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## Defining the Pillars of Trade Union Freedoms: the Polish Example

Trade unions play a particularly important role in the modern social market economy. This type of voluntary collective labour organisation forms a fundamental and necessary part of the social and economic system of any civilised country. Trade union organisations should be seen as key social partners, whose basic role is to represent and protect the legitimate rights and interests of workers. It can be concluded that trade unions co-determine the realities of the social and economic life in Poland, even though radical economic and political changes have also affected both the structure and character of the national union movement. Furthermore, even national legislation seems to confirm that collective labour organisations are extremely important for the economic, political and social order.

In their organisational character, pursued policies and activities modern domestic trade unions depart significantly from the experience of the “Solidarity” movement of the 1980s and early 1990s. It is worth noting that the character, structure or problems of the modern labour market differ significantly from the realities of previous decades, when we were able to experience global and radical changes in social and political life. Consequently, both the character and strategy of the domestic union movement have also evolved (or should have?), in trying to adapt to current realities and tackle certain problems and challenges associated with the labour market. Thus, modern Polish trade unions should not be seen anymore only as direct accelerators of political and economic transformation. Nowadays, both the role and functions of trade unions in the social market economy are different, as basic problems of the labour market have changed. Now society expects that union movements should focus mainly on such issues as equitable remuneration, lower unemployment or stability and the security and comfort of work.<sup>1</sup> Therefore, there is a reason to consider that (simplifying somewhat) the national trade

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1 B. Ebbinghaus, *Trade Unions' changing role: membership erosion, organisational reform, and social partnership in Europe*, *Industrial Relations Journal* 2002, no. 33, p. 465–466.

unions should primarily aim to globally improve the welfare of workers.<sup>2</sup> It seems that national union movements should focus more on dialogue with other social partners, especially in the times of global economic crisis and the increasing popularity of flexicurity<sup>3</sup> policy.<sup>4</sup> This is because the society expects from trade unions to initiate necessary and desired changes in the Polish legal system rather than on waging “class conflicts”.

When considering the functions of modern trade unions in Poland we should not forget about particularly important role of the domestic lawmaker. It should be borne in mind that strong and firm position of national union movement can be achieved only through the creation of proper legal frameworks and functional measures. It is also noteworthy that the specific legislative policy related to freedoms and rights of trade union often plays a substantial and decisive role in determining stronger or weaker position of trade unions in a given legal, social and economic system.

In order to characterise and evaluate such aspects as position, importance and size of union movement in a given system it is useful to use two basic and fundamental measures: the extent of trade union freedoms legally recognised in the system and how such freedoms and their guarantees functioning in the reality. The position of a rightful union organisation in a social market economy is based on four basic pillars – freedom of association, self-governance, independence and equality.<sup>5</sup> It seems that only comprehensive analysis of existing legal frameworks from perspective of the above-mentioned pillars makes it possible to identify and determine actual degree of both the autonomy and the liberty enjoyed by trade unions in a given legal order. A general analysis of the Polish legal system makes it possible to present the thesis that the legislator attaches particular importance to the issue of assuring the proper and free functioning of trade unions.<sup>6</sup> At the same time, the legislator tries to shape a relatively broad range of freedoms and guarantees designated to trade unions and their members. Such freedoms, rights and guarantees are directly constituted under the Polish Constitution, binding international agreements and national legislation. It should also be highlighted that the trade union freedoms are recognised as one of the constitutional political freedoms and

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2 W. Streeck, *The sociology of labor markets and trade unions*, in: N. Smelser (ed.), R. Swedberg (ed.), *The handbook of economic sociology*, Princeton University Press 2005, p. 264–265.

3 Flexicurity is popular concept of employment model that focuses on two aspects: easiness of employment and dismissals processes (flexibility) and complex social benefits for unemployed (security). Labour market based on flexicurity assures that all – employers, employees and unemployed are beneficiaries. Employers are able to efficiently adjust their employment levels to the market situation. Employees enjoy better chances of improving their qualifications and stronger trade unions. The unemployed experience better social welfare and accessibility of new job positions.

4 R. Hyman, *Emerging agenda for trade unions?*, Labour and Society Programme, Discussion Paper Series 1999, no. 98, p. 6–12.

5 *Ibidem*.

6 K.W. Baran, *Komentarz do ustawy o związkach zawodowych*. in: *Zbiorowe prawo pracy. Komentarz*, 2010, LEX/el.; J. Żołyński, *Ustawa o związkach zawodowych. Komentarz*, 2014, LEX/el.

rights,<sup>7</sup> which in turn proves that such freedoms play particularly important role in shaping internal political order. It seems that the constitutional lawmaker expects trade unions to actively participate, not only in social and economic life, but also in political life.<sup>8</sup>

The aim of this article is to present the essence of four fundamental pillars (the freedom of association, the self-governance, the independence and the equality) of trade union freedoms, which can be identified in the Polish legal system. The author tries to briefly systemise and characterise chosen pillars. The article is based on the review of the national legislation (including the Polish Constitution, relevant international agreements and the Act on Trade Unions of 23th May 1991)<sup>9</sup> doctrine and judicature.

## The Classification of Trade Union Freedoms Functioning in the Polish Legal System

Despite the fact that the issue of theoretic classification of trade union freedoms has a minor impact on the practical functioning of trade unions, it is worth noting that the domestic doctrine defines two competing concepts regarding number of trade union freedoms.<sup>10</sup> Some researchers are in favour of the monolithic idea, which is based on the assumption that there is only one meta-freedom.<sup>11</sup> Such standpoint reflects foreign perspective, where ‘the freedom of association’ is recognised as the only trade union freedom. On the contrary, other researches advocate the competitive pluralistic concept, indicating that we should specify at least three trade union freedoms – freedom of association, self-governance and independence.<sup>12</sup>

It seems that the constitutional legislator is in favour of the pluralistic concept of trade union freedoms as even the Polish Constitution itself indicates in article 59(4) that “the scope of freedom of association and other trade union freedoms may only be subject to such statutory limitations as are permissible in accordance with international agreements to which the Republic of Poland is a party”. Furthermore, it should also be

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7 Articles 12 and 59 of the Constitution of the Republic of Poland.

8 K.W. Baran, *Komentarz...*

9 The Act on Trade Unions of 23th May 1991 (consolidated text. OJ of 2015, item 1881 as amended).

10 K.W. Baran, *Wolności związkowe i ich gwarancje w systemie ustawodawstwa polskiego*, Oficyna Wydawnicza Branta, Bydgoszcz-Warszawa 2001, p. 19.

11 Cf. L. Florek, M. Seweryński, *Międzynarodowe prawo pracy*, Warszawa 1988, p. 122–124; A. Michalska, *Międzynarodowa ochrona wolności związkowej*, „Ruch Prawniczy, Ekonomiczny i Społeczny”, no. 1, 1982, p. 85; J. Wrątny, *Niektóre problemy wolności związkowej w krajach kapitalistycznych*, in: *Z problematyki związków zawodowych i współuczestnictwa pracowników w zarządzaniu. Ujęcie prawnoporównawcze*, Warszawa 1982, p. 5;

12 Cf. K.W. Baran, *Wolności związkowe...*, p. 18–20; J. Jończyk, *Prawo Pracy*, Warszawa 1995, s. 170; Z. Hajn, *Zbiorowe prawo pracy. Zarys systemu.*, 2013, J. Żołyński, *Ustawa...*

noted that article 12 of the Polish Constitution identifies two trade union freedoms – for creation and functioning of trade union organisations. Consequently, for the direct constitutional basis, the pluralistic concept of trade unions freedoms should be considered as the leading and more adequate concept in the Polish legal system.

Adopting the pluralistic concept makes it possible to specify individual freedoms, the total of which determines the factual position and rights of union movement in Poland. For the purpose of the article and adopted methodology, I propose focusing on two fundamental meta-freedoms, which are most important – the freedom of association and the freedom of functioning. This is because all other freedoms and rights (e.g. the freedom to establish union organisation, the freedom to join an organisation or the freedom to dissolve an organisation) originate directly or indirectly from the indicated meta-freedoms and each ‘minor’ freedom can be easily assigned to the one of them.

While naming the freedom of association and the freedom of functioning as two the most fundamental trade union freedoms, it is also worth highlighting that these two meta-freedoms are directly and mutually related. The freedom of association could not exist independently, while the true image of the functional freedom is widely determined by the extent to which the standards of freedom of association are implemented. My personal view is that each minor freedom designed for union movements should be considered as a logical consequence and derivative of one of the specified meta-freedoms. Moreover, also the fact that both the freedom of association and the freedom of functioning of trade unions are constituted under the Polish Constitution seems to support the thesis about the leading role of described meta freedoms.<sup>13</sup> For example, we can refer to article 12 of the Polish Constitution, where it is clearly recognised that “the Republic of Poland shall ensure freedom for the creation and functioning of trade unions”.

Accurate insight into the specified meta-freedoms also makes it possible to particularise four fundamental guarantee pillars of trade union freedoms. These four fundamental pillars are: the freedom of association as an necessary factor initiating the creation of the union movement and the self-governance, the independence and the equality as three basic guarantees and dimensions of both association and functional freedoms.<sup>14</sup> As was highlighted at the beginning, in order to reconstruct both the actual legal position and the social and economic gravity of the union movement in Poland it is necessary to focus on these four pillars, which together determine the actual role of trade union freedoms.

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13 K. W. Baran, *Komentarz...*, J. Żołyński, *Ustawa...*

14 *Ibidem*.

## Trade Unions' Freedom of Association

The freedom of association should be considered as the primary and supreme pillar of trade union freedoms guaranteed under any civilised legal and social system. Any other particularised trade union liberty should be considered as the logical consequence resulting from achieving standards and fulfilled directives of the freedom of association. It should be noted that the national legal system consists of numerous guarantees designed to assure the appropriate degree of freedom of association of trade unions and employers' organisations. We may find mandatory provisions in the Polish Constitution,<sup>15</sup> as well as in other sources of law (in the provisions of binding international agreements<sup>16</sup> and in national legislation, especially in the Act on Trade Unions)<sup>17</sup>. Therefore, both the quantity and importance of legislation concerning the issue of trade unions' freedom of association may prove that both freedom itself and (in general) the union movement in Poland are particularly important for the national legislator.

Turning to the characteristic of the analysed pillar of trade union freedoms, it is worth highlighting that freedom of association consists of three basic dimensions. These are:

- the freedom of coalition,
- the freedom to leave any trade union organisation and
- the freedom to dissolve established union organisation.<sup>18</sup>

The freedom of coalition<sup>19</sup> should be considered as the most important and fundamental element of the meta-freedom of association. It results from the fact that the freedom of coalition is described as the workers' liberty to establish or join any union organisation. Colloquially, the freedom of coalition would mean that decision to join or establish any union organisation shall be based on the founders' or candidates' free will. It is also worth noting that employees are not the sole beneficiaries of the freedom of coalition. We must not forget that such liberty can also be enjoyed by domestic trade union's federations and confederations, as well as international workers' organisations.<sup>20</sup> A simi-

15 Especially in article 12 (the state's legal obligation to ensure the freedom of creation and operation of trade unions), article 20 (the dialogue of social partners as basis of the social market economy) and article 59 of the Polish Constitution (direct guarantees for trade union freedoms).

16 Cf. Articles 2, 4 and 5 of the International Labour Organisation (ILO) Convention no. 87 concerning Freedom of Association and Protection of the Right to Organize; article 22 of the International Covenant on Civil and Political Rights and article 8 of the International Covenant on Economic, Social and Political Rights.

17 The Act on Trade Unions of 23th May 1991 (consolidated text. OJ of 2015, item 1881 as amended).

18 Cf. K.W. Baran, *Wolności związkowe...*, p. 39; W. Masewicz, *Norwe prawo o związkach zawodowych*, „Praca i Zabezpieczenie Społeczne”, no. 10, 1991, p. 3; W. Sanetra, *Prawa (wolności) pracownicze w Konstytucji*, „Praca i Zabezpieczenie Społeczne”, no. 11, 1997, p. 2.

19 Term peculiar for Polish doctrine of collective labour law.

20 Cf. Article 11 of the Trade Unions Act and article 5 of ILO Convention no. 87.

lar concept can be applied to other indicated dimensions (the liberty to leave or dissolve a given organisation), which should also be considered as a logical consequence deriving from the freedom of coalition.

The personal scope of the freedom of coalition is shaped mainly by the provisions laid down in article 2 of the Act on Trade Unions. Under this article, “the right to found and join trade unions shall be given to the employees regardless of the employment relation basis, members of agricultural production cooperatives, and persons who perform work on the basis of an agency contract if they are not employers”. The unlimited freedom of coalition is also granted to “persons delegated to such establishments in order to serve their substitutionary military duty” (art. 2(5) of the Act on Trade Unions). It is also worth mentioning that the domestic labour law doctrine considers the adopted personal scope of freedom of coalition as both relatively broad and reflecting the specificity and complexity of employment relationships on the domestic labour market.<sup>21</sup> However, current evolution of the labour market seems to prove that the statutory personal scope of the freedom should be determined in more liberal and appropriate form that would assure that all categories of workers have unrestricted access to the freedom.

When studying the issue of personal scope of freedom of coalition, it is also necessary to mention the newest ruling of the Constitutional Court. As a consequence of the ruling of 2th June 2015, the personal scope of the analysed freedom has been significantly expanded.<sup>22</sup> The Court decided that current personal catalogue shaped under article 2 of the Act on Trade Unions, in so far as it limits the freedom of establishing and joining any trade union only to individuals that are directly named in given article, is incompatible with the provisions of article 59(1) in conjunction with article 12 of the Constitution of the Republic of Poland.<sup>23</sup> In the Court’s opinion, the access to the freedom of association in the form of trade unions should be granted to all the categories of working individuals considered as workers in the light of constitutional and economic values.<sup>24</sup> These values obligate the lawmaker to assure that all the categories of working individuals, engaged in personal gainful activities and sharing similar professional interests and rights, should have free access to the freedom of association.<sup>25</sup> The presented judgment should be considered as a basis for significant breakthrough that would allow the freedom of association to be enjoyed by numerous workers (in both the constitutional and economic meaning)<sup>26</sup>, who so far have been denied the right to protect their legitimate interests.

21 K.W. Baran, *Wolności związkowe...*, p. 41.

22 The judgement of 2th June 2015 (Ref. K 1/13, OTK-A 2015/6/80, OJ of 2015, item 791).

23 Ibidem.

24 Ibidem.

25 Ibidem.

26 In this sense, employment covers also such working activities like self-employment or mandate and work performance contracts (colloquially called “junk jobs”).

In order to fully understand the essence of the freedom of association it is also important to analyse its current legal limitations. It should be at least signalled that within the Polish legal system we may distinguish between the full and limited freedom of coalition, the scopes of which directly affect personal and material shape of the freedom.<sup>27</sup> The full freedom of coalition assures the right to both join and establish any union organisation, while the limited freedom restricts such liberty only to the right to join already established union organisations.<sup>28</sup> At the same time, there is also a specific category of individuals who are fully deprived of freedom of coalition.<sup>29</sup> However, it should be noted that the vast majority of imposed limitations meets international standards in terms of acceptable limitations and enjoys proper *ratio legis*.<sup>30</sup>

Finally, it is also worth to study the issue of the size of the union movement in Poland as relevant statistical data makes it possible to evaluate the strength and potential of national unionism. In 2015, the Polish Central Statistical Office published the first statistical report for 25 years that is related to the topic of trade union activity in Poland.<sup>31</sup> According to the statistical data, in 2014 there were 12.9 thousand registered trade union units that associated a total number of 1.6 million people.<sup>32</sup> The size of union movement was equivalent to 5% of the Polish adult population, 11% of the working population and 17% of workers under employment contracts.<sup>33</sup> It should also be highlighted that the majority of registered trade union organisations (67%) associated no more than 149 members.<sup>34</sup> Furthermore, the vast majority of trade unions functioned on the public sector, where over 66% of all the registered organisations were established and functioned exclusively.<sup>35</sup> It is also worth noting that in countries with the highest rate of unionisation, domestic union movements assemble nearly 70% of the working population.<sup>36</sup>

27 Cf. K.W. Baran, *Wolności związkowe...*, p. 41; G. Goździewicz ed., *Zbiorowe prawo pracy w społecznej gospodarce rynkowej*, Toruń 2000, p. 55.

28 Examples of employees with limited freedom of coalition: pensioners, retired people, unemployed.

29 Examples of employees deprived of such freedom: members of the National Broadcasting Council, the President of the Supreme Chamber of Control, the Ombudsman, the President of National Bank, judges.

30 Article 59(5) of the Polish Constitution refers to rules of bidding international agreements, especially to provisions of the ILO Convention no. 87. As article 8(2) of the Convention indicates, any domestic legal regulation shall not infringe substance of the guarantees given to trade unions.

31 Polish Central Statistical Office, 2015, *Trade unions in Poland in 2014 – briefing note*, [access: 29.03.2016].

32 Ibidem.

33 Ibidem.

34 Ibidem.

35 Ibidem.

36 The highest score in 2013 were noted in case of Finland (68,6%), Sweden (67,7%) and Denmark (66,8%).

At the same time, the average rate of unionisation for OECD countries in 2013 was estimated to be 16.9% of working population.<sup>37</sup> Poland, with its unionisation levels (11% of the working population) should be considered as one of the OECD's countries with the lowest score.<sup>38</sup>

Notwithstanding the fact that the Polish legal system offers relatively strong guarantees for trade unions in the field of the freedom of association, it should also be noted that union activities are not very popular among workers, especially in case of the private sector. Also other aspects, such as the specific atomisation of trade unions (confirmed by relatively big number of small organisations), seems to have adverse effects on both the developments of trade unions and their impact on the realities of political, economic and social life in Poland.

### The Self-Governance of Trade Unions

The self-governance in terms of internal organisation and policy is another fundamental pillar of the trade union freedoms. Under article 1(1) of the Act on Trade Unions, a trade union should be defined as “voluntary and self-governing organisation of employees, established represent and defend their rights, occupational and social interests”. A self-governed trade union enjoys autonomy and unlimited liberty in defining its goals and can freely shape its internal structure and organisation.<sup>39</sup> We can mark out two dimensions of the self-governance: the task-program dimension related to defining goals, directions and policies of a given trade union and the normative-functional dimension which concerns shaping the internal structure and organisation of the union.<sup>40</sup>

In legal terms, the self-governance of trade unions is assured mainly by constituting specific legal provisions that are designed to guarantee unions' liberty of defining its functions and shaping its internal organisation. The Act on Trade Unions consist of numerous provisions related to the analysed pillar of trade union freedoms. In addition to the general directive of article 1(1), the Act also guarantees almost unlimited self-governance of trade unions in terms of defining or forming such aspects as: bylaws and resolutions (article 9 of the Act), internal organisational structure (article 9 of the Act), rules of membership (article 10 of the Act), execution of specified union functions

37 OECD, Online OECD Employment database, *Trade union membership and density in OECD countries*, 2013.

38 The worst scores in 2013 were noted in case of France (7,7%), Estonia (6,4%) and Turkey (4,5%).

39 Cf. A. Świątkowski, *Autonomia organizacji partnerów społecznych (związków zawodowych i organizacji pracodawców)*in: System prawa pracy, t. 5, Zbiorowe prawo pracy, K.W. Baran (ed.), Warszawa 2014, p. 299.

40 Cf. K.W. Baran, *Wolności związkowe...*, p.100, J. Żołyński, *Ustawa...*, 2014.



(article 10 of the Act), rules of representation (article 13 of the Act), organisation's authorities (article 13 of the Act) or its financial principles (article 13 of the Act).<sup>41</sup>

Liberty in terms of managing membership matters and defining programme priorities should be considered as two the most important aspects of self-governance. The freedom to define the rules of membership is subjected to almost no legal limitations. The management or another entitled authority of the union organisation independently defines such aspects as the terms of admission and loss of membership, the rules and procedures of election to governing bodies or members' rights and obligations. At the same time, we should not forget about other significant aspects such as trade unions' autonomy in terms of defining their task and policies. It is the external activity of trade unions based on previous plans and assumption that may affect the realities of economic, political or social life of a given country. In these terms, it is extremely important to constitute the legal guarantees of a trade unions' self-governance that will efficiently protect union movement policies from any external and particular pressure, influences and harmful inspirations.

The self-governance of trade unions is also subjected to certain legal limitations determined by the directive of legalism (legitimacy). The provisions of binding international agreements allow public authorities to limit trade unions' self-governance only in specific situations when legal intervention is fully justified by the principle of legalism.<sup>42</sup> For example, under article 8(1) of the International Labour Organization (ILO) Convention no. 87 concerning Freedom of Association and Protection of the Right to Organize, execution of trade union freedoms and rights "shall respect the law of the land" (principle of legalism). Thus, trade unions can enjoy guarantees of self-governance as long as they comply with mandatory rules of law. It should be also noted that any legal limitations imposed on trade union freedoms shall not impair the essence of guarantees provided under the Convention no. 87 (article 8(2)). To sum up, it seems that self-governance and other guarantees (pillars) of trade union freedoms should not be affected by any legal restriction as long as the execution of rights assured under these pillars meets the principle of legalism.<sup>43</sup>

41 Guarantees of trade unions' self-governance defined in the Act on Trade Unions are directly consistent with standards constituted under article 3(1) of the ILO Convention no. 87. The Convention assures that "workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs".

42 Article 59(4) of the Polish Constitution provides that „the scope of freedom of association in trade unions and in employers' organisations may only be subject to such statutory limitations as are permissible in accordance with international agreements to which the Republic of Poland is a party”.

43 International Labour Office, *Freedom of Association. Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, International Labour Organisation, Geneva 2006, p. 45–56.

## The Independence of Trade Unions

The independence should be considered as another fundamental pillar of the trade union freedoms. As article 1(2) of the Act on Trade Unions clearly states, “in pursuing its statutory activities a trade union shall be independent from employers, state administration, territorial self-government, and other organisations”. It simply means that each and every trade union should be free from any external influence of any other organisation or public entity. Such assurance of independence creates specific obligation of the State to both refrain from any interference and to guarantee that any other entity will not compromise union’s independence. It should also be stressed out that presented provisions of the Act on Trade Unions are in the line with the directives of binding international standards that define the principle of public non-interventionism in rightful statutory union activities.<sup>44 45</sup> As can be observed, the independence is directly connected with the self-governance of trade unions. The combination of these two pillars defines full picture of trade union’s autonomy, where the self-governance is related to the internal dimension and the independence should be linked to the external aspects of autonomy.

As already indicated, trade unions should not be considered as direct recipients of the directive of independence, yet they are its main beneficiary. The principle of unions’ independence is addressed mainly to external entities who are legally obliged to refrain from any interference with the statutory activities of trade unions. As was defined in article 1(2) of the Act on Trade Unions, the principle of independence of trade unions is directly imposed on such entities as employers,<sup>46</sup> state and local authorities and other organisations (e.g. foundations, associations, non-governmental organisations, churches and religious communities).<sup>47</sup> It seems that under indicated provisions any external organisation or other entity is required to refrain from defined type of conduct. At the same time, from the perspective of trade unions, independence should be regarded as a simple guarantee that all trade unions in their statutory activities shall be free from any interference, oversight or other type of external influence.<sup>48</sup>

It should also be pointed out that the independence of trade unions, just like the self-governance, is subjected to almost no legal limitations. The only legal restriction may be linked to the principle of legalism (legitimacy) that requires from trade unions

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44 Cf. Article 3(2) of the ILO Convention no. 87.

45 K. W. Baran, *Komentarz...*

46 The Polish Supreme Court in resolution from 12th September 1990 (Ref. III PZP 1/90, OSNC 1991/5–6/55) stated that an employer has no power of control or inspection over union activities of trade unions operating in a given company. Such issues as statutes, association and creation of new organisation, its internal organisation and structure shall be free from any external influences of employers.

47 K. W. Baran, *Wolności związkowe...*, p. 86.

48 Ibidem.

to respect mandatory rules of law. It is clear that independence should not be perceived in such absolute terms as unlimited discretion or total arbitrariness. Consequently, the principle of legalism allows the lawmaker to adopt and impose the appropriate model of judicial control on union activities. Under article 36 of the Act on Trade Unions, the national legislator has introduced a multistage procedure that enables the registry court to correct any unlawful activity of trade union organisation. Judicial assessment showing that a trade union's activity is in contradiction to mandatory rules of law triggers specific procedure. Firstly, the registry court shall specify a period of at least 14 days, within which given trade union has to adjust its unlawful activities to the rules of law. It is also necessary to stress out that the control procedure can be initiated only with the proper motion of a competent public prosecutor.<sup>49</sup>

In case of the failure to correct a unlawful activity within the specified time-limit, the registry court gains the power to:

- impose a fine on members of trade union's body that failed to comply with the court's decision or
- schedule a deadline for elections to the troublesome body of a given trade union, under a threat of suspending the union's insubordinate body.<sup>50</sup>

Finally, if the abovementioned measures proved to be ineffective and following a proper motion of the Minister of Justice, the registry court shall issue a decision to remove the trade union from the register.<sup>51</sup> Under the court's decision, the removed trade union organisation is also obliged to immediately cease its activity and initiate and carry out the liquidation procedure.<sup>52</sup> However, it is also important to underline that such severe sanctions are rarely applied by the registry courts. The national case-law seems to reflect the concept that the sanction of removal may be applied only in extreme cases where the abuse of trade union freedoms and rights is obvious and serious.<sup>53</sup> Examples of such extreme situations may include: initiating illegal strikes, causing serious damage to property or implementing aggressive, discriminating or violent union policies.<sup>54</sup> Nevertheless, competent registry courts usually present a relatively lenient attitude towards unruly trade unions and apply less radical and less effective sanctions.

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49 Cf. Article 31(1) of the Act on Trade Unions.

50 Cf. Article 36(2) of the Act on Trade Unions.

51 Cf. Article 36(3) of the Act on Trade Unions.

52 Cf. Article 36(5) of the Act on Trade Unions.

53 Cf. K.W. Baran, *Wolności związkowe...*, p. 92; A. Świątkowski, *Swoboda podejmowania akcji zbiorowych a prawa obywatelskie, ekonomiczne i socjalne regulowane prawem pracy*, Studia z zakresu prawa pracy i polityki społecznej. t. 2, Kraków 1995, p. 160; W. Masewicz, *Rokowania oraz spory zbiorowe pracy*, Warszawa 1993, p. 84.

54 Ibidem.

## The Equality of Trade Unions

Equality is the last, most important pillar of trade union freedoms guaranteed in the Polish legal system. The principle of equal treatment is directly constituted in article 1(3) of the Act on Trade Unions, under which the legislator has obliged the public (state and territorial) authorities to treat all trade unions uniformly. The principle of equality also binds other entities such as employers or non-governmental organisations.<sup>55</sup> Therefore, it can be noted that the principle of equal treatment is not directly addressed to trade unions, but to other public entities that are in specific factual or legal relationship with union organisations. At the same time, trade unions should be regarded as the only direct beneficiaries of the indicated principle, enjoying particular protection from any discriminating activities of other entities.

The substance of equality of trade unions' can be defined as the legal prohibition on favouring or discriminating any union organisation.<sup>56</sup> In theory, any trade union registered and functioning in Poland should be treated uniformly by the public authorities. It seems that the principle of equality is equally important in the case of mutual relations between employers and trade unions. In this case, the legal obligation to treat uniformly all trade unions obligate employers to refrain from any behaviour manifesting specific preferences or aversions.<sup>57</sup> Consequently, all obliged entities should treat trade unions equally, regardless of their size, structure or popularity.<sup>58</sup>

However, there are some exceptions from the principle of equality and among them the representativeness criterion should be considered as the major one. Presented criterion has crucial impact on actual scope of a given trade union's powers. Put simply, under the concept of representativeness, the scope of trade union's powers and rights should be determined by a given union's size estimated by the number of its members.<sup>59</sup> Consequently, a given trade union can be recognised as representative only when it is the biggest organisation in given company or it associates at least minimal statutory number of workers.<sup>60</sup> Representative trade unions enjoy broader catalogue of powers, especially in situation where in a given company at least two union organisations operate and the total union movement is unable to develop a uniform position.<sup>61</sup> Representativeness also

55 K.W. Baran, *Komentarz...*

56 J. Zołyński, *Komentarz...*

57 Ibidem.

58 Ibidem.

59 Cf. Articles 24117 and 24125a of the Labour Code.

60 Ibidem.

61 In case when more than one organisation function in s given company, which are not able to work out a common position, only the representative organisation shall efficiently express its position. Such an exclusive procedure is linked to issues such as: shaping collective agreements (article 24116 (5) and 24125 (5) of the Labour Code), exceeding reference periods of working time (article 150(3) of the Labour Code), imposing interrupted working time (article 139(5) of the Labour Code) or defining conditions of teleworking (article 676 (2) of the Labour Code).

influences the position of a given trade union outside the work place, favouring dominating union movements, for instance in the case of unions' participation in the Social Dialogue Council.<sup>62</sup>

To sum up, the principle of equality seems to be contradicted by the criterion of representativeness as the latter introduces some degree of exclusivism favouring stronger organisations.<sup>63</sup> However, it seems that concept of representativeness is pragmatically justified. We should be aware that absolute equalization of trade unions may cause that the union movement will be incapable to properly exercise assigned social functions. Consequently, the unlimited union pluralism may lead to the risk that trade unions will be unable to effectively protect and represent the rights and interests of its members.<sup>64</sup>

## Concluding Remarks

The freedom of association, the self-governance, the independence and the equality of trade unions should be regarded as four fundamental pillars of trade union freedoms in the Polish legal system.<sup>65</sup> The fact that the domestic legal system consists of numerous provisions guaranteeing the proper position of union movement seems to support such thesis. It also seems that the national legislator considers trade unions as the key social partner and tries to implement efficient legal guarantees of trade union freedoms.

Concurrently, trade unions enjoying their powers experience only minor legal limitations. It is reasonable to conclude that trade unions in Poland enjoy strong autonomy. National provisions ensure that trade unions enjoy a large degree of liberty in terms of policy making, tasks-defining or shaping internal structure and organisation. Furthermore, the legislator requires public bodies, employers and other entities to treat all trade unions equally and refrain from any interferences. At the same time, the principle of legalism (legitimacy) seems to be the only distinctive restriction imposed on the trade union freedoms. Trade unions, like any other legal entity, have to comply with the mandatory rules of law.

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62 Only representative organisations are entitled to represent employees in the Council of Social Dialogue (article 23 of the Act of 24 July 2015 on the Council of Social Dialogue and other institutions of social dialogue).

63 Cf. J. Żołyński; J. Wratny, Problem reprezentatywności związków zawodowych w zakładzie pracy. Więcej pragmatyzmu czy demokracji?, „Praca i Zabezpieczenie Społeczne”, no. 3, 2012, p. 3.; G. Goździewicz (ed.), *Reprezentacja praw i interesów pracowniczych*, Toruń 2001, p. 9–11.; J. Stelina, *Nowa koncepcja reprezentatywności organizacji związkowej*, „Praca i Zabezpieczenie Społeczne”, no. 6, 2008.

64 Ibidem.

65 K. W. Baran, *Komentarz...*, J. Żołyński, *Ustawa...*

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SUMMARY

**Defining The Pillars of Trade Union Freedoms: The Polish Example**

The aim of the article is to present and characterise the essence of four fundamental pillars (the freedom of association, the self-governance, the independence and the equality) of trade union freedoms in the Polish legal system. The author presents such aspects as the classification of trade union freedoms or the characterisation of chosen specific union pillars. The article is based on the review of the relevant national legislation (including the Polish Constitution, international agreements and the Act on Trade of 23th May 1991), doctrine and judicature.

Keywords: trade unions, freedoms, freedom of association, self-governance, independence, equality, Poland, law, union movement

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