

Employee Involvement in Poland

I. Introduction

1. Introductory Note

The term of “employee involvement” has appeared only recently in the EU directives and till now it has no equivalent in the Polish language. Polish terms are equivalent rather to English terms of “workers participation” and “employee participation”, and both are used to refer to all forms of employees’ participation in the management of an enterprise, as well as in its capital and benefits. That’s why these terms will be used in this paper as equivalents for “employee involvement”.

In this paper the term of “workers’ self-management” will also be used. Even though this expression comes from the communist period in which it played above all an ideological role, nevertheless it has legal grounds in the Act of 1981 on Staff Self-management in the State-owned Enterprises, which is still binding. The truth is that the Act of 1981 grants employees the right to participate in the management of the enterprise by its manager and only within a narrow scope provides for workers’ self-management. Such a significance of the Act justifies its use as a foundation for a paper on “employee participation” or “employee involvement”.

2. Historical Overview

In Poland, the history of employee participation in enterprise management began in 1918-1919, when, under the influence of the October Revolution in Russia and the patriotic movement to restore the Polish independence, councils of worker’s delegates and their subordinate works committees were established.¹ The councils’ main goals were to organise workers, to protect their professional interests and livelihoods, and to supervise factories left by the occupants after World War I.

Neither the councils of workers’ delegates nor the works committees survived in the newly rebuilt country. This was mainly the result of a disparity in views between the then political parties - the communist party (KPRP) and the socialist party (PPS) - which perceived the role of these workers’ organs differently. The communists saw in them an opportunity to organise workers and lead them towards revolution, and thus to establish (as in Russia) the ‘dictatorship of the proletariat’. According to the socialists, the councils of workers’ delegates were supposed to support the executive power of the Temporary Government of the People’s Republic of Poland. A similar disparity concerning the role of the councils of workers’ delegates appeared in the Polish trade

¹ See more: M. Seweryński, *L'evolution de la législation sur l'autogestion des travailleurs en Pologne*, *Revue Internationale de Droit Comparé*, juillet - septembre 1983, no.3, pp. 463-495 and *Polish Labour Law from Communism to Democracy*, Publ. Dom Wydawniczy ABC, Warsaw 1999, pp. 175-187.

union movement. As a consequence, the position of the councils quickly weakened. Their final decline was caused by the reconstruction of the country's democratic system and by very progressive (for the time²) social legislation which corresponded with the main goals of the councils of workers' delegates. The decrease of the councils' influence over workers facilitated the liquidation of the councils by the State in the summer of 1919.

Workers' councils existing from 1918 to 1919, as well as those emerging spontaneously in the period of liberation at the end of World War II (from 1944 to 1945), had no legal base, but they paved the way for future legal regulation of workers participation in enterprise management in Poland. The new political order and particularly the nationalisation of industry that took place after the WW II were conducive to the passing of this legislation, as worker participation in the management of State-owned enterprises was declared to be a principle of the new regime and was supposed to be a manifestation of socialist democracy.³

The first legal basis for employee participation in enterprise management was the Decree as of February 6, 1945 on workers' councils.⁴ According to this regulation, the main competencies of workers' councils were to supervise work conditions and to cooperate with the manager in order to increase productivity and work discipline as well as in matters of the employment and dismissal of workers. The workers' councils were supposed to be the organs of the works' staff. However, the evolving trade union legislation transformed them into works trade unions' organs.⁵ Furthermore, the new regulations stressed on workers' council duty to mobilise workers in order to increase and improve production. Restrictions imposed upon the participation of workers' councils in management were the consequence of the growing centralisation of the planning and management of the national economy. The ideology of those days also played an important role. It was based on the dogmatic assumption that socialist labour relations are conflict-less because the social partners' interests converge. As a consequence, the democratic institutions of labour law disappeared and its protective function weakened.⁶

The issue of worker participation in management emerged in Poland again during the worker riots in October 1956. The events of this time brought to light the workers' lack of confidence in the trade unions and public authorities.⁷ Workers, inspired by the idea

² See: Świącicki, M. 1960. *Instytucje polskiego prawa pracy w latach 1918-1939 (Polish Labour Law Institutions 1918-1939)*, pp. 16-19, Publ. PWN, Warszawa.

³ See: Balcerek, J. 1973. *Samorząd robotniczy, a systemy społeczno-gospodarcze (Workers Self-government and Socio-Economic Systems)*, p. 10. Warszawa. Bar, S. 1980. *Samorząd w przedsiębiorstwie państwowym (Self-government in the State-owned enterprise)*, "Państwo i Prawo" Number, number 12 at 5.

⁴ *Journal of Laws* 1945, number 8 item 36.

⁵ See more: Świącicki, M. 1949. *Rady zakładowe jako organy ruchu zawodowego (Works councils as trade unions' movement organs)*, "Państwo i Prawo" Number 9-10.

⁶ See: Balcerek, J., Gilejko, L. 1967. *Społeczno-ekonomiczne funkcje samorządu robotniczego (Socio-economic Functions of Workers Self-government)*, p. 34. Warszawa.

⁷ See: Rabska, T. 1962. *Samorząd robotniczy w PRL (Workers Self-government in the Polish People's*

of the democratisation of social and economic relations, spontaneously established authentic representative bodies in the form of workers' councils. The councils quickly expanded and the authorities had to recognise them by the Act as of November 19, 1956 on Workers' Councils.⁸

According to the 1956 Act, the workers' councils were the works staff representative organs, democratically elected and authorised to manage a state-owned enterprise on behalf of the staff. However, the council's resolutions in the matter had to be consistent with legal provisions and with the tasks specified in the national economic plan for the enterprise. The establishment of the workers' councils did not entail the liquidation of the works trade union organs. For this reason the 1956 Act decreed that a workers' council's resolutions concerning wages, benefit distributions, social matters, work security, hygiene, and regulations had to be adopted in agreement with the trade union's organs. In case of a lack of agreement the decision was left to the staff.

The 1956 Act made a distinction between the general management of an enterprise, which was the domain of the workers' council, and the everyday management of the enterprise, which was carried out by its manager. However, the decisions taken by the manager had to be consistent with the resolutions of the workers' council and with the provisions of the state administration organs to which the enterprise was subordinated. Therefore it gave the manager the right to suspend resolutions of the workers' council that were not consistent with the law or with the economic plan by which the enterprise was bound. Thus, the enterprise manager, even if bound by the resolutions of the workers' council, remained a representative of the state, which was the owner of the enterprise. He was appointed and dismissed by the proper organ of the state administration, although after a mandatory consultation with workers' council. Thus, the 1956 Act laid the legal foundation for substantial workers participation in enterprise management, close to the self-management model. However, the Act intended to reconcile that model with state ownership of enterprises and with the centralised national economic plan. This double subordination indicated how employees' social interests were depended of the state interests and how the political authorities tried to reconcile them.

The model of workers participation in enterprise management, as introduced by the 1956 Act, existed for only two years because the workers' councils were considered by authorities to be a threat to the Communist Party and to trade unions. The Party and the unions always played an important ideological and political role within enterprises and this role was undermined by the democratic character of the councils and the social support they gained. In order to reinforce the Party's position within the enterprise, its leaders began to claim that the true model of worker self-government could not be limited to workers' councils but had to encompass the Party and trade unions, as both of them represented workers' interests. The new model of worker participation was also supposed to assure co-operation between the staff's organs and those of the Party and trade union within the enterprise and to prevent rivalry among them. Within the Party the argument was also raised that the large management aspect of workers' councils was not consistent with state ownership and with the principle of a planned economy. The fact that personnel might manage an enterprise could entail the fragmentation of

Republic), p. 65. Poznań.

⁸ *Journal of Laws* 1956, number 53 item 238.

the state's property and lead to ownership by social groups. Such fragmentation was a characteristic of Yugoslav socialism, but was rejected by Polish communists.⁹

A new model of workers participation in enterprise management, promoted by the Polish communist party and supported by trade unions, was introduced by the Act as of December 20, 1958 on Workers Self-management.¹⁰ It established a new obligatory organism: the Workers' Self - Management Conference (KSR). It was constituted *ipso iure* from organs representing three key elements within a state-owned enterprise: staff, a trade union, and the Communist Party. Although the only democratic element in the construction, i.e., workers' councils – representing the enterprise staff - was maintained, it was fully subordinated to the Conference. Its real competencies were clearly limited, having a character of participation in enterprise management and not that of self-management, as it was stated in the title of the 1958 Act. What is more, the position of the manager of a state-owned enterprise towards the Conference was considerably strengthened and the Act pointed out its supremacy over all employees. While the manager had to execute the resolutions of the workers' self-managements organs, at the same time he had a duty to refuse to comply with them if they were not consistent with the law or with the enterprise's economic plan.

The 1958 model of worker self-management was dominated by the Communist Party and particularly by trade unions, as the Central Council of Trade Unions (CRZZ) gained the competence to establish rules concerning elections for the workers' councils and rules governing the activities of the Workers' Self-Management Conference. The law, in fact, provided for employee participation in the form of worker assemblies and of production conferences which were held with their participation; the law also proclaimed the self - management bodies' responsibility towards the employees and their obligation to submit activity reports to them. Nevertheless, neither rank and file employees nor their participation organs had real impact on the decision making process within an enterprise. Thus, the 1958 Act was a step backwards in the evolution of the idea of worker participation in enterprise management in Poland. Moreover, conditions for according employees a broader scope of activities were worsening. The major reasons for the progressive decline of self - management were the comeback of central planning and management, and the constraints imposed on enterprises by decisions taken by the state bureaucracy.¹¹

As a consequence of the shock caused by the tragic workers' protests of 1970, the Communist Party paid more attention to the idea of worker self-management, considering it to be an instrument that could help to regain the trust of workers and to improve enterprise productivity. However, political declarations had no legislative

⁹ See: Owieczko, A. 1967. *Ewolucja samorządu robotniczego od rad robotniczych do konferencji samorządu robotniczego (Evolution of workers' self-government from workers councils to conference of workers self-government)*, in: *Socjologiczne problemy przemysłu i klasy robotniczej (Sociological Problems of Industry and Workers' Class)*, ed. S. Widerszpil, p. 116. Warszawa.

¹⁰ *Journal of Laws* 1958, number 77 item 397.

¹¹ See: Bar, L. 1981. *Uczestniczenie załóg w zarządzaniu przedsiębiorstwem państwowym (Staffs' participation in the management of the State-owned enterprises)*, „*Studia Prawnicze*” Number 1-2, pp. 16-18. Szubert, W. 1981. *Kierunki rozwoju zbiorowego prawa pracy (The Directions of the Collective Labour Law Development)*, „*Państwo i Prawo*” Number 6, pp. 21.

effects guaranteeing worker self-management its proper role. Although staff participation in enterprise management was promoted to the rank of a constitutional rule by the 1976 amendment to the Constitution, and although it was extended to all state-owned enterprises and their complexes, the workers' attitude towards the idea of self-management was more and more negative. The workers realised perfectly that the managers of state-owned enterprises were not free to make decisions and that the workers' organs had no real power, playing only a decorative role. Thus by the end of 1970, worker self-management became just a political slogan.

A new stage of development in workers' self-management legislation in Poland was opened after the massive workers' protests in August 1980. The process of democratic and economic reforms resulting from these events was based on the principle of enterprise autonomy and the real worker self-management. The debate on this concept was led by politicians, union activists, and university scholars. Among the arguments in favour of the worker self-management,¹² economic factors were considered to be the most important. In particular, it was emphasised that worker self-management would give the state-owned enterprises a real autonomy and would help to free them from the bureaucratic subordination to the state administration. It was also pointed out that a real respect for the constitutional principle of worker participation could be an argument in favour of socialist democracy. Social and moral aspects were stressed by the argument that worker self-management would ensure a real socialisation of the economy and the humanisation of labour relations, both necessary to integrate workers to enterprise goals.

The democratic opposition of the 80's, with Solidarity at its head, saw in the idea of worker self-management a vehicle strengthening employees' position in their fight for social rights and against the politicisation of enterprises. Thus, inspired by spontaneous workers' movements in favour of worker self-government, Solidarity elaborated its own comprehensive concept of Social Enterprise. This way, Solidarity exerted pressure on communist authorities aiming to retain control over state-owned enterprises.¹³ After arduous dialogue between the democratic opposition and the communist authorities, two acts emerged on September 25, 1981: one concerned employee self-management in state-owned enterprises,¹⁴ and the other, which was closely related, on state-owned enterprises.¹⁵ These two laws were the result of a social agreement between Solidarity and the communist authorities, aiming at Poland's recovery from the deep social and economic crisis that occurred at the beginning of the 80's. Both acts are still binding, making, together with the 1996 Act on Commercialisation and Privatisation of State-owned Enterprises¹⁶, a legal foundation for employees' participation in their management.

¹² See: Bar, L. 1980. *Samorząd w przedsiębiorstwie państwowym (Self-government in State-enterprises)*, „Państwo i Prawo” Number 12, p.5. Szubert, W. 1981. *Współczesne tendencje przemian w prawie pracy (Current Tendencies of Labour Law Transformation)*, Państwo i Prawo Number 8, p. 10.

¹³ See more: Panne, J. L., Wallon, E. eds. 1986. *L'entreprise sociale- le pari autogestionnaire de Solidarność*, pp. 87 ff. Editions L'Harmattan, Paris and Ash, T. G. 1991. *The Polish Revolution: Solidarity*, pp. 196 ff. Granta Books, London.

¹⁴ *Journal of Laws* 1981, no.24, item 123 with following changes.

¹⁵ *Journal of Laws* 1981, no.18, item 80 with following changes.

¹⁶ *Journal of Laws*, 1996, no. 1 18, item 561.

II. Institutionalised Employee Participation at the Shop-Floor

1. Enterprise Staff as an Autonomous Subject of Employee Involvement

The 1981 Act is based on the democratic concept of employee participation in the management of an enterprise.¹⁷ It grants the state-owned enterprise staff i.e. all employees of a given enterprise, participation subject qualities and competencies, stipulating precisely that the staff participate in the management of the enterprise.

The enterprise staff assumes its participation in an autonomous way, as it stays independently from state administration organs, political organisations and trade unions. Thus, the 1981 Act deviated from the former concept of the employee self-management, which only gave the staff the possibility to express their opinion indirectly *via* the communist party and trade union units acting in the enterprise.

The independence of staff self-management organs from state administration means that the latter cannot impose on the staff any decision, perform any control over these organs, nor hold the execution of any decision they made. On the other side — state organs' decisions concerning an enterprise as a whole may be contested by the employee council or by the enterprise manager - *via* opposition. If the organ delivering a contested decision does not cancel it, the conflict could be presented to a court for resolution.

2. Staff's Organs

The 1981 Act sets up the following staff self-management organs:

- the general enterprise employee assembly (grouping employees of all enterprise organizational units);
- the enterprise employee council;
- the plant employee council in an enterprises with multiple plants.

The members of employee councils are elected by the enterprise or plant staff in universal, equal, direct elections and secret ballot. The persons bearing management duties are not eligible. The democratic election procedure is considered as a guarantee of the autonomy of staff organs and the authenticity of the whole self-management concept as expressed by the 1981 Act.

The general employee assembly and the employee council are not only staff organs but also enterprise organs, alongside to the enterprise manager. Thus, the self-management concept adopted by the 1981 Act obviously also had an influence on the enterprise structure, as defined in the 1981 Act on State Enterprises.

In order to guarantee the members of the employee council the possibility to perform their duties, the 1981 Act provides them with a particular legal protection. This protection consists of the council member's right to preserve his/her salary for the period when he/she was unavailable at work because of his/her duties performed within

¹⁷ See more: S. Rudolf in *'The objective nature of the democratisation process in the workplace'*, *CLLJ*, vol. 9, no. 3, Spring 1988, pp. 399-431. M. Matey, *Poland* in: *International Encyclopaedia for Labour Law and Industrial Relations*, Kluwer 1988, vol. 8, pp. 168-174. S. Anastasi, *Notte sulla autogestione in Polonia*, in: *Modelli di democrazia industriale e syndicate*, tomo primo, Universita di Messina, Giuffre (ed.), Milano, 1988, pp. 171-197.

the council. Moreover, a council member benefits from a special protection against the dismissal. The employer cannot terminate his/her labour relation without the agreement of the council in the period of its tenure and within a year after its expiration. Within the same period, the employer is not allowed to introduce any disadvantageous changes to the contract of an employee being member of the council.

3. Staff's Organs and Enterprise Manager

Article 33 of the 1981 Act on State Enterprises stipulates that the director of the enterprise manages and represents the enterprise in external relations. However, by granting participation attributes to enterprise staff's organs, the 1981 Act on Self-management limits the power of the manager. Furthermore, the manager's decisions which do not comply with staff's organ resolutions or with the law can be suspended by these organs. On the other side, the manager has the authority to suspend the execution of a resolution issued by staff's organs, provided it is in contradiction with the law. Conflicts arising between staff's organs and the enterprise manager are solved *via* conciliation. If conciliation fails, the conflict goes into a labour court. Furthermore, the director and workers' council also have a reciprocal right to appeal to the court their own decisions which affect public interests.

The 1981 Act on Staff's Self-management goes very far by granting the employee council the right to designate the manager. Only the managers of enterprises that are considered a public utility¹⁸ are designated by their founding organs.¹⁹ The employee council is also entitled to ask the founding organ to recall the manager or his deputy. The council can also recall a manager on its own, provided it has the former acceptance of the enterprise founding organ. Recalling the manager without such acceptance is void. In some cases, the council is allowed to suspend the manager of state enterprise in his duties, but for a period that does not exceed six months. The enterprise's founding organ can object to such a decision.

The employee council has the right to present its objections to any decision of the founding organ that is relevant to designating or recalling a state enterprise manager. Moreover, the council is equal to the manager in its right to present objections to any decision issued by organs supervising the enterprise. All objections in relationships between the council, the director and the founding organ of an enterprise are firstly examined by the organ issuing the questioned decision. If this organ overrules such an objection, the objecting enterprise organs could make an appeal to the court.

Bearing in mind attributes of the state enterprise staff's organs and their relationships with the manager, it is obvious that state enterprises are basically managed by the latter. The staff participates in management, but with limited attributes - in their scope as well as in their character. Thus, the concept of employee participation in the enterprise management, adopted in Poland by the 1981 Act, could be considered as close rather to a 'co-management' model. There are no grounds for a *sensu stricto* 'self-management' model. The expression 'self-management', adopted by the Act, may be explained by the declarative and political character of the legislative language used under the communist

¹⁸ Public utilities enterprises are usually providing current and continuous services to the population (i.e. supplying with water, electricity, gas and heating as well as providing public transportation services).

¹⁹ State and local state administration organs are entitled to be state enterprises' founding organs.

system, the goal of which was among others to approach the myth of socialist democracy.

4. Staff's Organs and Trade Unions

The 1981 Act was based on the principle that staff's participating rights would not interfere with trade unions' rights. More, initially the relationship between staff organs and enterprise trade union organs were based on the principle of cooperation, expressed by the art. 34 of the Act. But in 1990 this provision was abolished and nowadays the competences of staff organs and trade union organs within an enterprise are not clearly determined. However, the article 36 of the Act gives trade unions the right to take a stand, before staff's organs make a resolution as regards matters related to trade unions' specific competencies defined by the Labour Code or by the Trade Union Act.

Despite all legislative endeavours, relationships between staff's organs and trade unions within state-owned enterprises have been tense from the very beginning. That was due to the fact that workers' councils were perceived by trade unions as a rival in the field of employees' interest representation. This was especially the case before 1989 when trade union freedom was considerably limited. Once trade unions regained full freedom and obtained the monopoly on collective agreements bargaining and on collective disputes, including the right to strike, they dominated employee councils. Still, trade unions are generally rather negative towards staff's organs. Trade unions and employee councils really co-operate only while protecting workers from unfavourable changes in state-owned enterprises, especially when they are being privatised. However, unions and councils rarely co-operate in seeking the new strategy for enterprise development.

5. Employee Involvement *via* Trade Unions

In Poland, trade unions constitute the basic form of employees' interests and rights representation. It's due to the 1991 Act on Trade Unions²⁰ which not only allows for the establishment of trade union units within any work organisation, but also provides it with a large scope of rights and competencies. One of those rights consists of the possibility for the trade union to present to the employer its opinions on matters regarding common employees' interests and rights (article 26.2). Considering the general nature of this statement, it is possible to interpret it as a basis for the work establishment trade union organisation /unit/ to express its opinion on enterprise management matters, as management decisions are usually in relation with common employees' interests and rights. However, the above mentioned provision is rarely used by trade unions that way, except the decisions having an impact on employment.

When mentioning employee participation in the management of an enterprise *via* trade unions, it is important to bear in mind that in Poland they are entitled to conclude collective agreements at the plant level. As to the contents of these agreements, the consecutive amendments of the Polish Labour Code, that took place after 1989, have finally provided parties with a full freedom.²¹ As a consequence, there are no legal

²⁰ Act on Trade Unions as of May 23rd, 1991, Journal of Laws, 1991, no. 55, item 234 with following changes.

²¹ See M. Sewerynski, 'Changes in Polish Labour Law and Industrial Relations During the Period of Post-Communist Transformation From Planned to Market Economy', in: *Labour Law and Industrial Relations in Central and Eastern Europe*, (eds.) R. Blanpain and L. Nagy, Kluwer Law International,

restrictions to include in the collective agreements stipulations concerning the management of the enterprise, especially when they concern strategic decisions determining employment or other issues important to the employees. Thus, on the formal viewpoint, Polish legislation allows employees to participate in the management of their enterprise *via* collective agreements, negotiated by trade unions. However, in practice collective agreements are not used that way. Collective accord relevant to group dismissals, concluded on the basis of the 1989 Act²² by the employer and trade unions, is an exception. It has to be also mentioned that trade unions negotiate agreements concerning social terms of state-owned enterprise privatisation and that they negotiate with the Government the terms of some branch industry restructuring.²³

6. Staff Organs' Rights and Competencies

The rights of the general employee assembly are as follows:

- on enterprise director's proposal, it adopts the enterprise by-laws;
- it defines the way in which benefits assigned to the staff are distributed;
- on employee council proposal, it adopts the enterprise staff self-management by-laws;
- adopts multi-annual enterprise plans.

The specific general employee assembly's competence consists in issuing, once a year, an evaluation on the activity of the employee council and of the enterprise manager. A negative opinion may result in the dissolution of the council, recalling some of its members or in recalling the manager, either by a employee council or enterprise founding organ. The general employee assembly has also the right to issue opinions on any topic relative to the enterprise.

There are four types of employee council attributes: normative, consultative, that of control and to make proposals. Among normative attributes, consisting in adopting resolutions, the most important ones are those relevant to:

- production and investment plans of the enterprise;
- approval of the annual report and of the balance sheet presented by the enterprise's director;
- adoption of the rules as regards distribution of enterprise funds;
- referendum to be organised in the enterprise;
- enterprise welfare policy;
- designation or recall of the enterprise director;
- bonding or sharing the enterprise possessions as well as changing its structure or enterprise activity.

Consultative attributes of the employee council cover all matters of the enterprise and its management. As a general rule, it is a council decision whether to issue an opinion or

1996, pp. 98-100 as well as M. Sewerynski, *'Polish Labour Law from Communism to Democracy'*, ABC Publ., Warsaw 1999, pp. 149 and ff.

²² Act of December 28th, 1989, on Particular Principles of Terminating Employment Relationship with Employees due to Enterprise Causes. *Journal of Laws*, 1990, no. 4, item 19.

²³ See more: M. Sewerynski, *Poland*, in: *Labour Flexibility and Free Market: a Comparative Legal View from Central Europe*, eds. U. Carabelli, B. Venziani, Giuffrè Editore, Milano 2002, pp. 219 and foll.

not. There are however some matters that require the manager to refer to the opinion of the employee council. This compulsory consultation applies for example in case of a modification of the enterprise foundation act, its liquidation, commercialisation, privatisation as well as in case of a conclusion of a long-term contract by the enterprise.

The council's attribute in the field of control is relevant to the whole enterprise activity, and particularly to the matters of its property. In order to facilitate the council's control operations, the 1981 Act imposed on managers the obligation to grant access to all documents and materials that may be needed for the council to perform its activity.

As to attributes consisting of making proposals, the employee council is entitled to present initiatives and remarks on any matter relative to the enterprise.

III. Employee Involvement in the Field of Work Safety and Health

1. Work Safety and Hygiene Commissions

According to the art. 237.12 of the Labour Code, an employer employing more than 250 employees shall set up a Work Safety and Hygiene Commission (WSHC), as an advisory body. The duty to set up the WSHC is imposed on employers both in the public and in the private sector of employment.

WSHC consists of the members of works safety and health service, the works physician, the employee labour inspector and the representatives of the works staff elected by works trade union organization. If there is no such a union organization operating in relation to the employer, the staff representatives are elected directly by the works' employees. The chairmen of the WSHC is the employer or a person authorized on his/her behalf, but the deputy chairman shall be the employee labour inspector.

The Labour Code defines also the tasks of the WSHC and methods of its fulfilment (art. 237.13). The tasks consist in:

- making a survey of the conditions of work and periodical evaluation of the level of work safety and hygiene,
- giving opinion on measures for prevention of accidents at work and occupational diseases, taken by the employer,
- offering suggestions concerning the improvement of the conditions of work and
- co-operating with the employer in the fulfilment of the latter's duties as regards work safety and hygiene.

Meetings of the WSHC shall take place during the working hours at least once in each quarter of the year. However, employees retain the right to remuneration for the time they did not work by reason of attendance at the meetings of the WSHC. In connection with carrying out its tasks, the WSHC is allowed to use analysis and opinions of external specialists, in cases agreed with the employer and at the latter's cost.

The existence and the activity of the WSHC proves that the Polish legislator aims at implementing the principle of cooperation between employees' representatives with the employer as regards work safety and hygiene, expressed in the ILO Convention no. 155 as of 1981 on Occupational Safety and Health, even though Poland has not yet

ratified this convention. However the WSHC does not have the power over the employer. This stems from the character of its particular tasks and competencies, as well as from the fact that the employer presides over the WSHC. The position of the employer in the WSHC was strengthened in the last amendment of the Labour Code in 2002. Still, the WSHC is a place where employees can not only express their views as regards work safety and health at the workplace but also to control its condition. In practice the influence of the WSHC on the improvement of works safety is seriously limited, as employers usually do not have sufficient funds for this purpose.

2. Employee Labour Inspectors

Pursuant to the legislator a particular form of employee involvement in the field of work safety and hygiene is to be constituted by employee labour inspectors, acting on the grounds of the 1983 Act.²⁴ Inspectors are elected by the staff of each works establishment, but in a bigger units also division and group inspectors are elected, subordinate to the works inspector. Elections of employee labour inspectors are organized by works trade union organisation and that procedure remains of its original perception as trade unions' organs. The Act grants employee labour inspectors a protection against a dismissal during the four years mandate and for one year after its expiry.

The task of employee labour inspectors consists in controlling whether the employer respects labour law provisions as regards: work safety and hygiene, vacation leaves, working hours, protection of women, juveniles and the disabled at work, as well as provisions concerning accidents at work or occupational diseases and the protection of natural environment. Moreover employee labour inspectors participate in fact finding concerning work accidents and in the activity of the Work Safety and Hygiene Commission. In order to carry out control actions, inspectors may visit works' premises and installations as well as request information from the employer and have access to documents. However, the most important is that inspectors have the right to give recommendations to the employer as regards elimination of stated defaults and even to stop work or machines, if they can cause an accident at work. In fact a recommendation is binding for the employer as a failure to implement it constitutes an offence against employees' rights and is liable to a fine. However the employer can make an appeal against the recommendation of the employee labour inspector to the state labour inspector, whose decision prevails.

Employee inspectors originate from the communist system, in which they were to be a proof for employees' participation in the control over the employer's respect of provisions on work safety and hygiene. However, already then the legal science pointed out a default of this legal institution consisting in granting inspectors the power over their own employer, which was the beginning of a conflict. For fear of this conflict employee labour inspectors very rarely used their powers toward the employer and as a consequence their position and activity were very weak. Therefore inspectors have not played the role assigned to them by the law which consists in being an autonomous employees' organ for exercising control over work safety and hygiene.²⁵

²⁴ The Act on Employee Labour Inspection (Journal of Laws 1983, number 35, item 163 with following amendmends).

²⁵ See more: W. Szubert, *Ochrona pracy: studium społeczno –prawne (Work Protection: Socio-legal*

After 1989 the institution of employee labour inspectors has remained unchanged and even though their patron – trade unions – have been given back their freedom of action, the activity of inspectors has not evolved. This is proved by the fact that in many works inspectors have not been elected at all. This is mainly due to a lack of trade unions in many private enterprises and they are the ones who organise elections of employee labour inspectors. Also the employees' reluctance towards participation in the work of employee labour inspectors is of some importance, as well as a growing trust to the State Labour Inspectorate which has regained its autonomous position in the democratic Poland.²⁶

IV. Board-level Employee Participation

1. Participation *via* the Enterprise Supervisory Board

The privatisation of state-owned enterprises is considered to be a key task in the process of building the market economy in Poland. This process began in 1990 on the grounds of the first Privatisation Act. Experience resulting from the implementation of this Act has been used as a foundation for the presently binding 1996 Act on Commercialisation and Privatisation of State Enterprises. The Act is particularly important for employee participation in the management of the enterprise, as it stipulates that the 1981 Act on State Enterprise Staff Self-management is no longer applicable to state enterprises transformed into a companies. It means that commercialisation and privatisation of state-owned enterprise results in a liquidation of employee participation in the management of the enterprise *via* staff organs.

However, the 1996 Act on Commercialisation and Privatisation has established new forms of employee participation in the management of the enterprise. They are applicable only to companies with the participation of the State Treasury. First of all employee representatives participate in the company's Supervisory Board, acting as its members. The number of these representatives is variable. As long as the State Treasury remains the sole shareholder, employee representatives represent two fifths of the Board members. Once the State Treasury sells more than 50% of shares, the by-laws of the company can change the number of employee representatives in the Board. The law imposes however an obligation to keep a minimum of employee representatives within the Board:

- 2 employee representatives on a Board of 6;
- 3 employee representatives on a Board of 7 to 10;
- 4 employee representatives on a Board of more than 10.

Employee representatives on the Board are elected in universal, direct election and secret ballot. The result of the ballot is binding for the General Assembly of the company.

study), Warsaw 1966.

²⁶ See more on work safety and health protection: T. Wyka, *Ochrona zdrowia pracownika jako element treści stosunku pracy (The Employee Health Protection as an Element of Employment Relationship)*, Difin Publ., Warszawa 2002.

The 1996 Act grants employees being members of the Board a special protection against termination of the labour contract. During the tenure of the Board and within a year after its expiration, the employer has neither the right to terminate the contract of its members, nor to introduce any change to their disadvantage.

2. Participation via the Enterprise Board of Directors

The second form of employee participation in the management of a company with the State Treasury shareholder, as established by the 1996 Act, is the right of employees to elect one member of the Board of Directors, if the company employs over 500 persons. The way this election is made is defined in the company's by-laws. However, the law requires for the election to be universal and direct and based on secret ballot. This form of employee participation does not apply to companies with participation of the State Treasury as a shareholder, if responsibilities for the management of the company are in the hands of a manager, on the basis of a special management contract concluded with a natural or legal person.

V. Self-employment and Employee Involvement

1. Employee Companies

Transformation of a state-owned enterprise into an Employee Company is one of the ways of their privatisation, regulated by the Act as of 1996.²⁷ An Employee Company is established when employees working in a given state enterprise buy all its shares or a part of them. The second case is the most popular among employees and takes a form of leasing contract passed with the State Treasury.²⁸ That way the employees acquire the right to use the property of the state enterprise and they become owners of the company only when capital instalments have been paid up. These instalments come from the benefits of the enterprise that was taken over.²⁹ The application for concluding a leasing contract is based on the works council's resolution, consulted previously with the employees' general assembly. Moreover, the majority of employees of the privatised enterprise has to enter the company that is being created. It is also required that the shares bought by employees cover at least 20% of the company's funds and that at least 20% of company's shares are bought by employees not being employed by the privatised enterprise. Employee companies can be created only in enterprises that employ not more than 500 employees and where the value of sales and the amount of enterprise funds does not exceed statutory limits.

Transformation of state-owned enterprises into employee companies arouses interest of employees working in these enterprises and is supported by trade unions. The first ones

²⁷ Act of August 30, 1996 on Commercialization and Privatization of State-owned Enterprises (*Journal of Laws* 1996 number 118 item 561 with following amendments).

²⁸ According to the data of the Ministry of State Treasury, in 2002 the leasing contracts covered 1344 state enterprises, representing 63,5% of all state-owned enterprises in Poland privatized by sale.

²⁹ See more, Z. Kubot, *Spółki pracownicze i spółki menedżerskie (Worker Companies and Manager Companies)*, Zielona Góra 1993 and S. Zwierzchlewski, *Leasing pracowniczy jako sposób prywatyzacji (Worker Leasing as a Method of Privatization)*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny", Year LX, Number 2/1998, pp. 45-48.

understand that entering such a company will grant them the status of an employee and at the same time the status of co-owners, participating in the decision making process as regards the company. Thanks to such a double status employees grant themselves protection against loss of employment, which is unavoidable in case of liquidation of an enterprise or very likely when an enterprise privatised by selling it to external investor, aiming to rationalise employment. As far as trade unions are concerned, they see in employee companies not only a way of preventing the loss of employment, but also a tool allowing for limiting social conflicts connected with privatisation as well as a form of capitalism that does not hurt the weakest.

Opponents to employee companies accuse them of not healing state enterprises that are being taken over by employees because they tend to lower the value of state enterprises in the moment of the take over and then they use their status of owners to gain redundant employment, increase wages and to stop investments. Opponents to employee companies also argue that this type of privatisation is often used by a more wealthy, as compared to rank and file employees, management of a state enterprise (in the beginning, very often, it was the previous communist „nomenklatura”) to easily take over the enterprise. Above all, they point out the contradiction between their two roles that employees play: that of owners and employees. This contradiction constitutes a threat to the economic effectiveness of employee companies. Therefore they are rather treated as a temporary and not a permanent form of privatisation of state and municipal enterprises.³⁰ However, there are some employee companies who have good results and evolve even in difficult conditions of the market economy.

2. Work Co-operatives;

Work co-operatives constitute a particular case of employee involvement, regulated by the 1982 Act.³¹ Work co-operatives are a voluntary association of members, conducting together an economic activity on the basis of members' work as well as their financial contributions. The special type of work co-operatives is represented by those who are established by disabled people, as they combine economic goal with that of rehabilitation. For this reason these particular co-operatives benefit from the state aid.

Members of a work co-operative have a double legal status as they are at the same time its shareholders and employees. These two elements of a legal status are strictly related and for this reason members of a work co-operative are obliged to perform work for it. On the other side, a co-operative can terminate employment relationship only for an economic necessity to reduce employment and when an employee acquires the right to pension.

Each member of a work co-operative has the right to participate in the process of decision making concerning the co-operative by participating in its general assembly. He/she also has the right to a part of profit destined for co-operative's members. It's obvious that an employee status gives each member of the co-operative the right to be

³⁰ See more: Z. Kubot, *Problem pracodawcy w spółkach pracowniczych (Problem of Identification of an Employer in the Employee Companies)*, "Praca i Zabezpieczenie Społeczne" 1992, number 5-6, pp. 17-24.

³¹ Act of September 16, 1982 on Cooperative Law (Journal of Laws 1982 number 54 item 288 with following amendm,ents).

remunerated for his/her work as well as to other employee rights provided for in the provisions on work co-operatives, the co-operatives' statutes as well as in the common labour law.³²

Work co-operatives were established in Poland as a particular form of enterprise under the communist system. During this period the role of members capital contributions and profit-sharing in the co-operatives was in reality always secondary and even marginal. Furthermore, work co-operatives became very dependent on governmental credit, which stripped them of any vestige of self-government. Thus, the work co-operatives came to very much resemble state-owned enterprises. Under the democratic system, established in Poland after 1989, work co-operatives have once again resumed their self-governing nature. However, their number is very limited and those in existence face serious difficulties in competing with their rivals in the private sector.

VI. Forms of Direct Participation

1. Referendum

According to the 1981 Act on Self-management, the staff of a state-owned enterprise is entitled to participate in the enterprise management not only by its organs but also directly: in the form of a referendum. This form of participation can be applied in all matters important to the enterprise, once it's decided upon by the employee council. This form of participation worked in many state-owned enterprises. Furthermore, referendum is very often used in the public as well as in the private sector, in the procedure preceding the decision on organising a strike.

2. Consultation with Employees

Particular form of direct employee involvement occurs in case of a lack of a trade union in given works. Then the employer is obliged to consult and to conclude agreements with the employee representatives, elected for this purpose. It has to be underlined that the legal status of those non-union representatives of employees is not regulated. As far as election procedure is concerned, legal provisions refer to the procedure adopted in given works. This means that employees can decide autonomously in this respect. Legal provisions do not provide for an answer whether representatives of employees who were elected for consultation or for concluding an agreement in a given case keep their status permanently. Therefore it can be assumed that they are not permanent staff's organ but rather a form of *ad hoc* and direct consultation with works employees.

Consulting and concluding agreements with representatives chosen directly by employees of given works establishment are provided for e.g. by provisions of the Labour Code as regards certain matters related to work safety and hygiene (art. 237.7 § 2 and 237.8 § 1) or provisions of the 1989 Act on Works Welfare Benefits Fund (art. 4.3 and 8. 2). The recent amendment of the Labour Code, which was carried out in

³² See more: M. Gersdorf, J. Ignatowicz, *Prawo spółdzielcze: komentarz (Cooperative Law – Commentary)*, Warszawa 1985 and K. Pietrzykowski, *Powstanie i ustanie stosunku członkostwa w spółdzielni (Establishment and Termination of Cooperative Relationship)*, Warszawa 1990.

2002, has increased the number of situations in which an employer can conclude an agreement with selected representatives of employees, if in his business there's no trade union. Moreover the meaning of such agreements is of greater significance as they can suspend the implementation of works' regulations as well as provide for less favourable employment terms, as compared with those provided for in the employment contract, if it is justified by a bad financial situation of the employer (art. 9.1 and 23.1.a of the Labour Code).

VII. Employee Financial Participation

The 1996 Act on Commercialisation and Privatisation of State-owned Enterprises introduced Employee Share Ownership in Poland. According to the Act, employees, fishermen and farmers have the right to purchase 15% of shares of a State Treasury company for free. A total nominal value of shares purchased this way cannot exceed the limit specified in the Act. Under certain conditions also former employees of a state-owned enterprise transformed into a company have the right to benefit from the Employee Share Ownership. Employees can purchase shares for free in one company; fishermen and farmers in two companies at the most. Shares acquired within the Employee Share Ownership scheme can be sold by employees only after two years since their attribution by the State Treasury. If shares were purchased by employees being members of the company's management board, than they can be sold after three years.

Additional grounds for Employee Share Ownership constitute agreements concluded by the buyer of the privatised state-owned enterprise with trade unions. Even though the main purpose of such agreements consists in gaining guarantees of employment and wages for employees, but sometimes they contain provisions concerning acquisition of shares in a privatised enterprise by employees. This way employees gain free shares above the 15% limit provided for in the Act or they buy them under preferential terms.

Employee Share Ownership scheme, based on a free distribution of company's shares among employees, grants them a participation in company's management and the right to dividend. For this prize the Government aimed at gaining employees' approval for privatisation of state-owned enterprises in which they were working. It was also assumed that buy purchasing shares, employees will become more integrated with the goals of the privatised enterprise. It is estimated that the first objective was reached, as employees very willingly accepted benefits stemming from ownership of company's shares. However the integration objective has not been reached, only because employees very quickly sell shares that they gained for free in order to have an income and this way they lose the right to participate in the decision making process within a company.³³

³³ See: M. Bednarski, J. Wratny, *Porozumienia socjalne związane z prywatyzacją przedsiębiorstw państwowych (Welfare Agreements Related to State-owned Enterprise Privatization)*, Instytut Pracy i Spraw Socjalnych Publ., Warszawa 2000, p. 35.

VIII. Prospects for Employee Involvement in Poland

1. Opponents and Partisans of Employee Involvement

The idea of employee participation in enterprise management has been considered in Poland for a long time as a political instrument. Communists believed it to be an ideological slogan which would impress workers and integrate them within State-owned enterprise objectives. The democratic opposition of the 80's considered it as a way to enforce the employees' position in their struggle for social and political rights, as trade union freedom did not exist.³⁴ That is also why after the fall of communism in Poland the democratic opposition, with *Solidarność* at the lead, has reduced its attention to the employee participation and concentrated its efforts on the restructuring of the economy and trade union freedom.

After the fall of communism in 1989, the employee participation remains an actual issue, as the of building market economy cannot be realized without a collaborative attitude of employees, particularly in the sector of state-owned enterprises which need a fundamental restructuring. That attitude could be obtained only by way of social partners dialogue and cooperation, which is already adopted by the Polish Constitution of 1997 as one of the principle of economic system. The concept of employee involvement seems to be a logic consequence of this principle. Yet, it's still a subject of a hot debate for social partners, political parties and, of course, for legal and social sciences. Each and every of these milieus is somehow divided into partisans and opponents, founding their opinions on political, economic and social arguments.

The opponents believe that the employee involvement, as issued from the idea of industrial democracy, has only a political meaning, so that transposing it onto labour relations in the form of employee involvement in an enterprise is not justified, as politicisation of an enterprise has a negative impact on its economic character and goals. The concept of employee participation in enterprise management has played a positive role in Poland under the communist system, leading to a kind of political democracy substitute. Nowadays however, under the rebuilt democratic system, the concept of employee participation, particularly as defined by the 1981 Act as employee self-management, should be entirely abandoned. Furthermore, the opponents stress that the concept of employee self-management has been introduced as a result of a social protest against the communist system of enterprise management, based on the principle of 'nomenclature' i.e. on the Communist Party control over the appointment of State-owned enterprise managers. However, that concept has not been successfully applied anywhere and finally it failed, including Yugoslavia, where the idea of social self-management has been adopted as a basis not only for enterprise management but for the whole political system in order to separate it from the Soviet model.³⁵

³⁴ Cf. M. Sewerynski, 'Les particularites du syndicalisme des pays de l'Est et les tendances recentes dans ce domaine'. *Revue Internationale de Droit Compare*. 1990, no.1, p. 115 and ff.

³⁵ L. Krzyżanowski, *W sprawie miejsca i roli samorządu pracowniczego w strukturze organów przedsiębiorstwa (The Place and Role of Employee Self-management in the Structure of Enterprise Organs)*, „Organizacja i Kierowanie”, 1990, no. 1-2, p. 65.

Arguing against employee involvement, it is also pointed out that reaching economic goals requires professional management of the enterprise and employees do not have such professional skills. Furthermore, the professional enterprise management is considered as one of the key factors determining the whole economic transformations in Poland.³⁶ Some employee participation opponents even pretend that this concept is incompatible with the rules of the free market economy. Particularly, employee participation may dissuade foreign investors from investing capital in Poland which is necessary for redressing its economy.

The partisans of employee participation in enterprise management see in it a device of labour relations democratisation, enterprise socialisation and the way to implement the idea of the social justice. At the same time, they believe the employee participation to be one of the guarantees of the enterprise's autonomy towards the State, as well as a way of focusing the interest of the staff on the effectiveness and profitability of the enterprise.³⁷ Furthermore, participation is based upon a partners' dialogue between the employer and employees, which facilitates the state enterprise restructuring process and helps maintain social peace.³⁸ Another argument in favour of participation is that trade unions encounter in the private sector a heavy employers' opposition, which is the main reason for low level of unions presence in this sector. Hence, it could be easier for the employer to accept employees' interests representation *via* staff organs, especially when the latter do not possess the right to strike.

The partisans of employee participation in the management of the enterprise reject its self-management model, defined in the 1981 Act, as not being adapted to political, economic and social conditions, which emerged after 1989 in Poland. They are however favourable to the consultative participation model and particularly to the German *Mitbestimmung* model, which are said not to be contrary to an effective enterprise management by a professional manager.³⁹ As to legal forms of employee participation, a participation *via* staff organs is mainly postulated. This organ should to be the works council, democratically elected, having information, consultation and control rights. Moreover, employees should have their representatives on the Supervisory Board of the company. It has also been suggested to introduce in private enterprises a post of employee director, designated after staff consultation.⁴⁰

³⁶ See J. Krauss, J. Modrzejewski, M. Safian, Zlikwidowac państwowe przedsiębiorstwa (Liquidate State Enterprises), „Rzeczpospolita” of the 8th of May, 1990, and L. Krzyzanowski, op.cit., pp. 66-71.

³⁷ See M. Dabrowski, Mit komercjalizacji (Commercialisation Myth), „Gazeta Samorządowa”, 1990, no. 16.

³⁸ See J. Wojtyła, Social Dialogue in the Process of Regional Restructuring: the Example of Upper Silesia, in: Polish Labour Law and Collective Labour Relations in the Period of Transformation, (ed.) M. Seweryński, Ministry of Labour and Social Policy Publ., Warsaw 1995, pp.111-112; P. Ruszkowski, Ogień z wodą, (Fire with Water), „Zarządzanie”, 1991, no. 1, p. 49; A. Wieczorek, Lobby załogi (The Staff's Lobby), Zarządzanie, 1991, Number 3, p. 45; J. Kulpińska, I. Mazlakova, Uczestnictwo pracownicze (Employee Participation) in: Zbiorowe stosunki pracy w procesie przemian (Collective Labour Relations in the Transformation Process), Wydawnictwo IFiS PAN, Warszawa 1995, p. 359.

³⁹ The employees themselves point out a need of harmonizing participation legal regulations with political, economic and social conditions. These were the results of a research performed in Upper Silesia. See. J. Sztumski, Samorząd pracowniczy a demokracja przemysłowa (Staff Self-Management and Industrial Democracy), „Polityka Społeczna”, 1991, Number.7, p. 6.

⁴⁰ See S. Jakubowicz, Pracownicza rada nadzorcza (Employee Supervising Board), „Zarządzanie”, 1991, Number 3, p. 43; the same, Demokracja najemnych (Wage-earners' Democracy), „Życie

2. Legislative Projects

The employee involvement is one of the major subjects of current legislative work in the field of the labour law in Poland. One of its results is a draft of the Collective Labour Code, elaborated in 1997 by the governmental Commission for the Labour Law Reform. The draft has adopted the principle of works staff's right to participate in the decision making process within a work establishment. The principle is inspired by the rule of dialogue and cooperation between social partners, as adopted by the new Polish Constitution of 1997 (art. 20). The draft states that the staff of a work establishment should have its own right to information on the establishment and to submit proposals on its activity, as well as the right to express opinions and to co-operate with the employer. The right to express opinions covers the following matters:

- liquidation, sharing or bonding of the work establishment with an establishment belonging to another employer;
- total or partial transfer of the work establishment to another employer;
- changes in work organisation, work establishment structure or its activity profile, having an influence on employment or work conditions;
- employee professional training programme.

The right of the staff to co-operate with the employer consists in concluding collective agreements on the following topics:

- remuneration,
- work organization,
- welfare benefits,
- participation in the enterprise's profits,
- work safety and hygiene,
- group dismissals,
- establishing a conciliation commission for settlement of individual labour conflicts.

A staff of less than 100 employees implements its participation rights directly but in enterprises of more than 100 employees - *via* democratically elected employee council. Council members benefit from a certain number of free hours to perform their duties and are protected against the deterioration of employment conditions and termination of the employment contract.

The draft-Code maintains the right of the company's staff to delegate its representatives to the Supervisory Board, having the right to express the staff's point of view in deliberating matters.

According to the draft, the scope and forms of employee involvement differ, depending on whether trade unions exist or not in a given work establishment. In the first case the staff would only have the right to receive information and to be consulted by the employer, before his decision is taken. But if there is no trade union within a given work establishment, its staff has also the right to negotiate collective accords and even

Gospodarcze”, 1991, Number 18; J. Wrątny, *Partycypacja pracownicza w przedsiębiorstwie* (Employee Participation in the Enterprise), Instytut Pracy i Spraw Socjalnych Publ., Warszawa, 1993, p. 51 and ff.

the right to address collective disputes. So, in the second case the staff has not only the right to participate in the decision making process but also has rights belonging traditionally to trade unions. It has to be underlined that according to the draft the staff is vested with the right to get information and to be consulted also in the case when trade unions exist within the plant. Thus, in such a case there would be two parallel forms of employees' collective rights and interest representation: *via* staff's organs (general assembly and works' council) and *via* the enterprise trade union organisation.

The concept of employees' participation, as adopted in the draft of the Collective Labour Law Code, is based on the assumption that it should not hamper neither the rights of enterprise owners nor the employer's right to manage it - on one hand - and should not collide with the traditional rights of trade unions - on the other hand. However, both social partners have expressed their critical opinions as regards the draft. The employers maintain traditional objections, referring to the enterprise ownership and rules of its professional management. As far as trade unions are concerned, they contest the concept of the staff as a subject of the autonomous right to information and consultation, as undermining trade unions' position within the work establishment. The staff's right to negotiate collective agreements and to address collective disputes, although limited to some clearly defined situations, is totally rejected by trade unions, as it weakens their traditional monopoly.

The Commission which has elaborated the draft-Code of Collective Labour Law realizes that the proposed concept of employee participation makes relative the trade unions' monopoly on collective bargaining and leading collective disputes. However, it argues that such a concept is justified in light of the negative trade unions' freedom principle, arising from the ILO 87 convention. This principle gives employees the right to remain outside trade unions, without bearing the negative consequences. It means that the rights of employees who are not members of any trade union should not be less developed and protected than these of trade unions' members, both in the field of individual and collective employee rights. Hence, the employees of a work establishment in which there is no trade union organisation, whatever a reason, should have the right to all collective actions, defending their collective rights and interests. Such a concept is also compatible with article 6.4 of the European Social Charter, which recognizes the right of all employees to a collective action in case of a conflict of interest, including the right to strike. It was also added that the draft-Code concept significantly reduces the consequences of managers blocking the creation of trade unions in the private sector of the Polish economy.

3. Employee Involvement in Poland and European Union Law

a. European Works Councils - Polish Experience

The key factor for the issue of employee involvement in Poland is the prospect for the integration with the European Union in which there are many regulations establishing employees rights for information and consultation. The most important are the Directives on European Works Councils as well as on employee involvement in European Company and in national enterprises. Poland is not yet a member of the European Union and that's why is not bound by the above mentioned Directives. Nevertheless, all of them shape a framework for the future Polish legislation taking into account that Poland will be soon a full member of EU.

As far as the EU 94/45 Directive on European Works Councils is concerned, Poland already has some experience in this field as Polish unions' representatives participate in European Works Councils, acting in international enterprises having their branches in Poland.⁴¹ The number of these enterprises is very limited but it's very important that the research prove the positive attitude of Polish representatives to the idea of employee involvement *via* the institution of works council. Their favourable opinion is due to benefits that trade unions gain from the participation of their delegates in the Councils' work. They consist of the reinforcement of trade unions' position towards the employer as well as towards employees. Furthermore, trade unions' delegates acquire international experience and can count on the support of foreign trade unions in case a dispute arises between the management of the Polish branch of the enterprise and trade unions.⁴²

Recently Poland has implemented the EU Directive 94/45 on European Works Councils, adopting the special national Act of 2002.⁴³ According to this Act, the rules of the Directive will be fully applied in Poland after reaching a membership in the European Union. As a full member of the Union, Poland will be also obliged to implement the Directive 2001/89/EC, supplementing the statute for the European company with regard to the involvement of employees.

b. Impact of the EU 2002/14 Directives on Employee Involvement Regulation in Poland

The recent EU regulation have established a general framework for informing and consulting employees in the European Community. This refers to the Directive number 2002/14, dealing with national enterprises, as well as to the Directive number 2001/86 supplementing the statute for the European Company with regard to the involvement of employees. This new tendency cannot be, of course, ignored by the future EU Member States. The solutions adopted within the above mentioned Directives on employee involvement are of high importance for Poland in the light of its future EU membership. Thus, one can expect that they will give a new impetus to the idea of social dialogue and employee involvement, as well as to the evolution of the Polish legislation in this field.

However, it seems that the implementation of the 2002/14 Directive in Polish private sector will be limited, as it applies only to undertakings employing at least 20 or even 50 employees, according to the choice made by the Members States. Yet, in Poland an average employment in the private sector is around 4 employees per one enterprise, which means that the 2002/14 Directive would not apply to a great number of private enterprises in Poland. Moreover, the Directive allows employers not to communicate information or undertake consultation where doing so would seriously harm or prejudice the functioning of the undertaking.

⁴¹ See S. Rudolf, *Europejskie Rady Zakładowe: konsekwencje dla Unii Europejskiej i Polski (European Works' Councils: Consequences for EU and Poland)*, „Studia Prawno-Ekonomiczne” (ed.) M. Seweryński, Vol. IV, University of Lodz Publ., 1999, pp. 165 and ff.

⁴² See more: *Europejskie rady zakładowe – polskie doświadczenia i perspektywy (European Works Councils – Polish Experience and Perspectives)*, papers presented for the “Solidarity” conference organized the 28-29 may 2001 in Gdansk.

⁴³ Act on European Works Councils of 5th April 2002 (Journal of Laws 2002, Number 62, item 556).

The implementation of the 2002/14 Directive in State-owned enterprises will constitute a particularly complex issue. It's due, first of all, to the fact that in this sector enterprises are covered by the 1981 Act on Staff's Self-management, which grants the staff not only the right to information and consultation, but also some normative attributes and the right to appoint the manager. That means that the Polish Act as of 1981 reaches further than the 2002/14 Directive. In this context one should consider the article 8.3 of the Directive saying that it shall be without prejudice to other rights of employees to information, consultation and participation under the national law. On the other side the 2002/14 Directive reaches further as regards the right to information and consultation, covering matters relating to employment, as well as changes in work organization or in contractual relations. In this respect there is a similarity between the Directive and the draft of the Polish Collective Labour Law Code. It may be expected that social partners will be willing to approve the wide scope of information and consultation in exchange for repealing normative rights of employees' representation and the right to appoint the executive director of the State-owned enterprise.

The reception of the 2002/14 Directive on information and consultation in Poland may also encounter difficulties as regards the form of employee representation. It may seem like a paradox since the Directive gives the full freedom to the national law and/or practice in this respect. However, in Poland, in the private sector only in some enterprises there is a trade union representation of employees and there are no legal grounds for other types of the representation. Also, the binding law, including the Constitution /art.59.2/, grant trade unions the monopoly to negotiate. Therefore the employer cannot neither negotiate nor consult with no other employee representation than those of trade union. Moreover, it has to be underlined that only a collective agreement concluded with a trade union has a normative character. Collective agreements concluded by the employer with another partner are not formally prohibited but can be perceived only as civil law contracts. Thus, it seems that the implementation of the 2002/14 Directive on information and consultation in Poland should to be accompanied by the adoption of a law allowing for non-union employee representation within the enterprise, in which employees do not have set up a trade union. Furthermore, such a non-union representation will also have to be given the right to negotiate with the employer, at least within the scope defined by the 2002/14 Directive. One can see first steps towards the above mentioned solution in the 2002 Labour Code amendment.⁴⁴ However, trade unions oppose such a regulation since every attempt to recognize a non-union representation of employee interests is perceived by trade unions as an attack on their rights and freedoms.

⁴⁴ See above at Chapter VI par.2.