Judgment of 23rd October 2001, K 22/01

UNREPRESENTATIVENESS OF A TRADE UNION AS AN OBSTACLE TO CONCLUDING WORKPLACE COLLECTIVE LABOUR AGREEMENTS

Type of Proceedings: Abstract review Initiator: National Physicians' Trade Union	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0

Legal provisions under review	Basis of review
Inability of unrepresentative trade unions to independently conclude workplace collective labour agreements [Labour Code 1974: Article 241^{25} § 5]	Trade unions' right to conclude collective agreements [Constitution: Article 59(2)]
Criteria for assessing the representativeness of a trade union's workplace structure, including the criteria for determining the number of employees associated in such a workplace structure [*Ibidem*: Article 241^{25a} § 1 and 3]	Principle of equality and prohibition of discrimination Trade unions' right to conclude collective agreements [Constitution: Article 32 and Article 59(2)]

A distinguishing feature of labour law is the assumption that the content of an individual employment relationship, i.e. the legal relationship between an employer and an employee, is shaped not only by the contract between the parties to this relationship and labour legislation but, also, by collective labour agreements concluded between an employer, or employers' representatives, and trade unions representing a certain category of employees. Particular legal problems arise in relation to the phenomenon of trade union pluralism, which is common in Poland and directly related to historical developments beginning in 1980 – i.e. the existence of two or more trade unions, often competing with each other within a particular sector, occupation or workplace. There are no statutory prohibitions on an employee being a member of several trade unions at the same time (although such restrictions may be contained within the articles of association of a particular trade union). Some trade unions limit their scope of operation to a single workplace.

The Labour Code differentiates between two types of collective agreements: "supra-workplace agreements" and "workplace agreements". A supra-workplace agreement is concluded between the appropriate organ of a supra-workplace trade union organisation (e.g. a national trade union) and the appropriate organ of the employers' organisation. A workplace agreement is concluded between a single employer and "workplace trade union organisations" (this term encompasses not only trade unions operating exclusively within a particular workplace but also the workplace structures of supra-workplace trade unions).

According to Article 241^{25} § 5 of the Labour Code, collective agreements should be concluded by all trade union organisations having participated in the negotiations related to this agreement, or at least by all "representative" trade union organisations. Pursuant to Article 241^{25a} § 1 point 1 a workplace trade union is said to be representative when it exhibits a number of necessary features. It must be an organisational unit or a member of a representative supra-workplace trade union organisation (the criteria governing the

representativeness of supra-workplace trade unions are contained in Article 241^{17} and relate to the number of employees associated therein) and have amongst its membership at least 7% of the total employees working for a particular employer. As an alternative, point 2 of the aforementioned provision categorises a trade union as representative when it has amongst its members at least 10% of all employees of a particular workplace employed by a particular employer. In accordance with the first sentence of Article 241^{25a} § 3, the only employees to be taken into account when determining the number of employees associated in a workplace trade union organisation are those who have been members for at least six months prior to this organisation's involvement in negotiations concerning the conclusion of a collective agreement.

The National Physicians' Trade Union challenged the aforementioned provisions of the Labour Code before the Constitutional Tribunal, alleging that they infringe the constitutional principles of: equality (Article 32(1)); non-discrimination (Article 32(2)); and freedom to pursue negotiations and conclude agreements between trade unions and employers (Article 59(2)).

RULING

1. Article 241^{25} § 5 of the Labour Code 1974 conforms to Article 59(2) of the Constitution.

2. Article 241^{25a} § 1 point 1 of the 1974 Code conforms to Article 32(1) of the Constitution.

3. Article 241^{25a} § 1 point 2, read in conjunction with Article 241^{25} § 5, of the 1974 Code conforms to Article 32(2) of the Constitution.

4. The first sentence of Article 241^{25a} § 3 of the 1974 Code conforms to Articles 59(2) and 32 of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. When interpreting Article 59(2) of the Constitution, it is of vital importance to take into account the social function of the right to conclude collective labour agreements: this right not only constitutes the means to further the interests of trade unions and employers' organisations but, above all, serves to realise the interests of employees and employers.

2. Article 59(2) does not provide the basis for every trade union having reached an understanding (i.e. with an employer) to demand the conclusion of a workplace collective labour agreement based on that understanding, regardless of the position of the majority of employees of a particular workplace who are represented by other trade unions.

3. No prohibition flows from Article 59 of the Constitution, which ought to be read in the context of Article 24, such as would prevent the legislator from imposing restrictions on the contents of concluded collective labour agreements where such limitations are indispensable for the realisation of other constitutional values or for regulating the procedure of concluding collective labour agreements.

4. Article 59 contains, inter alia, the requirement for the legislator to guarantee trade unions and employers' organisations: the right to launch an initiative to conclude a collective agreement; the right to participate in negotiations concerning a collective labour agreement; the freedom to decide whether to be bound by a negotiated collective labour agreement; and the broadest possible scope of freedom to formulate collective labour agreements. This provision also requires the legislator to accept the binding nature of collective labour agreements concluded by social partners, in accordance with principles laid down by statute.

5. Article 32(1) of the Constitution formulates the principle of equality in a general manner as a constitutional norm addressed to all public authority organs, whilst Article 32(2) makes the significance of this principle more precise, indicating its universal character (i.e. its operation in all spheres of life), and defining the limits of permissible differentiation of legal entities in such a way that no criterion may constitute a basis for unfair differentiation which discriminates against certain entities.

6. The constitutional principle of equality does not prevent the differential treatment of similar entities provided that three cumulative conditions are met: such differentiation must be rationally justified – i.e. connected with the purpose and contents of the provisions containing a given norm; the importance of the interest to be served by such differentiation must remain proportionate to the importance of interests that will be adversely affected as a result of such differentiation; the differentiation must be based on constitutional values, principles or norms.

7. The activity of a trade union at a particular workplace may be considered a common significant feature justifying – in general – the equal treatment of trade unions in collective labour relations, as regards the conclusion of labour agreements. However, where the aforementioned conditions are fulfilled, it is permissible to differentiate between trade unions on the basis of the criterion of representativeness and to differentiate the criteria of workplace representativeness according to whether or not the workplace trade union is, or is not, an organisational unit of a representative supra-workplace trade union. The challenged provisions of the Labour Code (referred to in the ruling) fulfil these conditions.

8. The Constitutional Tribunal does not share the view that the legislator's definition of the representativeness of a trade union should be based solely upon the criterion of its number of members. The legislator was entitled, by virtue of Article 241^{25a} § 3 of the Labour Code, to introduce an additional criterion that the membership base must have remained stable over a certain period of time.

9. The authorisation to limit a constitutionally guaranteed right may follow not only from an explicit constitutional provision but also from another constitutional norm ensuring the protection of certain constitutional values. In evaluating the situation where a conflict arises between a constitutional norm protecting a particular personal right and a constitutional norm requiring the realisation of another interest, account must be taken of the importance of the values underpinning this particular right vis-à-vis the importance of the relevant constitutional value conflicting with this right.

Provisions of the Constitution

Art. 24. Work shall be protected by the Republic of Poland. The state shall exercise supervision over the conditions of work.

Art. 32. 1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.
2. No one shall be discriminated against in political, social or economic life for any reason whatsoever.

Art. 59. 1. The freedom of association on trade unions, socio-occupational organisations of farmers, and in employers' organisations shall be ensured.
2. Trade unions and employers and their organisations shall have the right to bargain, particularly for the purpose of resolving collective disputes, and to conclude collective labour agreements and other arrangements.
3. Trade unions shall have the right to organise workers' strikes or other forms of protest subject to limitations specified by statute. For protection of the public interest, statutes may limit or forbid the conduct of strikes by specified categories of employees or in specific fields.
4. 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.