



**KRZYSZTOF WOJCIECH BARAN**

Jagiellonian University in Kraków, Poland

[krzysztof.w.baran@gmail.com](mailto:krzysztof.w.baran@gmail.com)

ORCID: 0000-0001-5165-8265

## THE RIGHT OF TRADE UNIONS TO INFORMATION IN THE POLISH LABOUR LAW SYSTEM

### ABSTRACT

The right to obtain information from the employer is fundamental for the activity of trade unions. In the Polish labour law system, a pluralism of normative approaches functions in this matter. As a result, in practice we are dealing with a specific interference of competences of trade unions. In order to obtain specific information, they have to reference different legal bases. The aim of this study is to provide a comprehensive presentation of this complex issue.

**KEYWORDS:** *Trade unions, right to information, information obligations of the employer*

In employment relationships, the basis for the functioning of trade unions is the appropriate information (B. Sitek, J. Sitek 2022/ 1 pp.325-327 and the referenced literature), as possessing such information allows them to conduct their activities effectively. The right to information in Polish labour law system is established by several provisions (Wujczyk 2007 p.133 ff.). This issue is characterised by a strong pluralism of normative approaches. In attempting

their delimitation based on the idealising theory of science it seems justified to distinguish the right to collective and individual information. The first one refers to general issues that are related to the functioning of the employer, while the subject of the second one is the status of a specific employee. The aim of this study is to provide a holistic presentation of these issues, which are essential for the functioning of labour relationships.

In the Polish employment law system, the provisions of Art. 28 of the Act on Trade Unions are essential as regards the right to information (M. Włodarczyk 2014 pp. 438-440). The referenced Article states that on request of the trade union organisation, the employer shall provide information necessary to conduct trade union activity, in particular information concerning: the conditions of work and remuneration; the operations and financial standing of the employer connected with employment and the foreseen changes in this respect; the state, structure and prognosed changes in employment as well as actions aimed at maintaining the current level of employment and actions that might cause significant changes in work organisation or in the basis for employment. The use of the term “in particular” implies that we are thus dealing with the *eiusdem generis* mechanism, i.e. an enumeration of an exemplary nature. As a result, the legislative authority created a “grey zone” concerning the remaining categories of information. At the same time, it is worth noting that this kind of regulation ensures a certain degree of flexibility in the actions of social partners, which seems to be important in the practice of collective employment relationships. Here, it should be emphasised that trade unions are not legally obliged to justify why the given information is necessary for them to conduct their activities. This view is supported by the constitutional principle of the self-regulation and independence of trade unions.

I will start my analysis of the prerequisites provided in Art. 28, item 1 of the Act on Trade Unions following the dogmatic sequence directive, starting from the analysis of item 1. Based on the *lege non distinguente* argument, it seems justified to claim that the right to information applies to all work conditions, starting from technical and organisational ones, through functional and normative, to social and proactive conditions, obviously provided that they are necessary to conduct trade union activity.

The second prerequisite provided in Art. 28, item 1 (1) *in fine* of the Act on Trade Unions are the principles of remuneration. It seems doubtless that in the subjective aspect they refer to all financial benefits granted to persons who perform work in return for remuneration, provided however that they refer to general issues. The use of the term “principles” in the analysed norm implies only the right to obtain information of a general nature (e.g. the remuneration system, methods of calculating remunerations, and remuneration structure in subjective terms).

In the light of the literary wording of Art. 28, item 1 (1) *in fine* of the Act on Trade Unions, it seems justified to conclude that information about remuneration cannot concern the financial status of an individual employee or other persons who perform work. This is due to the fact that principles of remuneration are of a super-individual nature. It is obvious that it must not refer to the data about the conditions of remuneration of a specific individual. In spite of the changes in law, the judgment of the Supreme Court of the 16.07.1993 (case file: I PZP 28/93, PiZS 1994/1), pursuant to which trade unions do not have the right to demand the employer to provide information about the remuneration of an employee without that employee’s consent, remains valid. Moreover, revealing the amount of remuneration by the employer may be considered to be a disclosure of personal data and violation of personal rights as defined in Art. 23 and 24 of the Polish Civil Code. (E. Niezbecka 1993 s.24-28). Data concerning the amount of remuneration or other individual properties of the salary belong to the private sphere of a person who performs work in return for remuneration (M. Szewczyk 2001 p. 339).

Pursuant to Art. 28, item 1 (2) of the Act on Trade Unions, the Employer shall notify the trade unions about its operations and financial standing of the employer connected with employment and the foreseen changes in this respect (K. Baran 2019, p. 177 ff.). For example, this may include data concerning:

- the balance sheet result of the company,
- the revenues from the sales of goods and/or services,
- gross and net profit or loss,
- financial assets and liabilities,
- planned investment expenditures.

The economic factors listed above determine directly or indirectly the financial standing of the employer and thus influence the level of the current and future employment. Due to the fact that Art. 28, item 1(2) of the Act on Trade Unions refers to the operations of the employer, the employer may be obliged to provide also other information related to the market situation, the concentration of customers or suppliers, loan policy of the banks, the implementation of restructuring programmes, and, finally, the macroeconomic factors (such as the changes in foreign exchange rates on the export markets) that affect the economic and financial standing of the employer.

Trade unions may also demand general information about the strategic objectives of the development of the company or the forecasted results. Thus, it is unacceptable for the employer to conceal data about events or obligations that, based on reasonable assessment, will affect the level of employment in the future (such as establishing or dissolving financial provisions).

Pursuant to Art. 28, item 1 (3) of the Act on Trade Unions, the employer is obliged to provide information on the state, structure and prognosed changes in employment as well as actions aimed at maintaining the current level of employment. In practice, this refers mainly to the following issues:

- the total number of employees,
- the structure of the basis for employment (based on employment contract and on other forms of contracts),
- professional structure of employment,
- territorial structure of employment (e.g. in branch offices or divisions in other locations),
- the structure and education level of employees,
- personnel rotation rate,
- the level and reasons of absences,
- voluntary redundancy programme,
- actions taken to retrain the employees.

On the other hand, Article 28, item 1 (4) of the Act on Trade Unions is subsidiary, as it refers to “other” activities of the employer related to work organisation or in the basis for employment. However, in any case, such information must be necessary to conduct trade union activities. This status may

be assigned to information that is important in the course of negotiations with the aim to enter into a collective labour agreement or to agree on regulations (e.g. the rules of remuneration).

Significant practical problems arise from other issues related to the right to information. For example, it is impossible to determine clearly, *de lege lata*, the existence of the obligation to provide specific data, e.g. concerning the costs of management or representation expenses. Whether a motion for providing information is justified is often determined by the situational context, and specifically, whether the given information is actually necessary to conduct trade union activity. In my opinion, the employer may refuse to provide such information in situations when it may be suspected, based on the circumstances of the specific case, that the information is not directly related to the activity of trade unions, but that it will be used for populist, personal, or media purposes.

Pursuant to the provisions of the amended version of Art. 28, item 1 of the Act on Trade Unions, information is provided on demand of the trade union organisation. This provision also applies *ab exemplo* to inter-company and super-company organisations. Due to the fact that the law does not specify a required form of the demand, it is justified to state that it may be filed in any form (e.g. by e-mail, text message, or even in oral form). However, due to the certainty of law – *verba volant, scripta manent* – the written form is recommended in employment relationships.

Pursuant to the regulations adopted in the amendment to the Act on Trade Unions of the 5.07.2018, the employer is obliged to provide information within 30 days after receiving the demand. (K.W. Baran 2019 pp.181-182) The wording of Art. 28, item 2 *in fine* of the Act on Trade Unions allows us to assume that this refers to 30 calendar days. During this period, the employer may demand the trade unions to specify the purpose for which this information is necessary. This will enable to adapt the scope of the provided data to the needs of the conducted trade union activity multiple times.

The Act on Trade Unions does not specify the form in which the employer should respond to the motion of the trade union organisation. In this matter, I am of the opinion that it should be adequate to the specific nature of the provided information. For example, I believe that hybrid (heterogeneous) forms, such as written and e-mail form are acceptable. The discussed regulation does

not specify the entity that will represent the employer, either. I believe that, in general, this should be a person authorised under Art. 3<sup>1</sup> of the Labour Code to take actions in cases related to labour law. The employer is not entitled to demand fees for preparing the information, even if it incurred significant costs. However, nothing prevents the employer from introducing such fees in the collective labour agreement or another collective agreement.

In the light of the provisions of Art. 28, item 2 of the Act on Trade Unions, the problem of sanctions for failure to perform or undue performance of the information obligation arises. It was not defined *expressis verbis* in the new version of Art. 35, item 1 (4) of the Act on Trade Unions. However, this does not mean that such actions are not penalised by the law. In my opinion, they may qualify as hindering the performance of trade union activities that are conducted in compliance with the provisions of the Act (Art. 35, item 1(2) of the Act on Trade Unions, provided that this applies both to situations when the information was not provided and when the provided information is incomplete or inaccurate (K. Baran 2019 pp.249-250). It is doubtless that all information provided to trade unions should be fact-based and reliable. In particular, it seems unacceptable to tamper with financial data, which is characteristic of so-called “creative accounting”. Here, it is worth emphasising that it is not justified to demand penal liability of a person who refuses to provide information that is not necessary to conduct trade union activities.

Article 28 of the Act on Trade Unions does not provide the precise prerequisites for refusing to provide trade unions with information, which seems to be a major disadvantage of this regulation. In my opinion, the regulations provided in Art. 16 item 2 of the Act on Informing and Consulting Employees may be applied *ab exemplo* in this matter (K.W. Baran 2010 pp.87-99). As far as the procedural aspects are concerned, nothing prevents the trade unions to pursue the claim for ordering the employer to provide information that is necessary to conduct trade union activity in court. This interpretation option is rooted in the constitutional right to court trial. From the point of view of cognition of labour courts, it should be classified as a case from the relationships under labour law as defined in Art. 1 of the Civil Procedure Code.

The information provided to trade unions during the transfer of the work establishment to another employer is also important. Art. 26 (1) of the Act

on Trade Unions obliges the previous and new employer to notify the trade unions in writing about the prognosed time of transfer of the work establishment, its reasons, its legal, economic, and social effects on employees, as well as about the intended actions that refer to the conditions of employment of these employees. The objective of this information is to facilitate negotiations concerning the transfer agreement. This will allow the trade unions to assess the consequences of the transfer of the enterprise or its part for the interests of the employees. By nature, one should take into account the fact that information received from the previous and new employer concerning the transfer will be estimations, due to the dynamically changing market conditions.

Pursuant to the provisions of Art. 26(1) of the Act on Trade Unions, this information should be provided at the latest 30 days prior to the planned date of transfer of the work establishment or a part thereof to another employer. The nature of this provision is semi-imperative, so I am of the opinion that the period cannot be shortened, but nothing prevents the employer from providing this information earlier than prescribed. If there is more than one trade union organisation at the work establishment, this period starts from the date when the written information was received by the last trade union organisation. Violation of this provision is subject to sanctions pursuant to Art. 35 item 1 (2) of the Act on Trade Unions.

Under the right to information, the employer is *de lege lata* obliged to notify the trade union organisations in writing about its intention to perform collective redundancies. (K. Baran, M. Lekston 2019 pp. 623-624, A. Wypych-Zywicka 2014 pp. 988-989). The notification addressed to the workplace trade union organisations should contain information concerning:

- the reasons for the planned collective redundancies,
- the number of employees employed in the professional groups affected by the plan of collective redundancies,
- the period when the redundancies will take place,
- the criteria for selecting employees,
- the sequence of redundancies,
- the proposed solutions of employee issues connected to the planned redundancies, and if they include financial benefits, also the manner of calculating their amount.

When analysing the required content of the notification about the planned collective redundancies, one should first of all point to the determination of reasons. In the conditions of market economy, they are usually of an economic and organisational nature. The employer is obliged by the law to specify the number of employed workers and the professional groups that are affected by the planned redundancies in the notification. These data should identify the groups that are in danger of losing their jobs precisely.

The legal regulations also oblige the employer to provide the dates of the planned redundancies and the criteria and order of terminations, as well as other factors that affect the legal status of the employees who will be made redundant. This information will allow the trade unions to perform a preliminary assessment of the reasonability and extent of the planned redundancies. The Act on collective redundancies does not provide a precise period for the employer to notify the trade unions about the planned redundancies.

It only establishes a general directive stating that it should take place within a period that will enable the organisations to submit the relevant proposals during negotiations. (K. Baran, M. Lekston 2019 pp. 623-624, A. Wypych – Żywicka 2014 pp. 988-989). This type of solution leaves the employer a wide margin of manoeuvre. In my opinion, the notification should be provided as quickly as possible, as this will leave more time for negotiations and developing compromise solutions.

The information provided to trade unions may constitute company secret. Due to the fact that the analysed Act does not specify any mechanisms to protect it, the regulations foreseen in Art. 16 of the Act on Informing and Consulting Employees may be applied *per analogiam* in procedural matters. The protection of information in the procedure of collective redundancies is in a way complemented by the application of the principles provided in the Act of the 5.08.2010 on the protection of confidential information.

The right of trade unions to information is also established in Art. 241(4) para. 1 of the Labour Code. (J. Piątkowski, (2022), Vol. 2, pp. 1997-1998). The provision states that an employer shall provide information on his economic situation to the representatives of trade unions involved in negotiations, to the extent covered by those negotiations and as may be necessary to conduct responsible negotiations. That obligation shall apply in particular to information



reported to the Central Statistical Office This provision is applicable *lege non distinguente* both to internal and inter-establishment negotiations. However, it does not apply to associations of employers. The labour Code does not specify the period in which such information should be provided. Based on the *ab exemplo* argument, I suggest that a period of 30 days should be applied, as it is in Art. 28 of the Act on trade unions. On the other hand, representatives of trade unions are obliged not to disclose the information received from the employer that constitutes company secrets as defined in the Act on combating unfair competition. (A Michalak, (2006) p.7)

The information in individual cases of specific employees is also important for the practice of employment relationships. The provisions of the Labour Code oblige the employer to present certain information, in particular in the event of termination of the employment relationship. First of all, one should refer to Art. 38 of the Labour Code, which states that the trade union representing an employee shall be notified by the employer in writing of the intention to terminate the employee's definite or indefinite-term contract of employment with notice, giving the grounds for contract termination. However, this provision is not commonly applicable, as it refers only to trade union members and persons who applied to the trade union for protection. The notification should provide the specific reasons that justify the termination of the employment contract. The jurisprudence of the Supreme Court (judgment of the 3.11.1994, I PRN 77/94, OSNP 1995/2 item 24) emphasises that such information cannot be ambiguous or unclear. A similar informational mechanism is also provided for the termination of the terms and conditions of work and pay pursuant to Art. 42 of the Labour Code (T. Bińczycka-Majewska 2017 pp.382-387). In this case, it is necessary not only to provide the trade union organisation with the grounds to justify the change in the content of the employment relationship, but also to specify the new terms and conditions of work and pay that the employer intends to offer the employee.

Trade unions are also notified about the termination of an employment contract with an employee without notice (P. Prusinowski 2017 p.616 ff.). Having determined that the trade union represents the employee, the employer is obliged to notify it about the reasons justifying the termination of contract without notice before making the statement of will. As Article 52 § 3 of the Labour Code does

not specify a form of such notification, there are no legal barriers that would prevent the employer from notifying the trade unions on the phone or electronically. However, due to the considerations of legal certainty – *verba volant scripta manent* – written form should be recommended. The notification should be specific and contain the legal or factual circumstances that justify the termination of the employment contract. A notification that contains only a repetition of the statutory wording (e.g. “the employee has grossly violated his/her basic duties”) should be considered as defective, as it makes it impossible for the trade union organisation to take a substantive position in the consultation procedure. Similar mechanisms of notifying trade unions are also applicable to individuals who are subject to special legal protection, such as women during maternity period, trade union activists, and social labour inspectors (A. Dral 2017 pp. 739-743). Similar information mechanisms also apply to termination of the employment contract without notice due to reasons other than by fault of the employee (Art. 53 item 4 of the Labour Code).

In practice, the problem is the issue of the right of the trade union to information as part of the intra-company procedure of appeal in cases of disciplinary sanctions imposed on the employee. Pursuant to Art. 112, item 1, sentence 2 of the Labour Code, the employer shall decide whether the objection will be granted or not after having considered an opinion of the establishment’s trade union organization. At the same time, it should be emphasised that this provision does not oblige the employer to inform the trade union about imposing a penalty. However, such information obligation may be established in the collective labour arrangement or work regulations. Here, it should be noted that this type of mechanism extending the right to information may also be used in other situations when it is not foreseen by the law.

To sum up this discussion on the right of trade unions to information, I would like to conclude that, in the Polish labour law system, we are dealing with a differentiation of normative solutions in this matter. Individual provisions regulate the issue of access to information in various ways, not only in the subjective, but also in the procedural aspect. In this respect, we are dealing with a specific interference of competences of trade unions. In order to obtain specific information, they have to reference different legal bases. Due to that, I recommend, *de lege ferenda* to unify the legal regulations in a single legal standard, which should

ideally be included in the Act on trade unions. Another major disadvantage of the currently existing legal regulations is the lack of universal prerequisites for the refusal to provide information by the employer. In its consequences, it leads to chaos and various conflicts with trade unions.

## REFERENCES

- Baran, K.W. (2010) Zbiorowe prawo pracy. Komentarz [*Collective Labour Law. A Commentary*]. Warsaw.
- Baran, K.W. (2019). (in:) Zbiorowe prawo pracy. Komentarz [*Collective Labour Law. A Commentary*], K.W. Baran (ed.). Warsaw.
- Baran, K.W., Lekston, M. (2019). (in:) Zbiorowe prawo pracy. Komentarz [*Collective Labour Law. A Commentary*], K.W. Baran, G. Goździewicz (ed.). Warsaw.
- Bińczycka-Majewska, T. (2017). (in:) System prawa pracy. Indywidualne prawo pracy. Część ogólna [*The Labour Law System. Individual Labour Law. General Part*], K.W. Baran, G. Goździewicz (ed.), Vol. 2. Warsaw.
- Dral, A. (2017). (in:) System prawa pracy. Indywidualne prawo pracy. Część ogólna. [*The Labour Law System. Individual Labour Law. General Part*], K.W. Baran, F. Goździewicz (ed.), Vol. 2. Warsaw.
- Michalak, A. (2006). Ochrona tajemnicy przedsiębiorstwa. Zagadnienia cywilnoprawne [*The Protection of Company Secrets. Civil Law Issues*]. Kraków.
- Niezbecka, E. (1992). Prawo do prywatności pracownika o ochrona dóbr osobistych i danych osobowych osób fizycznych [*The Employee's Right to Privacy and the Protection of Personal Rights and Personal Data of Natural Persons*]. PiZS 1992/8.
- Piątkowski, J. (2022). (in:) Kodeks pracy. Komentarz [*The Labour Code. Commentary*], K.W. Baran (ed.), Vol. 2. Warsaw.
- Prusinowski, P. (2017). (in:) System prawa pracy. Indywidualne prawo pracy. Część ogólna. [*The Labour Law System. Individual Labour Law. General Part*], K.W. Baran (ed.), Vol. 2. Warsaw.
- Sitek, B., Sitek, J. (2022). Ograniczenia jawności działań administracji publicznej ze względu na prywatność jednostki [*Restrictions on the Disclosure of Public Administration Activities due to the Privacy of Individuals*]. Journal of Modern Science, 2022 /1/48.
- Szewczyk, M. (2001). Prawo do prywatności a ujawnienie danych osobowych o wynagrodzeniu pracownika [*The Right to Privacy and Disclosing Data about an Employee's Remuneration*]. Monitor Prawniczy 2001/6.
- Włodarczyk, M. (2014). (in:) System prawa pracy. Zbiorowe prawo pracy [*The Labour Law System. Collective Labour Law*], K.W. Baran (ed.), Vol. 5. Warsaw.
- Wujczyk, M. (2007). Prawo związków zawodowych do informacji o sytuacji zakładu pracy i możliwości jego dochodzenia na drodze sądowej. Studia z zakresu prawa pracy i polityki społecznej [*The Right of Trade Unions to Information about the Situation of the Work Establishment and the Right to Pursue it in Court. Studies in Labour Law and Social Policy*].
- Wypych-Żywicka, A. (2014). (in:) System prawa pracy. Zbiorowe prawo pracy [*The Labour Law System. Collective Labour Law*], K.W. Baran (ed.), Vol. 5. Warsaw.