

Marek Pliszkiwicz
Humanitas University in Sosnowiec (Poland)

Social Dialogue in Poland on historical and comparative background

1. Introduction

Social dialogue is crucial for collective labour law, which constantly evolves from the very moment of its creation. Indeed, its constant and dynamic development is one of the most frequently mentioned characteristics that distinguish labour law from other branches of the law.

“Labour law, as it developed in modern times, reflects predominantly the system of legal linkages among three subjects: a worker, an employer, and the State. It is within this triangle that fundamental content decisive for the social aspects and specificity of the labour law develops”¹.

Factors, which fundamentally influence labour law, include the balance of power between workers and organisations that represent them and employers and their organisations, as well as political, economic and social aspects².

Social dialogue receives a lot of attention among society and is studied by representatives of various social sciences (law, sociology, political sciences, etc.). Legal terms: “social dialogue” and “dialogue among social partners” were introduced by the Single European Act of 1986³ (Art. 118 B), which amended the Treaty of 25 March 1957 establishing the European Economic Community (the Treaty of Rome). Both are commonly used in collective labour relations, in legal acts, documents, as well as European Union and its Member States action programmes. Nowadays, social dialogue is regulated by the provisions of the

¹ W.Szubert *Réflexions sur les modèles de droit du travail* ; Droit polonais contemporain-Polish Contemporary Law ; 1990 n° 1 (85) p . 5.

² . J.Rivero, J.Savatier, *Droit du travail*, PUF , Paris 1991, pp.34-36, 30-42, J.-C.Javillier *Dynamique des relations professionnelles et évolution du droit du travail*, [in :] *Le droit collectif du travail (questions fondamentales - évolutions récentes ; Etudes en hommage à Madame Hélène SINAY* , Ed N.Aliprantis, F.Kessler, Frankfurt a/M.-Berlin-Bern-New York-Paris-Wien 1994, p. 219 and further.

³ Art.22 of the Single European Act of 17 and 28 February 1986, *Journal officiel des Communautés européennes, série Législation – Official Journal of the European Communities, Legislationa (hereinafter OJEC n.L.)* No. 169 of 29 June 1987.

Treaty of Lisbon⁴, in the Treaty on the Functioning of the European Union, Title X Social Policy, Art. 151-157.

The paper is an overview of how social dialogue in Poland was established and developed. Labour law and its development are influenced by a variety of economic and non-economic factors (philosophical views, beliefs, religion, and political doctrines)⁵. It is impossible to even briefly discuss all of them in such a short article. Considerations which follow will focus on how social dialogue developed in Poland in the context of historic and international factors.

Social dialogue exists and may properly develop when certain systemic conditions are met. We need a democratic system that respects human rights and freedoms, including the freedom of association, and the principle of self-governance and independence. We also need a market economy and a labour market with the three social partners: trade unions and other representatives of labour on one side and employers with their organisations on the other.

After World War II, beginning from the year 1948, a totalitarian political system and a nationalised, centralised economy existed in Poland, both driven by the Soviet ideology. Economic decisions were made at political levels. Even the most rudimentary laws of economy were not obeyed. The state was just about the one and only employer in the country. No freedom of association existed, and hence there were no social partners. The few small entrepreneurs and craftsmen could not establish any private employers' organisation, and employees had no possibility of establishing trade unions which would be independent of the government. Existing trade unions neither represented nor defended the rights and interests of employees. They were fully subordinated to

⁴ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing European Community signed in Lisbon on 13 December 2007 comprises the Treaty on European Union and the Treaty on the Functioning of the European Union (Journal of Laws, Dz.U. of 2009, No. 203, item 1569).

⁵ T.Zieliński *Podstawy rozwoju prawa pracy*, Zeszyty Naukowe UJ, Prace Prawnicze Zeszyt 120, PWN Warszawa Kraków 1988, p.32..

the Polish United Workers' Party (PZPR), which held the rule as a proxy of the Soviet Union.

Starting from 1956, employees, in particular workers of large industrial plants, organised manifestations and strikes on employee matters, but trade unions existing at the time never participated. Employees, therefore, fought for the right to freely establish their own trade unions, independent of the government. That very struggle became a symbol of the fight for democracy for all social groups of Poland.

Pursuant to the Agreements signed with representatives of the government in 1980 by the Interfactory Strike Committees in Gdansk, Szczecin, Jastrzebie-Zdrój and in Katowice, the Independent Self-governing Trade Union "Solidarity" (henceforth "NSZZ Solidarność") was established, as well as other independent trade unions. These operated for just above one year.

2. Social Dialogue: the Notion, Subjects and Themes

By "social dialogue" *sensu stricto* we mean all mutual relations between employees' representatives and an individual employer, a group of employers or their organisations. Such social dialogue is referred to as "autonomous dialogue".

We may also understand social dialogue in a wider sense. To discuss social and economic matters, social dialogue may involve, besides representatives of employees and employers, the State (tripartite dialogue), as well as other subjects, including local administrative and self-government authorities (multipartite dialogue).

The dialogue is "social" by nature if it engages employees' representatives, i.e., representatives of employees' "community". It becomes social when it is attended by employees' representatives, in particular, trade

unions and it remains such, even if on the other side of the table there is just a single employer.

Participation of representatives of employees and an employer or organisation of employers is the pre-condition for social dialogue (two-partite dialogue). The term “social dialogue” is so closely connected with the parties, social partners, that it should not be used when they are not involved. Let us bear in mind that both the law of the European Union and the Constitution of the Republic of Poland (Art. 20) use the term dialogue and collaboration of social partners.

Social nature of the dialogue is also determined by the scope of issues addressed in it (broadly understood “social issues” connected with representing and defending workers’ rights and interests), as well as by its social environment and impact. Trade unions are the oldest and the most universally recognised form of workers’ representation. Hence, apparently, the view that social dialogue focuses on issues within the realm of their competence relating to workers’ representation and protection of their dignity, rights and interests, both material and moral, is well grounded.

Collective labour relations cover activities of trade unions and employers organisations, such as: defining working conditions and remuneration, specifying mutual obligations of parties to collective agreements, including aspects connected with the application and compliance with their provisions, identifying other issues within the framework of the labour law not regulated by unconditionally binding provisions, defining social benefits, and establishing rules for trade unions operations and their cooperation with employers. Collective labour relations cover all mutual relations between trade unions and employers or employers organisations in matters pertaining to their respective competences.

In practical terms, especially political scientists and sociologists interpret “social dialogue” more widely and often confuse it with “citizen dialogue”.

We need to bear in mind, however, that “social dialogue”, as we call it today, has been in existence for a long time and from the very beginning has been inseparably linked with “collective labour relations” and “collective labour law”. This is why when discussing social dialogue we should not limit ourselves to European Union’s law and experiences after 1986. We need to consider how collective labour relations evolved since the inception of labour law. Law and many years of practical experience of the International Labour Organisation and its member countries are major sources of knowledge about social dialogue. It is a method adopted and followed in the activities of the International Labour Organisation (ILO) since its establishment in 1919 due to the principle of tripartism, on which the organisation is based.

3. Legal basis for social dialogue in Poland

After 1989 Poland started to develop a new model of collective labour relations and social dialogue, to which it obliged itself at international level vis-à-vis the ILO and the European Communities. At the same time, Poland benefited from substantial assistance of both the above mentioned partners.

Poland ratified ILO Conventions on collective labour relations and social dialogue:

- Convention 87 of 1948 Freedom of Association and Protection of the Right to Organize;
- Convention 98 of 1949 The Right to Organise and Collective Bargaining Convention;
- Convention 135 of 1971 Workers’ Representatives Convention concerning protection and facilities awarded to them;

- Convention 144 of 1976 Tripartite Consultation (International Labour Standards) Convention;
- Convention 154 of 1981 The Collective Bargaining Convention.

Poland obliged itself to harmonise its legislation with the law of European Communities pursuant to Art. 68 of the Europe Agreement⁶ establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, in which parties to the Agreement recognized that the approximation of Poland's existing and future legislation to that of the Community is the major precondition of the country's economic integration into the Community. Poland shall use its best endeavours to ensure that future legislation is compatible with the Community legislation. This general rule applies also to legal regulations concerning social dialogue.

In Poland "social dialogue" is a legal term. The Preamble to the Constitution of Poland lists social dialogue as one of systemic cornerstones of our State. The aforesaid is clear from its part, which reads: "(...) hereby establish this Constitution of the Republic of Poland as the basic law for the State, based on respect for freedom and justice, cooperation between the public powers, social dialogue, as well as on the principle of subsidiarity in strengthening the powers of citizens and their communities (...)".

Social dialogue is one of preconditions of our country's economic model. Pursuant to Art.20 of the Constitution of the Republic of Poland "A social market economy, based on the freedom of economic activity, private ownership and solidarity, dialogue and cooperation between social partners, shall be the basis of the economic system of the Republic of Poland". These provisions of the Constitution clearly demonstrate that in Poland social dialogue has become one of systemic principles of the State. It means that it should be treated as a

⁶ Europe Agreement establishing an association between the Republic of Poland, of the one part, and European Communities and their Member States, of the other part, made in Brussels on 16 December 1991 Journal of Laws [Dziennik Ustaw] of 1994, No. 11, item 38)

legislative guideline and indication for interpretation when creating and applying collective labour law in Poland. By the same token, social dialogue has become an inseparable component of economic and social transformations and activities in Poland. Social dialogue is considered a principle of collective labour law.

The following legal acts are the major sources of collective labour law and social dialogue in Poland:

Labour Code⁷ of 1974 amended by the Act of 29 September 1994 Section XI. Collective Agreements;

Act of 23 May 1991 on trade unions⁸;

Act of 23 May 1991 on employers organisations⁹;

Act of 23 May 1991 on the settlement of collective labour disputes¹⁰,

Act of 13 March 2003 on special principles for terminating employment with employees for reasons not attributable to employees¹¹,

Act of 7 April 2006 on informing and consulting employees¹²,

Act of 24 July 2015 on the Council for Social Dialogue and other social dialogue institutions¹³.

4. Conditions for effective social dialogue

Acts adopted by ILO and the practice of the organisation devote substantial attention to identifying conditions that would ensure efficient social dialogue.

⁷ Consolidated text: Journal of Laws [Dziennik Ustaw] of 1998, No. 21, item 93 with further amendments.

⁸ Journal of Laws [Dziennik Ustaw] No. 55/1991, item 234 with further amendments.

⁹ Journal of Laws [Dziennik Ustaw] No. 55/1991, item 235.

¹⁰ Journal of Laws [Dziennik Ustaw] No. 55/1991, item 236.

¹¹ Journal of Laws [Dziennik Ustaw] of 2003, No. 90, item 844.

¹² Journal of Laws [Dziennik Ustaw] No. 79/2006, item 550 with further amendments.

¹³ Journal of Laws [Dziennik Ustaw] of 2015, item 1240

Membership criteria laid down at the European Council summit in Copenhagen in 1993 required Poland to achieve stability of institutions guaranteeing democracy, the rule of law, respect for human rights and ethnic minorities, and the existence of a functioning market economy.

Social dialogue can be pursued when parties are self-governed and independent of one another; when the subject of negotiations has been specified; and, last but not least, when there is political will to arrive at common arrangements¹⁴. Trade unions, employers' organisations and the State must act as three separate, independent parties with clearly specified functions; all the parties must be powerful enough and well organised; social partners must be willing to cooperate; lasting social peace can be achieved if there is a generally approved balance of powers among partners. When it comes to the subject of social dialogue, the economy should be open, meaning there must be "something to negotiate about" for partners to social dialogue, State should limit its activities to the identification of the framework for social and economic dialogue within the competence of these partners.¹⁵

In summary, we could make a list of conditions of effective social dialogue. Conditions that apply to the parties to social dialogue include: distinctive organisational structures, self-governance, independence, representative nature, competence, balance of powers, and the will to make common arrangements. Conditions concerning the subject of social dialogue relate to the existence of space for dialogue, so that there is "something to bargain about", identification of the theme and possibilities to hold dialogue.

Meeting these conditions was not easy. Collective labour relations emerge in practice, depending on the balance of powers between trade unions and

¹⁴ A. PANKERT *Trzy warunki*, *Życie Gospodarcze* magazine, No. 40/1993, .p. III.

¹⁵ A. PANKERT "Why tripartite negotiations "[in:] E. SOBÓTKA (ed.)" *Tripartism and industrial relations in Central and Eastern European countries (current state and prospects)*", "Social Dialogue" Library, p.88, Ministry of Labour and Social Policy, Warsaw 1994.

employers organisations. Social partners apply “peaceful” methods, such as dialogue or resort to disputes and strike or lockout. We need a model where the practice of mutual multi-layer relations and arrangements made by social partners in the field of collective labour relations, within their respective competences, are reflected in legislation pertaining to labour.

5. Historical and international factors

Legal science realises and appreciates the need to examine legal phenomena in a historic perspective that would recognise their origin and further development¹⁶. Importantly, historic approach to labour law needs to take account of the existing legal and research acquis. Unfortunately, we constantly see “starting from scratch” even though there are documents, programmes, and publications of primary importance to labour law.

International factor refers mainly to the duty to stick to international agreements ratified by Poland and other obligations resulting from Poland’s membership to international organisations. Besides, it covers comparative legal studies, which examine similarities and differences in laws of various countries. Comparative legal studies may cover just the description and analysis of the current legal order, even when it is not directly compared to any other legal order. Nowadays, comparative legal studies law have gained in importance as a result of globalisation and the need to move across a variety of legal orders.

¹⁶ W.Szubert *Histoire du droit et les recherches sur le droit contemporain*, Czasopismo Prawno-Historyczne, vol. XXXI 1979, copy 1 and T.Zieliński *Podstawy rozwoju ... , rozdział VI - Czynniki historyczne w rozwoju prawa pracy [Foundations ..., chapter VI – Historic Factor in Labour Law Development]* op.cit.5, PWN, Warszawa – Kraków 1988, pp.84-99 and by the same author *Interpretacja historyczna w porównawczym prawie pracy [Historic Interpretation in Comparative Labour Law Studies]* [in:] *Studia z prawa pracy. Dla uczczenia 50-lecia działalności naukowej Profesora Doktora WACŁAWA SZUBERTA [Studies in Labour Law. To Commemorate the 50th anniversary of scientific work of Professor Wacław Szubert]*, PWN Warszawa – Łódź 1988, pp.395-407.

Very often comparative legal studies are pursued within individual branches of law or individual concepts of a given law. Legal provisions binding in other countries should be treated as an inspiration to identify solutions that would best fit Polish legal, economic, and social system. Never should we replicate regulations, which work well elsewhere.

Historic and international factors need to be considered more broadly when discussing values that have laid foundations for Polish labour law.

In the history of individual countries or international organisations we can come across periods or events, which specifically encourage us to think of values. As examples we can mention: important social and political developments, changes of political and economic system, codification of labour law, meaningful anniversaries and the adoption of ordinary acts of law that contain legal solutions, which infringe the Constitution of the Republic of Poland and our international obligations, as it is the case in Poland today. Such legislative measures impact all of the legal system, including labour law.

6. Social dialogue development phases

In this paper I will make references to certain developments meaningful for the development of social dialogue in order to recall values addressed, discussed, and analysed at that time.

Changes, which took place in 1981 and led to the emergence of the Independent Self-governing Trade Union “Solidarity” were fundamental for the course of our history. We know a lot about values resulting from social efforts made by millions of Poles within the framework of this social, trade union, and political movement¹⁷. It exerted powerful impact upon labour law, also as a

¹⁷ For example, see M.Pliszkiewicz *Solidarité, réalisation de l'idée de fraternité des travailleurs dans la Pologne contemporaine* [in:] "Liberté, Egalité, Fraternité: actualités en droit social", Bordeaux, COMPTRASEC 1990;

science. Back in 1981, a collective study was published that justified the reform of labour law, its scope and premises¹⁸, which read: "Reform should cover all of the labour legislation and ensure its compliance with social policy postulates and international labour law standards. We need to stop using labour law instrumentally, as a tool to achieve narrowly understood, ad hoc political and economic goals. (...) Labour law reform should aim at: - increasing active involvement of workers and their organisations in creating and applying labour law; - full recognition of the principle of equality and social fairness; - fostering protective aspects of labour law and inviolability of rights already achieved by the workers"¹⁹. "Reform of labour law should aim at promoting progressive solutions, which reflect socially acceptable ethical values and highlight active role of a man at a workplace and in the economy"²⁰.

The above quoted publication made an intrinsic part of the *NGO-drafted List of Suggestions for the Amendment of Labour Code* of 1981 prepared by the Social and Vocational Centre of NSZZ Solidarność in Warsaw (works were coordinated by M. Pliszkiwicz) and National Coordination Committee of NSZZ "Solidarność" for Justice Department Employees – Centre of Citizen Legislative Initiatives in Krakow (works were coordinated by T.Zieliński)²¹.

Since the moment Round Table talks were completed back in 1989, development of Polish labour law has been closely linked with Poland's efforts to join the European Communities. Europe Agreement²² establishing association between the Republic of Poland and European Communities and their Member

reprint of the paper [in:] "Revue Juridique Africaine", 1990/1, Caméroun et [in:] « Revue Syndicale » n° 75/76 1991, Athènes;

¹⁸ J.Nowacki, M.Pliszkiwicz, J.Rosner, M.Seweryński, W.Szubert, T.Zieliński *Kierunki reformy prawa pracy. Założenia ogólne [Directions of Labour Law Reforms. General Assumptions]*, Published by the Publishing House of Trade Unions. It was a document of the I Convention of NSZZ Solidarność in 1981 in Gdańsk.

¹⁹ Ibidem p.3.

²⁰ Ibidem p.4.

²¹ More on this Project, see M.Pliszkiwicz *Warunki trójstronnego dialogu społecznego [Tripartite Social Dialogue Conditions]* [in :] *Przyszłość prawa pracy.[Labour Law Perspectives] Liber Amicorum*. On the 50th anniversary of research work of Professor Michal Seweryński, Ed. University of, Łódź 2015, pp.462-463.

²² EUROPE AGREEMENT establishing association between the Republic of Poland, on the one part, and the European Communities and their Member States, on the other part, made in Brussels on 16 December 1991 (Dz. U. of 27 January 1994.).

States was signed on 16 December 1991. It was the result of a commitment of all parties [Poland, European Communities and their Member States] to strengthen political and economic freedoms, foundations of the Association, and significant achievements of the Polish nation in quickly shifting towards new political and economic order based on the rule of law and respect for human rights, including legal and economic framework of the market economy and a multi-party system with free and democratic elections. In accordance with Article 68 of the Agreement the parties decided that the approximation of Poland's existing and future legislation to that of the Community is a major precondition for economic integration of the country into the Community. Poland shall use its best efforts to ensure compatibility of its future legislation with that of the Community. The Agreement entered into force on 1 February 1994.

We need to bear in mind that the emergence and evolution of social dialogue in Poland were influenced by a variety of factors. Poland benefited from generous assistance of the European Communities: the European Union and International Labour Organisation (ILO). In 1989 the European Commission launched a financial aid scheme for countries-candidates for the membership in the European Communities. Initially, the programme was addressed only to Poland and Hungary, hence its name PHARE²³. It was intended to safely guide candidate countries to the European Communities and its acronym “phare” is the French for a lighthouse. Surely, the authors of the programme's name should be congratulated on their ingenuity.

International Labour Organisation opened its Subregional Office for Central and Eastern Europe in Budapest to render technical assistance and expertise in systemic transformations in the countries in this part of Europe.

²³ Poland and Hungary: Assistance for Restructuring their Economies (En) and Pologne Hongrie Aide à la reconstruction économique (Fr).

The state was then the predominant employer, private employers were few, therefore no organisations of private employers existed. Trade unions at the time were much stronger than employers, as they affiliated most employees. It was, therefore, necessary to collaborate and maintain dialogue with the state as the former and current employer. Tripartite dialogue developed in Poland and other countries of Central and Eastern Europe²⁴.

The emergence of the Tripartite Commission for Social and Economic Affairs (henceforth: “Tripartite Commission”) is closely related to negotiations on transformation and the future of state owned enterprises and their employees. The Minister of Labour at the time, Jacek Kuroń, proposed the initiative to sign an agreement with the social partners, called the Pact on State Owned Enterprise in Transformation²⁵. He invited to the table all trade unions operating at a national level and the only existing Confederation of Polish Employers, which had been established in 1989. At present it operates under the name „Pracodawcy RP” (Employers of the Republic of Poland).

Three work groups were established for matters of: privatisation of state-owned enterprises, financial restructuring and social matters, respectively. During the negotiations, many trade union organisations abandoned participation in the group. Furthermore, trade unions were conflicted, actually hostile towards each other. This applied in particular to NSZZ Solidarność and the All-Poland Alliance of Trade Unions (Ogólnopolskie Porozumienie Związków Zawodowych – hereinafter “OPZZ”). Therefore, negotiations on the Impact on State Owned Enterprise in Transformation were held separately for

²⁴ *Tripartism and Industrial Relations in Central and Eastern Europe Countries*, edited by E. Sobótka, Ed. Social Dialogue Library, Ministry of Labour and Social Policy, Warsaw, 1994 pp.23-30, M.Pliszkiwicz *Le tripartisme dans les pays de l'Europe Centrale et Orientale (Tripartism in the countries of Central and Eastern Europe)*, [in:] *Le syndicalisme contemporain et son avenir (The contemporary unionism and its future)*, edited by H. Lewandowski Z. Hajn, Ed. University of Łódź, Łódź, 1995, pp. 260-276

²⁵ c.f. E.Sobótka in article *Social Dialogue. Institutions, Legal Representatives, Practice. Polish Legal Solutions Against International Background* (with M.Pliszkiwicz) [in:] *Regional School of Social Dialogue. Guidebook. The Perspectives of Regional Social Dialogue in Poland – in Search of the Model poszukiwaniu*. Published by TNOiK Gdańsk 2000, pp. 52-63.

NSZZ Solidarność and for OPZZ, and then separately for the seven industry trade unions, signatories of the Pact.

The spirit of social dialogue, however, prevailed eventually. In the three, separately negotiated and executed documents of the Pact, all trade unions agreed to collaborate within the framework of the Tripartite Commission. It was established on February 15, 1994²⁶, pursuant to a Resolution of the Council of Ministers no. 7/94. Initially, members of the Commission comprised signatories of the Pact.

Several years thereafter, the Act of July 6, 2001 on Tripartite Commission for Social and Economic Affairs and the Provincial Social Dialogue Commission was adopted²⁷. This Commission is the forum for social dialogue held for the purpose of accommodating employee and employers' rights, as well as public interest.

In the years 1992–1993 a Project "*Social Dialogue*" – *assumptions, implementation, perspectives* was carried out under the PHARE-90 Programme with the involvement of renowned ILO experts. The Project was coordinated by E. Sobótka²⁸ and it included many conferences with international experts and study visits of Polish social partners to other countries. The Project and its implementation were highly appreciated by the Director General of the International Labour Organisation²⁹. It was crucial for the improvement of Polish social partners' knowledge about social dialogue. Numerous publications of the Biblioteka Dialogu Społecznego [Social Dialogue Library], a publishing house established by E. Sobótka in the Ministry of Labour and Social Policy,

²⁶ Resolution of the Council of Ministers no. 7 of February 15th, 1994, on establishment of the [Tripartite Commission for Social and Economic Affairs](#)

²⁷ Journal of Laws no. 100/2001, item 1080, as amended.

²⁸ E. Sobótka, "*Social Dialogue*" – *assumptions, realization, prospects*, [in:] E. SOBÓTKA (ed.) "Tripartism and industrial relations in Central and Eastern European countries (current state and prospects)", "Social Dialogue" Library, p.88, Ministry of Labour and Social Policy, Warsaw 1994.

²⁹ *Des valeurs à défendre; des changements à entreprendre: La justice sociale dans une économie qui se mondialise: un projet pour l'OIT*, Rapport du Directeur général, Partie II: Activities of the ILO, 1992-93, International Labour Conference, 81st Session 1994, p. 16.

were also very helpful. Undoubtedly, the project "*Social Dialogue*" – *assumptions, implementation, perspectives* facilitated and accelerated future negotiations with social partners in the difficult process of drafting legislation and creating a set of legal norms for social dialogue. E. Sobótka was completely right when she said that "a conference table should come first before the negotiating table" and Poland, at that time unable to benefit from the free movement of people, goods, services, and capital, could fully enjoy the "fifth freedom of the common market", i.e. "free movement of thoughts, information and ideas".

International cooperation with Ministries of Labour in other countries, especially France and Belgium, as well as other organisations and social partners was crucial for the building up of social dialogue in Poland. Polish researchers of labour law, authors of a plethora of studies on the subject, contributed significantly to the development of social dialogue. They were importantly helped by universities and researchers from Western Europe.

The VII European Congress of International Society for Labour and Social Security Law that met in 1999 in Warsaw chose „Social Dialogue – Economic Interdependence and Labour Law” as its leading subject.

Between 1 July 2008 and 31 December 2009 the Dialogue and Social Partnership Department of the Ministry of Labour and Social Policy, together with social partners at national level and labour law Professors, carried out a systemic Project "Support for Social Dialogue; Strengthening of its Legal Norms and Participants" under Sub-Measure 5.5.1 of the Operational Programme Human Capital³⁰. The Project comprised three components (measures): "Social Dialogue Analysis and Recommendations for its Changes", "Developing Model Educational System for Social Dialogue", and "An Idea for Institutional Support of Polish Participants to Social Dialogue" based on European Union Member States best practices. Results of conducted studies

³⁰ Priority of the 5th Human Capital Operational Programme – Good Governance, Measure 5.5.

were approved by the Expert Panel – a special team set up for the Project whose members were appointed by seven representative organisations – social partners and four researchers, experts in social dialogue. These results and a diagnosis were taken as a starting point for recommendations and further planning of adequate systemic solutions and future projects designed to study social dialogue.

One of the major conclusions from the studies included in recommendations is the recurring opinion that participants' knowledge about social dialogue and matters that it covers is often unsatisfactory. Potential offered by the results and recommendations of this Project has never been used properly.

Since 2008 the Tripartite Commission has been actively involved in mitigating the effects of crisis to Polish society, in particular to employees and employers.

Trade unions and employers organisations made suggestions to the Tripartite Commission as to what should be done when crisis hits our country. They argued that the situation in global financial markets could lead to economic crisis. At the beginning, the Government disregarded their concerns and suggestions. Thus partners started an autonomous dialogue on what should be done to mitigate consequences of potential crisis.

Following initial arrangements, heads of social partners organisations - members of the Tripartite Commission met in February 2009. In an autonomous social dialogue, social partners, members of the Tripartite Commission for Social and Economic Affairs agreed a list of 13 principal issues and prerequisites concerning : wages and social benefits, labour market and labour relations and economic policy. The list was approved by the Government as a basis for drafting a programme of anti-crisis measures. On the basis of this list the Act of

1st July 2009 on the relief of the effects of the economic crisis for workers and entrepreneurs³¹ was adopted.

This Act regulates in a broad manner various problems relating to actions taken to counteract the economic crisis. It determines principles relating to:

1) extension of working time calculation periods, determination of individual working time schedules, reductions in working time and limitations in the employment of workers on the basis of employment contracts concluded for a definite period;

2) granting, payment and reimbursement of benefits financed from the Guaranteed Employee Benefit Fund;

3) granting, payment and reimbursement of benefits to finance the costs of training and postgraduate studies of workers and the payment of stipends to workers, financed from the Labour Fund³².

Representative social partners, in particular the trade unions, called for thorough changes of the formula of social dialogue in the existing Tripartite Commission. They believed that new legislation was necessary.

The opinions expressed, proposing that new legislation will ensure better operation of the social dialogue, are questionable. Similar views were given by social partners at the time when the Tripartite Commission operated on the basis of the Resolution of the Council of Ministers³³, expressing the hope that the standard of social dialogue would significantly improve by being regulated by an act of law. Those hopes were not fulfilled. It is a known fact that legal regulations themselves do not determine the quality of social dialogue. I believe that provisions of law are not the obstacle in keeping an effective dialogue.

³¹ Journal of Laws No 125, item 1035 of 7th August 2009

³² The principles of payment of contributions to the Labour Fund have been determined in the Law of 20 April 2004 on the Promotion of Employment and Institutions of the Labour Market (unified text in Journal of Laws 2008, No. 69, Item 415, with further amendments).

³³ Resolution of the Council of Ministers no. 7 of February 15th, 1994, on establishment of the [Tripartite Commission for Social and Economic Affairs](#)

Social partners, members of the Tripartite Commission, prepared and presented in January 2015 proposals for changes to the social dialogue system. On that basis, a draft Act on Social Dialogue Council and other social dialogue institutions was developed in collaboration with the Ministry of Labour and Social Affairs.

Pursuant to the act of July 24, 2015³⁴, the Social Dialogue Council³⁵ was established in Poland, as a forum for tripartite collaboration between employees, employers and the government.

Currently, the Council comprises: representative trade union organisations (NSZZ “Solidarność”, OPZZ and the Trade Unions Forum), representative employers’ organisations (Employers of the Republic of Poland, Polish Privat Confederation of Employers’, „Lewiatan”, Polish Artisan Association, Business Centre Club – Union of Employers) and representative of the Council of Ministers, appointed by the chairman of the Council of Ministers: The Minister of Labour and Social Policy The Minister of State Treasury, the Minister of National Education, the Minister of Finance, the Minister of Infrastructure and Development and the Minister of Health.

6. Conclusion

Social dialogue ensures understanding among social partners, creating new solutions in labour law and maintaining sound and peaceful industrial relations.

Social dialogue helps achieve peaceful relations at a workplace. Its forms help successfully prevent collective disputes and conflicts and, if they arise, social dialogue enables arriving at a solution. Social dialogue is there so that collective

³⁴ Journal of Laws 2015, item1240

³⁵ cf. Marek Pliszkiwicz *The Social Dialogue Council in Poland*, [in:] *Festschrift or Liber Amicorum dedicated to Professor Stein Evju*, Oslo University , pp.533-543, 2016.

labour relations are not regulated top-down by the Government. Employers and trade unions need to have as much freedom as possible with this regard. Social partners are more familiar with economic reality and can make right decisions while solutions agreed by them are much more valuable and stand better chances of being implemented than regulations imposed by the government. In a market economy, the Government has no monopoly over economic decisions; workers and employers' organisations have their important role to play.

Social dialogue is conducted at levels where there are social partners empowered to conduct such a dialogue in its specific forms. We may distinguish the following levels of social dialogue: European, national, regional, sectoral, and company.

The level at which social dialogue takes place depends on where there are social partners authorised to hold a dialogue on specific issues and on whether there are topics to be addressed. Hence there are certain conditions that must be met to ensure the efficiency of the dialogue.

It is not easy to assess social dialogue in Poland. Since its inception in 1989 it had to cope with various hurdles, which popped up mostly in relation with transformations that were extremely difficult and costly for society. High inflation and significant drop in real wages exacerbated the dialogue and negotiations over working conditions.

After 1989 social dialogue developed unevenly at different levels. It was rather efficient and dynamic at the company level, especially in the course of negotiating and agreeing social packages with foreign investors when Polish State-owned enterprises were privatised.

At the same time it was far from satisfactory at sectoral level, at which employers' organisations were neither strong nor representative. Before 1989 the public sector was the principal employer. There were very few private

employers, who were mostly craftsmen or small producers. Private employers had no representation. Their first organisation, Confederation of Polish Employers (currently “Employers of Poland”) was set up in 1989, while the first organisation of private employers Polish Confederation of Private Employers (currently known as Polish Confederation “Lewiatan”) was established in 1999.

Social dialogue and the tripartite practice between governments and representative organisations of employees and employers in Poland and internationally are currently becoming even more important for developing good solutions, and for building social cohesion and the rule of law, also through international standards of labour.

A tripartite social dialogue should not be regulated in isolation from other types of social dialogue (autonomous and multilateral). This is because it constitutes an indispensable part of social dialogue as a whole, existing at different levels: company, local, regional, sectoral, national and European. Therefore, the important task at hand is to codify the labour law in such way as to incorporate the fundamental changes of the political, social and economic system after 1989. We have the draft labour law and the code of collective labour law thousand and four, which were not tabled the Parliament. It is a good idea to make use of them now.

New Labour Law Codification Commission was established based on the Regulation of the Council of Ministers of 9 August 2016³⁶. The Regulation identified: the scope of Commission’s activities, its membership, funding and servicing. The Commission operates at the Minister of Family, Labour and Social Policy. It has been entrusted with drafting the Labour Code Act with explanatory notes and Collective Labour Code Act with explanatory notes.

³⁶ Journal of Laws 2016, item 1366.

Membership of the Commission was decided in line with rules significantly different than those binding previously. Candidates for membership were appointed not only by the Minister of Labour but also by trade unions and employers organisations representative at national level³⁷. These organisations are members of the Social Dialogue Council but at the same time representative trade unions organisations (Independent Self-governing Trade Union “Solidarity”, All-Poland Alliance of Trade Unions –OPZZ, and Trade Unions Forum) and representative employers organisations (Employers of Poland, Polish Confederation of Private Employers “Lewiatan”, Polish Craft Association, and Business Centre Club – Organisation of Employers) appointed one candidate each. Minister for Labour appointed the same number of candidates for members of the Commission as trade unions and representative employers’ organisations. Thus, the Commission consists of 14 members and a Chairman.

³⁷ In the meaning of, respectively, Art. 23 para. 2 and Art. 24 para. 2 of the Act of 24 July 2015 on Radzie Dialogu Społecznego i innych instytucjach dialogu społecznego (Journal of Laws, Dz. U. 2015, item 1240),