

The Polish Women's Strike, abortion, and the right to strike

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1. The Polish Women's Strike and the (unsuccessful) general strike. 2. Polish Women's Strike and women's strike in Iceland in 1975. 3. Model of the right to strike in the Act on the Resolution of Collective Disputes. 4. The right to strike in the Constitution of the Republic of Poland. 5. Political strike. 6. Abortion and workers' rights. 7. The Polish Women's Strike as an organizer of a workers' strike. 8. Conclusions.

Abstract

On 22 October 2020, the Constitutional Tribunal (Poland's constitutional court) issued a ruling that effectively restricted the legality of abortion, which triggered massive protests ("women's strike"). In this paper, I take a deeper look at the women's strike in Poland in order to examine whether its central demand, i.e. the change of law on abortion, pertains to occupational or socio-economic interests of workers and thus meets the criteria for subject matter appropriate to a strike. I also discuss whether this demand may be raised by an actor, such as the "Polish Women's Strike", that is not a labour union. The model of the right to strike enshrined in the Polish Constitution and ILO standards (ILO case no 3111 against Poland) prompts a broad interpretation of the right to strike, which leads to the conclusion that politically motivated strikes are allowed under Polish law. I then review the potential interdependencies between abortion and workers' rights and argue that changing the law on abortion meets the legal criteria for strike demands. Nevertheless, organizations that are not created to represent the collective interests of workers have no legally sanctioned powers to call a strike.

Keywords: Right to strike; Political strike; Protest strike; Abortion; Polish Woman's Strike.

1. The Polish Women's Strike and the (unsuccessful) general strike.

The circumstances that had led to the Constitutional Tribunal ruling on abortion,¹ as well as its content, were met with widespread social disapproval, particularly among women.

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¹ Constitutional Tribunal verdict of 22 October 2020, K 1/20, *Journal of Laws* 2021/175. See more Cieply F., *Engenic Abortion as Discrimination against Persons with Disabilities: Another Perspective on Current Constitutional Case in Poland*, in *Forum Prawnicze*, 6, 2021, no 6, 74-84; Gliszczyńska-Grabias A., Sadurski W., *The Judgment That Wasn't*

Despite the Covid-19 pandemic and the resulting restrictions on public gatherings, numerous street protests took place across the entire country. The protests, generally referred to as the “women’s strike”, were organized by an informal social movement going by the name Polish Women’s Strike (Ogólnopolski Strajk Kobiet; OSK). The movement’s objective is not to bring workers together, and it makes no claims in terms of representing labour interests. Yet on 28 October 2020 it nonetheless staged an (unsuccessful) attempt at organizing a general strike with a view to drawing attention to the issue of abortion.

The Polish Women’s Strike is a spontaneous social movement. Its website reads: “We are a grassroots independent social movement of pissed-off women and smart men who support us. We engage in protest and action for women’s rights, democracy, and a Poland for all, mobilising people in over 150 towns in Poland, 90% of which have fewer than 50,000 inhabitants, which is our greatest strength and pride”.² The Polish Women’s Strike emerged in 2016, when on 23 September the Sejm (the lower chamber of the Polish parliament) refused to proceed with a bill liberalising the abortion law, entitled ‘Save the Women’, and instead proceeded with a bill to restrict legal abortion (‘Stop Abortion’). In response to the Sejm’s decisions, a political party organized street protests in several cities in Poland. At one of these protests, women’s activists launched the idea of a women’s protest on 3 October 2016, referred to as the black protest or the Black Monday – and this is how the Polish Women’s Strike was born.³ Following massive protests across all of Poland, on 6 October 2016 the authorities decided to drop the ‘Stop Abortion’ bill. The Polish Women’s Strike continued without taking on any specific legal form (in contrast, for instance, to becoming an association⁴). Its work to advance women’s rights continued, with abortion remaining the point of focus. Only recently has the movement begun to incorporate more typical social issues such as improving women’s economic situation (including pensions for women doing unpaid work), boosting welfare services for the families of disabled persons, effective enforcement of child support payments, penalties for failure to make child support payments, raising the income cut-off for welfare support from the state-operated child support fund to the same level as the average wage, and gender equality in wages and salaries.⁵ However, OZZ Inicjatywa Pracownicza – one of the Polish trade union has aptly pointed out that the socio-economic demands of the Polish Women’s Strike are only of marginal importance to

(*But Which Nearly Brought Poland to a Standstill*): Judgment’ of the Polish Constitutional Tribunal of 22 October 2020, K 1/20, in *European Constitutional Law Review*, 17, 2021, 1, 130-153; Tykwińska-Rutkowska D., *The right to abortion in Poland in the light of the Constitutional Tribunal’s judgment of 22 October 2020*, in *Studia Iuridica Toruniensia*, 29, 2021, 419-440; Bucholc M., *Abortion Law and Human Rights in Poland: The Closing of the Jurisprudential Horizon*, in *Hague Journal on the Rule of Law*, 14, 2022, 73-99.

² <http://strajkkobiet.eu/co-robimy/> (accessed 25 May 2022).

³ Kubisa J., Rakowska K., *Was it a strike? Notes on the Polish Women’s Strike and the Strike of Parents of Persons with Disabilities*, in *Praktyka Teoretyczna*, 4, 30, 2018, 21.

⁴ Note the leaders of the movement has set up in 2019 a foundation to raise funding for Polish Women’s Strike actions <https://spis.ngo.pl/304605-fundacja-ogolnopolski-strajk-kobiet> (accessed 25 May 2022).

⁵ As for socio-economic demands of Polish Woman’s Strike see <http://strajkkobiet.eu/postulaty/> (accessed 25 May 2022).

many women on the labour market, and that the movement itself views them as secondary to its demands regarding reproductive and political rights.⁶

The Polish Women's Strike played the key role in organizing the street protests (the "women's strike") following the Constitutional Tribunal's ruling of 22 October 2020. The ruling found that it is unconstitutional to allow abortion if prenatal tests or other medical tests indicate high likelihood that the foetus is heavily and irreparably damaged, or suffers from an incurable illness that threatens its life. In practice, the ruling means that abortion is legal in Poland only in two cases: where the pregnancy is a risk to the life or health of the pregnant woman, and where there are reasons to believe that the pregnancy is a result of a criminal act.⁷ This is one of the most restrictive approaches to the legality of abortion in Europe.⁸

The Polish Women's Strike is a well-run social movement. Using the word "strike" makes great sense in terms of social communication. It is catchy and easy to grasp. It suggests the fight against injustice. It invokes progress as well as sacrifice (e.g. a hunger strike). There is no other word in Polish that would carry a comparably clear message of engagement and would serve to mobilize the public quite as effectively. Furthermore, given Poland's recent history, "strike" inevitably brings back the memory of the massive strike wave in August 1980 – the same strike wave that led to the emergence of Solidarity (NSZZ Solidarność), the first independent legal trade union in the communist block; the same strike wave that is widely recognized as the beginning of the political transformation in Central and Eastern Europe that eventually led to the collapse of communism and the end of the Yalta system.

Yet the "strike" in the name of the Polish Women's Strike is a misnomer. There can be no strike without workers who choose to collectively stop working in order to put pressure on the other party (usually the employer, sometimes the state) in order to fight for their interests. But this crucial component is essentially missing from the Polish Women's Strike. What the people protesting in the streets of Poland have in common is not the fact that they are workers. Polish law gives a very clear context for when a strike can take place; according

⁶ Inicjatywa Pracownicza claims: "OSK's socio-economic demands upsets [trade unions and working class, added by PG]. It is clear these demands were given a lower rank, contrary to political and reproductive demands"; <https://www.ozzip.pl/publicystyka/spoleczenstwo/item/2699-strajk-kobiet-postulaty-socjalne-albo-przebrana> (accessed 25 May 2022). See more <https://www.ozzip.pl/publicystyka/strategie-zwiazkowe/item/2437-zwiazki-zawodowe-strajk-kobiet-i-kontrola-narodzin> (accessed 25 May 2022). Piotr Duda, leader of one of the biggest Polish trade union NSZZ Solidarność expressed very critical statement on Polish Woman's Strike; "some protesters want to destroy all values and behave like a bandits" <https://polskieradio24.pl/130/6257/Artykul/2626169,Piotr-Duda-o-Strajku-Kobiet-czesc-uczestnikow-protestow-chce-zniszczyc-wszelkie-wartosci-zachowuja-sie-jak-bandyterka> (accessed 25 May 2022).

⁷ Ustawa z 7 stycznia 1993 r. o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży (Dz. U. Nr 17, poz. 78 ze zm.); Act of 7 January 1993 on Family Planning, the Protection of Foetuses, and Grounds for Permitting the Termination of a Pregnancy. More on abortion law in Poland see Różyńska J., Chańska W., *Abortion in Poland: Law and Practice* in Sandor J. (ed.), *Studies in Biopolitics*, Budapest: Central European University Press, 2013, 41-59; Krajewska A., *A. Revisiting Polish Abortion Law: Doctors and Institutions in a Restrictive Regime*, in *Social & Legal Studies*, 3, 2022, 409-438.

⁸ See European Parliament resolution of 11 November 2021 on the first anniversary of the de facto abortion ban in Poland (2021/2925(RSP)); Kapelańska-Pregowska J., *The Scales of the European Court of Human Rights: Abortion Restriction in Poland, the European Consensus, and the State's Margin of Appreciation*, in *Health and Human Rights Journal*, 2, 2021, 213-224.

to Article 17(1) of the Act on the Resolution of Collective Disputes,⁹ a strike is when “workers (underline my, P.G.) collectively stop work in order to settle a dispute concerning interests listed in Article 1 hereof”, and these interests are: “conditions of work, pay or welfare benefits as well as trade union rights and freedoms of workers or other groups that have the right to form trade unions”. Even the Polish Constitution safeguards the right to strike but links it to work. Article 59(3) of the Constitution reads: “Trade unions shall have the right to organize workers’ (underline my, P.G.) strikes or other forms of protest subject to limitations specified by statute.”¹⁰

The Polish Women’s Strike has little to do with workers. It is not intended to serve as a workers’ associations nor is its purpose to protect workers’ interests. Its focus is and has been on women’s reproductive rights. Yet there are certain areas where the Polish Women’s Strike actually does meet “strike” as defined by the law, and this is precisely why it is interesting to analyse the women’s strike in Poland in light of collective labour law. These areas are: the (unsuccessful) attempt to organize a general strike to change the law on abortion, and the combination of street protests with workers’ strikes.

The general strike was planned for 28 October 2020 under the slogan: “We’re not going to work” (*Nie idziemy do roboty*). The leaders of the movement called on employees, contractors, freelancers etc. to stop working: “Let’s take a day off. A day of unpaid leave. A day of leave to donate blood. Close the business, the store, the stand. Or just simply – let’s not go to work! Since Poland is not working, let’s bring it to a stop! And let’s forge a new Poland for ourselves!”.¹¹ This was the one and only attempt at organizing a general strike, and it was unsuccessful. Later on, the activism of the Polish Women’s Strike took the form of street protests and demonstrations, without any significant participation of workers or trade unions.

The reasons why the general strike was unsuccessful and why the street protests failed to turn into strikes are twofold. Firstly, the movement leaders have been unable to sufficiently motivate workers. Secondly, however, certain limitations that are inherent in Polish strike law have served to undermine this objective.

2. Polish Women’s Strike and women’s strike in Iceland in 1975.

The leaders of the Polish Women’s Strike made it clear that it was their intention to combine street protests with workers’ strikes, directly invoking the idea of the women’s strike in Iceland in 1975 that went down in history as the Women’s Strike, Women’s Day Off,

⁹ Ustawa o rozwiązywaniu sporów zbiorowych (t.j. Dz.U. z 2020 r. poz. 123); Act of 23 May 1991 on the Resolution of Collective Disputes.

¹⁰ What ‘worker’ means in Polish collective labour law *see*: Case no 2888 (Poland). Definitive Report - Report No 363, March 2012; Mitrus L., *European Trade Unions in Age of Flexicurity and Segmented Labor Markets: The Case of Poland*, in *Comparative Labor Law & Policy Journal*, 38, 1, 2016, 65-68.

¹¹ <https://www.rp.pl/Spor-o-aborcje/201029343-Dzis-kobiety-strajkuja-Polska-nie-dziala-zrobmy-sobie-nowa.html> (accessed 25 May 2022).

Kvennafrídagurinn.¹² They spoke about the strike in Iceland, both in terms of organization and impact, as being the source of inspiration for their work in Poland first in 2016 when the movement emerged and then again in 2020 following the ruling of the Constitutional Tribunal.

On 24 October 1975, Iceland witnessed a protest action that involved approx. 90% of the country's women. The protest consisted in women not doing any work that day, neither at their workplaces nor at home. The purpose of the action was to show the importance of women on the labour market, and to demand equal labour rights regardless of gender, including equal access to work and equal pay.¹³ The strike in Iceland was successful: an overwhelming majority of women working outside the home did not go to work, and those who normally stayed at home did not engage in housework or childcare. On the day of the strike, services normally rendered by women – as phone operators, bank cashiers, at airlines, at printing presses, etc. – were either unavailable or severely limited. Schools were closed or operated at minimal capacity, because most teachers were women. Employers had to accept male workers bringing their children to work. In the centre of Reykjavik rallies were held that drew a crowd of approx. 25 000 women. The strike lasted until midnight on 24 October 1975. In terms of legal consequences, most employers chose not to respond to the women's actions with any reprisals. This may have been caused by the fact that the more radical and confrontational slogan of “strike” was changed to “day off”, and the day was promoted as Women's Day Off. The idea was to make the protest attractive to a greater number of women, but also to avoid the potential problem of participants being accused of taking part in a wildcat strike that was illegal under Icelandic law. In terms of purely legal impact of the Women's Day Off, Iceland adopted a law in 1976 that prohibited gender-based pay discrimination.¹⁴ Yet it appears that the extra-legal impact was much greater, raising social awareness of the importance of women's work (both inside and outside the home) for Iceland's economy.¹⁵

The ruling of the Constitutional Tribunal brought the pro-choice demonstrators out to the streets to decry it, despite the pandemic. The leaders of the Polish Women's Strike may have wanted to pursue the liberalization of abortion law by relying not only on the freedom of peaceful assembly (Article 57 of the Polish constitution)¹⁶ but also on this classic institution of collective labour law, the strike (Article 59(3) of the Constitution). The idea makes sense: if employers (whose employees are not at work) and the clients of the employers (who are not receiving the services they require for the duration of the strike) were thus incorporated into the debate on abortion, it would strengthen the position of the Polish

¹² <https://icelandmag.is/article/1975-womens-strike-when-90-icelandic-women-went-strike-protest-gender-inequality> (accessed 25 May 2022).

¹³ <https://nvdatabase.swarthmore.edu/content/icelandic-women-strike-economic-and-social-equality-1975>; <https://www.theguardian.com/world/2005/oct/18/gender.uk> (accessed 25 May 2022).

¹⁴ <https://nvdatabase.swarthmore.edu/content/icelandic-women-strike-economic-and-social-equality-1975> (accessed 25 May 2022).

¹⁵ In more details see Styrkársdóttir A., *Iceland: Breaking Male Dominance by Extraordinary Means*, in Dahlerup D., Leyenaar M. (eds.), *Breaking Male Dominance in Old Democracies*, Oxford: Oxford University Press, 2013, 130-132.

¹⁶ Konstytucja Rzeczypospolitej Polskiej (Dz.U. 1997 Nr 78, poz. 483); English version available <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> (accessed 25 May 2022).

Women's Strike in negotiating with the government. Effectiveness of any protest at all, and of a general strike perhaps even more so, depends on its genuine impact on the interests of not only employers but also the state and its citizens. Since only a person who normally works can actually stop working, politicians, leaders of social movements etc. who wish to wield the power of the strike – and its impact in terms politics, economics, and propaganda – must successfully mobilize the workers.

The Polish Women's Strike thus announced a day-long general strike. However, it turned out that organizing and managing a protest of this scale is a great challenge both conceptually and logistically (in particular for an organization with no experience in collective bargaining, no solid structure, and no in-depth understanding of the situation of workers in Poland). The point of a general strike is to encourage a large proportion of workers to abandon work at the same time, and to persuade these workers that the cause is worthy of the risk of lost wages, or even lost jobs. When planning the general strike for 28 October 2020, the key challenge for the leaders of the Polish Women's Strike was to persuade the public to use the strike against the judiciary (the Constitutional Tribunal) acting to further restrict the law on abortion. It would seem that mobilizing workers to go on strike would require the Polish Women's Strike to demonstrate a direct relationship between the right to abortion and workers' rights, and also to persuade workers that their demands are important enough to the general interests of workers (or indeed of the society at large) that they justify the requested collective effort. In other words, it would seem necessary to persuade workers that they are sacrificing their wages for the duration of the strike and accept the risk of job loss because the women's strike is either relevant in terms of the conditions of work of women who work, or promotes interests that are important for the common good (liberalization of the law on abortion).

As for demonstrating the relation between the right to abortion and workers' rights, the Polish Women's Strike has not done much. The general strike was not preceded by any information campaign addressed to workers which would explain that the restrictive law on abortion would e.g. have an adverse impact on women's situation on the labour market, the standard of life of working women, etc.¹⁷ Furthermore, no attempts were made to act in collaboration with trade unions, which might have helped to mobilize workers.¹⁸

Even though the example of Iceland was invoked very often, in reality the only element that the strike in Iceland and the one in Poland shared was that they were both organized by

¹⁷ Interestingly, different images of the strike were presented by the media, including public media controlled by the PiS ruling party; Koźdoń-Dębecka M., *The Image of Women Strike in "Wiadomości" TVP and "Fakty" TVN news services from October 22 until November 2 2020, in the context of COVID-19 pandemic*, in *Media Biznes Kultura*, 2, 2021.

¹⁸ See an interview to Magdą Malinowską and Martą Rozmysłowicz (Workers' Initiative, Poland) by Transnational Social Strike <https://www.ozzip.pl/english-news/item/2713-the-women-s-strike-in-poland-freedom-of-abortion-freedom-from-exploitation> (accessed 25 May 2022). On a general problem of gender issues in Polish trade union movement see Miśkiewicz J., *Women on the labour market and their restricted right of association*, in *The Situation of Women in Poland 2020. Collective work*, Forward Foundation, 2021, 43-52; (available online https://www.transform-network.net/fileadmin/user_upload/the_situation_of_women_in_poland_2020_2.pdf) and Mrozowicki A., Trawińska M., *Women's union activism and trade union revitalization: The Polish experience*, in *Economic and Industrial Democracy*, 2, 2012, 269–289.

women's movements, i.e. by definition not trade unions. Beyond this single similarity, the differences were numerous and significant. Firstly, the demands in Iceland were socio-economic in nature, in the sense that they touched upon issues with a direct link to women's situation on the labour market. The focus of the Polish Women's Strike is almost exclusively on abortion, which admittedly is viewed by Polish trade unions as a socially relevant issue, but not a suitable subject for a collective dispute in general, and a strike in particular. Secondly, the attempt to channel the protests into a strike – the way it happened in Iceland where the leadership of the women's movement managed to persuade a large majority of women to stop working – was unsuccessful.

3. Model of the right to strike in the Act on the Resolution of Collective Disputes.

The fact that the general strike proposed by the Polish Women's Strike never really got off the ground, and that the streets protests did not morph into workers' strikes, is to a certain extent a consequence of the model of the right to strike laid down in Polish legislation and the limitations that it entails. The model is primarily based on the 1991 Act on the Resolution of Collective Disputes. Shortly after the collapse of communism in Poland, the legislator adopted a bare-bones approach with regard to legal regulation for the right to strike for the era of the political transformation. The law was drafted in a hurry, because there was a pressing need to offer clear and specific instruments for handling collective interests and the disputes that inevitably arose around them, and up until 1991, such instruments had been practically non-existent in Polish law.¹⁹ The early 1990s were a volatile period of rapid socio-economic change in Poland; it is not surprising that the model of the right to strike adopted under those circumstances introduced numerous curbs and restriction with regard to strike participants, organizers, procedures, and demands.²⁰ I will refer to this model as the 'static model'.

First of all, the strike forms only one stage in the collective dispute between the employer and the trade union(s). On each occasion, the scope of the collective dispute (as specified within the parameters set by the Act) determines the scope of the right to strike. Secondly, only a trade union can organize a strike. Thirdly, a strike is only allowed after the two-tiered amicable resolution procedure, consisting of bargaining and mediation facilitated by an outside mediator, is exhausted. Fourthly, a strike and a collective dispute may only pertain to narrowly understood conditions of work and trade union freedoms.²¹

In the context of the women's strike, this fourth and last restriction is particularly important. According to Article 1 of the Act, "a collective dispute between employees and

¹⁹ Florek L., *Demoncratic Institutions of Industrial Relations: A Polish Perspective*, in *Michigan Journal of International Law*, 3, 1991, 623.

²⁰ See Seweryński M., *Collective labour law codification, polish experience*, in *Revista Latinoamericana de Derecho Social*, 17, 2013, 322 ff; Baran K. W., *Outline of Polish Labour Law System*, Warsaw: Wolters Kluwer, 2016, 425 ff; Czerniak-Swędziol J., Baran K. W., Wujczyk M., *Collective labour disputes* in Baran K. W. (ed.), *Labour law disputes in Polish legal system*, Warsaw: C.H. Beck, 2017, 258-327.

²¹ In more details Grzebyk P., *The Right to Strike: Poland* in Waas B. (ed.), *The Right to Strike. A Comparative View*, Kluwers Law International, Alpeen aan den Rjin, 2014, 427-449.

an employer and employers may concern the conditions of work, pay, or social benefits, as well as the liberties and freedom of association rights and of employees and other groups entitled to associate in trade unions”. On this basis, academic literature and case-law have developed the consensus that disputes concerning interests located outside the workplace fall outside the scope of the Act on the Resolution of Collective Disputes. This includes for instance disputes on how those in power wield this power, or disputes where the demands are directed not at the employer but rather at an authority (central/local government), or where the disputes concern the broadly understood justice administration. They constitute “conflicts of political character”²² and as such preclude the organization a legal strike.²³ This view is rooted in the assumption that any demands for more favourable laws or against the negative consequences of plans or decisions of public authorities may only be broached using legislative instruments.²⁴ It presumes that all collective disputes with non-occupational interests at their centre are harmful to employers, who are thus forced into a dispute they have no power to solve, since they have no power over the authorities to whom the demands are addressed.

As for the strike itself, if the interests are non-occupational, the employer bears the risk of costs resulting from the work stoppage. Since individual employers are unable to influence the legislative processes or the decisions of the public authorities, they should not be exposed to the negative consequences of state policy. Grievances related to legislation should take not lead to a strike but rather should be aired at a forum designed specifically for that purpose (e.g. the Social Dialogue Council). Employees or trade unions that wish to express in public their disagreement or discontentment with what the public authorities are doing may do so under the freedom of assembly (demonstrations, pickets, protests)²⁵. The ‘static model’ of collective dispute resolution – including the strike – assumes that in the post-1989 system, each employer is an entity completely separate from other employers and from the state in economic, legal and political terms.

In consequence, the model of the right to strike enshrined in the 1991 Act on the Resolution of Collective Disputes suggests that the workers who wanted to take part in the women’s general strike on 28 October 2020 or in the strikes that accompanied the street protests were prevented by the regulation from doing so legally, at least for four reasons. Reason number one: the subject matter of the strike went much beyond their narrowly understood occupational or socio-economic interests (such as conditions of work and pay); the demands were related to abortion and as such were only in an indirect relation to employment and freedom of association. Reason number two (linked very closely to reason number one): the demands of the strike were not addressed to the employer(s) but rather to the state. Number three: Polish Women’s Strike is not a trade union, and only trade unions have the right to organize a legal strike. And finally, number four: the previous stages of reaching a resolution to a collective dispute, i.e. the bargaining and mediation, were not completed. In practice, the workers who decided to take part in the strike had to resort to

²² Cudowski B., *Spory zbiorowe*. Białystok, 1998, 52.

²³ Baran K.W. (ed.), *Zbiorowe prawo zatrudnienia. Komentarz*, Wolters Kluwer Polska, Warsaw, 2019, 405.

²⁴ See Case No 3111 (Poland). Definitive Report – Report No 378, June 2016, 696.

²⁵ *Ibid.*

other options that are usually used in Poland by workers with employee status (or officials, whose status also differs from employees) with no right to strike, e.g. employees of the justice administration sector, judges, police officers, etc.

4. The right to strike in the Constitution of the Republic of Poland.

The model of the right to strike enshrined in the 1991 Act was considerably modified when, in 1997, the new Polish Constitution came into force. Its Article 59(3) reads: “Trade unions shall have the right to organize workers’ strikes or other forms of protest subject to limitations specified by statute. For protection of the public interest, statutes may limit or forbid the conduct of strikes by specified categories of employees or in specific fields.” In the context of the Polish Women’s Strike, it must be noted that the Constitution does not consider the strike to be solely a method of reaching a resolution to a collective dispute between an employer and a trade union.²⁶ In my opinion, of great importance is the fact that the Constitution lists in one single provision three key components of the right of association, namely the freedom of association in trade unions (Article 59(1)), the right to bargain and conclude collective labour agreements (Article 59(2)), and the right to strike (Article 59(3)).²⁷ However, only the bargaining and the collective labour agreements are specifically labelled as instruments designed to reach a resolution of a collective dispute.²⁸

Given said that, I claim there are thus no grounds to argue that the Constitution stipulates that the right to strike may only be used for the purpose of making a collective labour agreement or another type of agreement between social partners specifically regulated by the law. Under the Constitution, the strike is not an instrument of protection of only the narrowly understood occupational interests of workers. I am of the opinion, the scope of the right to strike as regards its subject matter laid out in the Constitution goes much beyond what is delineated in the 1991 Act on the Resolution of Collective Disputes. There is also nothing in the Constitution that would preclude the legality of a strike addressed against the state.²⁹

²⁶ I elaborate more on this, in the context of political strikes, in Grzebyk P., *Od rządów siły do rządów prawa: polski model prawa do strajku na tle standardów unijnego i międzynarodowego prawa pracy*, Warsaw: Scholar, 2019, 202-204. Different opinion is presented in Polish literature; see for instance Oniszczyk J. in Baran K. W. (ed.), *System Prawa Pracy. Tom V. Zbiorowe prawo pracy*, Wolters Kluwer, Warsaw, 2014, 744 ff.; Baran K. W. (ed.), *Principles of Polish labour law*, Warsaw: C. H. Beck, 2018, 382.

²⁷ Polish Constitutional Tribunal claims, in my opinion wrongly, that “it is possible to distinguish between stronger freedom of association in trade unions (art. 59 (1)) and - related - weaker trade union freedoms, including the right of trade unions to bargain collectively, in particular to resolve collective disputes, and to conclude collective labour agreements (art. 59 (2)) and the right to organize workers' strikes and other forms of protest (art. 59 (3)) [...] As a result, possible restrictions on the right to conclude collective labor agreements, may be slightly broader than the restriction of the basic freedom of association”. Constitutional Tribunal verdict of 17 November 2015, K 5/15, OTK-A 2015, nr 10, poz. 164, point 11.1. This opinion is accepted in Polish doctrine, see Krzywoń A., *Konstytucyjna ochrona pracy i praw pracowników*, Warsaw: Wolters Kluwer, 2017, 447.

²⁸ See Freedom of Association. Compilation of decisions of the Committee on Freedom of Association, Geneva 2018, 766, 258, 759.

²⁹ Please note this is not a common view in Polish doctrine. In fact, this problem was not so far a subject of a detailed discussion. See Florczak-Wątor M. in *Konstytucja Rzeczypospolitej Polskiej. Komentarz, wyd. II*, red. P. Tuleja, LEX/el. 2021, art. 59; Banaszak B., *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warsaw, C.H. Beck, 2012.

The second provision in the Constitution that directly refers to the strike is Article 59(4), which reads: “The scope of freedom of association in trade unions and in employers’ organizations may only be subject to such statutory limitations as are permissible in accordance with international agreements to which the Republic of Poland is a party”. This enshrines the polycentric³⁰ nature of the right to strike, i.e. the fact that the legal norms that safeguard the right to strike are created and interpreted by several bodies across several different systems of law, beyond the Polish legislator and the Polish courts. Polish law may not be in violation of international agreements – but that is only the foundation, the starting point. Article 59(4) goes beyond this foundation in stipulating that Polish law may only restrict the right to strike where it is allowed to do so by international agreements by which Poland is bound.³¹

The international standards articulated in particular in no 87 Freedom of Association and Protection of the Right to Organise Convention of the International Labour Organization (ILO) would be difficult to reconcile with the ‘static model’ of the right to strike laid down in the 1991 Act on the Resolution of Collective Disputes.³² Rather, they support the model to the right to strike expressed in the 1997 Constitution, in which the permissible subject matter of the strike is interpreted broadly and a strike can be directed against parties other than employer(s), for instance against the state.³³

The Committee on Freedom of Association, in case no 3111 against Poland, when assessing whether the 1991 Act on the Resolution of Collective Disputes is in compliance with its standards, noted that:

“the occupational and economic interests which workers defend through the exercise of the right to strike do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions and problems facing the undertaking which are of direct concern to the workers.”³⁴

Furthermore, the Committee on Freedom of Association noted that:

“organizations responsible for defending workers’ socio-economic and occupational interests should be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and standards of living.”³⁵

³⁰ Kilpatrick C., *Has polycentric strike law arrived in the UK? After Laval, after Viking, after Demir?*, in *International Journal of Comparative Labour Law & Industrial Revolution*, 30, 3, 2014, 293.

³¹ See more Sobczyk A., Zagrobelny J. in Safjan M., Bosek L.(eds), *Konstytucja RP. Tom I. Komentarz. Art. 1-86*, Warsaw: C. H. Beck, 2016, 1402; Surdykowska B., *Konstytucja Rzeczypospolitej Polskiej. Komentarz* in Czarnecki P., Grzebyk P., Reda-Ciszewska A., Surdykowska B., *Ustawa o związkach zawodowych. Komentarz praktyczny z orzecznictwem*, C.H. Beck, Warsaw, 2022.

³² The latest, very comprehensive, legal analysis of the ILO no. 87 convention as a source of the right to strike is presented in Vogt J., Bellace J., Compa L., Ewing K. D., Lord Hendy Q.C., Lorcher K., Novitz T., *The right to strike in international law*, Hart, London, 2020, 65 ff.

³³ See nt. (27), 203-204.

³⁴ See nt. (25), 712; nt. (29), 758.

³⁵ See nt. (25), 712; nt. (29), 759.

In short, the ILO standards require that workers should have the guarantees necessary to engage in disputes on socio-economic issues³⁶ and to organize, as part of these disputes, ‘protest strikes’ against the economic and social policy of the government,³⁷ and such guarantees are lacking from the 1991 Act on the Resolution of Collective Disputes.

5. Political strike.

There is often an overlap between freedom of association, occupational interests, and politics. In effect, a need emerges to distinguish between political disputes and socio-economic ones. In the context of the Polish Women’s Strike in 2020, the crux of the issue is whether the demand that the law on abortion be changed falls within the permissible scope of a protest dispute/protest strike, or outside that scope (and thus renders the dispute and protest political)?

An interesting aspect of the Polish model of the right to strike is that it includes certain guarantees absent from other legal systems. Article 59(3) of the Constitution gives certain legal guarantees to political strikes. There are two principal arguments to support the view (that is alas not universally held) that the Polish constitution protects certain forms of political strike.

Firstly, the makers of the Constitution intentionally and on purpose decided not to exclude political strikes from the scope of Article 59(3). This is supported by the documentation from the drafting stages on the Constitution, including the reports from the proceedings of the Constitutional Committee of the Polish National Assembly, i.e. the Sejm and the Senate sitting jointly. Transcripts from the meetings for the Constitutional Committee clearly show that the drafters were in favour of granting constitutional protection to political strikes, fearing social discontent should the protection for this category of strikes be withheld.³⁸ This approach is very favourable to workers and goes even beyond ILO standards in this respect; the standards explicitly absolve states from the obligation to safeguard collective disputes and strikes “of a purely political nature”³⁹ and allow each state to prohibit political strikes. The Polish approach must therefore be considered highly pro-freedom and pro-worker.

Secondly, the Constitution posits the strike as a political rather than economic freedom. There were debates among the drafters of the Constitution with regard to potential legal ramifications of this approach, and in the end, a conscious decision was made that considering the right to strike in purely economic terms, whether correct or not, is

³⁶ “disputes on socio-economic issues”; see nt. (25), 710.

³⁷ See nt. (29), 764.

³⁸ I describe it in details in Grzebyk P., nt. (27). Note however, different opinion is presented in Polish literature, namely political strikes are not protected by Constitution; Sokolewicz W., Wojtyczek K., *Komentarz do art. 59 Konstytucji* in Garlicki L., Zubik M. (eds.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, t. II, Warsaw: Wydawnictwo Sejmowe, 2016, 430-431.

³⁹ See nt. (29), 761: “Strikes of a purely political nature do not fall within the protection of Conventions Nos. 87 and 98”.

“unrealistic in the Polish conditions”. It was explicitly noted that “certain social processes may progress so that the strike becomes political regardless of the initial intentions”.⁴⁰

In addition to the theoretical debates, it must be noted that political strikes almost invariably come on the heels of inappropriate management of either the economy or the state as a whole, and must be viewed as an attempt to “correct the course” of the processes in the areas of economy and politics that always impact the situation of workers, whether directly or indirectly.⁴¹ Trade unions or *ad hoc* strike committees will never replace political parties and take over their role. Whenever trade unions or workers engage in mass-scale action of political nature, it is because the political situation has a bearing on labour interests.⁴² The idea of a ban of all strikes of political nature is founded on the somewhat unconvincing concept that the state and the economy are run on fully democratic principles, and that the aims that political strikes serve should be pursued solely by democratic means, i.e. elections.⁴³

In contrast, some constitutional lawyers have argued in favour of the view that the Polish law disallows political strikes, citing the practice of the courts and of the Constitutional Tribunal after 1997, i.e. after the Constitution came into force.⁴⁴ However, so far, the judiciary has had no opportunity to address the legality of political strikes. Even the Polish Women’s Strike ultimately did not succeed in creating a situation where the court would have to rule whether political strikes are permissible, or draw the line between a political strike and a socio-economically motivated one (a protest strike). This however would likely have happened if the attempt to organize a women’s general strike had been successful. If it had been the case, those who would have suffered some damage as a result of the strike likely would have gone to court to seek redress for the damage caused by a strike they might have considered illegal.

6. Abortion and workers’ rights.

In view of the constitutional guarantees around the right to strike, two different approaches to the assessments of the legality of the women’s strike are reasonable. On the one hand, the scope of permissible subject matter must be interpreted broadly. In this approach, the strike in support of changing the law on abortion is a strike in support of broadly understood labour rights (a protest strike). On the other hand, it can simply be argued that the women’s strike is political in nature, and as such it is protected directly by the Constitution. The legal reasoning is of course more complex in the latter case, and must take into consideration the permissibility of direct application of the Constitution, the absence of constitutional provisions detailing the specifics of a political strike, etc. Furthermore, classifying the strike aimed at changing the law on abortion as purely political is somewhat

⁴⁰ Komisja Konstytucyjna Zgromadzenia Narodowego. Biuletyn XXXVII, Wydawnictwo Sejmowe 1995, 121.

⁴¹ Alike Ishida S., *The right to strike in Japan: A need to restore its political function*, in King’s Law Journal, 26, 6, 2015, 324.

⁴² Alike Hepple B., *The role of trade unions in a democratic society*, in *Industrial Labour Journal*, 11, 1990, 649.

⁴³ On the links between the strike and democracy, *see nt.* (33).

⁴⁴ *See* Sokolewicz W., Wojtyczek K., *nt.* (39).

tricky, because the objective of the strike is not to change the government or the political system. A more convincing argument can be made in favour of classifying the strike as socio-economic in nature, because the demand to change the law on abortion satisfies the criteria of “social policy”⁴⁵ and “social protections and standard of living”⁴⁶. There is a clear and undeniable link between the restrictions to the availability of abortion laid down in the ruling of the Constitutional Tribunal of 22 October 2020 and the situation of women on the labour market. Primary significance should be attached here to the right to work, guaranteed under Article 65(1) of the Polish Constitution, as it pertains to a woman who is pregnant in the context of her decision to give birth to a disabled child. It must be noted that the point of the Polish Women’s Strike is that the Constitutional Tribunal restricted not the right to have abortion on demand, but the right to have the so-called eugenic abortion.⁴⁷ Giving birth to a disabled child has a direct and significant impact on the practical ability to exercise the right to work, particularly with regard to the woman. Becoming a caregiver to a disabled child most typically leads to being pushed out of the labour market. In the best case scenario, it limits the time available to work. The ruling of the Constitutional Tribunal also has other, perhaps less significant impact on women’s situation on the labour market. When access to legal abortion is restricted, what used to be legal becomes illegal. An illegal abortion has different consequences in view of labour law and social welfare law than a legal one. Research in some countries demonstrates that a variety of problems arise for women in relation to the law on abortion.⁴⁸ When a woman has an abortion that contravenes the law, it makes it difficult to determine whether the employer is allowed to pay for the procedure, whether the absence following the procedure counts as time off sick, whether abortion qualifies as stillbirth, etc. Restricting the circumstances under which abortion is legal makes it also difficult for trade unions to assist the women who wish to undergo the procedure, because such assistance may be criminalized. For healthcare workers who perform abortions or assist the women who have the procedure, the criteria for permissibility of abortions are strictly connected with their belief systems and the right to express their beliefs at the place of work. Having (or not having) an abortion may trigger discrimination and mobbing at work.

I am making no argument here as to whether it is reasonable to weigh the life of a disabled child against the right to work and other rights vested in the woman. What I am arguing is that restricting access to legal abortion may be viewed by workers in general, and women workers in particular, as an issue with direct impact on the situation of women on the labour

⁴⁵See nt. (29), 758

⁴⁶See nt. (29), 759.

⁴⁷ Eugenic is a Greek derivative of a science whose aim was the elimination of unfit persons. By ‘eugenic abortion’ I understand “abortion when the child will probably be born with serious defects”. See Kindregan C.P., *Eugenic abortion*, in *Suffolk University Law Review*, 6, 1972, 425, 406. See also: Rush C. S., *Genetic Screening, Eugenic Abortion, and Roe v. Wade: How Viable is Roe's Viability Standard*, in *Brooklyn Law Review*, 1, 1983, 113 ff; Szczepaniec M., *The Ethical and Legal Aspects of Abortion on Eugenic Grounds*, in *Białostockie Studia Prawnicze*, 13, 2013, 77-84; Ciepły F., nt. (2); ‘Eugenic abortion’ term was used also in Amicus Curiae Brief Submitted to the Constitutional Tribunal of Poland In the case K 1/20 by European Centre for Law and Justice, <http://media.aclj.org/pdf/Amicus-Curiae-Brief-to-the-Constitutional-Tribunal-of-Poland-K-1.20-ECLJ-October-2020.pdf> (accessed 25 May 2022).

⁴⁸ Bloomer F., Devlin-Trew J., Pierson C., MacNamara N., Mackle D., *Abortion as a Workplace Issue: Trade Union Survey - North And South Of Ireland*, UNITE the Union, 2017, 27.

market. The crucial element of the right to strike is to provide workers with instruments which can be wielded to protect not their specific individual rights (which can be accomplished via the court system) but their interests. What these interests are, how important they are, and what the odds are at any given time to enshrine them into laws is for the workers to decide. The strike is a procedural right designed to facilitate the pursuit of inclusion of certain safeguards in the law.

The reality of the protests organized by the Polish Women's Strike suggests that workers in Poland see no close connection between abortion and work conditions or occupational interests, or at least that they do not perceive this connection to be important enough to warrant disputes and strikes. While no detailed data are available on how many workers stopped working in support of the Polish Women's Strike, it would be difficult to argue that the period from October 2020 up to now has witnessed any major action by workers in connection with the restrictions in the law on abortion. Similarly, trade unions have not so far demonstrated any particular interest in engaging with the issue of abortion, even by simply putting it on their official agenda. Furthermore, neither pro-life nor pro-choice advocates reached out to the trade unions before the women's strike, and the unions were not involved in the organization of the street protests. As for supporting the street protests, several unions spoke up: OPZZ,⁴⁹ WZZ Sierpień 80,⁵⁰ and Związkowa Alternatywa⁵¹. They issued statements in support of the demands of the Polish Women's Strike, offered legal assistance to those stopped by the police during the protests, etc. Only one trade union (Ogólnopolski Związek Zawodowy Inicjatywa Pracownicza) actually encouraged its member to go on strike.⁵² In my opinion, the trade unions are keeping their distance from the Polish Women's Strike for several reasons, the most important of which seems to be that they see no direct connection between abortion and workers' rights and interests. The trade unions seem to believe that other issues are much more vital from the worker's perspective, especially given the economic impact of the Covid-19 pandemic.

Yet it is not true that trade unions only engage with issues that are directly relevant to the workplace. Workers and trade unions are happy to join in actions that serve to protect broadly understood interests of labour and also of other social groups. They put issues on their agenda that go far beyond narrowly understood occupations interests: environmental protection, human rights, sustainable development, to name just a few. They also cooperate closely with NGOs that specialize in these areas.⁵³

⁴⁹ <https://www.opzz.org.pl/assets/opzz/media/files/7f41520d-38dc-430f-9c5e-a1592f1dec3e/2020-10-29-oswiadczenie-komisji-kobiet-opzz-w-sprawie-decyzji-trybunalu-konstytucyjnego-dotyczacej-zlamania-kompromisu-aborcyjnego.pdf> (accessed 25 May 2022).

⁵⁰ <https://wzz.org.pl/oswiadczenie-wzz-sierpien-80-w-sprawie-strajku-kobiet> (accessed 25 May 2022).

⁵¹ <https://web.archive.org/web/20201117164447/https://www.za.org.pl/walczymy-o-prawa-kobiet-apelujemy-do-innych-zwiazkow-o-przylaczenie-sie-do-protestow/> (accessed 25 May 2022).

⁵² <https://www.ozzip.pl/informacje/ogolnopolskie/item/2695-ozzip-przeciwko-zakazowi-aborcji> (accessed 25 May 2022).

⁵³ See for instance Gallin D., *Trade Unions and NGOs: A Necessary Partnership for Social Development*, Civil Society and Social Movements Program, Paper Number 1, June 2000, 10.

As for abortion, in the West already in the 1970s, as feminism emerged and left its mark on the labour movement,⁵⁴ trade unions became increasingly involved in lobbying to liberalize the law on abortion.⁵⁵ Today as well trade unions in the West are expected to continue to actively engage in issues of reproductive rights of women. The argument has also been made that, given the increasing support for liberalization of the law on abortion, union leaders should – for reasons both pragmatics and rooted in their own beliefs – support any action that promotes this goal.⁵⁶ The work of the unions themselves in this area also makes it unreasonable to see abortion as completely separate from social rights and even simply workers' rights.⁵⁷

Of course, not all trade unions see the matter quite in this way. For instance, in Ireland, which had abortion law similarly restrictive to the regulations in Poland, it has been argued that it is not a role for trade unions to promote either liberalizing or further restricting the law, and that the unions should remain neutral on the issue in order to avoid impinging on the private lives of their members; that getting involved in abortion issues may deter current and potential members; that occupational interests are separate from reproductive rights and consequently should be pursued using separate avenues, i.e. trade unions for the former and pro-life /pro-choice movements for the latter.⁵⁸ However, if the consequences of having (or not having) an abortion impact the situation of a woman in the workplace, in the form of e.g. discrimination, mobbing, absence from work etc., the union should approach these situations just like any other scenario involving the affected worker's rights and interests.

7. The Polish Women's Strike as an organizer of a workers' strike.

If we consider the demand to change the law on abortion to be permissible subject matter for a collective dispute and strike under the Polish law, the next question to address is whether the Polish Women's Strike should have the power to represent the workers who support its demands and take part in the protests it organizes.

In Poland, trade unions have a monopoly (granted to them both by the statute and by the Constitution) to represent workers' interests in seeking resolution of collective disputes and organizing strike action. Thus, any actions of the Polish Women's Strike as organizer or manager of a workers' strike goes directly against the statute and the Constitution, because

⁵⁴ Conaghan J., *Feminism and Labour Law: Contesting the Terrain*, in Morris A., O'Donnell T. (eds.), *Feminist Perspectives on Employment Law*, London: Cavendish Publishing, 1999, 13 ff.

⁵⁵ A. Kerner, *In Pursuit of Equality: Rethinking the Constitutionalization of Labour Rights after Fraser*, Review of Current Law and Law Reform 2013/18, p. 100, A. N. Cabot, *History of Abortion Law*, Survey of Abortion Law Arizona State Law Journal 1980, no 1, p. 126.

⁵⁶ Crain M., *Feminizing Unions: Challenging the Gendered Structure of Wage Labor*, in *Michigan Law Review*, 5, 1990-1991, 1179.

⁵⁷ For instance, in 2017 the Korean trade union federation took part in pro-choice actions addressing the social injustices surrounding abortion. Union leaders argued explicitly that abortion was not separate from labour rights issues; Kim S., Young N., Yurim L., *The Role of Reproductive Justice Movements in Challenging South Korea's Abortion Ban*, in *Health and Human Rights Journal*, 2, 2019, 101. See also *Politics on the Island of Ireland. Gender, peace and reproductive justice. Claire Pierson interviewed by James Stafford*, in *Journal of Labour Politics*, 27, 2019, 51.

⁵⁸ See nt. (49), 32.

the law stipulates that only trade unions and employers may be parties to a formal collective dispute and strike action. Even if there the employer is not unionized, the workers may not act without union representation (Article 3(4) of the Act on the Resolution of Collective Disputes reads: “The employees of a work establishment with no trade union may be represented by a trade union that the workers asked to represent their collective interests.”). If workers alone organize or manage a strike, or if this is done by an organization that is not a trade union, this constitutes a violation of the Act on the Resolution of Collective Disputes that may trigger criminal and civil liability.

In view of these regulations, the Polish Women’s Strike is not permitted to organize a strike or run strike action. This is not contingent on its demands. Even if the Polish Women’s Strike demanded closing the pay gender gap, pay raises for working mothers, equal access to employment for women, etc., it would still not be in the position to legally run a strike. It is possible that the leadership of the Polish Women’s Strike believed at some point that a general strike on the issue of abortion, or combing street protests with workers’ strikes, was practicable and helpful, and the legal risks stemming from the potential violation of the trade union monopoly on workers’ representation likely made them reconsider this approach. The main factor to keep in mind is potential claims for damages caused by the illegal strike action that can be brought against the organizer(s) of an illegal strike (Article 26(3) of the Act on the Resolution of Collective Disputes).

Yet the case of the Polish Women’s Strike puts the absolute trade union monopoly on engaging in collective disputes and organizing strikes into a new perspective. So far, the debate had been limited to three options: whether the right to organize a strike should be vested in trade unions, in other workers’ organization (e.g. workers’ councils), or in the workers themselves. This is linked to the determination of whether the right to strike vested in the trade unions is rooted in the right to strike vested in the workers, or whether the *vice versa* view is true.⁵⁹ In the specific context of the Polish Women’s Strike the question then becomes whether trade unions can be replaced in their role as workers’ representatives in collective disputes by other organizations: associations, pro-life / pro-choice movements, etc. To answer, we must begin by re-examining the notion of the trade union monopoly. Calling a strike was the first method by which workers began to associate; it was the workers who called the strike. The institutionalization of trade unions led organically to a transfer of the power to call a strike from the workers to the unions; instead of disorganized masses, strikes were to be called by unions which had more structure and a clearer legal form. In this way, the state sought to prevent anarchy in collective labour relations. Moreover, strikes typically were organized to win better conditions of work, which was achieved in the form of collective agreements (to which a trade union could become a party, due to it being a separate legal entity). It was only later, after the first wave of regulation of collective disputes, that some countries reverted to the idea that the right to strike should be vested in the

⁵⁹ Hodges-Aeberhard J., Otero de Dios A., *Principles of the Committee on Freedom of Association concerning strikes*, in *International Labour Review*, 126, 1987, 547.

workers, apart from (or instead of) trade unions.⁶⁰ This is also the view promoted in the context of human rights, which place the individual person at the centre.⁶¹

And yet it is difficult to make a convincing argument that organizations such as the Polish Women's Strike should be able to call a strike. It is not a trade union; moreover, its focus is not on labour issues as such, even if the one specific issue at its heart does overlap with labour interests. Instead, regulations that place the right to strike back into the hands of workers themselves seem to be a better solution (while leaving this right to trade unions as well)⁶². In this model, workers are able to choose how to organize a strike: whether independently, by engaging a trade union, or by acting with the assistance and cooperation of organizations such as the Polish Women's Strike. Ultimately, it only makes sense for the right to strike to be vested in the workers: without them, the right cannot be exercised.

8. Conclusions.

The women's strike offers an excellent opportunity to pinpoint the imperfections of the Polish model of the right to strike and of the entire system of collective dispute resolution. For the other jurisdictions, it also showcases the potential practical consequences of treating the constitutional right to strike as a political freedom. It proves constitutionalization of labour rights extends the scope of protection offered.

Certain general conclusions follow from the issues discussed in this paper. Firstly, the 1997 Constitution enshrines a broader concept of the strike and renders it an instrument of pursuit of broadly understood labour interests, including in conflict with the state. The Constitution positions the right to strike beyond the static nexus of workers-employers and allows the workers both to freely articulate their demands and to freely choose their addressees. International law likewise offers evidence that a strike may be directed against the state, and that "social policy" and "social protections and standard of living" are lawful, permissible issues that can serve as strike demands.

The second conclusion boils down to the fact that there are numerous strong links between the principles governing access to legal abortion and the situation of women on the labour market. In this light, the central demand of the women's strike, i.e. the demand that the law on abortion should be changed, is relevant to the interests of workers and as such

⁶⁰ Similarly, Jacobs A., *Labour Law and the Law in Europe*, London: Wolf Legal Publishers, 2011, 130-131.

⁶¹ In this vein Hepple B., *The Freedom to Strike and its Rationale* in Hepple B., le Roux R., Sciarra S.(eds), *Laws against Strikes*, Milano: FrancoAngeli, 2015, 42-43. See also Bogg A., Ewing K. D., *Freedom of association* in Finkin M., Mundlak G.(eds.), *Comparative Labor Law*, Cheltenham: Edward Elgar Publisher, 2015, 302.

⁶² More on that for instance; based on ILO standards nt. (29), 756. Betten L., *International Labour Law. Selected Issues*, Wolters Kluwer International, 1993, 114; based on art. 8 (1d) *ICESCR* see Craven M.C.R., *The International Covenant on Economic, Social and Cultural Rights. A Perspective on its Development*, Oxford: Oxford University Press, 2002, 278; based on art. 28 ECFR see Ulber D., in Ales E., Bell M., Deinert O., Robin-Olivier S. (eds.), *International and European Labour Law: Article-by-article Commentary*, London: Nomos/Hart Publishing, 2018, 1467; based on 11 ECHR see Dorsemont F., *The right to bargain collectively* in Bruun N., Lörcher K., Schömann I., Clauwaert S. (eds.), *The European Social Charter and the Employment Relation*, London: Hart publishing, 2017, 265; based on art 6 (4) ESC see Kovacs E., *The right to strike in the European Social Charter*, in *Comparative Labor Law & Policy Journal*, 26, 4, 2005, 454.

constitutes permissible subject matter of a strike. The Constitution in its Article 59(3) and Article 59(4) paves the way for a broad interpretation of permissible subject matter of strikes, and safeguards the worker's right to stop working as in instrument to be used not only in relations with the employer but also with the state.

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