THE EXPERIENCE OF SOCIAL DIALOGUE IN POLAND

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Abstract: Social dialogue, according to the European Union, is a process of constant interaction between social partners aiming to reach agreement on executing control over certain economic and social variables, both on a macro- and microeconomic level, to put it in simpler terms, social dialogue is the exchange of information and the presentation of opinions on social issues and problems.

The sides of social dialogue are the trade unions side, representing the interests of employees who are members of organizations operating on all levels of social dialogue, the employers side, representing the interests of employers who are members of organizations operating on all levels of social dialogue, and the government's side, representing the interests of the state and consisting of the representatives of the executive branch. The partners are the units of self-government, industry self-governing councils, other social organizations and the representatives of professional and artistic circles.

The aim of all partners from social circles, politicians and officials participating in the dialogue is social partnership and institutionalized social dialogue is necessary, despite serious criticism of the current dialogue in Poland.

Keywords: social dialogue, dispute, conflict, the government, the Tripartite Commission, determinants of social dialogue, social consultation, public administration

1. Introduction

Social dialogue, according to the European Union, is a process of constant interaction between social partners aiming to reach agreement on executing control over certain economic and social variables, both on a macro- and microeconomic level. To put it in simpler terms, social dialogue is the exchange of information and the presentation of opinions on social issues and problems.

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The aim of all partners from social circles, politicians and officials, participating in the dialogue, is social partnership and, as a consequence, institutionalized social dialogue is necessary, despite serious criticism of the current dialogue in Poland.

2. Social determinants of social dialogue

Social dialogue as a from of resolving collective disputes and social conflicts is determined by a number of social conditions. While analyzing social dialogue from this perspective, we should distinguish the factors which have a significant influence on its shape. A man is a social being and as a homo societus seeks contacts and builds relationships with people. These

contacts make his life, the life of a community and the whole society, meaningful. One of the forms of social life is dialogue, which is shaped by the culture of a community, which causes that individuals act and behave in a particular way, types and a variety of social groups in the society, social norms, the system of values, religion, law, social order, a family model, social changes and many other.

The essence of social dialogue are the relations which comprise the whole of mutual relationships between the parties involved, ie trade unions, employers' organizations and state institutions such as the government and its agencies, local governments and other state institutions. Social dialogue is the process of constant interaction between its participants aiming at achieving agreement on difficult, contentious and controversial issues both on a level of the whole society and on a regional or industry level.

Social dialogue always occurs in a specific social context and its results have an impact on future social relations between the interest groups it involves. The society develops the general way of perceiving and evaluating the reality. In this way it ends up creating social norms which build the model of behaviour which, if universally accepted, leads to a particular system of reward and punishment for the members of the society. Social dialogue, which involves working out solutions and compromises, causes that the parties involved become responsible for observing the universally accepted system of norms and values. These solutions and compromises become the foundation for new social norms, which, in turn, shape behaviour models in particular social situations. The way to industrial action in a company, for example, leads through specific solutions at particular stages of social conflict. These solutions have been developed, for instance, in the Pact on a state-owned enterprise.

In the society, an individual holds a particular social position determined by a social, financial and professional status. The position is permanently linked with a social role, ie a set of different formal and informal attributes stemming from this position. Accordingly, the roles of the participants of social dialogue are a social factor which influences this dialogue. Trade union representatives have the roles that are different from those of the representatives of the government or employers. This often makes social dialogue more difficult as its participants have to meet the expectations arising from their roles. Employers cannot make decisions jeopardizing the financial liquidity of their companies, government representatives have to take into account the interests of other occupational groups, trade union representatives represent the interests of their electors, so they are also motivated by political factors, etc.

Another factor influencing social dialogue is socialization. This is a process during which an individual learns how to be a member of the society and it involves adopting its norms, values, and communication methods, learning how to play the roles, for example, of an employee, an employer, a mother, a father, etc, and accepting, or not, social dialogue as a method of settling contentious issues. Another form of socialization is professional socialization, which involves learning attitudes and behaviors necessary to achieve an accepted and permanent level of competences in the working environment. The process of socialization allows an individual to learn how to differentiate good an devil, important and unimportant things, and to acquire civic, legal, economic, environmental and other knowledge. As a consequence, preparing to play the roles of entrepreneurs, trade unionists, NGOs activists and government representatives is an important factor both determining the adoption of social dialogue as a form of solving problems and influencing its course. The degree of the acceptance of norms and values of social dialogue by its members significantly contributes to its successful outcome and the effective implementation of its solutions.

Another factor influencing social dialogue is social distance, ie the sense of difference between social groups which, in extreme cases, may lead to hostility. Social dialogue requires

cooperation and in Poland there are still social distances, historically rooted, dividing basic social groups and influencing Polish corporate culture.[1]

3. Levels of social dialogue

There are at least five levels of social dialogue depending on its range. The first level of social dialogue is international dialogue conducted by international employers' and employees' organizations and their associations of various character; European dialogue is an example of such dialogue. The second level is national dialogue – conducted on a central level in a given country, often by dialogue institutions, for example social and economic councils. The third level is sectoral dialogue – it deals with the issues relating to a particular sector of the national economy is conducted by institutions that are, to different degrees, institutionalized. Another level is regional dialogue – conducted in a particular region and dealing with the region's problems. The final level is company dialogue – direct contact between employers and company trade union representatives, employee councils and other employee representations, without the participation of state administration representatives.

Social dialogue may be bipartite, tripartite, or even multipartite. Bipartite dialogue, also referred to as autonomous, is conducted by social partners: trade unions and employer organizations, without the participation of state government representatives. Tripartite dialogue, conducted on a central or regional level, involves social partners, representing two parties, and the third party – the government. The participation of state authorities in tripartite relations does not always have to be the same. They may participate directly or only indirectly, using the outcomes of autonomous agreements and recommendations coming from the participants of this process. Multipartite dialogue occurs when, in addition to three parties – the government, trade unions and employer organizations – the representatives of other organizations or institutions, such as territorial self-government or corporate associations, eg commerce and industry chambers, get involved, which normally happens in sectoral dialogue. The representation of parties extended with non-governmental organizations (associations, foundations, etc.), depending on the status granted to them in mutual relations, may give social dialogue the character of civil dialogue, which increases its social significance.

4. Forms of social dialogue

Social dialogue may take the following forms:

a. Negotiations, normally involving social partners, or occasionally the third party – the government. Their aim s usually compromise which will guarantee social peace. The talks may deal with actual problems and mutual relations between the parties. Their outcome should be agreement binding for all parties.

b. Consultations – they involve the same parties as negotiations, but do not have to lead to agreement, although the participants usually respect their outcome.

c. Opinion seeking – public administration representatives apply for opinions of trade unison and employer organizations on government policies. The stances of social partners are not unconditionally binding for the government. The rules for opinion seeking are often regulated by law and the law usually specifies on which issues the government should seek opinion.

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[1] J. Hryniewicz: Social dialogue – social distance. In: *Social partnership – Poland's development model*, pp. 189 - 212

d. Informing – public administration representatives provide social partners with information either on their own initiative or upon request from the interested parties. The presentation of information does not involve the obligation to receive feedback, but it is common practice to offer an opportunity to ask additional questions and carry out a short discussion. On a company level, the right to information is ranted to trade unions, employee councils and other employee representations.

Within the constitutional framework, the way and range of social participation in the functioning of the state distinguish three forms of dialogue: social, civil and involving the self-government participation (in other words, intergovernmental relations). Social dialogue tends to be defined as "all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy."[2] Civil dialogue is the form of communication between public administration and different social partners, which occurs through the exchange of information or by agreeing on goals, tools and strategies of the public policies. What is particularly important, this form of dialogue legally involves particular forms of the organization of the society (eg non-governmental and social organizations, associations, foundations) on different platforms (social, economic, territorial, professional and others).[3] Whereas dialogue with local authorities is "an autonomous dialogue within the system of public administration: between the central authority and different self-government units."[4] Dialogue defined this way – as manifesting the departure from tradition when "administration knows best" – leads to the increased social character of decision-making processes on one hand, and on the other hand it "should counteract the marginalization of different social interests and grant social legitimization to political initiatives in the public sphere, which might turn out to be unpopular." [5]

In the European tradition, at least on a national level, two forms of social dialogue have developer: formalized dialogue, when social partners „have a strong negotiating position allowing to veto the proposals submitted by the government (so called "veto players"), and weakly institutionalized social consultations, when social partners are not guaranteed "the participation in making final decisions."[6]

5. Rules of social dialogue

There are thee basic rules of social dialogue and they stem from both legal and social conditions:

1. Independence and equality of the sides of social dialogue – employer and employee organizations should be entirely independent. The relations between the partners should be relatively equal – it is completely unacceptable when one side dominates over the other.

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[2] Definition of the International Labour Organization (ILO). In: R. Towalski, Social dialogue – an attempt of definition, in: *Social dialogue. Latest discussion and concepts.* Centre for Social Partnership "Dialog", Warszawa 2007, pp. 14-18.
[3] *Rules of social dialogue*. The Council of Ministers, 22 October 2002, p. 23.
[4] W. Misztal, *Local civil dialogue,* Centre for Social Partnership "Dialog", Warszawa 2008, p. 16.
[5] W. Mandrysz: *Social dialogue, civil dialogue in Poland – Experiences.* In: *Negotiable democracy, European governance in Polish.* Ed. K. Wódz. WN SCHOLAR, Warszawa 2007, p. 106.
[6] T. G. Grosse: Social and civil dialogue in the European Union. In*: Social dialogue. Latest discussion and concepts* Centre for Social Partnership "Dialog", Warszawa 2007, p. 54.

2. Trust and compromise – sides should act upon the principle of mutual trust and respect and they should involve in the dialogue in goodwill.
3. Compliance with the law and partnership – dialogue should del with issues open to debate, because the problems raised cannot be regulated by the government unilaterally. The rules of social dialogue should be clearly defined and accepted by all sides. They cannot violate the existing laws. It s also important to build appropriate structures – dialogue institutions – and provide their proper management.

6. 20 years of democracy

Since the year of breakthrough – 1989 – social dialogue has increasingly been present in our social and economic reality. The approach of social partners to dialogue has evolved, just as the catalogue of methods and entities of dialogue has expanded. Let us briefly discuss the approach that the partners have towards social dialogue and the vision how this dialogue should be conducted. Employers perceive social dialogue only as conducting talks, consulting, and exchanging information, whereas trade unions do not see these activities as social dialogue at all. In their opinion, the key issue is n outcome – it must be measurable, for example, an agreement or a compromise. However, the theoretical "ideal vision" assumes a certain unity of interests of employers and trade unions, which may lead to the exchange of information and consultation. This process may turn into collective bargaining, which, in turn, will result in binding agreements, such as a collective agreement.

7. The Tripartite Commission and Provincial Commissions of Social Dialogue

The most important forms of social dialogue are the Tripartite Commission (TK) and Provincial Commissions of Social Dialogue (WKDS). The Tripartite Commission was launched together with the reforms of the early 1990's, when the social pact was signed in 1993. Social partners perceived this pact as a success, so in the next years, in the face of reforms and crises, there were more attempts to conclude other similar pacts.

In the years 2001-2004 there was a dynamic growth in the significance and effectiveness of social dialogue, including the Tripartite Commission. It was then when the Pact for Labour and Development was signed. This pact preceded the so called Hausner Plan.[7] Trade union organizations, the All-Poland Alliance of Trade Unions (OPZZ) and the Independent Self-governing Trade Union "Solidarity" (NZZS), represented then typical attitudes – NZZS opposed the pact as a support for the government because it manifested a great degree of mistrust towards the government coming from the other political extreme, whereas OPZZ was hugely skeptical, both having much trust in the success of the undertaking. Moreover, both organizations focused on judgments rather than on the actual problems. Employers were more positive in their opinion, but they did expect solutions to the urgent problem of restructuring of the industries and public services. At that stage, NZZS forced the change from the "pact" to the "agreement", which reduced the political success of the government. Although the pact did not come to fruition, the very fact of holding the talks had a great significance for further dialogue within the Tripartite Commission. Their participants gained huge experience and

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[7] M. Falkowski, T. G. Grosse, O. Napiontek: *Social and civil dialogue in Poland 2002-2005*. ISP Warszawa 2006, pp. 29-33

developed effective negating techniques, which were used in the future. The whole situation also proved that there was a lack of social capital (including trust) which is necessary for such talks to be successful.

Following a short crisis of trust towards the government, the PiS (Law and Justice) government reestablished tripartite dialogue – in 2009, another breakthrough event took place, when a social pact of 13 items was concluded. Its primary aim was to counteract the global crisis on the world markets. Alas, the agreements of social partners were not fully transformed into legal acts, in particular the Act on Counteracting the Crisis. Comparing this fact to the analogous legislative initiatives in 1993, relating to the previous social pact, this practice remains unchanged.

Dialogue on a regional level is mainly conducted at Provincial Commissions of Social Dialogue (WKDS). The specific character of this institution is expressed by the presence of the representation of local government. These commissions try to resolve many regional and local conflicts. Unfortunately, a large number of conflicts cannot be settled at this level – for numerous reasons they require intervention of the central level. Firstly, the character of the conflict itself may prevent such settlement because of the sides involved and their interests or the importance of the problem for the region or the entire country. Secondly, the statute of TK and WKDS does not allow the latter to enforce its settlements, since they instill analytical dialogue. This strengthens frustration of social partners, which, as research shows, can be observed not only in this institution. In spite of that, WKDS gives a certain chance to resolve the issues important for the region more efficiently, especially if one takes into account strong network bonds between social partners which exist at this level. A lot depends on the personality of the head of a WKDS – his/her initiative, knowledge of the problems and of ways of coping with them are crucial not only to the work of a commission, but also to its perception by its partners and other entities.

8. The settlement of collective disputes

According to the directory of the Ministry of Labour and Social Policy (MPiPS) in years 2006-2008 one can observe a steady growth in the number of collective disputes that reached the stage of mediation. Overall, the number of registered disputes rose from 86 in 2006 to 155 in 2008. On the whole, there were 286 registered collective disputes, 274 of which were conducted with the participation of a mediator from the list of MPiPS. Most disputes occurred in regions with a high number of large cities or highly populated centres (Masovian, Silesian and Lower-Silesian Provinces). On average, a third of these disputes concern healthcare and also a third are disputes over industry. The analysis of the ownership of companies where disputes occurred produces interesting results. In 2008 in over 34% of the cases, the proprietors were local governments, which can be also tied to the similar percentage of disputes concerning healthcare. The rest were in majority of private ownership. The union activity in 2008 also shows interesting practice – the first place was occupied by NSZZ Solidarity (28%), then Trade Unions' Forum (FZZ) and OPZZ (16% each). The rest of the cases featured collective union representation. Contrary to popular opinion, the initiative to submit a collective dispute lied not only on behalf of the trade unions. Such situations occurred in 50.5% of the cases. The employers submitted a dispute in 36.5% of the cases. Remaining cases were submitted collectively by both sides. The reasons for disputes were mainly demands concerning pay (62.37%) and work conditions (10.75%), both independently and along with other lesser ones. The effectiveness of mediation varies depending on a given year, but we can safely assume that its average value is 48-50%. In the years 2006-2008, there were only 5 instances of goodwill missions on behalf of WKDS. They took place when,

because of formal and legal regards, there was no way of resolving the issues based on the statute and their resolution was of key importance to maintaining social peace.[8]

The number of collective disputes registered by Regional Labour Inspectors in years 2006-2008 has risen dramatically. In 2006 there were 659 of them altogether, but in 2007 there were 2869 and in 2008 as many as 5433. Such dynamics of growth stem from numerous reasons, discussed later in the text. The comparison of demands (which may or may not be defined as collective disputes) towards employers shows a very similar picture. In 2006, 1206 such demands occurred, in the following year there were 8832 and in 2008 there was an astounding number of 11530 demands. However, the analysis of disputes divided into the sectors of the national economy leads to surprising conclusions – 80-90% of them relate to education and health care. Disputes with private employers constitute a small percentage of the whole. Their number is at a stable, relatively low, level despite the beginning of the world economic crisis.

According to the estimates by the Ministry of Labour and Social Policy, a large percentage of disputes are conducted with the violation of the statute or even with the complete disregard for it. Negotiations are stalled or suspended even though no such possibility is provided by the regulations. Nevertheless, the procedures of resolving collective disputes should be rated positively. Basically, the process reaches its later stages when the sides cannot reach the agreement on their own and bipartite dialogue at the level of a company does not produce proper results. Except for disputes in healthcare and education, which are unsolvable without systemic reforms, the rest have reached positive conclusion. Their low number may bear witness to the development of other forms of social dialogue in companies. They may prevent potential conflicts during bipartite, less formal, discussions.

9. Divisions in employer organizations and trade unions

Where there is a difference of interests and views on matters of high importance to participants of the dialogue, there are differences of opinions which sometimes may cause conflicts. It is worth noting that differences and misunderstandings do not occur only between the employers' side and the employees' side, which is natural, but also internally, and with similar intensity, among the representations of both sides. Their occurrence was observed as early as during the beginnings of Tripartite Commission. NSZZ Solidarity and OPZZ come from the opposite political sides and their influence on governing the country during the last decade of 20th century had been significant. Because of that, the Constitutional Tribunal was paralyzed at the time of Jerzy Buzek administration. It was caused by OPZZ assuming that NSZZ Solidarity was favoured by the Tribunal. It is also suspected that there was another reason for such conduct – OPZZ wanted to sustain the possibility of launching a collective dispute with the government of opposite political background to conduct bipartite negotiations the result of which would depend on the actions of the government and OPZZ, leaving no place for other social partners.

Nowadays the divisions within trade unions have less and less importance, as OPZZ and NSZZ Solidarity have no support in the ruling political option. They have also been losing influence on "their" political representations. Moreover, these two actors of the union scene have been joined by a third one – FZZ, which gained representativeness in January 2003 at

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[8] Data from the Directory of Ministry of Labour and Social Policy: Settlement of Collective Disputes 2006-2008, pp. 21-52

the moment of the validation of the verdict of the district court in Warsaw. It was preceded by a long fight with OPZZ and NSZZ Solidarity, jealously guarding their position. It should also be pointed out that a number of trade union membership in Poland has been decreasing since mid-1990s.

Employer organizations do not show a uniform stance on numerous basic issues even though they have not been affected by an ideological divide similar to one that affected the trade union side. There are a few splits between them. The basic split is the clash of interests between small and mid-sized companies and the large ones. This happens in spite of the fact that every organizations claims to be unifying mostly small and mid-sized private employers – e.g. the Confederation of Polish Employers (KPP) and the Polish Confederation of Private Employers (PKPP). This division is also tied to a split between supporters of pure liberalism and supporters of a more active role of the state in the economy. Despite original antagonisms between KPP and PKPP, they now present a similar stance (for example on limiting the employee privileges, lowering labour costs, changes in labour law, increasing the level of employment).

Recently, an increasing number of differences and disputes among employer organizations have been observed. This may lead to an open conflict (major causes are certainly the effects of the recent global economic crisis). For example, the Business Centre Club (BCC) and the Polish Chamber of Commerce (KIG) are proposing the creation of chambers of economic autonomy at the level of provinces and controlled by voivode. KPP and PKPP oppose this idea. The creation of such organizations would definitely affect the dialogue on a regional and local level[9].

10. Conclusion: Dialogue in the context of changes initiated upon the EU accession

The prospect of the EU accession which had been offered to Poland at the beginning of the 21st century and the effects of its eventual realization had an immense impact on Polish social dialogue. As a result of the accession process, basic values that underlie the EU mechanisms as a whole and of individual countries, were promoted. Among them a major place is obviously reserved for social dialogue. With the accession, a stream of funds was directed to Poland and allocated for the implementation of the unity policy and the development of social dialogue. The programmes financed by these funds aim to support the creation of local partnerships, to increase activity of private entities during the process of public management and to support social partners. The adoption of the act on informing and consulting social partners was also of great significance. Thanks to this law and more precisely – thanks to its amendments – the monopoly of trade unions in representing employees in front of the employers has been abolished. Employees have gained the first real chance to get information on the issues key to their future in their company. The accession has also helped expand the list of key areas – new challenges to employers and employees. Social dialogue, to a still larger extent, contributes to their effective resolution. As a result, the civic society based on trust and conciliatory approach to social conflicts is developing more and more dynamically.

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[9] http://gospodarka.gazeta.pl/gospodarka/1,33181,7624266,_Puls_Biznesu___Biznes_krok_od_wojny.html

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