue as defined by the ILO can take place on three levels: providing information, consulting and negotiations. In most countries this dialogue takes shape of collective negotiations and two types of indicators can be used to measure it. The first one pertains to legal and administrative regulations: Conventions No 87, No 98; the Collective Bargaining Convention, 1981 (No 154), namely the ratification rate; the second is based on the number of ongoing negotiations (share of employees currently covered by those). Yet another aspect is the participation of employees in management of their enterprise. However, also in this case there are no simple methods of measuring the level. The ILO does not provide detailed guidance, only general principles can be found in: Cooperation at the Level of the Undertaking Recommendation, 1952 (No 94), the Consultation (Industrial and National Levels) Recommendation, 1960 (No 113). Still, the best approach is to research in detail the legal, institutional and procedural situation in each country. Documents and papers published by the ILO draw attention to the fact that there is no simple method available to measure the level of participation of social partners in creating law at national level (Jose 2002).

A visible polarisation of views presented by trade unions and employers in terms of the final shape of labour law, model of labour relations and functioning of the labour market is manifest in an ever increasing activity of social partners in discussions regarding directions of changes, in formulating postulates, and engaging in negotiations in this scope. This thread seems to be of particular importance, since the role and significance of social partners in reacting to market changes and phenomena on the labour market in the context of functioning of this area of the law

is visibly increasing, particularly after Poland's accession to the EU. This is why the meaning of social dialogue in the process of negotiating changes to labour law on the European and national levels will be increasing (Męcina 2005: 38–42).

Therefore, on one hand it is worth taking a critical look at underdevelopment of collective labour agreements as a formula for decentralisation of labour law and democratisation of labour relations, while on the other hand it is also worth noting the increasing significance of social dialogue at the national level, especially of the Tripartite Commission on Socio–Economic Affairsfor developing new solutions in the labour law area. The Tripartite Commission itself, or maybe otherwise representative trade unions and employers' organisations, despite the crisis in dialogue expressed by the suspension of tripartite talks by trade union organizations, display a huge activity not only in formulating postulates, but by participating in informal meetings and agreements concerning key changes to the labour law. In this context, it is worth emphasising the role of the ILO expert mission, which in mid-2014 engaged in consultations on changes in the collective labour law, including the act on trade unions and the right of association, the act on collective dispute resolution and collective labour agreements, thus contributing to creating space for negotiations and to building plans of returning to tripartite diologue[2].

In many European countries collective labour agreements constitute the basic source of labour law, defining employee rights and relations between employers or their organisations and trade unions. In Poland, next to the regulation of standards in the Labour Code, there is a possibility to negotiate sectoral and enterprise level collective labour agreements. The overarching principle according to Polish law is the principle of more advantageous solutions prevailing. This means that employment and wage related conditions negotiated under a collective agreement cannot be less advantageous than the statutory provision. Collective labour agreements may be concluded at the level of a workplace, but also on a level higher than a workplace, especially sectoral, regional, or even national (Wratny 1998: 11–13).

The questions to be decided by partners on the principle of autonomy in the frames of a collective labour agreement by introducing departures from the generally binding standards regulated in the Labour Code and in other statutes are not numerous. They include, among others, certain regulations of working time systems, wage payment mode, company social benefits fund.

[2] The ILO mission on was invited by the Polish government and offered technical assistance. It conducted consultations with social partners and the government thus contributing to the reestablishment of tripartite dialogue as of early 2015.

With trade unions' monopoly for concluding collective labour agreements and arrangements, the first formal limitation preventing their conclusion was and continues to be the low level of unionising, especially in the private and SMSE sector. Another limitation came as a weak condition of Polish companies, especially during the first decade of the transformation, which – along with the working conditions standards in force and costs of labour in relation to average productivity in comparison with the EU countries – for many companies constituted a barrier in incurring further obligations. In conditions of unfavourable economic situation at the end of the 1990s, most enterprises avoided incurring additional obligations, especially through collective labour agreements. The situation changed in the years 2005–2007 as a result of an improving standing of Polish companies and difficulties with recruiting and keeping employees. It opened a space for the increasing of working standards with the view of stabilising employment and offering more competitive working and wage conditions; it may also be conducive to development of collective labour agreements (Goździewicz 1997). The crisis from the turn of 2008 and 2009 adversely impacted development of collective labour agreements in Poland and it persisted until the end of 2014.

It is worth emphasising that until 2001 unwillingness to regulate labour relations by means of agreements was connected with the existing legal status. Regulations of the Labour Code rendered collective labour agreements practically interminable without consent of trade unions which finally discouraged employers from entering into such agreements, and this way from incurring obligations without possibility of terminating them.

Development of sectoral agreements, whose regulations maintain legal barriers discouraging employers from using them, encounters even greater difficulties[3]. The system of sectoral agreements does not have the space for development also due to strong diversification and disintegration of former sectors which operated yet in the times of the People's Republic of Poland. Currently, these agreements as a rule pertain only to traditional public sectors of economy, such as mining, railway transport, and, until recently, metallurgy or power industry. In turn, newly arising sectors are so strongly diversified in terms of the ownership sector, size of enterprises, and their potential, that it is difficult to speak of space for unification of labour standards on the

[3] An example of such a provision is Article 241 of the Labour Code making it impossible for an employer associated withing an employers' organisation being a party to the sectoral agreement to terminate the agreement also after terminating membership in this organisation.

sectoral level, all the more so that majority of them are small or medium-sized entities without trade unions, and frequently not affiliated with any sectoral organisation of employers. In turn, in new modern sectors of economy, such as media, transport, insurance, IT, financial or developer services, there is no representation on the part of trade unions. In 2012, only 169 sectoral collective labour agreements were in force in Poland and their regulations covered merely390 thousand employees[4].

The listed conditions have this effect that collective labour agreements in Poland only to a limited degree fulfil one of the fundamental functions of decentralising regulations in the scope of labour relations, they do not give a possibility to depart from statutory regulations in many crucial areas of labour law, especially those related to working time. Neither do they offer wider possibilities to render provisions more flexible, which would facilitate adaptation of solutions in terms of labour relations to the needs of a specific enterprise and its personnel (Seweryński 2005: 12). It seems that justified is the thesis proposing that insofar as collective agreements as a form of more advantageous regulation of working and payment conditions may have a chance of becoming a subject of compromise at the workplace level, whereas sectoral regulations under the present legal status and in face of the lack or diversification of sectoral representations both on the side of trade unions and employers are faced with obstacles in their development. In Polish conditions, employers more often avoid regulations through collective agreements, opting for working regulations and remuneration regulations as well as employment contracts as fundamental sources regulating labour relations within the enterprise. However, according to Polish legislation, internal rules and regulations, in particular those pertaining to wages, are also subject to collective bargaining.

Development of collective labour agreements may be promoted by progressing processes of globalisation of economy. Already today employers from various sectors are searching for methods of unification of minimum conditions for remunerating employees with the view of counteracting dishonest practices, understating rates or employing in the grey zone, and therefore social dumping of companies seeking contracts in the frames of public tenders. The space for agreements is also being opened by improvement in the standing of enterprises, accompanied by a simultaneous improvement of the situation on the labour market. Competition on this market will force development of wage regulations allowing employers to reduce wage pressures. Other regulations in the scope of continuous education, specific

[4] Data from the Ministry of Labour and Social Policy, December 2010.

working time systems, employee retirement schemes or schemes aimed at provision of other benefits, e.g. in the scope of disease prevention and rehabilitation, paid for or co-financed by the employer, should also be developed. It seems that justified is the view that a bold opening of the negotiation space will facilitate faster transformations of the labour law in direction of adapting it the changing economy, competition conditions, but will also help to better meet challenges related to increasing wage expectations, employee development, and improvement of relations along the employer – employee lines. The negotiation based system of concluding collective agreements is also a method to exercise a socially-controlled process of adapting employment and remuneration conditions to the sector of the economy, number of employees, company developmental potential, fulfilment of training needs for both employees and employers, reconciling professional and family life considering employee's personal and professional situation[5].

In the first phase of transformation, changes in the labour law occurred mainly inspired by the government and they more often pertained to an introduction of entirely new institutions or adaptation of solutions to the needs of market economy, as was in the case of mass redundancies, the act on employment and unemployment, or regulating organisational and legal changes. The next stage of changes introduced in the labour law was realised by the government in order to ensure guarantees for employees, usually by introducing new institutions into the labour law. Many of these changes signified higher standards in labour relations, nevertheless, they were financed from employer's funds, whereas a part of these changes meant transferring the costs of public activities or social guarantees from the state onto the employer. An exceptional event against the background of experiences from the transformation period were autonomous negotiations regarding changes in the labour law engaged in at the beginning of the 2000s by the All-Polish Agreement of the Trade Unions (OPZZ) and Polish Confederation of Private Employers Lewiatan. Then negotiations ended in an agreement and changes to labour law, aimed at reducing bureaucracy and rendering certain solutions more flexible, were implemented.

It is worth emphasising that not only did changes in labour law adopted in the course of negotiations between the OPZZ and Polish Confederation of Private Employers Lewiatan give rise to a current of thought focused on streamlining the labour law and adapting certain solution to market economy principles, but also

[5] Sectoral changes which are one of the most significant characteristics of development of economy and employment structure mean a future dominant position of the services sector which is governed by other employment characteristics than the formerly dominant industry.

initiated the process of construction of new institutional frameworks for social dialogue with the new Tripartite Commission and participation from largest trade union organisations and representation of private employers and crafts. After the experiences of autonomic talks with participation of two organisations, attempts were embarked on to develop more extensive changes in the area of individual and collective labour law in the frames of the Tripartite Commission on Socio-Economic Affairs. Also the 2013 crisis of the tripartite dialogue served to reinforce the autonomic dialogue in Poland, which, provided that the new tripartite dialogue institution is quickly reconstructed, may be conducive to reaching agreements in this area. This should also be further facilitated by an already mature discussion on directions of changes in the collective labour law, which was prepared by the government and enjoys a tentative approval on the part of trade unions and organisations of employers.

The outlined processes of changes which have transpired in labour relations during the period of socio-economic transformation and European integration point to the increasing significance of social dialogue in this process. Social dialogue plays a role in shaping new characteristics of labour relations, related to reacting to a situation on the labour market, changes to the economic structure, costs of labour, disadvantageous drop in professional activity, and finally changes to labour law provisions and development of new flexible forms of employment. Against the background of the conducted analysis, indicating characteristic features of labour relations in Poland is possible:

- As a result of changes to the labour law, labour relations in Poland have become an element of market economy, while new phenomena, such as mass redundancies or organisational and legal transformations have a strong impact on situation of employees.
- Labour market forced a whole range of adaptive processes, unemployment – a phenomenon weakening the employee's position in labour relations – emerged, along with a number of its disadvantageous characteristics, such as increased risk of unemployment among people 50+, youngsters, women, a decrease in professional activity.
- Although an employment contract for indefinite time is still a dominant form of employment, the role of flexible forms of employment is growing; a fixed-term contract, temporary work, part-time employment, but also work performed in the frames of employment without contract, especially civil law agreements and self-employment. The catalogue of new forms of employment introduced

into Polish labour law and civil law is much broader, and it is made complete with flexible forms of labour organisation and working time.
- Changes affect not only the basis of employment, but also the content of labour, which impacts development of new technologies and structural changes in economy, especially the growth of significance of services in the employment structure.
- Structural changes force adaptive processes on the part of employees and employers, the share of people with higher education in the employment structure is increasing, the structure of education is also changing, forms of continual education and training are developing.
- Structural changes also signify a new sectoral structure of economy and structure of employment, a dominating share of the private sector and the small and micro-enterprise sector.
- Labour relations are affected by labour market and wage-related regulations, labour migrations, extra-wage costs of labour and minimum wage regulations.
- Changes can be observed not only in regulations concerning collective labour relations and representation of interests, still low degree of unionising on the part of employees and employers, deprivation of representation of a substantial part of private sector labourers, especially in small enterprises and those employed under no employment contract.

Both social dialogue itself and its role were important during the analysed period as they influenced labour relations, in particular at an enterprise level. As demonstrated in this analysis, the role of social dialogue at sectoral level, especially during the last decade, was less pronounced. Still, when it comes to influencing labour law legislation, the role of social dialogue at the national level was significant. Through participation in consultations as well as in tripartite negotiations within the Tripartite Committee and its topical teams social partners influenced the shape of social legislation. Tripartite dialogue was suspended during the period 2013–2015. The crisis of social dialogue was conditioned among others by the fact that the government adopted working time regulations without the consent of trade unions and by non-realisation of some of the trade unions' postulates. Social partners were also exasperated by restrictive fiscal policy justified by the government by the consequences and impact of the economic crisis. Nevertheless the importance and the role played by social dialogue in Poland are best confirmed by the fact that all parties search for possibilities of re-establish this dialogue. Only social dialogue can guarantee to work out a coherent and socially acceptable compromise between economic and social objectives of development. This search for opportunities to return to tripartite talks resulted in an important discussion on the new shape of social

dialogue in Poland. A dialogue, conducted in new institutional and organizational formula that would better respond to contemporary challenges of the labour market and labour relations. A compromise between flexibility which is very much needed by the competitive economy and the key values of the ILO's Decent Work[6] concept as well as the European social model, characterised by such attributes as labour security and quality, should be the inspiration and the basis for solutions in the field of labour relations. Social dialogue on the compromise between flexibility and security, between competitiveness and social cohesion is needed in order to face the challenges of the future of labour relations in Poland.

The Polish population is consistently at a level close to 38 million, although it is systematically dropping. Unfavorable changes are visible in the demographic structure. All age groups are gradually decreasing their numbers. The only exception is people older than 60 years, which in 2013 outnumber the number of youngest people. The situation is not much better than the average in the European Union. Women's fertility also decreases. In 1990 it was at 2.03, in 2003 at 1.25, and in 2014 at 1.3. The forecasts are not optimistic. In fact, the Eurostat predicts that Poland's population is declining towards about 29 million people Unemployment below 7%, stable GDP growth and good economic situation mean that companies will want to hire new employees. All this results in the emergence of an employee market whose beginnings are already visible today. Employers face the problem of lower production capacity and higher costs of the recruitment process. Not only IT staff can choose among job offers, but also more and more specialists from other industries. To hire and retain an employee you have to offer him more than just a high salary. The quality of work is becoming more and more important. Companies outdo each other in proposing the latest ergonomic solutions, flexible forms of employment, or other facilitations that would reconcile work and private life. This results in increased pressure to improve the quality of work. The amount of salary becomes less important. The quality of work becomes crucial.

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