



## **Polish labour law: the impact of the economic crisis and demographic problems<sup>1</sup>**

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### **1. Introductory Remarks**

Over the recent years the Polish labour<sup>2</sup> and social security law has undergone a number of significant reforms. They have been caused by global phenomena that could be observed in all European countries as well as by some specific features of our socio-economic system.

Without a doubt one of the most important stimuli of the changes was the economic crisis. On the one hand, the results of the recession in Poland were relatively mild. On the other hand, there is still a visible difference in the economic and social development between Poland and the countries of the “old” European Union. One of the most important consequences is a low level of remuneration, a relatively high level of unemployment and the emigration of numerous Polish workers. As a result, the legislator decided to modify the labour market towards greater flexibility. However, recently the legislator has strengthened the protection of employees as regards fixed-term contracts (it was possible due to the improvement in the labour market). Moreover, Poland has found itself in a very difficult demographic situation, which forced the legislator to search for new methods that facilitate the reconciliation of professional and family life. Finally, gradual improvement in the labour market, observed over recent months, makes it possible to strengthen the protection of employees (e.g. more rigid rules concerning fixed-term contracts).

We should not forget either that one of the most important features of industrial relations in Poland is a significant decline in collective negotiations and collective agreements. Unlike the majority of

<sup>1</sup> This text is partly based on the Polish Report to the European Congress of the International Society for Labour and Social Security Law in Dublin 2014, see D. SKUPIEŃ – M. ŁAGA – Ł. PISARCZYK: Polish Labour and Social Security Law: the Impact of the Economic Crisis and Demographic Problems. 2014. at: <http://isls.org/wp-content/uploads/2014/08/Polish-National-Report.pdf>.

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<sup>2</sup> Polish labour law is codified: the Law of June 26, 1974 – the Labour Code, Journal of Laws 2014, item 1502, as amended, hereinafter referred to as “the Labour Code” or “LC”. Recently two important amendments to the Labour Code have been introduced. The legislator has modified fixed-term employment contracts as well as the employee rights related to parenthood.

other European countries, only a small part of Polish employees are covered by the provisions of collective agreements. This provokes questions concerning the future of the social dialogue.

Consequently, legislation cannot rely on social partners and relinquish the majority of protective measures. As a result, the Polish system is characterised by highly developed legislation and relatively limited room for social dialogue. To a certain extent, this may be treated as a heritage of the previous socio-economic system. The lack of a real social dialogue forces the legislator to search for specific legal measures that could help combat the consequences of the above-mentioned negative phenomena.

## 2. The Crisis of the Social Dialogue in Poland<sup>3</sup>

Collective labour relations in Poland are characterized by a low level of unionization of enterprises. In 2008, 17 % of employees were members of trade unions<sup>4</sup>. Afterwards, the unionization rate gradually fell down, reaching a mere 12 % in 2012<sup>5</sup>. Trade unions are the strongest in state-owned enterprises and public institutions (24%), and much weaker in private enterprises (7%). In certain sectors such as retail sales and services, trade unions are almost non-existent (2%)<sup>6</sup>. The right to establish and join trade unions is granted to employees, members of agricultural cooperatives, persons employed on agency contracts and in non-combatant military service. Moreover, the right to join trade unions (without the right to establish them) is granted to home workers, pensioners and the unemployed. The persons who work on the basis of civil law contracts such as contracts for service, as well as self-employed persons do not have the right to establish or to join trade unions. The coverage of employees by collective labour agreements is low<sup>7</sup>. In principle, the social dialogue takes place on the enterprise level<sup>8</sup>. However, the bargaining power of trade unions on this level was weakened in times of crisis<sup>9</sup>. Multi-enterprise collective bargaining is rare and the procedure of extension of multi-enterprise collective agreements is not used<sup>10</sup>. Sector-wide collective bargaining is almost non-existent. The conditions of work and remuneration are set forth in internal regulations, negotiated with trade unions or

<sup>3</sup> Compare e.g. J. GARDAWSKI: 20 Years of Social Dialogue in Poland and W. SANETRA: Social Dialogue as an Element of Polish Socio-Political System in the Light of the Constitution of the Republic of Poland. In: J. STELINA – Ł. PISARCZYK (ed.): *Collective Labour Law*. [Studia Iuridica No. 60] Warszawa, 2015.

<sup>4</sup> Source: CBOS (Public Opinion Research Centre) communiqué, A. MOKRZYSEWSKI: Przynależność do związków zawodowych. (Trade union membership) BS 21/2008.

<sup>5</sup> Source: CBOS research communiqué, Trade unions and employee rights, BS/52/2012.

<sup>6</sup> Ibidem.

<sup>7</sup> See also EIROnline, Poland. Collective wage bargaining, <http://www.eurofound.europa.eu/> accessed on the 14. 07. 2014.

<sup>8</sup> For the historical background of such a situation, see M. SEWERYŃSKI: Polish Labour Law from Communism to Democracy. Warsaw, 1999.

<sup>9</sup> See M. SEWERYŃSKI: Kryzys i prawo pracy (Crisis and Labour Law) in *Prawo pracy. Refleksje i poszukiwania (Reflections and Explorations)*. In: G. UŚCIŃSKA (ed.), *Księga Jubileuszowa Profesora Jerzego Wrątnego (Liber Amicorum in Honour of Prof. Jerzy Wrątny)*. [Studia i Monografie IpiSS], Warsaw, 2013. 32.

<sup>10</sup> See J. GARDAWSKI – A. MROZOWICKI – J. CZARZASTY: Trade unions in Poland. Report 123. ETUI, Brussels, 2012. 23–24 and D. SKUPIEŃ: Legal framework for collective agreements and other collective agreements in Poland. In: G. RING (ed): *Überbetriebliche versus innerbetriebliche Kollektivvereinbarungen*. [5. Arbeitsrechtlicher Dialog] Baden-Baden, 2012.

in enterprises employing fewer than 20 employees (where internal regulations are not obligatory) in employment contracts.

On the central level, as a result of the tripartite social pact of 1993, the Tripartite Commission for Social and Economic Affairs was set up as a forum of social dialogue of the government with the most representative organizations of employers and trade unions. On the employers' side, four employers' organizations<sup>11</sup> were entitled to have a seat in the Tripartite Commission whereas the workforce is represented by three trade unions' organizations, namely NSZZ Solidarność, OPZZ and Forum Związków Zawodowych<sup>12</sup>. NSZZ Solidarność and OPZZ were conflicted due to historical and political reasons dating back to the communist time. Only recently, in the face of the crisis and austerity measures, these organizations were able to undertake common collective actions. Social dialogue on the voivodship level may be developed by the social partners with the regional authorities in the voivodship commissions of the social dialogue. Recently, the Tripartite Commission was replaced by the Council of Social Dialogue (*Rada Dialogu Społecznego*), whereas the role of voivodship commissions was taken by the voivodship councils of social dialogue (*wojewódzkie rady dialogu społecznego*<sup>13</sup>).

Trade unions hold an exclusive competence to organize collective actions and strikes. The number of strikes was not increased in the years following the outbreak of the crisis<sup>14</sup>. The peak rate of strikes was achieved in 2008 when it amounted to 12 765 and then it was smaller each year. In 2013 only 365 strikes were registered in Poland<sup>15</sup>. Instead, the main trade union organizations – OPZZ and NSZZ Solidarność organized street demonstrations and protests against austerity measures and the foreseen reforms concerning higher retirement age, minimum wage, atypical work and working time<sup>16</sup>. It should be also noted that in 2013 a first general strike in thirty years was organized in the Silesian region in response to the austerity measures<sup>17</sup>.

In order to implement the EU directive 2002/14/EC, the Act on informing and consulting with employees was promulgated in 2006 which serves as a legal basis for setting-up of works councils. Since 2008, as a result of the judgment of the Constitutional Court, the works councils are not nominated by the trade unions and are elected by the whole workforce even in the unionized undertakings. Trade unions may present their own lists of candidates but otherwise do not have any influence on the

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<sup>11</sup> These organizations are : Pracodawcy.pl, KPP Lewiatan, BCC, Związek Rzemiosła Polskiego.

<sup>12</sup> On the representativity criteria concerning the membership in the Tripartite Commission, see GARDAWSKI–MROZOWICKI–CZARZASTY op. cit. 19–20.

<sup>13</sup> See Law of 24 July 2015 on the Council of Social Dialogue and other Institutions of Social Dialogue, *Journal of Laws*, 2015, item 1240.

<sup>14</sup> See GARDAWSKI–MROZOWICKI–CZARZASTY op. cit. 21.

<sup>15</sup> See the report of the National Employment Inspectorate of 2013. 19.

<sup>16</sup> See J. CZARZASTY: Trade unions lead largest street protest in decades. *EIRonline*, <http://www.eurofound.europa.eu/eiro/2013/10/articles/pl1310029i.htm>, access on 21. 07. 2014.

<sup>17</sup> See A. MROZOWICKI: First general strike in 30 years. <http://www.eurofound.europa.eu/eiro/2013/04/articles/pl1304019i.htm>, access on 21.07.2014.

functioning of works councils or any supervising powers over it. The number of works councils is low and according to the latest estimates it fell down since 2008 when it covered around 9 % of the employers who fulfilled the legal threshold of 50 employees<sup>18</sup>. In practice work councils do not play a significant role. Apart trade unions and works councils employers also consult and negotiate certain issues with the employee representatives selected according to the procedure established at the given workplace<sup>19</sup>. Polish employees are involved in the functioning of European Works Councils set up in the groups of undertakings operating in Poland. However, no European Works Councils under Polish law were set up so far even though some groups of undertakings fulfill the criteria. The collective labour law is regulated by different legal acts. In 2007, the codification commission presented the proposal of the Collective Labour Code<sup>20</sup> which consolidated this branch of law but it was never promulgated.

### 3. Anti-Crisis Measures and the Flexibilization of the Employment Relationship

Since 2008 the legislator has adopted a number of measures aimed at the flexibilization of the employment relationship. They involve the possibility of a temporary deterioration in working conditions on the one hand and more flexible organization of the process of work on the other (particularly in the area of working time). They are usually applied with the involvement of social partners and are introduced by means of collective agreements. The situation in Poland, however, is quite specific in that limited room is left for social partners and there is no real alternative to trade unions.

In response to the first symptoms of the economic slowdown, the government started discussions with umbrella organizations, members of the Tripartite Commission for Social and Economic Affairs, on potential anti-crisis measures. The consultations with social partners led to the emergence and development of the so-called 'anti-crisis package'. The anti-crisis package consisted of thirteen postulates addressed to the government by the social partners. The pact was divided into three parts, namely remuneration and social benefits, labour market and employment relationships and lastly, economic policy.

The first part contained such postulates as social support for the poorest families affected by the crisis, increase in welfare benefits for persons dismissed due to the crisis, tax exemption on allowances paid by trade unions and on benefits from company social funds, and elaboration of the methods of gradually bringing the minimum wage to 50 % of the national average wage.

<sup>18</sup> See GARDAWSKI–MROZOWICKI–CZARZASTY op. cit. 25.

<sup>19</sup> L. MITRUS: Works Councils in Poland: Problems of Informing and Consulting Employees. In: R. BLANPAIN – N. LYUTOV (eds.): *Workers' Representation in Central and Eastern Europe. Challenges and Opportunities for the Works Councils' System.*, Alphen aan den Rijn, 2013. 154. See also A. SOBZYK: Non-Union Forms of Representation Within the Collective Employee Representation System – Current Situation and Trends. In: STELINA–PISARCZYK op. cit.

<sup>20</sup> In the same year, the proposal of the Individual Labour Code was presented.

The second part contained specifically measures aimed at making working time more flexible, such as 12-months' working time reference period and the introduction of flexible working time as a means of supporting the reconciliation of family and professional duties, but also the legal determination of the normative character of the social benefit packages (*pakty socjalne* – agreements concluded with trade unions in case of transformation of state-owned enterprises into commercial companies or in other cases of change of the ownership or the structure of the enterprise) and the stabilization of employment through the constraints on the fixed-term employment contracts. The third part consisted of two postulates: the introduction of accelerated amortization for enterprises and subsidies for employment as an alternative to collective dismissals<sup>21</sup>.

The agreement of social partners served then as the basis for the adoption of the legislative act concerning the alleviation of effects of the economic crisis on employees and enterprises (later called Anti-Crisis Act)<sup>22</sup>. This act was one of examples of the negotiated legislation in Poland. It entered into force in 2009 and was applied until 31.12.2011. Formally, it was repealed on the 21<sup>st</sup> November 2013 by the Law of 2013 on specific measures relating to the conservation of the posts of work<sup>23</sup> (art. 33). The most important provisions of the Anti-Crisis Act concerned the flexibility of working time and work organization, modifications in the use of the fixed-time employment contracts, rules concerning a stoppage of work for economic reasons, rules concerning the payment of social benefits in case of the stoppage for economic reasons or the reduction of the working time as well as rules concerning the co-financement by the State of the vocational training<sup>24</sup>.

However, not all the postulates of the 'anti-crisis package' were fulfilled. In opinion of trade unions, the adopted act was not satisfactory as it responded mainly to the needs of employers<sup>25</sup>. The government was also criticized that it took over only these initiatives of the social partners which were consistent with its own policy<sup>26</sup>. The social dialogue was especially undermined by the refusal of the government to approve of the minimum wage negotiated by the social partners in 2010-2011<sup>27</sup>.

The anti-crisis package, despite the initial hopes for the further development of the national-level bipartite social dialogue, was so far the last agreement signed in the Tripartite Commission

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<sup>21</sup> See the complete list of postulates: J. CZARZASTY: Government accepts anti-crisis package submitted by social partners. *EIROOnline*, <http://www.eurofound.europa.eu/eiro/2009/06/articles/pl0906019i.htm>, access on the 3<sup>rd</sup> July 2014.

<sup>22</sup> Ustawa z dnia 1 lipca 2009 r. o łagodzeniu skutków kryzysu ekonomicznego dla pracowników i przedsiębiorców, *Journal of Laws* No. 125, item 1035. For details on the Anti-Crisis Law, see i.a. L. MITRUS: Anti-Crisis Regulations of Polish Labour Law. *European Labour Law Journal*, 2/2010. 269–275.

<sup>23</sup> Law of October 11, 2013 r. on Particular Measures to Protect Workplaces. *Journal of Laws*, 2013, item 1291.

<sup>24</sup> See also J. STELINA: Prawo pracy a kryzys gospodarczy (Labour law and the economic crisis). *PiP*, 3/2010. 12–13.

<sup>25</sup> For details see i.a. Anna KWIATKIEWICZ (National Fiche): Poland, Joint Study of the European Social Partners 'The Implementation of Flexicurity and the Role of the Social Partners'. 17. It was also criticized in the legal writing for this reason, see STELINA (2010) op. cit. 19.

<sup>26</sup> See J. CZARZASTY: Mixed reaction to anti-crisis legislation. *EIROOnline*, <http://www.eurofound.europa.eu/eiro/2009/09/articles/pl0909019i.htm>, access on the 13<sup>th</sup> July 2014.

<sup>27</sup> See J. CZARZASTY: Minimum wage under debate. <http://www.eurofound.europa.eu/eiro/2011/10/articles/pl1110019i.htm>, access on 21.07.2014, for the details on the minimum wage negotiations' procedure see D. SKUPIEŃ, The minimum wage in Poland. In G. Loeschmigg (ed.): *Staatliche Eingriffe in das System der mindestentgelte im internationalen Vergleich.*, Vienna, 2013.

for the Economic and Social Affairs. In the mid-2013, the dialogue in the Tripartite Commission was suspended due to the refusal of trade unions to discuss with the government<sup>28</sup>. The trade union organizations reproached the government especially that it neglected the social dialogue and that the amendments to the Labour Code making the working time more flexible were promulgated in spite of the negative opinion of the trade unions. The trade union organizations made their return to the works of the Tripartite Commission dependent on the demission of the Minister of Labour and Social Policy and the withdrawal of the amendments on working time<sup>29</sup>. The proposals of the reform of the functioning of the Tripartite Commission were also presented.

On the enterprise level, the employers may conclude so-called ‘crisis agreements’ which have a normative character. According to Article 9<sup>1</sup> of the Labour Code (in force since 2002), an employer if it is justified by the financial situation, may conclude an agreement concerning the suspension in totality or in part of the labour law provisions regulating the rights and duties of the parties to the employment contracts except the provisions of the Labour Code and of other legally binding acts. The suspension may thus concern the clauses of the employment contracts and the workplace internal regulations and agreements. The ‘crisis agreement’ may be concluded by the employer with the trade union or in case no trade unions are functioning in the enterprise, the employers’ representatives elected according to the given enterprise’s practice. The ‘crisis agreement’ may be concluded for a period no longer than three years. The condition of the ‘financial situation’ is understood in the legal writing as a situation in which the worsening of the financial conditions of the employer may have a negative effect on the employment relationships or may lead to the winding-up of the enterprise<sup>30</sup>. According to the same rules, in the light of Article 23<sup>1a</sup> § 1 of the Labour Code, if it is justified by the financial situation of the employer whose enterprise is not covered by the collective labour agreement or employing less than twenty employees, an agreement may be concluded on the application of the less favorable conditions of employment than the conditions resulting from the employment contracts concluded with these employees for the time and period determined in this agreement but no longer than for three years.

The ‘crisis agreements’ may also concern the suspension of the clauses of the collective labour agreement concluded on the enterprise or multi-enterprise level (Article 241<sup>27</sup> § of the Labour Code). Such an agreement shall be concluded by the parties to the given collective labour agreement or in case of the suspension of the multi-enterprise collective agreement – by the parties entitled to conclude an enterprise collective labour agreement with a given employer. During the validity period of the ‘crisis agreement’, the conditions of work resulting from the suspended collective labour

<sup>28</sup> See, Poland. Trade Unions suspend their participation in the tripartite Commission. [http://www.labourlawnetwork.eu/national\\_labour\\_law\\_latest\\_country\\_reports/miscellaneous/prm/192/v\\_\\_detail/id\\_\\_3226/category\\_\\_27/index.html](http://www.labourlawnetwork.eu/national_labour_law_latest_country_reports/miscellaneous/prm/192/v__detail/id__3226/category__27/index.html)

<sup>29</sup> See J. GARDAWSKI: Social dialogue reaches critical juncture. <http://www.eurofound.europa.eu/eiro/2014/02/articles/pl1402029i.htm>, Access on 21. 07. 2014.

<sup>30</sup> Zob. Z. HAJN: Inne niż układ zbiorowy pracy nazwane umowy normatywne jako instrument zakładowego dialogu społecznego (Normative collective contracts other than collective labour agreement as an instrument of the workplace social dialogue). In: *Zakładowy dialog społeczny* (Workplace social dialogue). (Red. J. STELINA) Warsaw, 2014. 192.

agreements are not applied. In case of the 'crisis agreements' suspending other provisions than the provisions of collective labour agreements, these agreements shall be transmitted to the national inspectorate of labour. The agreements suspending the collective labour agreements shall be registered in the register of collective labour agreements held by the National Inspectorate of Labour. It should also be mentioned that since the 1<sup>st</sup> January 2004, 'crisis agreements' concluded with employee representatives other than trade unions do not have to be approved by the voivodship commissions of the social dialogue any more.

The next important element of the reform was the introduction of more flexible rules concerning working time, including longer reference periods. Since 2013 so-called annualization of working hours has been a permanent element of the labour law system (regulated by the Labour Code). As a rule, the Labour Code accepts maximum 4-months reference periods. In many instances they are introduced unilaterally by the employer without any participation of employee representatives (as an element of the organisation of the process of work)<sup>31</sup>. Longer reference periods (up to 12 months) may be applied if this is accepted by employee representatives – by means of collective agreements. Once again, they are concluded with trade unions. But if there are no trade unions, agreements may be concluded with employee representatives elected according to the rules determined in a given enterprise (establishment). The annualization of working time is intended to help the employers to limit the costs of their activity and to organise the process of work in a more flexible way.

Another important solution which constituted a response to the economic recession is the second Anti-Crisis Law enacted in 2013 and providing for the suspension of the employment relationship and the shortening of working hours (with a proportional reduction in remuneration). In both cases the idea was to reduce the costs of employment and to support employers facing financial difficulties. Thanks to this, employers may avoid collective redundancies. The Anti-Crisis Law (2013) applies to those employers undertaking commercial activities who experience a deterioration in their financial situation (according to a set of specific criteria). The application of both instruments is accompanied by a system of subsidies paid from a special public fund. These payments are intended to mitigate the consequences of the reduction in remuneration. The employees bear, however, a part of the risk connected with the worsening of the economic situation of the employer (the payments cover only a part of the lost remuneration). To introduce the above-mentioned measures, it is necessary to conclude a collective agreement with trade unions or employee representatives chosen according to the procedure applied by the given employer (if there are no trade unions). Finally, the Anti-Crisis Law provides for the financing of various forms of training. The legislation enhances the development of human resources during the period of a reduction in working hours. Trainings are partially financed with public support.

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<sup>31</sup> Employee representatives are only involved when there are trade unions in a given enterprise or establishment.

One of the most important problems is the composition of the representation of employees who conclude collective agreements of the anti-crises type. The legislation gives priority to trade unions. When there are no trade unions, collective agreements may be concluded with an *ad hoc* representation. The enhanced role of non-trade union employee representatives serves as a remedy in the case of non-unionized enterprises in which employees are not represented. They are not, however, stable bodies with tasks and competences determined by the law. The solution is also criticized as there are no clear and democratic rules for the election of employee representatives, and no protection against dismissal is granted to them, which leads to doubts as to their ability to remain independent in their relations with the employer<sup>32</sup>. This may lead to abuses and the election of representatives who are not properly prepared to their role. The consequence of this situation is the lack of balance between social partners and the destruction of the traditional model of the social dialogue. One may also doubt if this solution is consistent with international and European standards, e.g. Section 18 of the directive 2003/88 which refers to collective agreements concluded at appropriate level.

#### 4. Fixed-Term Employment Contracts<sup>33</sup>

The Polish labour market is characterized by a high number of fixed-term contracts (about 25% of all employees). Fixed-term contracts are treated as a means to achieve flexibilization of the employment relationship. Contracts concluded for a specific duration expire on the date determined by the parties, which mitigates the risk involved in employing workers. Moreover, the Polish legislation is very liberal as regards the termination of the contracts before their expiration date. The application of fixed-term contracts protects, without a doubt, the employers' interests. On the other hand, the legislator may expect that thanks to such a construction the employers will be more willing to hire employees (particularly when their market situation is uncertain).

This flexible approach to fixed-term contracts must be confronted with European standards. The Framework Agreement on fixed-term work (hereinafter referred to as "the Agreement")<sup>34</sup>, confirms that the main form of employment is still the contract for indefinite duration. Consequently, Member States are obliged to introduce measures limiting the application of fixed-term contracts. The Agreement is also intended to ensure that workers employed on a fixed-term basis are treated equally with those employed on an open-ended basis. In 2014 the Court of Justice of the European Union challenged the provisions of the Polish law concerning the length of the period of notice in employment

<sup>32</sup> See HAJN *op. cit.* 199–200.; J. STELINA: Prawo pracy a kryzys gospodarczy (Labour Law and the Economic Crisis). *PiP*, 3/2010. 11–12.

<sup>33</sup> The chapter is based on L. PISARCZYK: Fixed-term Employment Contracts in Poland: In Search of Equilibrium between Flexibility and Protection. In: T. DAVULIS – D. PETRYLAITE (eds.): *Labour Regulation in the 21st Century: In Search of Flexibility and Security*. Cambridge Scholars Publishing, 2012.

<sup>34</sup> The *framework agreement on fixed-term work* concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the *framework agreement on fixed-term work* concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

contracts concluded for a definite duration. The main objection concerned the less favourable treatment of employees employed for a definite duration<sup>35</sup>. The judgment became the impetus for changes in the Labour Code. The amending act was enacted on June 25, 2015<sup>36</sup>. The legislator modified the catalogue of employment contracts, the protection against abuses as well as the principles of the termination of fixed-term contracts with a period of notice. The new law makes the protection of workers more strict. The main question is still to what extent fixed-term contracts can still flexibilize employment and serve as a special anti-crisis instrument.

In the past, the Labour Code recognised three different types of fixed-term employment contracts: for a probationary period, for a definite duration and for the completion of a particular task<sup>37</sup>. The 2015 amendment unified the catalogue of employment contracts by eliminating those for the completion of a specific task. On the one hand, the idea is to simplify the regulation and to ensure consistency with European standards (contracts for the completion of a specific task were not covered by the anti-abusive mechanisms). On the other hand, the conclusion of such contracts was justified by objective reasons, which means that one of the conditions established by the Agreement was met. Contracts of this type reflected the nature of some tasks and were adjusted to their duration. As a result, the legislator's decision is controversial. Nonetheless, the law now provides for one unified contract for a definite duration (the only exception are contracts concluded for a trial period).

An important consequence of the amendment is a modification of anti-abuse protection mechanisms. To clarify the nature of the changes, it is necessary to refer to the previous standards. Prior to the amendment, the Labour Code allowed for two successive part-time contracts. The employment contracts were considered to be successive if the period of time between the termination of the previous employment relationship and the conclusion of the subsequent employment contract was no longer than one month. The conclusion of the third successive employment contract for a definite duration had the same legal consequences as the conclusion of an employment contract for indefinite duration. The limitations did not concern contracts concluded in specific circumstances (determined by the law): to substitute an absent employee as well as to perform seasonal work or work performed on a periodical basis<sup>38</sup>.

In practice, the protection turned out to be insufficient. The limitations concerning two successive contracts were evaded by the conclusion of agreements of a different nature (e.g. civil law contracts,

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<sup>35</sup> Judgment of the Court of Justice of the European Union of March 13, 2014 in case C-38/13 Małgorzata Nierodzik v Samodzielny Publiczny Psychiatryczny Zakład Opieki Zdrowotnej im. dr. Stanisława Deresza w Choroszczy.

<sup>36</sup> The law of 25 June 2015 amending the Labour Code and some other legal acts, Journal of Laws 2015, item 1220. Most of the amendments are going to come into force on 22 February, 2016 (6 months after the publication in the Official Journal). There were also further objectives raised by the European Commission. They are going to be discussed further.

<sup>37</sup> For further details, see L. FLOREK: Labour Law. In: S. FRANKOWSKI (ed.): *Introduction to Polish Law*. Zakamycze–Kluwer, 2005. 279., who indicates the main difference between the contract for a definite period and the contract for a period necessary to perform a particular task. The point is the way in which the period of operation of the contract is fixed (the calendar date versus the accomplishment of a task).

<sup>38</sup> See also J. UNTERSCHÜTZ: Fixed-term contracts in Poland: protection or flexibility. *Hungarian Labour Law E-Journal*, 2015/1. 26–27. <http://www.hllj.hu>

contracts for the completion of a specific task) or by breaks in employment lasting longer than 30 days. Moreover, it was quite common to conclude fixed-term contracts for relatively long periods. Such a solution was convenient for employers if the parties provided for the possibility to terminate the contract before the expiration date (in practice such a provision was applied in the vast majority of contracts concluded for a definite duration). The employer was obliged neither to justify the termination nor to consult a trade union. In some cases, the courts tried to intervene by finding an evasion of the law (the provisions concerning termination of open-ended contracts) if the contracts had been concluded for a long period without objective reasons and the parties had provided for the possibility to terminate the contract before its expiration date<sup>39</sup>.

However, this was not enough to eliminate the abuses. The method of protection was criticized by the European Commission. Firstly, the Commission stated that the period of one month between successive contracts for a definite duration was too short to counteract abuse. Moreover, the Commission declared that the concept of seasonal work (that justified fixed-term contracts without further restrictions) was ambiguous.

The legislator sought to eliminate the weak points of the protective regulations. The new law still distinguishes between fixed-term contracts justified by objective reasons and contracts concluded without such a justification. In the former situation, the law does not limit the employment on fixed-term basis, while in the latter case the legislation influences the autonomy of the parties. The rules apply to all fixed-term contracts unless otherwise provided (e.g. temporary employment is regulated in a separate legal act).

Contracts for a definite duration can be concluded without further restrictions when they reflect a temporary need for work and, in the light of all the circumstances, the conclusion of such contracts is necessary. The legislation lists the cases excluded from the anti-abusive mechanism: odd work, seasonal work, replacement of an absent worker and situations justified by objective needs of the employer. The legislator removed cyclical work from the catalogue, i.e. a provision that was challenged by the European Commission. The most disputable criterion is, of course, the one referring to the objective needs of the employer. It leaves a margin for interpretation and manoeuvre for the parties (in fact, for the employer).

To prevent abuses, the legislator has introduced further protective measures. Firstly, the objective circumstances justifying the fixed-term engagement must be indicated by the parties in the employment contract. When the fixed-term contract is justified by the objective reasons on the employer's part, the employer is also obliged to inform an appropriate county labour inspector. In addition, the labour inspectors are empowered to initiate court proceeding aimed at determining the existence of an open-ended employment relationship (even without the employee consent) as well as to support the

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<sup>39</sup> Compare judgments of the Supreme Court of June 14, 2012, I PK 222/11, LEX 1222145; February 25, 2009, II PK 186/08, OSNP 2010, No. 19–20, item 230; October 25, 2007, II PK 49/07, OSNP 2008, No. 21–22, item 317.

employees' claims (on the condition that the employees accept their involvement). Nonetheless, there are serious concerns about the efficiency of the new protective mechanism. The employers may try to abuse the condition of objective needs.

When it comes to fixed-term contracts concluded without objective reasons, the protection against abuses is based on two pillars: the maximum length of fixed-term employment and the maximum number of renewals (Art. 25 § 1 LC), while the time limit is a new element. The number of contracts and their duration are calculated for the same employer and employee irrespective of breaks in employment. The legislator eliminated the construction of consecutive contracts that left a room for evasions of the law and was criticized by the European Commission. Moreover, changing the date of the expiration of the contract is considered to be a conclusion of a successive employment contract (Art. 25<sup>1</sup> § 2 LC). The contract expires at the originally determined date. From the next day the following employment contract (for a definite or indefinite period) comes into force<sup>40</sup>. If the parties contradict one of the limitations (3 contracts or 33 months) the legal presumption is applied that the contract was concluded for indefinite duration. The effect occurs when the fourth contract comes into force or from the first day after the lapse of the 33-month period.

The new anti-abusive mechanism seems to be more strict and efficient. Nonetheless, as long as fixed-term contracts can be concluded without objective reasons, they remain an instrument of the flexibilization of the labour market. They may be used to adjust the level of employment to the current needs of the employer and to mitigate the risk involved in hiring workers. One can doubt whether this guarantees an equilibrium between the parties to the employment relationship. The legislator probably expects that the liberal approach to fixed-term contracts will contribute to an increase in the rate of employment. Unfortunately, there is no evidence to the effect that the application of contracts for definite duration may improve the situation in the labour market. Usually it leads to the establishment of employment relationships of precarious nature (without effective protection against dismissals). The development of fixed-term contracts rather changes the dynamics and structure of employment<sup>41</sup>, reflecting the weakness of the labour market<sup>42</sup>.

The explosion of fixed-term employment in Poland was connected with the simple way in which contracts concluded for a definite duration could be terminated. As a rule, they expire, by virtue of law, at the end of the term for which they were concluded. The employer is not obliged to justify the lack of offer to conclude another contract. This helps to adjust the level of employment to the current needs. The contracts also expire by virtue of law in other circumstances indicated by the law (death of employee, death of employer, unless an undertaking is taken over by another employer). Moreover, there are a number of possibilities to terminate the contract before the expiration date. The employer

<sup>40</sup> Judgment of the Supreme Court, October 10 2002, I PKN 546/01, *PiZS*, 2003, No. 5. 37.

<sup>41</sup> INTERNATIONAL LABOUR ORGANISATION: *Termination of Employment Digest*. Geneva, International Labour Office, 2000. 11–12.

<sup>42</sup> This aspect of fixed-term employment is stressed by A. de GRIP – J. HOEVENBERG – E. WILLEMS: Atypical Employment in the European Union. *International Labour Review*, No. 1. (1997) 70.

is entitled to terminate the employment relationship without a period of notice in the case of serious misconduct or a crime committed by the employee, the loss of qualifications necessary to perform work through the fault of the employee (Art. 52 LC) and in case of a long absence of the employee (Art. 53 LC).

The most idiosyncratic is, however, the possibility to terminate fixed-term contracts upon period of notice. Until the 2015 amendment came into force, the legislation accepted such a termination in relation to contracts concluded for a trial period. Regular fixed-term contracts could be terminated upon period of notice if two conditions were met: 1) the contract was concluded for a period longer than six months; 2) the parties provided for earlier termination. The period of notice amounted to 2 weeks irrespective of the length of service. Contracts concluded for the completion of a specific task could not be terminated in this way. All fixed-term contracts could be terminated with a period of notice in case of the employer's bankruptcy or liquidation as well as due to reasons not relating to individual workers (if the employer employed at least 20 employees)<sup>43</sup>. If the termination of fixed term contracts was allowed, it required neither justification nor consultation with trade unions (this was the main difference with open-ended contracts).

In 2014, the Court of Justice of the European Union declared that Clause 4(1) of the Agreement must be interpreted as precluding a national rule which provides that, for the termination of fixed-term contracts of more than six months, a fixed notice period of two weeks may be applied regardless of the length of service of the worker concerned, whereas the length of the notice period for contracts of indefinite duration is fixed in accordance with the length of service of the worker concerned and may vary from two weeks to three months, where those two categories of workers are in comparable situations<sup>44</sup>. As a result, the rules for terminating fixed-term contracts were modified. Unfortunately, the results of the amendment are, to a certain extent, surprising.

The new law provides that the parties may terminate each fixed-term contract with a period of notice irrespective of the period for which it was concluded. The contractual clause is not required any longer. This solution may be assessed to constitute a violation of the autonomy of the will of one of the parties to the employment relationship who have determined specific duration of the employment relationship (in practice it violates the will of the employee who is interested in continuing employment). The protection of the employees was strengthened as far as the period of notice is concerned. The legislator eliminated the relatively short two-week period of notice that was challenged by the CJ EU and equalized the periods of notice for open-ended and fixed-term contracts. Now, the period of notice depends on the period of employment in a given establishment and amounts to: 2 weeks if the length of service is shorter than 6 months, 1 month if the length of service is at least 6 months and 3 months

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<sup>43</sup> Also in this circumstances the period of notice amounted to 2 weeks.

<sup>44</sup> The judgment of the Court of Justice of the European Union of March 13, 2014 in case C-38/13 Małgorzata Nierodzik v Samodzielny Publiczny Psychiatryczny Zakład Opieki Zdrowotnej im. dr. Stanisława Deresza w Choroszczy.

if the length of service is at least 3 years. Special rules apply to contracts for probationary period. The period of notice depends on the period for which the contract has been concluded and amounts to 3 working days (contract concluded for period not longer than 2 weeks); 1 week (longer periods); 2 weeks (maximum probationary period of 3 months).

The high level of flexibility of fixed-term contracts is still related to the procedure of their termination. As before, the amendment requires neither justification nor consultation with trade union representing the affected employees. The above-mentioned conditions have to be met in the case of the termination of an employment relationship of indefinite duration (according to Art. 38 and Art. 45 LC). The employer may terminate the employment contract concluded for a specific duration at any moment just by issuing a declaration of will<sup>45</sup>. The employees do not enjoy any stabilization in their employment and bear the consequences of changes on the employer's part. Paradoxically, it is easier to dismiss fixed-term employees than those engaged on permanent basis. There is no clear reason to treat fixed-term employees in a less favourable manner. On the contrary, because of their nature, fixed-term contracts should be stabilized to a greater extent. As a result, where fixed-term workers and those employed for indefinite duration are in comparable situations, the rules concerning the dismissal of workers upon period of notice contradict the principle of equal treatment<sup>46</sup>. The doubts are confirmed by the judgment of the Court in case *Nierodzik* that referred to another aspect of the protection but was based on similar argumentation.

The amendment to the Labour Code was inspired by the judgment of the Court of Justice of the European Union challenging the length of the period of notice in the case of employment contracts concluded for a definite duration. The legislator used this opportunity to introduce complex changes to rules concerning fixed-term employment. When it comes to the period of notice itself, the new law strengthened the position of the workers. They are treated in the same way as employees employed on a permanent basis. Very important is also the new mechanism of protection against abuses. Parties are free to apply fixed-term contracts if this is justified by objective reasons. In case of contracts concluded without objective justification, the law introduced more efficient protection. The same parties (irrespective of breaks in employment) may conclude only 3 fixed-term contracts while the total duration of these contracts cannot exceed 33 months. However, within this framework the parties are free to choose the basis of employment irrespective of the nature of the work.

As a result, fixed-term contracts remain a method of flexibilization of the labour market. Moreover, the legislator chose not to improve the level of protection in other areas. While terminating fixed-term

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<sup>45</sup> The right to terminate the contract is excluded or limited in the case of some groups of employees (so-called special protection against termination), e.g. pregnant women, employees 4 years before their retirement, employees on maternity or parental leave, trade unions officials and other employee representatives). For more details see FLOREK (2005) op. cit. 283.

<sup>46</sup> The Constitutional Court stated that the special rules concerning the termination of fixed-term contracts reflect the unique nature of these contracts and, as a consequence, do not contradict the constitutional principle of equal treatment. Judgment of the Constitutional Court of December 2, 2008, P 48/07, *Journal of Laws* 2008, No. 219, item 1409. This ruling may be seen as controversial.

contracts employers are still required neither to justify the termination nor to consult trade unions. This provokes questions concerning the application of the principle of equal treatment (raised in relation to the periods of notice). The new law even facilitates the termination of fixed-term contracts by providing the possibility of terminating every such contract upon a period of notice. All these rules create a very flexible form of employment close to the system of “hire and fire”. Only to a certain extent is this compensated by the introduction of the maximum length of fixed-term contracts. On the one hand, the flexibility offered by fixed-term contracts helps to adjust the level of employment to the current needs and market position of the employer. It may mitigate the employer’s concerns about hiring workers. At the same time, it underlines the precarious nature of employment that resembles the “hire and fire” system. Without a doubt, this is one of major problems of the contemporary labour market in Poland. As a result, the mechanism of terminating fixed-term contracts before their terminating date must be reconsidered.

## 5. Employment on a Civil Law Basis

Even more dangerous is the development of civil law contracts replacing employment relationships. Last years, as a consequence of the economic slowdown, an increase of number of people working on the basis of the civil law contracts was observed. In the years 2011-2012 it reached 5-6 % of the workforce<sup>47</sup>. The employment on the basis of civil law contracts is less costly for the employers and is often an alternative to joblessness or dismissals, but it is also a precarious form of work. For this reason, these contracts are often called ‘junk’ contracts<sup>48</sup>. According to Polish law, there is no legal presumption of the existence of the employment relationship. In theory, potential employees may ask the court to establish the existence of the employment contract, but legal proceedings concerning these matters are not very common. This leads to the abusive use of civil law contracts and the exclusion of numerous workers from the protection granted by labour law. The most important problem is the lack of effective measures of labour law enforcement. In practice, civil law contracts constitute one of the most popular form of flexibilization of the labour market. Unfortunately, this way of flexibilization cannot be accepted from the perspective of the principles constituting the fundament of the socio-economic system. It leads to a significant worsening of the position of numerous workers.

Moreover, workers engaged on a civil law basis are not entitled to form and join trade unions<sup>49</sup>. On 28 July 2011, the National Commission of NSZZ Solidarność lodged a complaint against Poland to the ILO Committee on Freedom of Association. Solidarność stated that the Polish Act on Trade Unions

<sup>47</sup> See S. CICHOCKI – P. STRZELECKI – J. TYROWICZ – R. WYSZYŃSKI: NBP. *Kwartalny raport o rynku pracy w I kwartale 2014*. (National Polish Bank, Quarterly report on the labour market in the first trimester of 2014) no. 01/2014, Warsaw, 2014.

<sup>48</sup> For details about this negative phenomenon see M. SEWERYŃSKI: *Kryzys gospodarczy i prawo pracy*. (Crisis and the Labour Law). In: G. UŚCIŃSKA (ed.): *Prawo pracy. Refleksje i poszukiwania* (Labour Law. Reflections and explorations). *Księga Jubileuszowa Profesora Jerzego Wrątnego*. (Liber Amicorum in Honour of Prof. Wrątny) [Studia i Monografie IPiSS] Warsaw, 2013. 27–28.

<sup>49</sup> See more HAJN op. cit.

is in conflict with Article 2 of the ILO Convention no. 87 in so far as it does not guarantee workers employed on the basis of civil law contracts the right to associate and to join organizations of workers.

As a consequence, the Committee delivered a statement in which it shared the opinion of Solidarność that the exclusion of workers employed on the basis of civil law contracts from the group of workers who may associate and join trade unions is in conflict with ILO Convention No. 87. The Committee also stated that the consequence of attributing to the persons employed on the basis of civil law contracts the right to associate and join organizations of workers should be that such organizations will be entitled to engage in collective negotiations in the interest of these persons (see ILO Report no 363, March 2012, case no. 2888 (Poland), point 1084). The Committee requested in its recommendations that the Polish Government take the necessary measures in order to ensure that all workers, including self-employed workers and persons employed under civil law contracts, enjoy the right to establish and join organizations of their own choosing within the meaning of the Convention No. 87.

The recommendation of the ILO Committee was followed by the constitutional complaint lodged by the OPZZ concerning the unconstitutional character of the above-mentioned exclusion of the workers employed on the basis of civil law contracts from the freedom of association (K 1/13). The Constitutional Court stated in the judgment of the 2<sup>nd</sup> June 2015 that the provisions of the Law on Trade Unions limiting the rights of persons employed outside the employment relationship (persons performing gainful activity) are inconsistent with Article 59(1) in conjunction with Article 12 of the Constitution. According to the Tribunal, the legislator is not absolutely free in determining the personal scope of the freedom of association. As a result, it is necessary to reconstruct its legal framework. The Law on Trade Unions must not overlook the rights of workers who are not employees (including those engaged on civil law contracts)<sup>50</sup>. As a result the legislator will have to extend the personal scope of the freedom of association.

At the moment the government is also considering to extend the protection offered by the individual labour law on certain groups of workers engaged outside the employment relationship. There is even an idea to create a uniform contract of employment. The first step should be, however, to eliminate civil law contracts concluded instead of employment relationship. Then we can cover selected civil law contracts by specific protective standards. The main criteria of their application could be the economic dependency of workers and permanent nature of employment. The creation of the law of employment seems to be one of the most important issues for the future<sup>51</sup>.

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<sup>50</sup> HAJN op. cit. 116.

<sup>51</sup> Compare M. GERSDORF: Prawo zatrudnienia. (Law of Employment) Warszawa, 2013.

## 6. Employee Rights Related to Parenthood

The financial crisis coincided with a debate about the dramatically negative demographic trends in Poland. The country has been struggling with a falling birth rate since 1984. Despite the alarms, demographic problems were pushed aside by various cabinets for various reasons (mainly of budgetary and financial nature). Even before the financial crisis, the core element of governmental policy was to broaden parental rights and facilitate childcare. The other important factor appeared finally in 2010. It was the parental leave directive<sup>52</sup>. The first major changes in parental rights of workers in the period under consideration were introduced on the basis of projects submitted before the crisis and included the parental rights of men. Parental rights in Poland, as in other countries, were traditionally the domain of women. A tendency to broaden parental rights of men was observed quite late in comparison with other European countries, practically in the 2000's.

Limiting further reasoning to the period of the crisis, the first change was establishment of 'the paternity leave'. The right was introduced gradually by the act of 2008<sup>53</sup>. The entitlement to one -week 'paternity leave' was in force since 1 January 2010 and was projected to broaden to 2 weeks since 1 January 2012. Fathers might apply for 'the paternity leave' until a child is 1 year old (added Art. 182<sup>3</sup> LC). This period of time is covered by pre-existing entitlement to 'the maternity benefit' in the amount of 100% worker's average income, paid from the social security system resources.

It has to be remarked that in the Polish system fathers were formerly entitled to exercise a part of 'maternity leave' (6 weeks), on the condition that mother resigned from partial exercise of this right. They had also autonomous right to 'the childcare leave' (Art. 186 LC). The right to this leave for mother and father amounted up to 36 months but until the child is 4-years-old. Mother and father could use it jointly only up to 3 months. It is not supported by any decent benefit from the social security system. Only if parents are under the certain threshold of poverty, the 'childcare allowance' – in considerably low amount (app. 100 EUR per month) – could be paid as a supplement to 'the family benefit' from social assistance.

The act of 2008 created also the second new entitlement – 'the additional maternity leave'. The length of traditional 'maternity leave' in Poland is 20 weeks (Art. 180 LC)<sup>54</sup>. The leave is socially covered by 'the maternity benefit' in the amount of 100% worker's average income, paid from the social security system resources. It is an obligatory right as a rule (with exceptions, like above mentioned case of resignation to the father). Mothers became entitled to apply for 2-week 'additional maternity leave' to follow directly 'the maternity leave' since 1 January 2010 (added Art. 182<sup>1</sup> LC). The application must be received 14 days before the beginning of the leave at the latest. The right to 'additional maternity

<sup>52</sup> Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC, OJ L 68, 18.3.2010, p. 13–20.

<sup>53</sup> Law of December 6, 2008 amending the Labour Code and other acts, of Laws 2008, No 237, item 1654.

<sup>54</sup> 31 weeks in the case of delivery of twins, 33 weeks – 3 children at one delivery, 35 weeks – 4 children, 37 – 5 children and more.

leave' was gradually increased to up to 4 weeks since 2012 and up to 6 weeks since 2014<sup>55</sup>. It was accessible only to mothers.

It was new in the Polish legal system to combine 'the additional maternity leave' with part-time employment (maximum half-time). This entitlement is a strong measure in a sense that employer who was handed an application for 'the additional maternity leave' has an obligation to give it. Moreover, between handing an application and the end of 'the additional maternity leave' dismissal of an employee is prohibited. Dismissed employee is entitled to reinstatement.

Revolutionary changes in parental rights were launched by the act of 2013<sup>56</sup>. In general terms the total amount of parental rights with a decent social coverage was doubled. The above mentioned act came into force on 17 June 2013. It has to be remarked that one of purposes of that change was the implementation of the parental leave directive. Poland was late in implementation of the directive since 8 March 2012 (likewise Ireland and Luxembourg). However, above mentioned description of Polish labour law in this field reveals that Poland complied with the majority of the parental leave directive standards yet before its launch.

By the new law 'the maternity leave' with a standard duration of 20 weeks and 'the additional maternity leave' with a standard duration of 6 weeks were supplemented by the new 'parental leave' with a duration of 26 weeks (Art. 182<sup>1a</sup> LC). Aggregated leaves amount up to 52 weeks nowadays. 'The parental leave' is addressed both to mothers and fathers. The right can be exercised jointly, but if that is the case – the total duration for both parents cannot exceed 26 weeks (e.g. if both parents exercise it jointly from the beginning, it will end after 13 weeks). Whole period of 52 weeks is covered by social benefits at a decent level. 'The maternity benefit' of 100% worker's average income covers 26 weeks of 'the maternity leave' and 6 weeks of 'the additional maternity leave'. 'The parental leave' (the last 26 weeks) is covered by 'the maternity benefit of 60% worker's average income, but at the request of worker whole period of 52 weeks might be covered by 'the maternity benefit' at a constant amount of 80% worker's average income. After those leaves employees still might exercise the above mentioned, unpaid 'childcare leave' up to 36 months.

At the same time the above mentioned act of 2013 has addressed 'the additional maternity leave' also to fathers (originally the entitlement as a rule was addressed to mothers). It can be also shared by mother and father. Workers are entitled to resign from 'the additional maternity leave' and 'the parental leave' at any time. In that case the employer is obliged to engage him or her after 14 days from application. It has also to be remarked that the right to 'the childcare leave' was broadened until a child is 5 years old (it was originally until 4 years old). The new law introduced also the minimum of

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<sup>55</sup> Employees having twins or other multiple births were entitled to up to 3 weeks' additional maternity leave since 2010, risen to 6 weeks since 2012 and 8 weeks since 2014.

<sup>56</sup> The act of 28 May 2013 on change of Labour Code and other acts, *Journal of Laws*, 2013, item 675.

one month period of ‘the childcare leave’, which has to be exercised on a non-transferable basis (see: clause 2.2 of the directive 2010/18).

Act of 2013 took also one austerity measure, namely the unconditional right to join parental rights with part-time work was weakened. The employer might refuse exercising this right, if this is not possible due to the organization of work or type of work performed by the employee. The axiology of the above mentioned change is to enable employers to refuse part-time work, if it is not suitable to work organization.

Regarding European law in this area, it has to be underlined that the name of the new right in Poland (‘parental leave’) does not fully correspond to the terminology used in the parental leave directive. The meaning given to ‘the parental leave’ in the directive is broad and general. It means any entitlement connected with release from work performance due to childcare in a given legal system. The notion contrasts with ‘the maternity leave’ regulated in the directive 92/85/ECC<sup>57</sup>. On the grounds of the Polish legal system the European concept of ‘parental leave’ (see: directive 2010/18/EU) is much closer to ‘childcare leave’ (described above).

It is even disputable whether the new Polish ‘paternity leave’ falls under directive 2010/18/EU or under directive 92/85/ECC. On the one hand, it is dedicated to both parents and there is possibility to use it jointly, but on the other it has close connections to ‘the maternity leave’ and ‘the additional maternity leave’, and what is more none part of this leave is of non-transferable nature. In result women might exercise whole period of leave, which is the most common case. Taking under consideration all mentioned factors, it might be stated that it falls under directive 2010/18/EU.

After the changes introduced by the act of 2013 amending Labour Code, Polish labour law was characterized by a broad set of entitlements in the field of parenthood related rights: ‘the maternity leave’, ‘the paternity leave’, ‘the additional maternity leave’, ‘the parental leave’ and ‘the childcare leave’. It generally complies with the parental leave directive. However, it must be stated that the extended range of parenthood related entitlements became unclear. In particular ‘the additional maternity leave’ and ‘the parental leave’ were very similar entitlements. The next phase of changes was aimed to change the above mentioned set of rights into the system of support for parents in raising a child until he or she is 6 years old. It included also simplifying the set of parental rights. It was brought about by the act of 2015 amending Labour code<sup>58</sup>. The act will come into force on 2 January 2016.

First of all, the act of 2015 combined ‘the additional maternity leave’ and ‘the parental leave’ creating one unified right to ‘the parental leave’ with a standard duration of 32 weeks<sup>59</sup> (amended Article 182<sup>1a</sup> LC). If it is summed up with ‘the maternity leave’ (20 weeks), the standard of length of

<sup>57</sup> Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, OJ L 348, 28.11.1992.1–8.

<sup>58</sup> The Law of July 24, 2015 amending the Labour Code and other acts, *Journal of Laws*, 2015, item 1268.

<sup>59</sup> 34 weeks in the case of delivery of twins or more children.

parenthood leaves with a decent social protection amounts 52 weeks, so it was not changed. Whole unified 'parental leave' is addressed both to mothers and fathers. The right can be exercised jointly. As a rule the first 6 weeks of parental leave are covered by 'the maternity benefit' of 100% worker's average income, the rest of the leave's by the same benefit but amounting 60% of average income. At the request of worker whole period of 52 weeks might be covered by 'the maternity benefit' at a constant amount of 80% worker's average income.

Secondly, the new 'parental leave' might be realized by one or both parents in maximum 4 parts (Art. 182<sup>lb</sup> LC). As a rule no part shall be shorter than 8 weeks (e.g. mother – 16 weeks, mother and father jointly – 8 weeks). 'The paternity leave' shall be exercised directly after exercising 'the maternity leave', but the maximum length of 16 weeks might be exercised later, until the child is 6 years old. That way of exercising this right proportionally reduces the entitlement to 'childcare leave' (initial, standard length of 36 months). Axiology of this last entitlement is to give parents chance to be more present in life of their child not only in his or her first period of life, but also during other important stages before the beginning of school time.

Parental leave can be combined with part-time employment (maximum half-time, Art. 182<sup>ld</sup> LC). Combining leave with part-time employment proportionally extends its length, as a rule up to 64 weeks. The employer might refuse the combination of leave and part-time employment, if this is not possible due to the organization of work or type of work performed by the employee. Applications for each part of leave and part-time employment must be received by the employer 21 days prior to the beginning of the leave at the latest (Art. 179<sup>l</sup>, 182<sup>ld</sup> LC).

The act of 2015 amending the Labour Code introduced also a few other changes. It liquidated still existing differences between employed and self-employed persons in this field. After 2 January 2016 both groups are able to fully share parenthood entitlements as 'the maternity leave' and 'the parental leave' (added Art. 175<sup>l</sup> and amended Art. 180, 182<sup>la</sup> LC). Changes included also 'the paternity leave' and 'the childcare leave'. Regarding 'the paternity leave', it will amount up to 2 weeks, not exactly 2 weeks as it was before. It will be possible to divide it into weekly parts. It has to be remarked that the right will be possible to be exercised longer – until the child is 2 years old (amended Art. 182<sup>3</sup> LC). Regarding 'the childcare leave' it will be possible to exercise longer – until the child is 6 years old, not 5 years as it is before the change. Similarly to 'the parental leave', since 2 January 2016 the whole 'childcare leave' will be possible to be jointly exercised by both parents. Before amendment both parents could use it only for 4 months.

The 2015 amendment of the Labour Code was the next significant step to facilitate childcare in Poland. Unsolved problem is still achievement of all aims of the parental leave directive. Poland has serious problems in this area. Implementation of the parental leave directive did not increase equality between men and women with regard to parental rights. Polish women exercise the above mentioned rights definitely much more often than men, due to various economic and social reasons. Men in

Poland are higher remunerated and less involved in childcare than women. Implementing the minimum requirements of the parental leave directive did not change and could not change the tendency, which has very deep social and economic roots. However, a few important legislative steps were made in the right direction.

## 7. Conclusions

Recently Polish labour law has undergone a number of significant reforms. There were two main driving forces of the changes: the global crisis and the need to resolve demographic problems. Apart from this, one should not forget the specific context of the functioning of industrial relations in Poland: the shift from a centrally-planned to a free market economy, a lower level of economic development and the decline of the social dialogue. Consequently, the Polish legislator has had to take into account both the global tendencies and some specific features of the Polish socio-economic system.

When it comes to the scope of the reforms, there are similarities between Poland and other European countries. To support the employers, the legislation moved towards greater flexibility. The employers gained some new instruments in the field of the organization of the process of work. One of the most important examples is the longer reference period. Moreover, the legislation accepts a temporary deterioration in the working conditions or even the stoppage of work if it is justified by the employer's situation. At the same time, the Polish legislator also decided to enlarge the entitlements related to parenthood, in response to the dramatic demographic situation.

One thing that is characteristic of Polish labour law is the way in which the changes were introduced. Initially, at the beginning of the economic slowdown in Poland in 2008, it seemed that the social partners will have a word in the formulation of anti-crisis measures and the bipartite social dialogue on the national level will gain momentum. Despite the first success of the talks on the 'anti-crisis package', which was partially implemented by a legally binding act, the social dialogue broke down. This was mainly due to the dissatisfaction of trade unions with the results of the 'anti-crisis package' which, according to trade unions, was much more favourable to the employers than to the workforce. The most regrettable fact is the suspension of the work of the Tripartite Commission, which has led to a situation where the social dialogue is not well developed on the national level at present.

Due to the steadily diminishing rate of trade union membership and the weakness of trade unions in times of crisis, not many collective labour agreements are being concluded in Poland. Instead, the conditions of work are regulated in internal regulations established by employers, unilaterally or through negotiations with trade unions in the unionized enterprises. The Labour Code, after the amendments of 2013, also provides for an increased role in negotiations with the employer of employee representatives who are elected according to unclear rules established in accordance with the practice of the given undertaking and are not afforded protection against dismissal. This leads, however, to the

destruction of the traditional social dialogue and constitutes a real threat to the equilibrium between management and labour.

The considerably good condition of the Polish economy left the door open to a significant increase in labour rights related to parenthood in 2008, 2013 and 2015. The main reason for those changes was the demographic crisis, but also the implementation of the parental rights directive played a significant role in the process. It might be stated that parenthood connected leaves were doubled in three steps with a decent social protection. The other important change is the considerable increase of rights of men in that field.

Without a doubt Poland must solve the problem of the abusive use of civil law contracts and fixed-term employment. A partial remedy to the problem is the recent amendment to the Labour Code which aims at the more efficient prevention against the extended use of fixed-term contracts. More strict protection reflects, to a certain extent, new tendencies in the labour market. However, fixed-term contracts remain a flexible form of employment. Even more difficult is the problem of civil law employment. First of all it is necessary to eliminate abusive civil law contracts. The next step could be the extension of the application of certain protective standards (if it is justified by the nature of employment). The law of employment seems to be one of the most important issues for the future.