RIGHT TO A FAIR TRIAL IN LABOUR DISPUTES IN THE LIGHT OF THE POLISH CONSTITUTION

In the Polish legal system the right to a fair trial is granted by the Constitution. Pursuant to Art. 45.1 of the Constitution of the Republic of Poland, everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial, and independent court. Art. 77.2 of the Constitution says that statutes shall not bar the recourse by any person to the courts in pursuit of claims alleging infringement of freedoms or rights. The aforementioned regulations are universal since they relate to both the procedural and organisational aspect (Art. 45.1) as well as the functional and jurisdictional one (Art. 77.3).

As far as the rights are concerned, neither Art. 45.1 nor Art. 77.2 of the Constitution restricts the right to a fair trial. Both of these provisions grant universal rights. In the first provision the word “everyone” is used, in the latter – the phrase “any person”. When it comes to labour relations, this means that the right to a fair trial applies to employees, employers, and other bodies functioning in industrial relations (e.g. trade unions, employers’ associations). Such interpretation is justified in argumentum a completudine and argumentum a cohaerentia.

As far as the laws are concerned¹, there are also no restrictions. Pursuant to Art. 45.1 of the Constitution, the right to a fair trial applies, lege non distinguente, to any case, even labour disputes. Art. 77.2 of the Constitution also does not provide for any differentiation criteria. In this context it is obvious that judicial remedies may be sought to protect employment rights and freedoms violated. One might assume that the legal interpretation of the right to a fair trial referred to in the Constitution of the Republic of Poland differs, in a positive way, from the legal interpretation of the regulations referred to in Art. 6.1 of the ECHR since the Constitution does not require to differentiate between obligatory labour relations and public service employment. Therefore, the Polish legal system allows to seek judicial review in any case when the law has been allegedly infringed. Such a procedural mechanism perfectly reflects the concept of a democratic state of law which allows to seek judicial remedies².

When discussing the problems related to the right to a fair trial in labour disputes, it is worth considering to what extent non-judicial procedures limit the constitutional judicial protection in labour relations. Before I go to the essence of this issue, it is advisable to systematise these procedures for the sake of clarity. As a rule, they are divided into the out-of-court proceedings and the pre-court proceedings. Logically, this division does not seem to be entirely correct since there is no separation. Therefore, I feel obliged to clarify it.

It may be assumed that the broad term of the out-of-court proceedings in the wide sense consists of both the pre-court (pre-judicial) proceedings when a labour dispute, before it is brought to the court, may or has to be referred to a statutory body other than a court for familiarisation (not necessarily for consideration), as well as the out-of-court proceedings in the strict sense when a labour dispute adjudicated under the law does not fall within the jurisdiction of the court but of another body defined by the law.

The starting point of an analysis of the out-of-court procedures in the wide sense applied to individual labour disputes in terms of restrictions on the right to a fair trial should be the out-of-court proceedings in the strict sense. At the very beginning it has to be stated that in those categories of disputes where these proceedings apply to the fullest extent, i.e. in courts of all the instances, parties are completely deprived of the right to a fair trial. In practice this means that disputes between those parties are resolved by other bodies or authorities, without any judicial review. These regulations are unconstitutional in the Polish legal system since they infringe the provisions of Art. 45.1 and Art. 77.2 of the Constitution. This particularly concerns disciplinary actions which are considered by disciplinary committees – quasi-courts which are not state judicial authorities. The jurisdiction of non-judicial disciplinary bodies should always be subject to the judicial review. The Supreme Court’s jurisdiction of this kind substantially developed at the turn of 20th and 21st centuries. In its Ruling IPKN 216/99 of 22 October 1999 the Supreme Court of Poland expressed an opinion that an appointed official may request the labour court to waive the penalty lawfully imposed by the disciplinary committee. On the other hand, in Ruling I PKN 580/99 of 13 April 2000 it was assumed that provision § 12.1 of the Regulation of the Council of Ministers of 27 October 1986 on the rights and obligations of the state organisational unit “Polska Poczta, Telegraf i Telefon” should, after the Constitution of the Republic of Poland entered into force, have been interpreted in a way ensuring its compliance with Art. 45 of the Constitution, i.e. not excluding judicial review of the legality or reasonableness of the employer’s statement on immediate termination of employment as a result of a disciplinary penalty consisting in terminating the employment relationship.

Further I would like to focus on the pre-court proceedings. As far as the optional pre-court proceedings are concerned, I believe the statutory permissibility to deal with an individual labour dispute by way of such procedures does not raise any observations in terms of the right to a fair trial. Personally I think that the parties to the employment relationship may at any time resolve a dispute by conciliation or mediation of any type,

\[3 \text{ OSNP 2001, No. 5, item 165.} \]
\[4 \text{ OSNP 2001, No. 18, item 561.} \]
\[5 \text{ Dz. U. No. 43, item 210, as amended} \]
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even imperative one, provided that it is voluntary and compliant with the law. In the light of Art. 77.2 of the Constitution it is crucial that if conciliation or mediation failed, an authorised entity could always have the possibility to resolve the dispute in the court.

One faces a different situation when it comes to the obligatory pre-court procedures. The fact that the law obligates the parties to a dispute to first try to resolve this dispute under internal procedures followed by the establishment or even under the administrative procedures undoubtedly constitutes a significant restriction on the right to a fair trial in the light of Art. 45.1 of the Constitution. In such a case one may speak of a mechanism described as the “conditional jurisdiction”, where exhausting all the pre-court procedures is the condition for referring the dispute to the court. However, it is doubtful whether such a scheme can be applied to labour disputes. I am of different opinion and believe this procedural mechanism is acceptable, provided that the labour court, when a dispute is referred to it, may consider the entire subject matter of the dispute with no limitations. One should remember that Art. 77.2 of the Constitution does not allow to bar the recourse by any person to the courts in pursuit of claims and thus does not explicitly make the obligatory pre-court procedures unconstitutional. This view is justified in argumentum a fortiori.

In functional terms, such an opinion on the procedures is a result of a compromise between the judiciary and the dispute resolution efficiency. Of significant importance here is the experience gained from resolving labour disputes. It reveals that any optional out-of-court procedures are poorly implemented by employers in their establishments or do not exist at all.

Taking the foregoing into consideration, one may ask which internal procedures followed by establishments exactly are obligatory. When considering the procedures referred to in the Polish Labour Code, I think the said obligatory procedures include the correction of an employment certificate and the imposition of fines. In the first case, pursuant to 97 § 21 of the Polish Labour Code, the employee may request the employer to correct his employment certificate within seven days of its receipt by the employee. Should such a request be rejected, the employee may refer his request to the labour court within seven days of the employer’s refusal to correct the certificate. The wording of the aforementioned provision, especially the phrase “should such a request be rejected,” may incline one towards the interpretation that submitting a request to the employer is a condition precedent to the right to refer it to the court. In all other cases of disputes about employment certificates the Polish Labour Code does not provide for the necessity to employ internal procedures at the establishment. This view is based on the per non est interpretation.

An analogous legal mechanism operates under Art. 112 § 2 of the Polish Labour Code, according to which the employee who filed an objection to the penalty imposed

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6 Jurists have been recommending to make any and all pre-court procedures optional for a long time. Cf. especially W. Siedlecki, O przewlekłości sądowego postępowania cywilnego, NP 1987, No. 2, p. 6; R. Więckowski, Sądowe dochodzenie roszczeń a postępowanie przedsądowe, PiP 1990, s. 2, p. 61.


on him may, within 14 days of the notice of rejection of the objection, request the labour
court to waive this penalty. In practice this means that the employee may bring an action
to the labour court only after the internal procedures followed by the establishment are
exhausted, i.e. after an objection is lodged to the employer in due time.

Summing up the problems related to the effects of the out-of-court proceedings in the
wide sense on the right to a fair trial in labour relations, it has to be stated that these effects
are exceptionally diverse. Intrinsically, the out-of-court procedures in the strict sense
deprive a party to the employment relationship of the right to a fair trial and this directly
violates the provisions of Art. 45.1 and 77.2 of the Constitution. The issue of the obliga-
tory pre-court procedures is more complex. In functional terms, they undoubtedly limit
the judicial remedies. However, if they are established by way of an act and this act does
not limit the right to a fair trial in any way, then they may be considered constitutional.
Only in the case of the optional pre-court procedures did not I see any legal mechanisms
that limit the parties’ possibility to take legal actions.

I would like to stress here that I do not share the universally held opinion that only
labour courts should have jurisdiction over labour disputes. It seems very improbable that
they will become the only place where labour disputes and conflicts are resolved. I do not
diminish the role and possibilities of non-judicial bodies a priori.

A well-organised, non-judicial legal protection system should, in my estimation, pro-
vide the parties with non-judicial labour dispute resolution alternatives (informal justice),
first and foremost at the level of the establishment. One should however remember that
resolving a dispute in a non-formal manner, without the intervention from authorities
empowered to take coercive measures, encourages the parties to the dispute to agree to
resolve the case. It is fundamentally important because very often these people still have
to work with each other. Nonetheless, if the non-judicial conciliation procedures fail, the
party should always have the right to refer the dispute to the court which, in procedural
terms, is a condition precedent to the exercise of the constitutionally guaranteed right to
a fair trial.

When it comes to the statutory restrictions on the right to a fair trial, one encoun-
ters a different situation in the case of the laws-related restrictions. The purpose of such
regulations results from the specifics of cases that ended with a law. All those disputes
vary in nature, where obligatoriness or individuality⁹ are of secondary importance. Under
the applicable legislation on the rights-related restrictions of the right to a fair trial, of
central significance is Art. 262 § 2 of the Polish Labour Code. Its meaning substantially
goes beyond the literal wording; it generally does not allow to refer a dispute to the court,
whereas its literal wording only limits the jurisdiction of the labour court. The point is
that the exclusion of the jurisdiction of the labour court results in total unavailability of
judicial remedies since disputes either are not of civil nature in the wide sense or require
the application of procedures different than the judicial ones. It should be emphasised
here that the foregoing remarks apply exclusively to Art. 262 § 2.1 and § 2.2 of the Pol-
ish Labour Code. Art. 262 § 2.3, however, only clarifies the issue, implicitly assigning

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I will begin my deliberations about the lack of possibility to seek judicial remedies as far as the laws are concerned by referring to the disputes described in Art. 262 § 2.1 and § 2.2, i.e. the ones related to the determination of new terms of employment and remuneration. At this point it should be stressed that this category of disputes may not be identified with cases related to the establishment of a right or a legal relationship. It is evident that in the light of Art. 189 of the Polish Code of Civil Procedure the second category of cases falls within the judicial remedies in the strict sense. It includes a situation when between the parties to the employment relationship or to a different material and legal relationship arising from the labour legislation an uncertainty about the rights and obligations resulting from such a relationship occurs. It is completely different when it comes to a dispute over the determination of new terms of employment and remuneration. The essence of such a dispute involves different views on rights or obligations that are not statutorily regulated or on the transformation of the existing rights or obligations. Disputes of such nature are classified as disputes over interests.

In this context it is worth taking note of the accurate statement of the Supreme Court of Poland in its Ruling IPKN 482/97 of 19 January 1998, according to which the case about signing the agreed employment contract may not be considered a dispute over new terms of employment and remuneration within the meaning of Art. 262 § 2.1 of the Polish Labour Code since it is perceived as a labour dispute. If the parties to a dispute over the determination of new terms of employment and remuneration are exclusively individuals, only internal conciliation and arbitration procedures followed by the establishment are taken into account, not the judicial remedies in the wide sense. The said statement is confirmed by Art. 5.3 of the Polish Act on Proceedings before Administrative Courts. In accordance with this act, such courts have no jurisdiction over cases related to the refusal to appoint public administration officials unless otherwise required by the law.

In the case of a dispute over new terms of employment of remuneration which is of collective nature, the provisions of the Polish Act on Resolution of Collective Labour Disputes apply. Disputes in this category are not of civil nature. In the Polish legal system only the laws embodied in the widely understood legal regulations are subject to judicial protection.

The second category of labour disputes that limit the judicial remedies are disputes over the application of labour standards. In general terms, they are about challenging the substantive legitimacy of the establishment of labour standards or implementation procedures. In practical terms, various situations are possible. For instance, the subject matter
of a dispute may be the currently applicable standards if the employees consider them too strict or if the employer believes that the technical and organisational conditions have changed to an extent justifying their raising but the employees demand that the standards be maintained at the existing level. A dispute may also be about the divergence between evaluations of trade unions and those of employers with respect to standards being developed. In such a situation, the core of the problem is the protection of future remuneration from decreasing. All the aforementioned categories of disputes are related to each other by one feature – the fact of challenging the legitimacy or reasonableness of the currently applicable labour standard or of a suggested one.

In the light of Art. 262 § 2.2 of the Polish Labour Code, it seems that the judicial remedies are unavailable in disputes of such type. However, due to the multidimensionality of labour conflicts there occur cases indirectly related to the labour standards where the judicial remedies are available. What I have in mind are disputes over the correctness of the application of the currently applicable labour standards. Such disputes, due to their obligatory nature, fall within the category of laws- and rights-related claims arising from the employment relationship since they are about the infringement of an obligation arising from a contract of employment. An example may be a situation where the employee claims he has not been remunerated in a relevant amount due to the misapplication of the labour standards.

According to the Supreme Court’s opinion on this matter, the employee demanding the employer to pay piecework remuneration, calculated under the incontestable labour standards, constitutes a typical claim for remuneration. An analogous situation, from a procedural perspective, is when the employer, questioning the correctness of the application of the labour standards, demands the employee to return part of the remuneration paid. Both of the situations are directly related to the obligatory nature of claims, therefore, they should be classified as claims arising from the employment relationship. This means that according to the law in force parties to disputes of such nature may seek judicial remedies.

When it comes to the reality of the Polish legal system, one may find certain difficulties with the issue of the availability of the judicial remedies with respect to the determination of invalidity of the so-called specific sources of labour law. This issue seems to be so controversial because there does not exist any provision formulating a related prohibition in express terms. However, I believe that in such cases the judicial remedies are unavailable since the constitutional wording of the right to a fair trial relates not to the resolution of cases about the validity of sources of law but to the protection of rights and claims of natural and legal persons. Therefore, according to the law in force, the court may not consider such specific sources of law as internal regulations, by-laws, agreements, and collective agreements to be invalid. According to the Supreme Court’s opinion on this matter expressed by seven judges in their Ruling IE ZP 17/00 of 23 May

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2001\textsuperscript{17}, once a collective agreement is registered and in place, its validity may not be challenged in the court. In fact, such a case is not a civil case and the provisions of a collective agreement, even the obligatory ones, may not be identified with obligations within the meaning of the civil law.

The judicial remedies\textsuperscript{18} are not available also in a situation where an organisational conflict related to the collective agreement arose between trade unions. The only effective way to invalidate a collective agreement seems to be the complaint procedure\textsuperscript{19} referred to in Art. 241\textsuperscript{11} § 5\textsuperscript{1}–5\textsuperscript{5} of the Polish Labour Code.

Concluding the foregoing, it is fair to state that there is a wide range of judicial remedies available in the case of individual labour disputes. The applicable legal restrictions are marginal. The Polish legislation satisfies the constitutional concept of a state of law.

In the Polish legal system the term “court” carries two basic meanings\textsuperscript{20}: procedural and functional as well as constitutional and organisational. The first meaning is strictly procedural and relates to the functional jurisdiction of the court being a body empowered to resolve a case referred to it for consideration\textsuperscript{21}. Within the constitutional meaning, however, this term means a separate organisational judicial body\textsuperscript{22}. Having regard to the foregoing, I would like to state that the term “labour court” bears the constitutional meaning\textsuperscript{23}.

In the Polish legal system labour and/or social security\textsuperscript{24} courts are units of district and regional courts (Art. 12 § 1(a).2 and Art. 16 § 4(a).1 of the Act on the System of the Common Courts), whereas labour and social security courts are units of courts of appeal (Art. 18 § 1.3 of the said act).

From an organisational point of view, they are thus an integral part of the common courts since they are considered to be units of these courts. Their very name suggests, first and foremost, separate proceedings carried out with respect to labour disputes.

The applicable regional and district regulations are optional in the sense that it is the Minister of Justice who decides whether to establish a labour court. This solution helps reasonably allocate human resources and funds taking into account a decreasing number of labour disputes, although closing particular courts has been frequently contested at the local level.

\textsuperscript{17} OSNP 2001, No. 23, item 684.
\textsuperscript{21} Examples of the usage of the term in this meaning that can be found in the Polish legal system are: guardianship courts, probate courts, registry courts.
\textsuperscript{22} Examples of the usage of the term in this meaning that can be found in the Polish legal system are: commercial courts, family courts.
\textsuperscript{23} This conclusion is explicitly derived from Art. 262 § 1 of the Polish Labour Code.
Labour courts operate as part of the common court structures. They are not a separate division but operate in accordance with the principles applicable to all common courts. Therefore, labour courts are subject to general supervision of the president of the district court, the regional court, and the court of appeal respectively. They are separated solely for organisational and functional purposes. This means that they are separated from the structure of the common courts because of the function they perform – consideration and resolution of labour disputes.

Summarising the deliberations on the legal status of the Polish labour courts, I would like to state that these courts are organisational units called divisions of the common courts but with a certain level of individuality. However, I think it is relative; it is particularly visible when speaking in institutional and procedural terms, though it is not of constitutional nature. As a result, the Polish labour courts are fully integrated with the structure of the common courts. The best manifestation of the integration is the fact they adjudicate as all the other courts adjudicate on civil cases (in the wide sense), pursuant to the provisions of the Polish Code of Civil Procedure and not to those of a special procedural act, thanks to which they may apply the basic procedural rules developed as part of the legal system. Generally, this provides parties to labour disputes with better means of protection of their rights.

In Poland, in this type of cases the Supreme Court also plays an important role. When analysing the issues related to the organisation of authorities appointed to resolve labour disputes, one should remember about their status in this structure.

Pursuant to Art. 183.1 of the Constitution, the Supreme Court shall exercise supervision over common and military courts regarding judgements. This provision also applies, lege non distinguiunte, to labour courts as well as labour and social security courts which adjudicate on labour cases. As a result, in this category of cases the Supreme Court, even though organisationally not part of the structure of the common courts, is in functional terms the last link in the chain of widely understood labour legislation.

When speaking of organisation and structures, it is worth mentioning the intra-organisational structure of the highest courts. There are various solutions possible. The highest court may adjudicate on individual labour disputes either as part of a separate organisational unit competent solely in this type of disputes or as part of an organisational unit

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26 Cf. T. Zieliński, Nowy model rozstrzygania..., p. 50.
27 In my estimation specialisations of judges are not directly affected by the status of a court within the organisational structure of the legal system.
28 In certain European countries a highest court adjudicating on individual labour disputes is in organisational terms an integral part of the entire labour legislation structure that operates outside the structure of the common courts. An illustrative example of such an organisational structure is Bundesarbeitsgericht, the German Federal Labour Court.
29 Pursuant to Art. 1 § 1 of the Act of 1928 on the System of the Common Courts in its original wording, the Supreme Court was part of the structure of the common courts just like county courts, district courts, and courts of appeal.
30 For more about remedies available in the labour courts see especially M. Mędrala, Funkcja ochronna cywilnego..., p. 259 and subsequent as well as references quoted therein.
competent in other types of disputes as well (e.g. civil or social security cases). In 1962\textsuperscript{31}, the Labour and Social Security Chamber\textsuperscript{32} was established at the Supreme Court.

Formerly, in the interwar\textsuperscript{33} period and afterwards, labour disputes were resolved by the Civil Chamber of the Supreme Court. In accordance with the applicable legislation, in the Supreme Court there is the Labour, Social Security, and Public Affairs Chamber\textsuperscript{34} which judicially supervises and reviews labour legislation by considering cassation appeals and other appeals as well as by adopting resolutions on legal issues.

**Summary**

Right to fair trial is one of the basis of the Polish legal system. It also applies to labor disputes heard by labor courts. They settle not only disputes between parties to the employment relationship but also other cases arise from industrial relations. Moreover, jurisdiction of the labor court does not include resolution of collective labor disputes. These disputes are settled in a separate mediation or arbitration procedure.

**Keywords**: right to a fair trial, labour disputes, employee, court proceedings

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\textsuperscript{31} Cf. art. 9 of the Supreme Court Act of 15 February 1962 (Dz. U. No. 11, item 54, as amended). See also the amendments introduced under Art. 94 of the Act of 24 October 1974 on Regional Labour and Social Security Courts (Dz. U. No. 39, item 231, as amended).

\textsuperscript{32} For more about the functioning of this Chamber in the times of the People’s Republic of Poland see F. Rusek, *Piętnastolecie Izby Pracy i Ubezpieczeń Społecznych Sądu Najwyższego*, NP 1978, No. 1, p. 3–9; W. Berutowicz, *Ewolucja funkcji Sądu Najwyższego to Polsce Ludowej*, NP 1985, No. 5, p. 9.

\textsuperscript{33} Cf. Art. 36 of the Act of 1928 on the System of the Common Courts in its original wording.

\textsuperscript{34} Cf. Art. 3 §1.3 in conjunction with Art. 1.1(a) and 1.1(b) of the Supreme Court Act.