

RESTRICTION OF WORK IN RETAIL ON WEEKENDS AND HOLIDAYS (POLISH EXPERIENCE)

Jakub Stelina

University of Gdansk, Gdansk, Poland

Article info

Received – 2018 December 13

Accepted – 2019 February 28

Available online – 2019 April 20

Keywords

Right to rest, Sunday, day off, rest time, retail, Poland

The subject of the article is legal regulation of work in retail on Sundays and holidays in Poland and in the European Union.

The main aim of the article is to confirm or disprove the hypothesis that restrictions on work in retail on Sundays are not due to the needs of the economy and law, but due to the political situation in Poland, and therefore, although these restrictions are not rejected by the Polish society, they can be revised easily after the elections.

The methodology of the study includes analysis, synthesis, description, interpretation as well as particular academic legal methods (historical overview, comparative analysis of legislation, formal-legal method, interpretation of legal acts).

The main results and scope of their application. The article discusses legal restrictions in

Poland concerning work on Sundays and public holidays, especially in retail. General rules concerning work on these days are set in the Polish Labor Code in accordance with the EU legislation. Recently, a law was passed in Poland introducing the restriction of employment in retail outlets on Sundays and other public holidays. This law was entered into force on March 1, 2018 with two years transition period. After transition period a total ban on working on Sundays and holidays in shops and other retail (except some special sales places, such as post offices, ticket offices etc.) will be established. Thus, discussions and disputes over the years, which have been going on almost from the very beginning of the systemic transformation, have been closed for many years. The author of the article presented a systematic analysis of legislation and various problems on the example of Poland and the European Union. The limitations on employment on Sundays are the protective measures established by labour law provisions. They combine the function of securing rest to employees with their role of a method allowing the society to celebrate certain days due to lay or religious reasons. Macroeconomic effects of the restrictions of work in retail on Sundays are not known yet. Nevertheless, it seems that the apocalyptic visions of the condition of Poland's economy, free of commerce made on Sundays (such as a dramatic drop in GDP or a rapid growth of unemployment) are rather far from reality.

Conclusions. The Polish law restricting work on Sundays and public holidays in retail is not totally rejected by Polish society, but it may be subject to further changes. It depends on what political forces will exercise power in Poland.

1. Introduction

In 2018, Poland adopted a law imposing restrictions on employment in retail outlets on Sundays and other holidays. Thus, the discussions and disputes that have been going on in Polish society for many years are over. Earlier, during the period of socialism, the problem of the functioning of trade during the holidays was absent, and this was due primarily to the constant shortage of goods. The situation changed after the political and economic reforms of the late 80s and early 90s of the last century. Then there was a clash of different approaches in society: liberal, perceiving as the basis for the development of the country the abolition of all barriers limiting the initiative of citizens, and social, proclaiming the need to protect weaker people from the dictates of stronger players in the labor market. A compromise approach prevailed in the political system. In accordance with the Constitution adopted in 1997, the Republic of Poland is a democratic state that implements the principles of social justice, and the basis of the economic system of the state is a social market economy based on freedom of economic activity, private property and solidarity, dialogue and cooperation of social partners. In practice, however, such a well-defined systemic formula gives the legislator room for manoeuvre. It is not known where the boundary between the market approach and social solidarity lies [1, p. 3; 2, pp. 112-114]. Thus, the resolution of the dilemma of "more market economy or more social responsibility" is left to the discretion of the legislator, whose decisions are subject to review by the Constitutional Tribunal. In fact, at present decisions on politically significant issues are taken by the parliamentary majority, which forms the government. For most of the period after 1989, Poland was dominated by a liberal orientation. This has not contributed to any restrictions on work on Sundays and public holidays. The provisions relating to this question, which have arisen since the time of socialism, have been retained. They assumed that work on Sundays and public holidays is prohibited, but at the same time, allowed a number of exceptions to this prohibition, among them - activities that serve the needs of the population, including work in shops. Below I will present the main provisions of the new law relating to the ban on the work of employees in retail outlets on Sundays. First, however, it is worth studying the historical context of the formation of the principle of the six-day working week with the privileged role of Sunday and how these issues are regulated in international law (more detail

this issue is consecrated in [3, p. 163].

In the countries of Jewish-Christian culture, the principle of a six-day working week has a very strong axiological basis, since it derives directly from religious texts. In the Book of Genesis (2,3-3) can be read: "And God made the seventh day His work which He had made; and he rested on the seventh day from all His work which he had made. And God did his works by the seventh day, which He did, and rested on the seventh day from all his works, which he did" [4; 5; 6].

Initially, the obligation to refrain from work on the seventh day of the week was observed in the ancient world by the Jewish population, and only later spread with the development of Christianity. In the legal sense, for the first time this principle was sanctioned by Emperor Constantine the Great in 321, setting Sunday (sun day – dies solis) as a day off and forbidding to make any commercial transactions and resolve issues in public institutions on this day [7, p. 554]. The question of whether Constantine's motives were Christian in nature is debatable in the literature [8, pp. 202-204]. The identification of dies solis with the resurrection as a Christian holiday appears a little later, quite definitely in the code of Theodorian in 438 and in the Code of Justinian in 533 [9, pp. 244-247]. Over the next seventeen centuries, generations of Europeans celebrated Sunday as a holiday also designed to rest after the hardships of a week's work. Moreover, the close connection of the rhythm of everyday life with the requirements of religious treatises meant that many Church and even national holidays were celebrated during the year, apart from Sundays (for example, the celebration of coronation or other important secular events). According to conservative estimates, the number of working days per year at the end of the middle ages averaged 265-270 days, an average of about 5 days per week. It can be assumed that statistically, every week there was an additional day off, in addition to Sunday [10, p. 188]. Of course, these days were meant for sacred holidays, but they also performed important functions days vacation.

2. The right to Sunday as a day of rest in EU legislation.

The right to a Sunday free from work was not questioned during the period of social changes caused by the industrial revolution and the related transformations of human labor (the transfer of gravity from agricultural and handicraft labor to hired labor). It is not surprising, therefore, that the principle of continuous weekly rest was relatively early

recognized by the International labour organization as one of the most basic standards for employment. As far back as 1921, Convention No. 14 on weekly rest in industry provided that employees of both public and private enterprises must have a rest period of at least 24 consecutive hours for every seven days of employment. If possible, such a period of rest should cope with days already established by the traditions or customs of the country or area. A similar right is provided for in Convention No. 106 of 1957 on weekly rest in Commerce and institutions and in the European social Charter of 1961 [11]. According to paragraph 5 of Art. 2 of the Charter "in order to ensure the effective exercise of the right to fair working conditions, the Parties undertake: to ensure weekly rest, which, to the extent possible, shall coincide with the day of the week recognized by tradition or custom of the country or region concerned as a day of rest".

These rules demonstrate not only the need to introduce the principle of a six-day working week, but also that the day off should be the same for the majority of the population and follow from the traditions or customs of the country.

In General, today no one questions the principle of the six-day working week, and from the IV century to the second half of the XX century in Europe it was widely recognized that the seventh day of rest should be Sunday (as a free day established in accordance with tradition or custom). The originally privileged nature of Sunday as the seventh day of rest during the week was also emphasized in European Union legislation. In accordance with EU Council Directive No. 93/104/EEC of 23 November 1993 on certain aspects of the organization of working time, which has become invalid, member States shall take the necessary measures to ensure that each employee is provided with a break of 24 hours, including a daily break of eleven hours specified in Article 3 (1), for a seven-day period of continuous working time...). The minimum break period set out in the first subparagraph shall, in principle, include Sunday." In the opinion of the European court of Justice, no such link was demonstrated between Sunday rest and the health and safety of workers (which would have been absent on any other day of the week), and the court's decision of 12 November 1996, which ignored a centuries-old tradition, the provision relating to Sunday break was excluded from EU law . The following Directive 2003/88/EC of 4 November 2003 concerning certain aspects of the organization of working time (and repealing Directive 93/104/EC) includes a provision in which the reference to Sunday no longer occurs [12]. Of course, as a General rule, the working week off is set on Sunday, although formally

the basis for this is excluded from the EU legislation [3, p. 163].

3. The Polish law on state holidays.

In Poland, Sunday is considered a public holiday since 1919 , currently it is enshrined in the Law of 18 January 1951 on non-working days. In addition, on the basis of laws defining the attitude of the state to churches and religious associations, workers belonging to religious and religious minorities have the right to be released from work on these holidays (with the possibility of the employer to postpone the day off for another time). The recognition of Sundays and other holidays (state and religious) referred to in the public holidays Act 1951 means a General ban on the work of workers on these days. Of course, the law provides for a number of exceptions, which means that work on holidays should be qualified as an exception to the General rule. Therefore, work on Sundays and other public holidays is permitted when necessary due to the nature of the work. Cases of permitted work on Sundays and public holidays are provided for. For example, rescue and repair work, continuous work, shift work, activities in the field of health, transport and communications, property protection or protection of people, agriculture and other work necessary because of its social usefulness and focus on meeting the daily needs of the population (for example, in restaurants, hotels, museums, etc.). In the case of work on Sundays, the employer is obliged to provide another day off within six calendar days preceding or following such Sunday, and in the case of work on holidays - during the reporting period, which is usually from one to four months. If it is not possible to use the day off during the above period, the employee is entitled to remuneration for overtime. (A similar rule on double payment for work in trade on Sunday, unlike work on holidays, is provided in the legislation of other countries, for example, in France [13].

Exceptions to the prohibition of work on Sundays and public holidays also included – which caused the greatest controversy - work in commercial organizations.

4. Days off in trade according to the Polish legislation.

On March 1, 2018, significant changes in the rules concerning work on Sundays and public holidays in retail outlets came into force. Previously, until October 2007, outlets were subject to exceptions to the ban on Sunday and public holidays. This meant that there were virtually no restrictions on the employment of workers in trade, so in practice most

shops, including large shopping centres, were open seven days a week. In 2007, employees were restricted from working in shops on public and religious holidays, but this was allowed on Sundays. In October 2007, a provision was added to the Polish Labour code that prohibited work only on public holidays, but allowed to work at these facilities on Sundays, but only when performing work that was socially useful and necessary to meet the daily needs of the population. The wording, however, was interpreted so broadly that all Sundays (except Sundays, which coincided with holidays) shops were open all day. In 2018, the reform began, which gradually reduces the employment opportunities of employees in retail outlets almost on all Sundays throughout the year.

The permissibility of Sunday work in trade almost without restrictions, has long been a subject of dispute in the public mind. The demands made primarily by representatives of the Christian churches, as well as by major trade unions, were rejected by many as being contrary to the principle of economic freedom. It was argued that the Polish economy could not afford to ban trade on Sundays and public holidays, as this would have a negative impact on economic growth and increase the number of unemployed, as well as ultimately lead to a decrease in the income of workers engaged in trade. It was also noted that the ban on Sunday trade will introduce the country in times of socialism and violate the foundations of the market economy. However, attempts to put pressure on the government in this matter have not stopped. The largest trade Union NSZZ "Solidarity" even referred to the legacy of the August agreements signed in Gdansk on August 31, 1980, which gave rise to an independent trade Union movement in Poland [14; 15]. One of the requirements of the August agreements was the introduction of work-free Saturdays, so trade unionists considered it necessary to provide the widest possible range of workers with a weekend Sunday. Thus, it was noted that the restoration of Sunday as a day off for almost one million workers engaged in trade, will fulfill the will of the so-called first solidarity movement (whose activities fell on 1980-1981 years). In the end, changes in the law in the discussed area became possible after the parliamentary elections in October 2015. The formed government, the political part of which signed the program agreement with NSZZ "Solidarity", fulfilled part of the requirements of the social Union, including the reduction of Sunday trade (among other agreements were the reduction of the retirement age to 65 years for men and 60 years for women, which

was increased by the previous government to 67 years). On January 10, 2018, the Law on the restriction of trade on Sundays and public holidays, as well as on some other days, was adopted, which entered into force on March 1, 2018. In accordance with this law, the full reduction of employment on Sundays in commercial establishments will take place from 1 January 2020 and until that time transitional provisions will be used, which include the admissibility of work in shops on the first and last Sunday of each month until the end of 2018 and on the last Sunday of each month – in 2019.

The law imposes a General ban on work in trade or activities related to trade, free of charge in retail outlets on Sundays and public holidays, as well as on 24 December (Christmas eve) and on the Saturday immediately preceding the first day of Easter. This prohibition applies to hiring as employees under an employment contract and persons performing work or providing services on the basis of civil law contracts (e.g. contracts, Agency contracts, construction contracts, contracts for services), as well as individuals involved in the work of the agencies for temporary employment. Under the work in trade and activities related to trade on Sundays and public holidays, commercial organizations should be understood to work for 24 hours in a row, falling respectively between 24:00 on Saturday and 24:00 on Sunday and between 24:00 on the day immediately preceding the holiday, and 24:00 public holiday. The law applies to different types of commercial organizations, and thus to all objects where trade and trade-related activities are carried out, in particular: shops, stalls, stalls, wholesale trade, coal warehouses, warehouses of building materials, Department stores, offices. The law categorically prohibits trade on Sundays and public holidays (with the exceptions mentioned below) in the above-mentioned industries. At the same time, outlets can be opened on Sundays and holidays, if the trade is carried out personally by an entrepreneur who is an individual, on his own behalf and at his own expense, and when the owner (or a person who has other legal ownership of this object) – it seems that we are talking about family members - himself serves customers and does not hire other people to help.

Of course, the ban on trading is not absolute. The law lists the types of objects and activities for which restrictions are not applied. Among them: gas stations, florists, pharmacies, souvenir shops, Newspapers, tickets for public transport, cigarettes, coupons for gambling, post offices, hotels, cultural and educational organizations, outlets at festivals, fairs and other non-systemic events, outlets in health care institutions, sea and river ports, airports, and

train stations (railway, bus), activities in free zones, online shops and Internet platforms, trade through vending machines, trade in flowers in cemeteries, funeral homes,, bakeries, pastry shops and ice cream shops, restaurants, etc.

As you can see, the list of exceptions to the ban on work on Sundays and public holidays is quite wide. Thus, we can conclude that even after January 1, 2020, when the transitional period associated with the gradual introduction of restrictions will be completed, and numerous commercial organizations that provide certain types of services, including ensuring the satisfaction of essential needs of consumers, will not be subject to this prohibition. In addition, the law provides that outlets may be opened without restriction on the two Sundays preceding the first day of Christmas, the Sunday immediately preceding the first day of Easter and the last Sunday of January, April, June and August.

Certain restrictions were also imposed on the conduct of trade-related activities on 24 December, that is, on Christmas eve and on the Saturday immediately preceding the first day of Easter. On these days, work in commercial organizations is prohibited after 14:00, while the employee retains the right to remuneration for non-working hours (reduced working day).

In addition, permanent or malicious violations of a ban on work in trade on Sundays, holidays and other prohibited days are classified as a crime prosecuted in accordance with the provisions of the Penal Code.

5. Summary

Restrictions on employment on Sundays and public holidays refer to the type of protective decisions in the field of labor law. They combine the functions of rest and religious rites. Labour legislation, on the one hand, provides for a ban on holidays, but allows for exceptions to this ban. In the case of authorized work on Sundays and public holidays, additional restrictions are imposed in the form of an obligation to provide employees with days off, and when this is not possible - additional financial remuneration.

As can be seen from previous considerations, the Polish legislator treats employment in trade in a special way. Since 2018, retail outlets have been excluded from the General provisions of the Labor code and a special legal regime has been applied to them. The relatively short period of time since the introduction of restrictions on Sunday and holiday work in the trade, does not allow to fully evaluate the new rules. In particular, the macroeconomic implications of the 2018 reform are unknown, but it

seems that apocalyptic perceptions of the state of the Polish economy, free from Sunday's trade, and therefore a sharp drop in GDP or an avalanche-like rise in unemployment, are quite far from reality. In General, there are no problems with compliance with the new rules, although there may be attempts to circumvent them (for example, the opening of shopping centers located near railway stations, under the pretext of performing the function of railway stations or the beginning of sales in postage stores under the guise of post offices). The bill on the suppression of such violations was even submitted to the Sejm of Poland.

The restrictions were rather well received by society. According to the survey, more than half of citizens evaluate the new law well (33% estimate "very good", 19% - "pretty good", 20% - "certainly bad", 21% - "pretty bad" and 7% "do not have an opinion on this issue"). These results reflect the public opinion after a few Sundays of free trade.

However, all indications are that the battle for Sunday in the trade is not over yet. On the one hand, some opposition parties claim that after coming to power they will abolish the ongoing reforms, including the law on the restriction of employment in trade, on the other hand, we also see a "war of opinions" before the elections. Depending on who is conducting the survey, the results may vary significantly. The results favorable for the new law were given above, but there are surveys showing completely different preferences of respondents. To the question "would you Like the ban on trade to cover all Sundays?" 45% of respondents said 'definitely not' and 23% said 'probably not'. Supporters of Sunday - 28% of respondents who do not buy (19% chose the answer "definitely Yes", 9 percent - "rather Yes") the Survey also shows that, according to every third Respondent, the statement on the abolition of trade restrictions on Sunday may affect his decision in the elections, while up to 42 percent of the electorate wants shops to be open every Sunday, and studies show that the law restricting trade on Sunday does not attract people living in the province .

As follows from the above, the law restricting work on Sundays and public holidays in trade may be subject to further changes. However, it depends on what political forces will exercise power in Poland.

СПИСОК ЛИТЕРАТУРЫ (REFERENCES)

1. Florek L. Problems and Dilemmas of Labour Relations in Poland. *Comparative Labour Law and Policy Journal*, 1991–1992, no. 13, pp. 112–114.
2. Kwiatkowski E., Socha M.W., Sztanderska U. *Labour Market Flexibility and Employment Security. Poland*. Geneva, International Labour Office Publ., 2001. 77 p.
3. Stelina J. Prawne ograniczenia pracy w niedziele i święta w Polsce [Legal restrictions on work on Sundays and holidays in Poland], in: Szmyt A., Boszycki J. et al. (eds.). *Aktualne problemy prawa Polski i Ukrainy*. Gdańsk, Gdańsk University Publ., 2018, pp. 163–172. (In Polish).
4. Baniak J. Niedziela jako dzień święty w wyobrażeniach i ocenach katolików polskich [Sunday as a Holy day in the performances and assessments of Polish Catholics]. *Teologia Praktyczna*, 2004, no. 5, pp. 245–259. (In Polish).
5. Krawczyk R. Szabat. Odpoczynek formą świętowania [Sabbat. Vacation form of celebration]. *Forum Teologiczne*, 2013, no. 14, pp. 51–65. (In Polish).
6. Salij J. Teologiczny sens odpoczynku niedzielnego [The theological meaning of Sunday rest]. *Collectanea Theologica*, 1969, no. 39/3, pp. 5–18. (In Polish).
7. Carroll W.H. *Historia Chrześcijaństwa [History of Christianity]*. Wrocław, Wektory Publ., 2009. Vol. 1. 590 p. (In Polish).
8. Dillon J.N. *The Justice of Constantine: Law, Communication, and Control*. Ann Arbor, University of Michigan Press, 2012. 295 p.
9. Bacchiocchi S. *From Sabbath to Sunday. A Historical Investigation of the Rise of Sunday Observance in Early Christianity*. Rome, The Pontifical Gregorian University Press, 1977. 357 p.
10. Skierska I. *Sabbatha sanctifices. Dzień święty w średniowiecznej Polsce [Sabbatha sanctifices. The Holy Day in Medieval Poland]*. Warszawa, Institute of History of the Polish Academy of Sciences Publ., 2008. 566 p. (In Polish).
11. Bercusson B. *European Labour Law*. Cambridge, Cambridge University Press, 2009. 752 p.
12. Grzebyk P. Ochrona odpoczynku niedzielnego [The protection of Sunday rest], in: Florek L. (ed.). *Czas pracy, praca zbiorowa [Working time, teamwork]*. Warszawa, Oficyna Publ., A Wolters Kluwer Business Publ., 2011, pp. 199–208. (In Polish).
13. Filipova I.A. Features of the Work and Rest Schedule Legal Regulation in the Labor Legislation of France. *Trudovoe pravo v Rossii i za rubezhom = Labor Law in Russia and Abroad*, 2016, no. 2, pp. 60–64. (In Russ.).
14. Havlovic S.J., Moore W.M. Workers' Councils, Trade Unions and Industrial Democracy in Poland. *Economic and Industrial Democracy*, 1997, vol. 18, iss. 2, pp. 261–287. DOI: 10.1177/0143831X97182005.
15. Kohl H., Lecher W., Platzer H.-W. Transformation, EU Membership and Labour Relations in Central Eastern Europe: Poland — Czech Republic — Hungary — Slovenia. *Transfer: European Review of Labour and Research*, 2000, vol. 6, iss. 3, pp. 399–415. DOI: 10.1177/10242589000600306.

INFORMATION ABOUT AUTHOR

Jakub Stelina – Doctor of Law, Professor, Head, Department of Labour Law
University of Gdansk
6, ul. Jana Bażyńskiego, Gdańsk, 80-309, Poland
e-mail: jstelina@prawo.ug.edu.pl
ORCID: 0000-0003-2871-1413

BIBLIOGRAPHIC DESCRIPTION

Stelina J. Restriction of work in retail on weekends and holidays (Polish experience). *Pravoprimerenie = Law Enforcement Review*, 2019, vol. 3, no. 1, pp. 79–85.
DOI: 10.24147/2542-1514.2019.3(1).79-85. (In Russ.).