

# THE EU LAW OBSERVATION POLICY IN THE FIELD OF CONDUCTING ECONOMIC ACTIVITY

**Wiesław Breński**

The University of Warmia and Mazury in Olsztyn

*Abstract: The EU law is a specific legal system different from the international one as well as the laws of particular Member States. The EU law means contemporary law of the United Europe together with already shaped principles emphasizing on comprehension and the use of legal norms, the EU policy, judicial decisions, customs and values that exist in the EU functioning are taken into account. The European law is an ordered system due to described criteria, according to which it is classified. The way of creating the law, the European law may be divided as follows:*

- *Primary law is created by the Member States via international agreements;*
- *Secondary law is created by the EU bodies on the basis and within primary law.*

**Key words:** *the EU law, primary law, secondary law, business ethics, state policy, economic activity.*

## 1. Introduction

The EU law is a specific legal system different from the international one as well as the laws of particular Member States. The EU law means contemporary law of the United Europe together with already shaped principles emphasizing on comprehension and the use of legal norms, the EU policy, judicial decisions, customs and values that exist in the EU functioning are taken into account. The European law is an ordered system due to described criteria, according to which it is classified. The way of creating the law, the European law may be divided as follows:

- Primary law is created by the Member States via international agreements;
- Secondary law is created by the EU bodies on the basis and within primary law.

Observing human rights within conducting economic activity is a basic element of ethic business and common responsibility of companies and social entities which should cooperate in order to prevent from their breaking. In the Communication “The EU renewed strategy for 2011-2014 concerning social responsibility of companies” [The European Commission, 2011, p. 16], the European Commission enhances all big European companies to oblige to observe at least one of the indicated standards until 2014 (Guidelines of the UN concerning business and human rights Global Compact, ISO 26000, OECD Guidelines, the ILO Tripartite Declaration of Principles of the International Labor Organization). The issues concerning human rights appear in different range and different emphasis in all branches and kinds of economic activity, there are no companies which the matter “does not concern to: [The European Commission 2011, p. 16]. The next international documents indicate that challenges connected with observing human rights should be treated as a foundation of ethic business and an element of business risk and be the subject of careful monitoring. Thus, the UN Guidelines concerning business and human rights recommend conducting so called *due diligence* also within human rights. A significant responsibility of business and states is creating and implementing effective

preventing and reorganization mechanisms if there were cases of infringement within human rights. The EU notices human rights as common and inseparable ones. It actively promotes, defends them both within its borders, and when they are engaged in the relations with non-EU Members, human rights democracy and state law are the basic EU values. They were built in in the founding treaty, strengthen when the EU adopted the Charter of Basic Rights in 2000 and more when the Charter became legally binding together with the Lisbon Treaty coming into force in 2009. Human rights and cultural diversity must be treated as mutually supplementary ones. Thanks to human rights, especially the right to giving opinions, freedom of assembly and enabling other rights including economic, social and cultural rights, everybody is entitled to contribute to a society, reflecting own opinions, culture and traditions in comprehension and tolerance towards others.

## **2. Human right in a workplace**

Fast development of globalization processes makes international enterprises meet more and more pressure of competition and maintaining its position on the market. International companies are found to be key player on the global market nowadays. Globalization and internationalization of business led to privatization of functions so far performed by a state and caused transfer of responsibility and power from a government onto market forces [Szymonek, 2011, p. 6]. There are quite interesting data concerning breaking human rights in the report of the University in Edinburgh concerning breaking human rights by the European corporations running economic activity in Third Countries. As the data included in the report show, internationalization of business leads to bigger discrepancy between ability to run economic activity by international corporations and the ability of a state to control such activity [Augenstein, 2010]. Professor Aniela Dylus writes about the crisis of state structures caused by one sided dynamics of economy development, explaining such a state of matter by disturbing the proportions between economy, politics and a society [Dylus, 2005, p. 372]. One of the causes of a state crisis and lack of ability to perform macro-economic functions i.e. contemporary is unable to deal with the issues of world's economy and competitiveness with the help of regulations and policies because globalization limits the capability. The problem of enterprises with the global dimension may be solved only on the international level. Running a fair activity in an international dimension is a chance for all but it demands creating and implementing development policies considering social aspects in economy with the respect of human rights. One of the instruments of such policy is international labor standard. Obviously, existence of law itself and ratification of the International Labor Organization (ILO) does not prove its observation. We may notice the lack of effective penal system for illegal activities of employers towards employees and the lack of supervision from the side of a state, there are more and more corporate pathology used by injustice entrepreneurs who use illegal practices. Despite legal regulations in proceedings codes, international conventions and legal regulations of particular states with bounding character, however, the rights are not enough guarantee of accordance of activities. But, they contribute to make a positive image of companies and use profits because of them in a significant way. McCrudden indicates that the more international standards in the area the more visible precipice between aspirations and reality [McCrudden, 2006]. While debating on the development of corporate social responsibility (CSR), the debate participants claimed that the issues of freedom of assembly, the right to collective negotiations, ban of discrimination of unions' activity should not be omitted, namely they are fundamental human rights and freedoms [Debate: *Human rights in workplaces. International perspective, Warsaw 2011*]. The pressure of competition on global markets often leads to searching for savings by

companies, e.g. in moving production to countries with lower remuneration or quite lower social standards of workers, not observing human rights including workers' ones or environmental protection. There are often situations when even lower standards are not observed, therefore the weakness of a legal system of a state accepting the investment is used, it does not protect enough a worker against such activity. Observing law in such cases concerns only headquarters of enterprises. The situation is worse in subsidiaries of those enterprises, especially if they are in the countries with less developed democracy. It is worth to add that using double standards touches not only Middle Eastern Europe (an attractive investment region for Western Europe or the USA) and developing economies but it also becomes a phenomenon that also exists in such countries as the USA where the matter of using double standards by the European companies in the area of observing unions' rights. Image whitewashing is one of the forms of pseudo-responsibility within the run activity often used by international entrepreneurs. Disrespecting human rights or labor unions' by employers is hushed up via intensive activity, e.g. towards environmental protection or charity "supported with" any PR techniques aiming at creating favorable company's image. Obviously, breaking law cannot be justified by the need for dynamic development, necessity to face challenge of contemporary world market or anti-crisis tightening a corporate's belt. Legal regulations should be applied and respected by entrepreneurs' owners in all countries where economic activity is run regardless their location.

Nowadays, one of the main directions of activity of state governments should be leading to the respect of human rights in all the process of economic activity. However, the world's data concerning breaking human rights are alarming. More and more often, the matter of breaking human rights by the European corporations in the Third world countries is aroused. One of the problems of breaking human rights that happens most often is breaking employees' rights. Next actions of breaking human rights may be seen in the area of environmental protection in the Third World countries which negatively influence health and lives of inhabitants of certain countries and regions. Therefore, numerous actions aiming at limiting such practices have been undertaken. One of such actions include European Coalition for Corporate Justice within Rights for People Rules for Business campaign. Prof. John Ruggie of Harvard University, the UN Secretary General representative for Business and Human Rights, also arouses the need for regulations concerning respecting human rights by international business. According to the professor, the source of the problems concerning business and humans rights are gaps in regulations of companies' economic activity. Ruggie, in his report *Respect, Protect, Remedy*, emphasizes not only the necessity of respecting law by international companies in all the countries in which the business is located but also the necessity of strengthening of the role of a state being an effective protector and executor of widely comprehend human rights including employees' rights. \*

*\*According to the following data: The UNHR press information (<http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-endorsed-16-jun-2011.pdf>) from August 30, 2013*

### **3. Breaking human rights and union's rights in a workplace**

The matter of respecting union's rights cannot be unimportant for observing human rights in a workplace. In the countries with low standards, labor unions play a significant role in order to protect employees' rights, i.e. human rights. Labor unions' actions are not free from discrimination which adopts the most drastic forms in some parts of the world. As regards Poland, breaking unions' rights does not only concerns foreign companies but also

those national ones. Freedom of assembly and collective negotiations were included in the two International Labor Organization (ILO) conventions: Convention 87 concerning union freedom and protection of unions' rights as well as Convention 98 concerning using the principles of assembly collective negotiations. This year Convention 87 will have been ratified for 62 year, overwhelming only half of the world's populations economically active.

International Trade Union Confederation (ITUC) includes 305 organizations in 151 countries and territories in all continents with the number of 175 million of members 40% of which are women. Every year, ITUC prepares and publishes an Annual review of breaking unions' rights noticing the cases of unions' rights discrimination all over the world.

#### **4. The cases of unions' rights infringement. An annual review of breaking unions' rights 2010**

Discrimination of union activists adopt various forms. The most drastic ones include murder, mutilation of union activist, committing crime of other types physical or mental one, limiting freedom etc. Those brutal acts of union discrimination occur mainly in developing countries and those where independent union activity is connected with the development of democracy.

According to Przegład, 101 murders were committed in 2009, in previous year the number of murders was lower, i.e. 76 union activists died, however the data of this year's issue indicates 90 killed [Szymonek, 2011, p. 12]. There are also acts of discrimination and breaking human rights in some European countries. The symptoms are arresting, repressions, dismissing, blackmail, harassment, ridiculing employees belonging to and acting in a union activity, those are typical forms of discrimination occurring in Europe. Crisis caused that a huge number of employees was forced to undertake work in dangerous and unstable conditions. According to ILO almost 50% of global work force is employed in such conditions. It concerns especially Special Economic Zones in the South Eastern Asia and Central America, home employees (Middle East, South-Eastern Asia), immigrants and farm employees [Szymonek, 2011, p. 12].

It should be noticed that women represent majority of those employed in the above mentioned sectors. A quite big phenomenon, recently noticed, is the growth of informal employment and development of atypical forms of work is noticeable in all systems of employment and world regions. Employees experience huge difficulties with organization and execution of union and labor rights. The characteristic of regional trends together with the examples of breaking human rights in a workplace are presented below.

##### **► Africa**

Particularly drastic suppression of strikes occurred in 2009 in the South Africa. The police used weapon to shoot to the strike participants. Burundi and Chad are the countries where several attempts of murder of human and trade union rights' protectors. In Algeria and Kenya, teachers participating in manifestations for improvement of their work conditions were crushed and arrested in a bloody way resulting in bad injuries and 90000 teachers in both countries were given orders to resign from the union [Szymonek, 2011, p. 13]. Egypt is another country where the rights of union members are broken by harassment and assault. In Zimbabwe, there were particularly severe acts of crime towards union activists by group dismissing and arrests as well as serious battery and wounds of union activists by the police. Breaking human and union rights also occurred in Sudan.

Fundamental union rights are guaranteed in many constitutions of African countries. However, the matter of implementation of that right looks completely different. The

problem particularly concerns such countries as Cameroon, Kenya, Liberia, Nigeria, Tanzania and Ivory Coast. The governments of Algeria, Swazi and the Republic of South Africa often refuse to register trade unions. The right to strike is often infringed and employees are harassed or dismissed due to participation in strikes.

#### ► **America**

America is a region where the most brutal anti-union actions such as murders, threats of murders, kidnapping of union activists occur. Many independent observers of International Labor Organization claim that Latin America means a death continent for union activists. In 2009, the following number of murders were noticed: 48 in Columbia, 16 in Guatemala, 12 in Honduras, 6 in Mexico, 4 in Brazil and 3 in Dominican [Szymonek, 2011, p. 13].

Creation of union organizations in Special Economic Zones is difficult or impossible because of the law or pressure made by employers which cause the combat for improvement of working conditions in those places unable. Such developed countries as the USA or Canada also belong to that region. Employees also experience discriminating practices in the USA. The law inefficiently protects union freedom providing employers great freedom in different actions.

Anti-union discrimination and avoiding collective negotiations are a common phenomenon. The use of double standards of work in the USA is an incredibly interesting practice. The example may be activity of a famous German telecommunication company which respects working standards (especially within creation of union organizations and joining them) in a mother company, however, in a daughter company located in the USA, discriminating anti-union practices are acceptable. In Canada, the law protects collective negotiations but there are certain restrictions according to the province. Those employed in agriculture in Albert or Ontario provinces are excluded from the right to assembly or collective negotiations. The right to strikes is limited. It especially concerns public services employees.

#### ► **Asia and Pacific**

That region also did not remain free from death casualties of anti-union actions. Massive protests organized in some countries of the region were repressed in a bloody way. Despite that ILO mission was sent to Philippines in order to check the accusations of murders and kidnapping union activists, anti-union actions have not stopped. Harassment of activists such as murders or kidnapping were continued making Philippines one of the most dangerous places in Asia for union activists. Three activists were killed, one of them died of injuries after being questioned by state defense officers [Szymonek, 2011, p. 14]. In Bangladesh, during a repressed strike, six employees of textile industry died. In similar circumstances, one employee died in India. A significant number of employees suffered from police repressions. The situation in Burma has not improved, where repressions adopt bloody forms and all union organizations may act illegally, the Federation of Burma Trade Unions is still treated as an illegal organization.

The situation of trade unions looks similar in the North Korea where, in fact, no unions may exist. Organizing employees in trade unions is incredibly difficult in Asia. Not only legal regulations are unfavorable to it but also employers' practices in the matter of anti-union actions such as dismissing, harassment, threats, blackmail, forcing to resigning from unions or, as in Philippines, false accusations of activists.

Also implementation and execution of law concern. The right to strikes is limited as long as it exists. Any demonstrations are often repressed in a bloody way. In Burma, two activists were sentenced for 10 years of imprisonment for help to farmers in preparation of a complaint to ILO for their land confiscation and the farmers were illegally arrested and

tortured before the case the court's verdict. Forced work in Burma is such a common phenomenon as it was 10 years ago and is a big problem in that region. In 2009, 2 deaths resulted from using the practice were noticed. The cases of forced work were reported also in China and Pakistan. As regards children's work, the reports concerned Bangladesh, Burma, India, Indonesia, Pakistan. In Bangladesh, the biggest number of children is employed in shipyard industry, in extremely dangerous conditions for their health and life, namely in demolition of wrecks and ships. Children state 25% out of all those employed for that kind of work. In India, there were a few deaths on cotton plantations, including a child's death. The recent reports indicate that about 150000 children are employed on those plantations. In Burma, children are enrolled into the army. In Indonesia, hundreds of thousand girls are employed for house works. They work long hours without any free day. In the worst cases, they are victims of mental and physical violence as well as sexual abuse. The Indonesian law does not overwhelm those employed for house works, therefore, they are devoid any employee rights or protection [Szymonek, 2011, p. 13]. Another problem connected with respecting human rights in a workplace in Asia are Special Economic Zones. It concerns Philippines, Vietnam, Sri Lanka and Fiji. Organizing unions in those zones is really difficult. Even if employees may create a union, employers of the zones located in the mentioned countries use numerous anti-union practices making effective creation of formal employee representation unable.

The matter of breaking law and migrating employees' exploitation is presented in an alarming way. The worst forms of breaking employee rights occur in Asia and the Near East. Exploitation of mobile work force both from abroad and national one often occurs together with human trade. Migrants are often devoid any rights and protection. One of the examples may be a situation that happened in Malaysia where an Indonesian chambermaid was deadly beaten by her employer.

#### ► **The Near East**

That region only in 2009 made a significant improvement in the matter of respecting human and union rights. It makes the region where union rights are protected the least. The report data [Szymonek, 2011, pp. 15-6] includes first of all union activists' repressions of the worst kind such as murder, arresting, severe battery, shooting to participants of demonstrations, including peaceful marches. The situation of migrating employees, especially those from Asia, is still getting worse. A secretary of Iraqi trade unions died of an attack. Also, a peaceful march met with the police aggression, where its participants were beaten and many of them were arrested. In Iran, the situation of trade unions looks similar. Employees experience numerous difficulties at the moment of attempting to create a union organization. Those celebrating the 1<sup>st</sup> May were arrested and beaten, the police used tear gas. Many teachers were severely beaten or arrested while the Teacher's Day. There are still a big number of the most important Iranian union leaders including Mansoor Oslanoo who was imprisoned together with those sentenced for murder. Not only an international union movement demands his freedom but also Amnesty International runs a campaign to free the union leader [Szymonek, 2011, p. 16]. Migrating employees make a significant part of work force in many countries of the region, such as Oman or the United Arab Emirates. Despite certain improvement in legal matters, migrating employees often do not have full employee rights. Employment without relevant permits is popular, passports are taken away just after entering the foreign country. Workers are forced to work long hours in tragic conditions for low wages. National migrating employees are often victims of physical harassment and sexual abuse, and migrants who object such treatment are repressed. The example are those protesting in a textile sector who were beaten and

deported to their countries. In Saudi Arabia, 23 Chinese employees were arrested and forced to leave the country when they protested against too low wages.

The biggest barriers to free execution of union rights were noticed in such countries as Bahrain, Jordan, Kuwait, Oman, Qatar, Syria, Yemen. In those countries, there is a monopoly for the activity of one officially approved union organization. In Iran, employees may “choose” Islamic Labor Council or association. In the United Arab Emirates, the law allows employees to organize themselves only into associations. Union activity is forbidden in Saudi Arab. In several countries, the government controls the activity of trade unions, e.g. in Iran signing a collective agreement must be proceeded by a government’s permit, in Lebanon, government controls any union elections, in Jordan, any strikes are illegal if there was no government’s permit before the start of the protest.

The right to collective negotiations is not respected in the following countries: Bahrain, Jordan, the United Arab Emirates. In other countries, although legally allowed it is extremely difficult to execute. The right to strikes is limited in Oman, Qatar, Syria, Yemen and it does not concern the public sector in the United Arab Emirates, Iran, Kuwait and Qatar. In Saudi Arabia strikes are completely forbidden Promises to strengthening the protection of union rights have not been realized. In Iraq, the regulations concerning trade unions’ activity derive from the Saddam Hussain regime and in Kuwait, despite implementing a new Labor Code, many extensive restrictions have not been removed.

### ► Europe

The problem of breaking employee rights also occurs in some European countries where employees attempt to create unions and run union activity, they are also victims of different discriminating practices although not as drastic as in other regions of the world. It also happen in the countries with a traditional model of industrial relationships. The economic crisis severely touched in many European economies, employees particularly suffered, being dismissed dues to compulsory restructuration activities. Protests and demonstrations were society the response to the lack of capability of many governments to manage with recession as well as the lack of implementation of effective anti-crisis solutions protecting business and employees.

Russia submitted a complaint to ILO because of constant attacks to union leaders and union rights, government interventions, rejecting registering and accepting trade unions’ activity as well as general lack of making effort in order to conducting investigation in breaking union rights.

Belgian trade unions also submitted a complaint to the European institutions concerning breaking the right to strikes. In Turkey, there was not progress in protection of trade unions. Contrary, there was a dramatic growth of the number of court cases limiting trade unions’ activity. What is more, last year, many demonstrations were crushed by the police, also with the use of force. In total 61 people were arrested for union activity, many of them were sentenced.

The situation of trade unions is getting worse and worse also in Belarus, despite the efforts undertaken in order to counteracting trade union discrimination, e.g. as rejection of their registering or dismissing from work due to union’s activity.

However, the court restored to work a union activist for the first time, who was dismissed due to the activity towards protection employee rights. In Albania, the government unexpectedly undertook legal actions depriving unions their property which limited their activities in a drastic way. There is also an alarming tendency to attack family members of union activists resulting in dismissing from work or other similar practices. Actions in

order to weakening trade unions' position were also noticed in Georgia and Ukraine where 106 court cases were against trade unions and their leaders.

In Great Britain, a black-list including data of union activists was discovered in March last year. In many European countries, the right to strikes is not observed and does not exist at all.

In many countries, strikes are allowed only in the context of a collective dispute. Sometimes, when a strike is considered illegal, its participants and the union that organized it, are put to responsibility and are the subjects of severe punishment, as it happened in Serbia.

In Europe, the situation of unions collecting public services employees is getting more and more worrying. Estonia, Greece, Germany, Turkey and Ukraine are the examples of the countries in which employees are not overwhelmed by the right to organize themselves. The right to collective negotiations does not overwhelm public services employees in Bulgaria or Germany. The law allows in a limited range to negotiations concerning conditions of employment in the Czech Republic, Portugal, Latvia and Turkey. Practically the use of the law concerning functioning trade unions is not satisfactory. One of numerous examples may be Georgia, where the court used rights banning anti-union discrimination, and in Croatia, court cases are too long, implementation of decisions is ineffective and monitoring and further proceedings concerning breaking employee rights are on a very low level.

A dangerous and spreading phenomenon in Europe is human trade and force work. As the data shows, in Azerbaijan, over 700 were the victims of human trade in 2009. Unfortunately, also in Poland we can observe the development of that phenomenon. As the police statistics show, 11 such crimes were revealed in 2001 but in 2009 the number growth up to 445 [Szymonek, 2011, pp. 17-18].

## **5. Human rights and business**

Respecting human rights within running economic activity is a basic element of ethic business and common responsibility of companies, states and social entities which should co-operate for counteracting their breaking. The matters of human rights appear in different range and with a different emphasize in all branches and kinds of economic activity, there are no companies which that subject does not concern to. The following international documents indicate that the challenges connected with respecting human rights should be treated as a foundation of ethic business and the element of business risk and be the subject of careful monitoring. Therefore, the UN Guidelines concerning business and human rights recommend conducting so called *due diligence* also within human rights. A significant responsibility of business and states is creating and implementing effective preventive and reorganization mechanisms if there was infringement within human rights.

Nowadays, it is difficult to find documents or guidelines contributed to responsible business that would omit the subject of human rights. Despite that, the debate on respecting human rights by business is not easy because of few reasons. First, the range of generality of contemporary documents devoted human rights and the "volume" of the notion itself usually leave a huge space for interpretation. Lecturing national law and approved standards may be helpful but it should be remembered that also for national administration, the matters connected with human rights may be a serious challenge.

Unfortunately, it must be taken into account that breaking human rights (via avoiding insuring employees or using corruption mechanisms) may be profitable for a company or a state for a short time. The other problem is different sense of responsibility and demands



towards business The sectors that public opinion by intuition connects with the threats concerning human rights (e.g. mining, oil, weapon trade, etc.) are usually of greater awareness of their influence in that area. It is more difficult to ask and receive answers from representatives of the branches which connection with the matter of human rights is not as obvious, e.g. the bank or automobile sector. The challenge is more and more complex and global way of conducting economic activity. The growing number of suppliers and outsourcing of its particular elements may limit a company's knowledge on its real impact on environment which, obviously, does not release it from liability for potential negative effect of lack of such information.

Business and human rights infringement. The actions of high risk include:

► A company's actions may become a direct reason for human rights infringement, exposing employees on the work in harmful conditions for health without providing necessary safety measures, discriminating recruitment assumptions.

► A company's actions may contribute to human rights infringement, transferring data by an Internet supplier to a state government which may want to use it to infringe human rights; shopping policy of „the lowest price” regardless the quality and origins of the ordered products/services.

► It is possible to relate a company to human rights infringement via its products/services; lending money to enterprises which activity may infringe human rights; using sub-elements/raw materials coming from illegal/doubtful source (e.g. wood) or those that are the subject of conflicts (e.g. diamonds or minerals).

### **Bibliography**

[1] Augenstein D., Study of the Legal Framework on Human Rights and Environment Applicable to European Enterprises Operating Outside the European Union, The University of Edinburgh, Edinburgh 2010.

[2] Dylus A., *Globalizacja, refleksje etyczne*, Wydawnictwo: Zakład Narodowy im. Ossolińskich, Wrocław 2005.

[3] McCrudden, Ch, Corporate Social Responsibility and Public Procurement, University of Oxford Faculty of Legal Studies, Re-search Paper Series, Working Paper No 9/2006.

[4] The European Commission, Communication of the Commission to the European Parliament, Council, European Social Economic Committee and the Committee of Regions, *Odnowiona strategia UE na lata 2011-2014 dotycząca społecznej odpowiedzialności przedsiębiorstw (The renewed EU strategy for the years 2011-2014 concerning social responsibility of enterprises)*, KOM (2011) 618 from October 25, 2011, Brussels 2011.

[5] Szymonek J., *Prawa człowieka w miejscu pracy. Międzynarodowe perspektywy*, Wydawca: Biuro Komisji Krajowej NSZZ „Solidarność”, Copyright NSZZ „Solidarność”, Warszawa 2011.