ANTI-CRISIS LABOUR LAW IN POLAND

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The global economic crisis, started in the USA in autumn 2008, spread to other parts of the world in a relatively short time. Although its direct causes are closely related to operation of financial institutions, banks in the first place, its most painful effects are those manifested in the social plane. The limitation of demand for goods and services results in a drop in business traffic which fact, in turn, translates into mass redundancies and increasing level of unemployment. In a majority of the countries struck by the crisis actions are taken aimed at reduction of the scale of the adverse phenomena. Among the measures taken, an important role is played by those directly aimed at labour market protection, including maintenance of jobs and supporting people who become unemployed. States attempt at using a wide range of measures from subsidizing entire sectors of the economy and big companies to providing credit guarantees to flexibility of legal regulations in the field of business activity, the area of broadly termed labour law and social law in particular.

Keywords: global economic crisis, financial institutions, unemployment, labour law and social law.

I. Introductory Remarks

The global economic crisis, started in the USA in autumn 2008, spread to other parts of the world in a relatively short time. Although its direct causes are closely related to operation of financial institutions, banks in the first place, its most painful effects are those manifested in the social plane. The limitation of demand for goods and services results in a drop in business traffic which fact, in turn, translates into mass redundancies and increasing level of unemployment. In a majority of the countries struck by the crisis actions are taken aimed at reduction of the scale of the adverse phenomena. Among the measures taken, an important role is played by those directly aimed at labour market protection, including maintenance of jobs and supporting people who become unemployed. States attempt at using a wide range of measures from subsidizing entire sectors of the economy and big companies to providing credit guarantees to flexibility of legal regulations in the field of business activity, the area of broadly termed labour law and social law in particular.

The process of implementation of legal measures aimed at counteracting the adverse aftermath of the economic crisis to the market labour was divided into a few stages in Poland. The first of those consisted in the introduction of a temporary anti-crisis regulation contained in the Act of 1 July, 2009 on Mitigation of the Impact of the Economic Crisis on Employees and Entrepreneurs (hereinafter referred to as the "Anti-Crisis Act I"). It came into force on August 22, 2009. The adoption of the Act was preceded by conclusion of an Anti-Crisis Pact by major social partners, the Pact being an agreement addressing certain social policy demands and supposed to assist the entrepreneurs that are in a difficult situation resulting from the global economic crisis, to protect jobs in that way. The demands were communicated to the government with the suggestion that the legislative process should be started, the solutions to be thus given the normative power.

The mechanisms supporting entrepreneurs during the economic crisis, as provided for in the anti-crisis law I, were twofold. The first group included legal solutions aimed at liberalization of certain working time schemes (extension of the account period, fixing of individual working time schedules, reduction of working time) and limited application of fixed-time employment contracts, as well as termination of employment relationships. The other group included financial mechanisms, consisting mainly in providing resources from public funds, aimed at financing additional benefits paid to employees.

The period of the Anti-Crisis Act I staying in force (which lasted for more than 2 years), did not bring the expected positive effects to the labour market. Nor did it result in considerable improvement of the employers' financial standing. The persisting economic crisis made the government take further steps aimed at assisting the employees and employers being in a tough situation. It was due to the idea that two Acts of Parliament were passed, one of them being a piece of legislation amending the Labour Code as regards the working time provisions (the Act of 12 July, 2013, which came into force on 23 August, 2013). The other – the Act of 11 October, 2013 on Specific Measures Related to Protection for the Jobs (hereinafter referred to as the "Anti-Crisis Act II") – became effective as of 21 November, 2013. Since both above mentioned laws of 2013, to a certain extent, have taken into account the experience from the operation of the Anti-Crisis Act I, the legislator decided to enact them as, in fact, permanent legal schemes.

II. Assumptions on the Anti-Crisis Act I

1. Subjective scope of the regulation

The anti-crisis act I had a limited subjective scope of application, as it pertains only to those employers that have been conducting business activity (entrepreneurs). Almost the entire public sector (public administration, education, healthcare system etc.) has thus been excluded from the operation of the law.

In addition, it should be mentioned that the anti-crisis act I made a distinction between "entrepreneurs undergoing temporary financial difficulties" and "other entrepreneurs". It is applicable, in full, only to the entrepreneurs in temporary financial troubles, solely its selected rules being applied to the remaining entrepreneurs. Such a delimitation of the subjective scope of application of the anti-crisis law makes it necessary to assess whether it rests in conformity with the constitutional principle of equality. On the one hand the initial assumption that it is only the employers running a business activity that are struck with the economic crisis may look wrong, and the adopted regulations may seem to favour them unfairly against other employers (if only as far as access to support from public funds is concerned). On the other hand, however, eyes should not be closed to the fact that it is mostly entrepreneurs that have been faced with the painful consequences of the crisis, and that it is their employees on whose shoulder the main burden of the crisis has been laid. Hence the limitation of the subjective scope of the anti-crisis law should be found rightful, all the more that social partners representing employees were ready to concede only to a solution like that. Consequently, the criterion whereby distinction was made between employers and entrepreneurs is relevant and does not lead to violation of the constitutional principle of equality.

2. Objective scope of the regulation

The objective scope of the regulation, i.e. the types of actions and legal instruments provided for in the anti-crisis law can be divided into four groups, concerning respectively: 1) liberalization of working time, 2) limitation of employment under fixed-time contracts, 3) granting of benefits financed from public funds, recompensing the employees for reduction of salaries/wages in case of so-called economic stoppage and reduction of

working time, 4) granting of public funds to subsidize training and postgraduate studies of employees.

Re 1) As regards actions concerning organization of working time the law allowed to extend the working time accounting period up to as many as 12 months (as compared to the current basic account period being 4 months long), and fix individual working time schedules for employees, the scheme consisting in determination of various hours of starting and finishing work. In addition, at the entrepreneurs experiencing temporary financial difficulties working time can be temporarily (for a period not exceeding 6 months) reduced, no more than down to half the regular working hours (with salaries/wages reduced on a pro rata basis), there being no need for the employer to give the employee a notice to terminate his/her terms of employment. For the application of the above mentioned legal solutions it is required to seek prior consent of the plant's staff, as expressed in the collective labour agreement or other agreement concluded with trade unions, and where such trade unions do not operate at the employer's – with a non-trade-union representation (e.g. a delegate of the staff).

Re 2) The period of employment under a fixed-time contract and the total period of employment under consecutive fixed-time contracts between the same parties to the employment relationship was not allowed to last longer than for 24 months. Deemed to be a consecutive fixed-time contract was a contract concluded before the lapse of 3 months from termination or expiration of the preceding fixed-time contract. This solution had replaced the mechanism used up to now, consisting in the third fixed-time contract with the same employee being qualified as a contract for an indefinite period.

Re 3) As regards entrepreneurs experiencing temporary financial difficulties, it was possible to partly pay employee salaries/wages for the time of economic stoppage (i.e. work not being done for economic reasons), partly compensate for the decrease in the employee working time, as well as pay premiums for social insurance of employees from the resources of the Guaranteed Employment Benefits Fund. It should be mentioned that during the period of the employee receiving the above mentioned benefits, his/her contract of employment must not be terminated by the entrepreneur for reasons not concerning the employee.

Re 4) And, finally, the anti-crisis law provided for a possibility of costs of employee training and costs of postgraduate studies of employees to be co-financed by the state where it is justified by current of future needs of the entrepreneur. The subsidy may amount to 80% of the costs of the training or postgraduate studies per person, but shall not exceed 300% of the average salary. In addition, during the period of the training or postgraduate studies, the employee whose working time has been decreased or who is in a situation of an economic stoppage is entitled to a scholarship financed from public funds, amounting to 100% of the unemployment benefit.

III. Assumptions on the package of the anti-crisis laws of 2013

1. Amendments to the Labour Code regarding the working time provisions

As a result of the amendments to the Labour Code, rules for the settlement of the working time were changed. The rule that the working time may not exceed 8 hours per day and an average of 40 hours per an average five-day working week within the adopted account period not exceeding 4 months still holds. Yet after the amendments it is possible to extend the account period up to as many as 12 months whenever it is justified by objective or technical reasons or reasons concerning work organization, provided that the general rules for occupational safety and health are observed.

The extension of the account period up to 12 months is introduced in a collective labour agreement or by an agreement with the trade unions, i.e. under the company-level social dialogue scheme. In the companies where no trade unions are operating, the account period may be extended by means of an agreement concluded by the employer with employee representatives appointed in the mode adopted at the employer's. Given lack of general solutions regarding the appointment of a non-trade union employee representation, applicable to work establishments in general, in practical terms it may turn out that the partner to the employer would be a non-formalised employee representation, neither duly representative nor truly independent of the employing entity. The result may be the employers imposing their will on the employees, the latter being forced to accept the disadvantaged solutions, obviously though they could affect their interests.

Although carried through, legal regulations concerning the above mentioned measures resulted in violent protests from the trade unions side; this concerned, in particular, the extension of the working time account periods from 4 to 12 months, widely allowed now. Trade union leaders claimed that the solutions meant shifting the burden of the fight against the crisis entirely on the shoulders of the employees, forced to accept periodical accumulation of the amount of work, at the expense of their personal health and with a damage to their family life. In mid-September 2013 the main trade union organizations organized a big rally in Warsaw, the capital, with about 200 thousand of people participating. It was also claimed that the adopted law contradicted the EU legislation, Directive 2003/88 concerning certain aspects of the organisation of working time. The Directive actually allows to extend the account periods up to 12 months, provided, however, that a number of conditions have been met. In the opinion of the trade unionists the conditions were, however, not fulfilled and one of the main trade union organizations (the Solidarity Trade Union) filed a complaint with the European Commission regarding the issue.

Due to the enactment of the law allowing for the extension of the working time account period, a very serious crisis in the tripartite social dialogue followed. The trade union side withdrew from the participation in the work of the Tripartite Committee claiming that the body had a merely showy character and accusing the government of having no intention to resolve social problems by means of a social dialogue. As a result, the operation of the Tripartite Committee came to a standstill, in practical terms.

2. The Anti-Crisis Act II

As it has already been mentioned, the Anti-Crisis Act II came into force on 21 November, 2013, and - unlike the Act preceding it - included legal schemes of permanent nature (scheduled for a period extending at least till year 2022). The Act is applicable only to those entrepreneurs whose financial standing deteriorated (a drop of business turnover by at least 15% within a period of 6 months), provided that they are not in arrears with payment of taxes and dues to the public funds and are not subject to the bankruptcy law.

The Act provides for two types of the mechanisms whereby actions aimed at job protection during the economic crisis are supported from the public funds. The first of those lies in the possibility to get a support for payment of the performances the employees are entitled to during work stoppage for economic reasons or when made subject to a reduced working time scheme. The other consists in subsidizing costs of training of the employees affected by such a stoppage or reduced working time scheme.

The stoppage for economic reasons should be understood as the period when an employee, ready for doing work, stays idle due to reasons which do not concern him or her. As far as the reduced working time scheme is concerned, the support is offered by the Act if the

reduction takes place for reasons not concerning the employee; the reduction must not, however, exceed half of the working time. The terms and mode of doing work within the period of the stoppage due to economic reasons or under the reduced working time scheme are provided for by the employer in the collective labour agreement or in agreement with representatives of the staff. The matters in question concern, in particular, specification of the employee groups affected by the stoppage or the reduced working time scheme, the extent of the reduction, and the period in which the specific solutions concerning the stoppage or the reduced working time will be implemented.

Where the above specified conditions have been met, the entrepreneur may file an application with the relevant local authority for conclusion of a agreement on the financing of employee performances from public funds. The performances are financed from the Guaranteed Employee Performance Fund and from the Labour Fund. Special subsidies from the central budget, regarding both funds, have been provided for, and the arrangements have been made until as long as year 2022.

The employee affected by the stoppage for economic reasons is entitled to remuneration from the entrepreneur, refunded partly by the state. Altogether, the remuneration guaranteed to the employee during the stoppage for economic reasons amounts to the minimum wage/salary (currently PLN 1,680, or – roughly - € 370). As regards an employee working under the reduced working time scheme, the latter is also entitled to (partly refunded) reduced remuneration from the employer, the working time of the employee prior to the reduction of the time being taken into account. In addition, during the stoppage for economic reasons or the reduced working time period the entrepreneurs have the right to receive, from public resources, the funds for payment of employee social security premiums as due from the employer under the social security law.

The right to the above mentioned performances can be enjoyed for a period not longer – in total - than 6 months over the 12 months from the date of the signing of the agreement on the payment of the performances. Important in that respect is the provision that, where the employer receives public assistance, the employee may not be dismissed by the employer for reasons independent of him/her during the period when the employee receives the subsidized performances and for the three months following the date when the payment of those ceases.

Besides the above mentioned support the employers may also apply for a subsidy to cover the costs of employee training. The Ant-Crisis Act II provides that the entrepreneur having signed an agreement on the payment of the performances may also turn to the administration of the county (or *powiat*, as the administrative unit is referred to in Polish), applying for a subsidy from the Labour Fund to train the employees covered by the job protection schemes, provided that the training is justified by the entrepreneur's current or future needs. Financed under the subsidy may be costs of the fees of a training institution on account of: the training, transfers related to the participation in the training, medical or psychological examinations needed to start the training and the mandatory insurance of the employee against accidents occurred in connection with the training and on the way to the place of the training and back. The amount of the subsidy falling to one employee is 80% of the costs of the training, but no more than 300% of the average wage/salary.

IV. Summary

As it was already mentioned, the Anti-Crisis Act I was a provisional piece of legislation. It was assumed in advance that the Act would become ineffective by the end of 2011. The assumption may have followed from a naïve expectation that the crisis would

have ended until that timed. The provisional nature of the law should, however, be viewed as positive. The Act contained many measures that could give rise to objections (as they contradicted the protective function of the labour law, so natural for the latter). Consequently, the society could accept it only on condition that the extraordinary instruments it provided for would stay in force for a limited time. Now that a few years have passed since the date when the Act had become ineffective, it is possible to make a proper evaluation of the legislation in question. Without going into a detailed analysis it can be justly stated that the hopes attached to the Act were, unfortunately, only partially fulfilled. To a considerable extent (as regards the instruments of support provided to the employers from the public funds), the discussed piece of legislation remained practically inoperable. Only a very small number of entrepreneurs decided to apply for such support. The obstacle consisted in very complicated procedures of seeking the funds, discouraging employers to file the applications.

As many factors seem to indicate, the new anti-crisis legal regulations of 2013 do not repeat the earlier made errors. The procedures for seeking the assistance funds have been simplified and it should be hoped that the resources would be used by the employers that really are in need of the assistance. A weak point of current solutions, those concerning the working time in particular, lies in the fact that the measures have been enacted under conditions of a social conflict. It is not clear, either, if the legal provisions are consistent with the EU legislation. And a price of the new scheme was a collapse of the social dialogue on the national level and the aggravation of the social tension in the country. Whether the price was too high or not, the forthcoming twelve months or so are likely to reveal.