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EUROPEAN SOCIAL CHARTER

Comments by OP ZZ to the 18th report national report
of the Council of Ministers
on the actions taken by Poland
on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF POLAND

(articles 7, 8, 16, 17, 19)
for the period 01/01/2014 – 31/12/2017)

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**OGÓLNOPOLSKIE POROZUMIENIE
ZWIAZKÓW ZAWODOWYCH**

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OPZZ comments to the 18th report of the Council of Ministers on the actions taken by Poland to implement the ratified provisions of the European Social Charter (articles 7, 8, 16, 17, 19) in the years 2014-2017

OPZZ states that actions taken by Poland to implement the provisions of the European Social Charter in the above-mentioned articles in 2014-2017 are insufficient.

According to art. 7 par. 5 of European Social Charter (hereafter ESC). Poland has committed itself to recognize the right of younger workers and apprentices to fair remuneration or other appropriate benefits. A younger worker in Poland in the period of apprenticeship is entitled to

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remuneration calculated as a percentage of the average monthly remuneration in the national economy in the previous quarter, announced by the Central Statistical Office. The remuneration has to be not less than 4 percent in the first year of education, not less than 5 percent in the second year of education, not less than 6 percent in the third year of education. Wages of younger in Poland are in practice very low and do not meet the requirements of ESC. The need to increase the remuneration of this group of workers is also indicated by the position of employers and employees of the Problem Subgroup on the reform of the labour market policy, which operates within the framework of the Problem Group on economic policy and labour market of the Social Dialogue Council.

Furthermore, OPZZ is concerned about compliance of Poland with standards stipulated by art. 8 of ESC regarding protection of the stability of employment relations in connection with motherhood. Protection of the employment relationship stability during pregnancy and maternity leave should include, according to ESC, all categories of female employees. However, it is clear from the provisions of the Labour Code (hereafter LC) that protection against dismissal during pregnancy and maternity leave is limited to female employees employed on the basis of indefinite-term contracts, and fixed-term contracts for a trial period exceeding one month. A fixed-term, employment contract or a contract for a trial period exceeding one month, which would be terminated after the third month of pregnancy, is extended until the date of birth (sec art. 177 § 3 of the Act of June 26, 1974 -LC, i.e. Journal of Laws of 2018, item 917,). However, this regulation does not apply to fixed-term employment contracts signed to replace an employee during his justified absence from work. Art. 177 § 3 of LC applies to temporary employees whose combined period for performing temporary work (appointed by a temporary employment agency on the basis of an employment contract) is at least 2 months (see art. 13 par. 3 of the Act of July 9, 2003, on the employment of temporary employees, i.e. Journal of Laws of 2018, item 594, 1608). The Labour Code also excludes applying any protection against dismissal of employees employed on a basis of contracts for a trial period not exceeding one month (sec art. 177 § 2 of LC).

OPZZ believes that the revision of the LC from 2009 is negative for the interests of Polish workers and is against the rules stipulated by the EKS. The amendment to the art. 241 (13) § 2 by adding a sentence 2, according to which it is possible to terminate employment also with persons subject to special protection, including pregnant women and those during maternity leave (see commentary to art. 241 (13) § 2 of I.C. ed. W. Muszalski, Labour Code.

Commentary, 2017). In addition, according to art. 5 par. 5 point I of the Act of March 13, 2003, on special rules for terminating employment relationships for reasons not attributable to employees (i.e. Journal of Laws of 2018, item 1969), in the event of collective redundancies due to 10 reasons not attributable to employees, the employer may terminate the salary and employment conditions of a pregnant employee, an employee during the maternity leave or a leave on the conditions of maternity leave, parental leave, and paternity leave. In case of terminating a employment contract of a person protected by LC, an employee should remain employed until a final court judgment.

Finally, the OPZZ believes, Polish government did not take sufficient steps to support migrant workers' rights in Poland. In the report presented by the government initiatives taken by social partners and in particular OPZZ in supporting the rights of migrant workers from Eastern Europe (Ukraine) are not mentioned. It is important to add that OPZZ in 2016 supported the creation of the trade union for Ukrainian workers. The union aims to provide advice and guidelines for Eastern European migrant workers in Poland by among others tackling discrimination against them and enhance their integration in the labour market.

Przewodniczący OPZZ

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