

KAZIMIERZ OSTASZEWSKI
OLGA OSTASZEWSKA

WORKER PARTICIPATION IN A COMPANY'S DECISION MAKING PROCESS

INTRODUCTION

The issue of worker participation has become increasingly relevant, particularly since the implementation of EU directives into the Polish legal system. The idea of company democratisation demands the actual and not only formal participation of workers in the company's activities. The enterprise as a socio-economic organization is governed by the same rules as any other area of social life. The idea of worker participation is derived from economics and involves the employees partaking in decisions concerning the management of company's real assets as well as its human resources.¹ The right to participate is achieved through the workers or their representatives gaining influence over the company's economic and employment choices. Participation may also imply that the employee share in revenues or in assets (shareholding). This is the so-called full right of participation. This article aims to draw attention to the aspect of worker participation in decision-making concerning the company's organization and functioning.

KAZIMIERZ OSTASZEWSKI – PhD, Associate Professor at the Chair of Administration Studies, Faculty of Law, Canon Law and Administration John Paul II Catholic University of Lublin; address for correspondence: Aleje Raławskie 14, 20-950 Lublin; e-mail: ostaszkz@kul.lublin.pl

OLGA OSTASZEWSKA – PhD, Associate Professor at the Chair of Form of Landscape, Faculty of Mathematics, Informatics and Landscape Architecture of the John Paul II Catholic University of Lublin; address for correspondence: Konstantynów 1H, 20-708 Lublin; e-mail: oostasz@kul.lublin.pl

¹ See: M. GŁADOCH, *Uczestnictwo pracowników w zarządzaniu zakładem pracy. Problemy teorii i praktyki na tle prawa wspólnotowego*, Toruń 2008, p. 104.

TOWARDS REGULATING THE INSTITUTION OF WORKER PARTICIPATION

Worker participation in Poland is addressed by the constitution. The Constitution of the Republic of Poland of 2 April 1997² guarantees trade unions and employers the right to collective labour agreements and other arrangements. The Polish Constitution states that the economic system in Poland is a social market economy, based on dialogue and cooperation between social partners. This system secures specific values, especially human dignity in labour relations manifested in the workers' right to participate in company management. Yet, the constitution does not explicitly mention the right to participate as a subjective right, as is the case with the right to ownership (Art. 64), occupation (Art. 65), and safe and hygienic working conditions (Art. 66). Owing to the process of adapting our legal system to the solutions functioning in Western European countries, it is hoped that this right will deserve the proper attention of the legislator. Adopted after 1989, the laws on participation refer to the Western European legacy as well as that of the United States, and nearly complete the legal enforcement of this institution.³

Article 18 of the Labour Code⁴ is of particular importance, since it names the general and one of the fundamental principles of labour law that "workers are involved in the management of the workplace to the extent and in accordance with the terms specified in separate regulations." As follows from this article, employers and their organizations, central administration and local government are obliged to provide conditions that allow the activity of worker participation institutions.

² "Dziennik Ustaw" [Journal of Laws] No. 78, item 483.

³ See Act of 23 May 1991 on Trade Unions ("Dziennik Ustaw" [Journal of Laws] 2001, No. 79, item 854); Act of 23 May 1991 on the resolution of labour disputes ("Dziennik Ustaw" [Journal of Laws] 2001, No. 55, item 236, as amended); Act of 30 August 1996 on Commercialisation and Privatization ("Dziennik Ustaw" [Journal of Laws] 2002, No. 171, item 1397, as amended), Act of 6 July 2001 on the Tripartite Commission for Socio-Economic Issues and voivodeships social dialogue commissions ("Dziennik Ustaw" [Journal of Laws] No. 100, item. 1080, as amended); Act of 7 April 2006 on Information and Consultation of Employees ("Dziennik Ustaw" [Journal of Laws] No. 79, item 550).

⁴ Act of 26 June 1974 the Labour Code ("Dziennik Ustaw" [Journal of Laws] 1996, No. 21, item 94, as amended).

THE ORIGIN OF WORKER PARTICIPATION

The idea of participation as a legal institution has a rich tradition. The first legal regulation on the subject goes back to the French Labour Code of 1849, which granted workers the right to establish factory committees sharing decision making authority with the employer on the issues of wages, work regulations, etc. Between 1890 and 1891, France and Germany established statutory bodies of workers' representation. In the interwar period, Whitley committees operated in England, works councils in Germany and staff representatives in France.⁵

Formal participation began in 1920, i.e. upon the adoption of the Law on Works Councils in the Weimar Republic. After World War II, the right to participate was universally recognized in most countries of Western Europe. International standards, especially ILO conventions, were instrumental in this development.⁶

The right of participation is also reflected in the fundamental instruments of European law.⁷ Article 27 of the EU Charter of Fundamental Rights adopted in Nice in 2000 reads that workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.⁸ Information and consultation procedures are regulated to the greatest extent in EU directives.⁹

Under the Act of 5 April 2002 on European Works Councils.¹⁰ Polish workers were granted the right to elect their representatives to European Works Councils in multinationals operating in Poland.

⁵ See: J. WRATNY, *Prawo partycypacji pracowniczej a encyklika "Laborem exercens"*, "Chrześcijanin w Świecie" 1985, No. 8/143, p. 25.

⁶ No. 98 of 1949 on the right of workers to organize and bargain collectively, and Convention No. 135 of 1971 on the workers' representatives, See: *ILO conventions ratified by Poland*, M. SEWERYŃSKI, Warszawa 1983.

⁷ See the European Social Charter (Additional Protocol to the European Social Charter signed in Turin in 1988, Article 137 of the Treaty establishing the European Community ("Dziennik Ustaw" [Journal of Laws] 2004, No. 90, item 864/2) and Article 17 and 18 of the Community Charter of the Fundamental Social Rights of Workers, 1989.

⁸ M. MATEY-TYROWICZ, *Podstawowe prawa społeczne w dziedzinie pracy jako "megaźródła" prawa pracy*, [in:] *Prawo pracy w obliczu przemian*, eds. T. ZIELIŃSKI, M. MATEY-TYROWICZ, Warszawa 2006, p. 53.

⁹ Directive 2002/14/EC of the European Parliament and the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (Official Journal EC L 80, of 23.3.2002, pp. 29-34).

¹⁰ "Dziennik Ustaw" [Journal of Laws], No. 62, item 556.

The workers' right to participate in the decisions of their company has also been provided for with respect to new business entities: i.e. the European Company and the European Cooperative Society.¹¹

WORKER PARTICIPATION IN THE SOCIAL TEACHING OF THE CHURCH

The idea of worker participation is strongly emphasized in Roman Catholic social thought. The Christian concept of participation was a response to the nineteenth century relations in enterprises and the ideas of socialists. In a liberal economy, workers' rights were generally limited to receiving remuneration for work named in the contract ("salarial"). Not until the twentieth century, in conjunction with the development of labor law and trade union activity, were employees allowed to participate in company management and profits. Socialists propounded the ideas of self-governing communes of producers (Fourier), or cooperative development, aimed at transforming capitalism into socialism.

The Roman Catholic social thought began to advocate worker participation in company decision-making in the first half of the nineteenth century. The proponents of the idea were: French economist Frédéric Le Play (1806-1882), Bishop Wilhelm Emmanuel von Ketteler (1811-1877), industrialist Leon Harmel (1829-1915), and in Poland: August Cieszkowski (1814-1894) and Karol Libelt (1807-1875). Not only did they disseminate the theory, but they often implemented it their factories or estates (L. Harmel, A. Cieszkowski).¹² Catholic thinkers emphasized that the right to participate in management is inherent in human nature, in

¹¹ European Companies – Societas Europaea (SE) are governed by two Community regulations: Council Regulation No. 2157/2001 of 8 October 2001 on the Statute for a European Company of the European Union and the Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European Company with regard to the involvement of employees (Official Journal EC L 294 of 10.11.2001). In Poland, on 4 March 2005, the Sejm adopted the requirements of the EU law on the European Economic Interest Grouping and European Company ("Dziennik Ustaw" [Journal of Laws] No. 62, item 554), which regulates the two new types of companies: SCE and SE, and standardizes the establishment, organization and activities of SE in a scope uncodified by the Community law and also implements the provisions of Directive 2001/86/EC on employee involvement. The Council Regulation No. 1435/2003/EC of 22 July 2003 on the Statute for a European Cooperative Society – Societas Europaea Cooperatio – SCE and the involvement of employees in a European cooperative; Council Directive 2003/72/EC of 22 July 2003 was adopted in Poland on 23 June 2006 as the Law on European Cooperative Society ("Dziennik Ustaw" [Journal of Laws] No. 149, item 1077).

¹² Cf. K. OSTASZEWSKI, *Wpływ nauki społecznej Kościoła na zarządzanie przedsiębiorstwem*, Radom 2008, p. 140 ff.

being a person. Human dignity and freedom are manifested in the ability of self-determination and responsibility. The indication of respect for humanity in the enterprise is when the employee may share in decisions effecting their work and bear responsibly for its organization.

Papal encyclicals elaborate upon the ideas of worker participation in a company's decision making. In his encyclical *Mater et magistra* (1961), John XXIII frames the employee's right to participate in company management (MM, 82) „[. . .] We do not doubt that workers should be given an active role in managing the business in which they are employed, regardless of whether it is a private or state-owned company” (MM 91).¹³ In the constitution *Gaudium et spes*, the Council expresses its support for the admission of all persons involved in a company to participate actively in responsibility-sharing. There was also a demand for granting employees the right to voice their concerns in the institutions of a higher order, which resolve economic and social affairs (GS, 68).¹⁴ In the letter *Octogesima adveniens* (1971), Pope Paul VI defines the aspiration to participate in management as a manifestation of human dignity and freedom characteristic of a democratic society (OA, 47).¹⁵

Also, John Paul II raises the issue of participation in his social teaching. In the encyclical *Laborem Exercens* (1981), the pope calls for the establishment of an institution of worker participation, especially employee shareholding schemes (LE14).¹⁶ The pope's argument is personalism-driven. The employee, in the Holy Father's view, has not only the right to a fair wage, but also to a sense of working “for himself”, through which they become the subject of work (LE 15).¹⁷ In John Paul II's text, as in other Church documents on social teachings, no specific institutional solutions are proposed. The Magisterium of the Church should be an inspiration for reforms in the enterprise that should include the issue of workers' right to participation.

¹³ JAN XXIII, *Encyklika “Mater et Magistra”*, [in:] *Dokumenty nauki społecznej Kościoła*, Fr. M. RADWAN, L. DYCZEWSKI, A. STANOWSKI, Rzym–Lublin, 1987, vol.1, pp. 235-237.

¹⁴ Second Vatican Ecumenical Council, *Pastoral Constitution on the Church in the Modern World “Gaudium et Spes”*, [in:] *Dokumenty*, vol. 1, p. 360.

¹⁵ PAWEŁ VI, *Encyklika “Octogesima adveniens”*, [In:] *Dokumenty*, vol. 1, p. 446.

¹⁶ JOHN PAUL II, *Encyclical “Laborem Exercens”*, London 1981, p. 56.

¹⁷ *Ibidem*, p. 60.

DIFFERENT FORMS OF WORKER PARTICIPATION

The right of worker participation is very diversified and is implemented in various forms and at different levels of management. There is a passive and an active form of participation, the latter being a right to obtain information about the condition of the company, to register complaints and demands, to express opinions and have access to consultation. By contrast, with respect to active forms of participation, decisions are taken jointly by both social partners as a result of an agreement reached between the employees and the employer.

Worker participation in a company occurs at various levels of management, i.e. at the workplace, in the company's statutory bodies and in representative bodies of multinationals. In addition, employee shareholding is considered a form of participation; it enables employees to take part in general meetings or general meetings of shareholders.

In the countries with a developed market economy, worker participation programmes have different names. In the United States and France, the term "participation" is used. The UK has a programme of "industrial democracy". In Germany it is referred to as "co-decision" (Mitbestimmung) and in Austria "social partnership" (Sozialpartnerschaft).

In Poland, like in other EU countries, the prevailing model is representative participation. Employees elect their representatives who will co-operate with the employer. In some cases, employees take part in management, but this is not commonplace and occurs only when employees are the company's shareholders (employee shareholding). Thus, they are in a position to co-decide about the company.

The entity enjoying the most extensive participation rights is a trade union. Trade unions in Poland benefit from all forms of participation, ranging from the right to information, through consultation, to co-deciding with the employer. Trade unions participate in the management regarding all matters covered by the subject of participation (economic, social, personal, health and safety issues). They own exclusive consultation rights on the dissolution of employment contracts with individual workers (Art. 38, 52 LC). With the development of new forms of participation, the role of trade unions is diminishing. However, their legal position is still strong. Disputes between trade unions, works councils and other staff representatives are not uncommon. The existing legislation should clearly define the powers of these individual bodies. The literature underlines the limited role of works councils in those businesses where no trade unions operate. Unfortunately, the legislator failed to strengthen the position of works councils and their competence, and did not endow them with the finances that would

ensure their sustainability. Consequently, the number of works councils established in Polish companies is quite low (6%).

WORKERS RIGHT TO INFORMATION AND CONSULTATION

A common form of worker participation in employers involved in business activity was introduced by the Act of 7 April 2006 on Information and Consultation of Employees¹⁸ that implements the provisions of Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002. Before the law came into force, worker participation in company management was limited and effective only in state-owned enterprises, and companies established through the commercialization and privatization of the latter, which employed over 100 employees. As from 24 March 2008, the scope of the act was extended to include employers having at least 50 employees.

According to the act, the exercise of the information and consultation rights was entrusted to works councils appointed from trade unions (Art. 3(2)). The act stipulated two models of composing such works councils.¹⁹ If the employer is covered by the activity of company-internal or inter-company trade unions, then only those organizations have the right to choose works councils or put forward the candidates for members of works councils (Art. 4(1)(2) and Art. 4 (3)). When there are no trade unions in the company, works councils are elected by employees (Art. 4(4)). The establishment of a works council depends on the will of the entitled trade unions or employees. Lack of action of the entitled employees means that they do not have the intention of using their statutory powers to create the council. The election of works council members is held by the employer at the request of at least 10% of workers (Art. 8(1)). The right to vote is available to any employee with the exception of juvenile workers; in order to run for election, candidate employees are required to have at least one year of employment at the current employer (Art. 9(1) and (2)). The election is carried out by the election commission. The term of office is 4 years (Art. 11(1)). The act generally defines the scope of information that the employer is obliged to provide to the works council: the company's activity and economic condition, company activity that may cause significant changes in work organization or the level of employment

¹⁸ "Dziennik Ustaw" [Journal of Laws] No. 79, item 550.

¹⁹ See: L. FLOREK, *Prawo pracowników do informacji i konsultacji*, "Monitor Prawa Pracy" 2006, No. 5, p. 237 and others.

(Art. 13(1)). The social partners may agree to make the information provided more detailed. A superior form of interaction of works councils with the employer is to hold consultation by exchanging views and maintaining a dialogue (Art. 14(1)). Due to the nature of the provided information, for example, financial information (the balance sheet, or profit and loss account), the legislator envisaged the option of referring to external experts for assistance.

WORKER PARTICIPATION IN DECISION-MAKING IN THE FIELD OF OCCUPATIONAL SAFETY AND HEALTH

Workers participation in occupational safety and health protection plays a significant role in European law. Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work²⁰ provides various forms of worker participation in shaping the working conditions, from information and consultation, to participation and the right to require the employer to take appropriate measures (Art. 11(3) of the Directive). Participation is manifested in the right to ask the employer to take appropriate measures to mitigate hazards for workers or to remove sources of danger. Regarding to the form of participation, the directive refers to national legislation.

The problem of worker participation concerning the occupational safety and health at the workplace is regulated in the domestic law in several ways. According to Art. 26(3) of the Act of 23 May 1991 on Trade Unions,²¹ a trade union organization has control over the observance of safety regulations in the company. The workers' representative supervising the compliance with occupational safety and health regulations is a social labor inspector, the body established under the Act. of 24 June 1983 on the Social Labor Inspection.²² The inspector is elected by the workers in a vote held by trade unions. Besides supervision, the social labor inspector examines the causes and particularities of accidents at work, takes action to improve working conditions, and participates in the occupational health and safety committee. The consultations on matters of occupational safety and health can be held directly with employees, their representatives and within the above-mentioned committee, which must be established by an employer with over 250 employees. During consultation, the employees or their representatives may submit proposals for eliminating or reducing occu-

²⁰ Official Journal EC No L 183, p. 1.

²¹ "Dziennik Ustaw" [Journal of Laws] 2001, No. 79, item 854.

²² "Dziennik Ustaw" [Journal of Laws] No. 35, item 163, as amended.

pational hazards and for the improvement of working conditions. They also have the right to submit well-grounded requests to the State Labour Inspectorate for auditing the instances of life and health risks within the enterprise.²³

CONCLUSION

The right of worker participation, as corroborated by the relevant research, is instrumental in improving the quality and efficiency of work. The idea of the inclusion of workers by offering them access to information and consulting on essential business issues, and the various forms of participation in the wider decision-making process within the enterprise foster greater worker empowerment in labor relations. Such an approach makes the employees feel that they are co-hosts of their workplace, thereby increasing the efficiency of work and the competitiveness of the company. In addition, participation prevents conflicts and reduces the risk of strikes or other forms of protest, which contributes to the strengthening of peace and social order.

BIBLIOGRAPHY

- BAR L., Prawna reprezentacja pracowników najemnych przedsiębiorstwa w gospodarce rynkowej, [in:] *Partycypacja i akcjonariat pracowniczy w Polsce. Stan i perspektywy*, L. GILEJKO, Warszawa 1995.
- DOUCOULIAGOS Ch., Worker participation and productivity in labour management and participatory capitalist firms. A meta-analysis, "Industrial & Labour Relations Review" 1995, vol. 49, No. 1, pp. 58-77.
- FLOREK L., *Informacja i konsultacja pracowników w prawie europejskim*, Warszawa 2002.
- GILEJKO L., Szanse akcjonariatu pracowniczego, [in:] *Ekonomika – polityka – świadomość społeczna*, ed. K. URBAN, Kraków 1998.
- GLĄDOCH M., *Uczestnictwo pracowników w zarządzaniu zakładem pracy. Problemy teorii i praktyki na tle prawa wspólnotowego*, Toruń 2008.
- IGNYŚ A., *Partycypacja pracownicza w świetle nauki społecznej Kościoła katolickiego*, [in:] *Partycypacja pracownicza. Echa przyszłości czy perspektywy rozwoju?*, S. RUDOLF, Łódź 2001.
- KRZYSKÓW B., *Partycypacja pracownicza w dziedzinie bezpieczeństwa i higieny pracy – aspekty prawne*, "Bezpieczeństwo Pracy" 2007, No. 1, pp. 2-5.
- MATEY-TYROWICZ M., *Podstawowe prawa społeczne w dziedzinie pracy jako "megaźródła" prawa pracy*, [in:] *Prawo pracy w obliczu przemian*, eds. T. ZIELIŃSKI, M. MATEY-TYROWICZ, Warszawa 2006.
- MĄCZYŃSKI J., *Partycypacja w podejmowaniu decyzji*, Warszawa 1996.

²³ See B. KRZYSKÓW, *Partycypacja pracownicza w dziedzinie bezpieczeństwa i higieny pracy – aspekty prawne*, "Bezpieczeństwo Pracy" 2007, No. 1, pp. 2-5.

- MENDEL T., Argumenty przemawiające za partycypacją pracowniczą, [in:] Partycypacja pracownicza. Echa przeszłości czy perspektywy rozwoju?, ed. S. RUDOLF, Łódź 2001.
- MENDEL T., Partycypacja w zarządzaniu współczesnymi organizacjami, Poznań 2001.
- Perspektywy rozwoju partycypacji pracowniczej w Polsce w warunkach Unii Europejskiej, ed. S. RUDOLF, Łódź 2007.
- PIWOWARCZYK J., Partycypacja w zarządzaniu a motywowanie pracowników, Kraków 2006.
- Rady pracowników na nowym etapie. Komentarz do ustawy o informowaniu pracowników i przeprowadzaniu z nimi konsultacji wraz ze wzorami pism, ed. J. WRATNY, Warszawa 2008.
- SIERPIŃSKA M., Polityka dywidend w spółkach kapitałowych, Warszawa–Kraków 1999.
- WRATNY J., Partycypacja pracownicza w przedsiębiorstwie, Warszawa 1993, "Instytut Pracy i Spraw Socjalnych. Materiały", vol. 7.
- WRATNY J., Partycypacja pracownicza. Studium zagadnienia w warunkach transformacji gospodarczej, Warszawa 2002.

WORKER PARTICIPATION IN A COMPANY'S DECISION MAKING PROCESS

Summary

This article discusses the origin and development of worker participation in the European Union legislation and its implementation into the Polish legal system. The idea of worker participation is deeply rooted in Roman Catholic social thought, today highlighted in the Magisterium of the Church. Through the right to participate, employees or their representatives may have influence over decisions related to all key aspects of the company's operation. The legal guarantee of worker participation in decision-making has a positive economic impact resulting in increased competitiveness.

Key words: worker participation; decision-making; industrial democracy; enterprise; works council.

WSPÓŁCZESTNICTWO PRACOWNIKÓW W PROCESIE DECYZYJNYM SPÓŁKI

Streszczenie

W artykule omówione są początki i rozwój współuczestnictwa pracowników w legislacji Unii Europejskiej i implementacja tej legislacji do polskiego systemu prawnego. Idea uczestnictwa pracowników jest głęboko zakorzeniona w myśli społecznej Kościoła katolickiego, a dzisiaj podkreślona jest w Magisterium Kościoła. Poprzez prawo współuczestnictwa pracownicy lub ich reprezentanci mogą mieć wpływ na decyzje związane ze wszelkimi kluczowymi aspektami działania spółki. Prawna gwarancja współuczestnictwa pracowników w podejmowaniu decyzji ma pozytywny wpływ ekonomiczny skutkujący zwiększoną konkurencyjnością.

Słowa kluczowe: współuczestnictwo pracowników; podejmowanie decyzji; demokracja przemysłowa; przedsiębiorstwo; rada pracowników.

Przetłumaczył Tadeusz Karłowicz