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Industrial Democracy and Involvement of Employees in the Societas Europaea

Abstract: Industrial democracy denotes a specific proposition as well as the practice of shaping relations between employees and employers in an enterprise. The intensification of discussion on industrial democracy has happened due to changes that have occurred in this area on the basis of EU law. The European Union legislature has not only developed the idea of industrial democracy, moving it from domestic work establishments on to a plane of cross-border businesses, but it has also introduced one of the most powerful forms it takes the participation of employees in the bodies of enterprises. New legal solutions have contributed to the evolution of views on the sociological approach to industrial democracy. In order to determine the reasons for the development of worker participation in an enterprise it is reasonable to determine to what extent industrial democracy and industrial citizenship manifest themselves in an enterprise in a way similar to political democracy and state citizenship. The considerations in this respect have been supplemented by a presentation of legal solutions which are the basis for functioning of industrial democracy in the Societas Europaea.

Keywords: industrial democracy, involvement of employees, Societas Europaea, industrial citizenship

Słowa kluczowe: demokracja przemysłowa, uczestnictwo pracowników, spółka europejska, obywatelstwo przemysłowe

1. Introductory remarks

The idea of democratising industrial relationships has been the subject of discussion for a long time, and extensive literature has been written on this topic. One of the ways that it can be displayed is ensuring that the employee participates in company management. In order to determine the processes related to this type of participation, we can use such expressions as: 'industrial democracy', 'participation', 'people's capitalism', 'co-deciding', 'company democracy', 'self-government', 'organisational democracy' and 'workplace democracy', depending on the economic conditions.

The issue of democracy inside a workplace (industrial democracy – author’s note) has, once again, become prevalent on account of the changes that have occurred in the European Union law. The European Union legislator has expanded on the idea of industrial democracy by relocating it from national workplaces onto the level of cross-border companies of which activity extends beyond local markets. The concept of industrial democracy has gained legal frameworks on the basis of Council Directive 2001/86/EC of 8.10.2001 supplementing the statute for a European Company with regard to the involvement of employees¹, European Parliament and Council Directive 2003/72/EC of 22.07.2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees², European Parliament and Council Directive 2005/56/EC of 26.10.2005 on cross-border mergers of limited liability companies³ as well as European Parliament and Council Directive 2009/38/EC of 6.05.2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees⁴.

The new legal solutions have contributed to the evolution of views concerning the sociological expression of industrial democracy. This idea is more and more often linked to the term ‘industrial citizenship’, which further points towards the analogy between democracy within the meaning of a political system and industrial democracy. The need to determine the extent to which industrial democracy and industrial citizenship are manifested within a company similarly to political democracy and state citizenship seems to be justifiable. An analysis of this issue makes it easier to determine the reasoning behind employee participation within a company. However, it should be emphasised that the analysis does not settle this issue unequivocally because of the other theories that exist in this field.

In the second part of the paper, the theoretical considerations will be complemented with an overview of legal solutions that form the basis of the functioning of industrial democracy in cross-border companies. Due to the scale of the issue, I will only concentrate on one subject – the European Company, which seems to be justified considering the constantly increasing number of European Companies⁵ as well as advanced forms of the participation of employees in the management of those entities.

1 OJ EUL 294 of 10 November 2001, p. 22, here in after referred to as ‘directive 2001/86’.

2 OJ EUL 207 of 18 August 2003, p. 25, here in after referred to as ‘directive 2003/72’.

3 OJ EUL 310 of 25 November 2005, p. 1, here in after referred to as ‘directive 2005/56’.

4 OJEU L122 of 16.05.2009, p. 28, hereinafter referred to as ‘directive 2009/38’.

5 According to data of April 2014 in 25 countries the European Economic Area in total 2125 European companies were registered, indicating increase by 159 EC in the last five months. Out of it, 289 companies were identified as ‘normal’, i.e. conducting business activity and hiring more than five employees (in October 2013, there were 269 ‘normal’ companies), News of European Companies: Slowdown or new dynamics? www.worker-participation.eu (accessed on: 22.10.2014).

2. The directions for the development of industrial democracy

The term ‘industrial democracy’ made its first appearance in an English doctrine – in the paper by Sidney and Beatrice Webb entitled ‘*Industrial democracy*’, which was published in 1897. The concept was associated with trade unions⁶ and their right to conclude collective agreements (later called collective labour agreements). There is no doubt that the use of this term was incorporated into the basic assumptions of the Fabian Society, which was created by Sidney and Beatrice Webb, together with G.B. Shaw. The views of the members of the Society had a substantial impact on the policies of London authorities concerning education, health and the management of municipal companies. The Fabians thought that the road to new social order leads through the expansion of voting rights as well as the magnification of the role and authority of municipal institutions (self-governments). They emphasised the country’s role in regulating the relationship between work and capital. In 1900, the Fabian Society joined the Labour Party⁷, which allowed for this idea to have a far greater reach.

Initially, the theory of industrial democracy was also a reflection of the increasing English labour force, the socio-political situation of which was constantly improving, as a result of the government’s operations. In the 1870’s, this was not possible because of, among others, the abolishment of the provision of the legal responsibility for protesting as well as for breaking the labour agreement by an employee. Trade unions were given a legal personality, which guaranteed the inviolability of their leaders and trade cash offices in the case of a strike, whereas workers were meant to be treated on par with entrepreneurs during judicial investigations. Among the additional elements that influence the development of the concept under discussion, one must also mention the workers’ struggle initiated at the end of the 1890’s in order to improve working conditions and to gain representation in the parliament⁸.

The discussion on the forms of industrial democracy in companies was also undergoing thanks to the initiative of European trade unions. However, it should be noted that there are differences in the range of the institutional representation of employees in companies. The dominant role was played by the view, which stated that the priority of trade unions is not to engage company management by having representatives in the management board (e.g. trade unions in the south of Europe, in Scandinavian countries as well as in Great Britain). Trade unions thought that the introduction of employee representatives into the top rungs of companies would

6 S. Rudolf, *Demokracja przemysłowa w rozwiniętych krajach kapitalistycznych*, Warszawa 1986, p. 19.

7 H. Zins, *Historia Anglii*, Wrocław 2001, p. 321-322.

8 H. Zins, *Historia Anglii*, Wrocław 2001, p. 320-321.

lead to an unavoidable conflict between work and capital⁹. The consequence of such a stance was aimed to create a strong position of the trade unions beyond the corporate structure of the company. The main focus was placed on the development of independent collective negotiations with employers concerning the wages and working conditions of employees.

A different stance was especially presented by German trade unions, who saw the importance of employee representation not only during collective negotiations, but also when engaging in organisational matters of the company. They thought that, thanks to this, companies will become more democratic, competitive as well as effective. This trend only gained approval in Europe after World War II along with the desire to create a more just global society¹⁰, in which forms of industrial democracy would play a central role. In reality, these views were only realised in some national companies.

Another heyday of the view on industrial democracy took place in the 1970's as a result of different 'forms of conflict' in western nations, especially student and worker demonstrations in France and the wave of strikes in Italy. The participants of those demonstrations emphasised the autonomy of the working class' actions, spontaneously creating workers' committees that were above the existent capitalist economic order and its legal mechanisms¹¹. The essence of those movements also found its reflection in the manner that the interests of workers employed in West Germany were portrayed, especially through employee participation in company management in the form of the 'co-deciding' system (*Mitbestimmung*).

From the above, it appears that the discussion on industrial democracy was under way mostly in the context of solutions foreseen in individual countries. As was stated by A. Sorge, it was only the increase of the importance of international companies that inspired representatives of the doctrine to search for 'certain standards' in the field of industrial democracy.

On an international level, the model of industrial democracy gained a real shape thanks to the development of European Union bodies, which initiated partial regulations in this field by means of solutions concerning group releases¹² and the transfer of companies¹³. A wide range of worker's rights, which are a part of the

9 R. Taylor, Industrial democracy and the European traditions, "Transfer: European Review of Labour and Research" 2005, vol. 11, No. 2, p. 157.

10 H. Lewandowski, Uczestnictwo pracowników w zarządzaniu przedsiębiorstwem, "Studia Prawno-Ekonomiczne" 1984, vol. 32, p. 42.

11 A. Sorge, The evolution of industrial democracy in the countries of the European Community, "British Journal of Industrial Relations" 1976, vol. 14, No. 3, p. 275.

12 Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies (OJ EUL 48 of 22.2.1975, p. 29).

13 Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of

industrial democracy organisation in supranational companies, appeared especially as a result of the creation of the first supranational company – the European Company (*Societas Europaea*)¹⁴. The idea of creating a European Company was born in the 1950's, whereas the first official concept of employee participation in the company was presented by the European Commission in the Statute for a European Company project in 1970¹⁵. The lengthening works over this regulation¹⁶ were primarily caused by an overly controversial solution, according to which employees were to obtain the right to participate in the body of the company. Less doubts were caused by the right to information and consultation, and as a result, in 1994, it was awarded to employees by means of Council Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees¹⁷.

In the evolution of the concept of industrial democracy, one can see two main trends, which were dependant on the traditions of individual nations. The first relies on the tradition of the role of trade unions as entities, which are prepared to fight for employee rights by means of 'conflict'¹⁸. In this case, the functioning of a company is altered through collective labour agreements. On the other hand, the second trend relies on cooperation with the 'capital', which is expressed through the creation of a non-union representative team.

On the European level, the main reason for the development of the last-mentioned trend should be searched for in the ongoing globalisation, which caused the necessity to 'optimise all economic and social resources as part of national economic systems'. The development of globalisation and IT technologies still requires a 'humanistic' organisation of company operations, also because recognising human capital is one of the factors influencing the competitive advantage of companies¹⁹. An important concept, which appeared in supranational companies, is the relationship between non-union representatives and trade unions. A tendency can be seen here of engaging trade unions in the sphere of co-managing a company by participating in the appointment of members of bodies representing employees

undertakings, businesses or parts of businesses (OJ EUL 61 of 5.3.1977, p. 26).

14 A. Sorge, *The evolution...*, *op. cit.*, p. 275.

15 Proposed statute for the European Company, Supplement to Bulletin of the European Communities 1970 (8), here in after referred to as the 'Project of 1970'.

16 On legislation works over projects of EC Statute see J. Wrątny, *Regulacja partycypacji pracowniczej w prawie wspólnotowym*, "Praca i Zabezpieczenie Społeczne" 1993, No. 4, pp. 4-5.

17 Council Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups undertakings for the purposes of informing and consulting employees (OJ EUL 254 of 30. 09.1994, p. 64).

18 On the issue of the conflict inherent in the nature of arrangement negotiations see: J. Wrątny, *Problem partycypacji pracowniczej* (in:) M. Matej-Tyrowicz, T. Zieliński (eds.), *Prawo pracy RP w obliczu przemian*, Warszawa 2006, p. 512.

19 See: R. Taylor, *Industrial...*, *op. cit.*, p. 159.

as well as during negotiations in the role of experts. Presenting the mechanisms of industrial democracy in a specific company requires an analysis of the theoretical principles of this concept.

3. The theoretical bases of industrial democracy and their significance for labor rights

In its simplest form, the essence of democracy in the political sense means that members of the society have the right to participate in the organisation and management of a country. The use of the term 'democracy' in relation to employee participation in company management is dictated by the analogy of a company being like a country, but on a microscale²⁰. Democracy in the political sense is strictly associated with the rights and responsibilities of citizens as lawful members of the state. As a result of the above, in industrial democracy, we can recognise the existence of employee citizenship within a company. The use of the term 'democracy' in relation to employee participation can also be associated with the right of subjects that represent employees to employ legal norms. The law is one of the essential competencies possessed by the state authorities²¹.

It is essential to determine the current way of justifying the participation of employees in managing a company with the use of the concepts of political democracy and citizenship. In order to obtain the appropriate differences, a reference point for further solutions will be provided by one of the key British theories on industrial democracy and industrial citizenship. That concept was strictly associated with the right to associate oneself with trade unions.

The theory on the relationship between citizenship and industrial citizenship was developed by a British sociologist, Thomas Humphrey Marshall, in the 1950s²². It became the model for later solutions in this field. According to T.H. Marshall, there is a basic plane of equality between people, which is based on the full participation in collective life. He claims that political rights detached from civil rights when not only men, but also women were awarded with the right to vote²³. As one could imagine, this meant that political rights became closely connected with citizenship, understood as the participation in a given community. T.H. Marshall thought that social rights only came after political and civil rights.

20 T. Wuestewald, B. Steinheider, Police managerial perceptions of organizational democracy: a matter of style and substance, "Police Practice and Research" 2012, vol. 13, No. 1, p. 44.

21 W. Sanetra, Demokracja pracownicza wczoraj i dziś, "Acta Universitatis Wratislaviensis" No. 1690, Prawo CCXXXVIII, Wrocław 1994, p. 117.

22 *Ibidem*, p. 118.

23 T. H. Marshall, Citizenship and social class and other essays, London 1950.

A political right is the right of association. This right is given to the citizens of a particular country. According to T.H. Marshall, the right to create trade unions and collective negotiation institutions (collective labour agreements) contributed to the occurrence of the 'secondary' citizen status in the industry²⁴, thereby completing the system of political rights. Trade unions have created a secondary system of industrial citizenship, which is parallel and supplementary in relation to the system of political citizenship.

As a consequence, the author articulated a unique thought that industrial citizenship should be treated as a group of rights that are separate from social rights. First of all, he assumed that it is an expansion upon the freedom of association, and not the right to a predetermined wage or to other social matters. Second of all, in contrast to social rights, those rights are of an 'active' character, i.e. they require the active participation of citizens in order to have an impact on the community. As a result of this, they more so resemble political rights, which give citizens political power in order to alter the composition of the government.

A question arises if the idea of citizenship, which is strictly associated with the operation of trade unions in T.H. Marshall's concept, can still be related to companies when taking into account the ever-decreasing number of trade unions²⁵.

It is also worth considering if the concept of industrial citizenship can be associated with forms of representing employees other than trade unions.

It must be stated that, currently, there is still a need to explain the relationship between citizenship and work in order to better understand the employee participation in company management. In the doctrine, an attempt was made to pinpoint universal values that form the basis for industrial citizenship. The modernisation of the concept of industrial citizenship occurred through a stricter cross-reference of this theory with industrial democracy. The results of those investigations consist of double-sided findings. First of all, it was determined that a particular characteristic of civil rights, which, in a sense, explains the basis for employee participation in company management, is the reference to a community²⁶. Together with industrial democracy, industrial citizenship makes it possible to treat a business as a community, in which employees also participate. It is in this community that important decisions are made, which have an impact on individuals and communities. This is why it is assumed that it is undemocratic to deprive employees of their contribution in making such decisions²⁷.

24 *Ibidem*, p. 20.

25 *Ibidem*, p. 44.

26 On the level of unionization in particular member states see: J. Stelina, *Związki zawodowe a pozazwiązkowe przedstawicielstwo pracowników w zakładzie pracy*, (in:) Z. Hajn (ed.), *Związkowe przedstawicielstwo pracowników zakładu pracy*, Warszawa 2012, p. 171.

27 A postulate of introducing the term 'community of the staff of the workplace to legal language was proposed also by A. Sobczyk, *W sprawie demokratyzacji przedstawicielstwa załogi*, (in:) J. Wratny

A similar theory, which strictly refers to industrial democracy as a starting point, assumes that people are able to manage themselves. As a result, one of the ways of conceptualising the very nature of an organisation is the system of a voluntarist cooperation between interested stakeholders. By stakeholder in a given company, we should understand: clients, suppliers, employees, shareholders and the community. Managing some of those relationships is somewhat like managing a political system. For example, shareholders have the right to choose representatives of the management board. Therefore, it cannot be assumed that they are undemocratic in the philosophical sense of managing and basing on a voluntary service, since those relationships are slightly different to the voting power in a political system²⁸. This is why democracy in this sense allows for larger groups of employees to influence the processes and decisions made within a company, and makes it possible for employees to become equal partners of workplace relationships²⁹. It is becoming more common for employers to notice the need to invite employees to participate in management, considering the fact that it favors an increased openness to innovation.

Second of all, a democratic system assumes that the contribution of citizens cannot solely be limited to periodic elections. The essence of participation relies on it providing the possibility to learn through the action and interaction with others. It is considered that this not only favours political processes, but also self-realisation, while, at the same time, having psychological advantages. In the case of industrial citizenship, such a view on citizenship accentuates the active participation of employees in industrial production in order to have a quantitative (wages) and a qualitative (dignity) impact on the working conditions³⁰. Additionally, it is widely accepted that industrial citizenship is a means of making it impossible for people to achieve common goals and complete common tasks. As a consequence, providing employees with 'greater needs' supports their effectiveness, which increase the competitiveness of companies.

In the modern discussion on industrial democracy, besides the 'refreshed' concept of industrial citizenship, the term 'corporative citizenship' also appears³¹. This expression is derived from treating a corporation like a citizen of a community, such as a commune, a voivodeship or a country, and entrusting it with responsibilities

(ed.), Aktualne problemy reprezentacji pracowniczej w zbiorowych stosunkach pracy, Warszawa 2014, p. 50.

- 28 G. Mundlak, Industrial Citizenship, Social Citizenship, Corporate Citizenship: I Just want my wages, Tel Aviv University Law Faculty Papers 2008, paper 82, "Theoretical Inquiries in Law" 2007, vol. 8, p. 549-552, and the literature quoted therein.
- 29 J.S. Harrison, R.E. Freeman, Is organizational democracy worth the effort?, "Academy of Management Executive" 2004, vol. 18, No. 3, p. 52.
- 30 L. Florek, Demokratyczne (zbiorowe) stosunki pracy, (in:) Problemy prawa pracy. Księga poświęcona Zbigniewowi Salwie, "Studia Iuridica" 1992, vol. 23, p. 23.
- 31 G. Mundlak, Industrial..., *op. cit.*, pp. 553-554.

that are expected from citizens – people. This view is closely related to corporations creating a positive international image as part of the so-called ‘social responsibility of business’ as well as creating corporation policy codes, also called the codes of good practices³².

To sum up the hitherto made assumptions, it must be emphasised that referring to the concept of industrial democracy and industrial citizenship draws attention to the two main rights of employees as part of the participation in company management. First of all, the right of employees to call forth their representatives is accentuated (voting rights). Second of all, employees are given the right to actively engage in company matters by receiving appropriate information and the ability to express one’s opinion. A characteristic feature of the ideas of industrial democracy and industrial citizenship is also the fact that attention is being paid to the economic effect of the employee participation in management³³.

4. Distinctive features of industrial democracy within a European Company

A European Company is a supranational structure, the employer of which has provided employees with the opportunity to participate in the management of the company. Despite the small number of research on this topic, the goal of these considerations is not a detailed discussion on the entire regulation related to the employee participation in company management. The conducted analysis will aim to answer what is the main trend in the matters of industrial relationships in a European Company in comparison with the hitherto solutions that were practiced in the laws of specific member states.

The first, distinctive characteristic of employee participation in a European Company is the dependence of that participation on the initiative on the employer’s side. Article 3, section 1 of Directive 2001/86 states that the management board or the administrative bodies of companies participating in the creation of a European Company draw up a plan of its creation and make the necessary steps in order to initiate negotiations with representatives of the company employees concerning the conditions of the employees’ participation in the European Company. This means that employees, or their representatives, do not have to submit a formal motion in this case.

As a matter of fact, the participation of employees in a European Company is guaranteed in a way. This solution, which was unheard of in European nations, foresees that the registration of a European Company that employs workers

32 *Ibidem*, p. 560.

33 M. Gładoch, Przedstawicielstwo pracowników w dobie rozwoju gospodarki globalnej, “Praca i Zabezpieczenie Społeczne” 2009, No. 8, p. 3.

is dependent on the prior conclusion of agreements concerning employee partnership. The above obligation was imposed by a European Union legislator in Article 12, section 2 of the regulation on EC statute³⁴, which makes the creation of a company dependent on the fulfilment of one of the following conditions: there was a conclusion of the agreement on the conditions of participation, or a decision was made not to initiate negotiations or to end the negotiations after their initiation and basing on the principles of informing employees, or when the time period dedicated for the negotiations has expired, and no agreement was concluded. In the last of the mentioned cases, registering a European Company requires the parties to accept prearranged 'statutory' conditions of participation.

The fundamental element of employee participation in managing a European Company is the priority of negotiation solutions between the employer and the employees concerning the conditions of participation. This is accounted for in pt. 8 of the preamble of Directive 2001/86, which states that specific procedures of informing employees and consulting employees on a transnational level, as well as participation, should be determined firstly by means of an agreement between the parties or, in the case of a lack of agreement, through the application of auxiliary norms. This leads to a conclusion that all procedural and material principles of employee participation are not enforced by the law in the first place. This differentiates the system of employee participation in company management from the one known in some European countries thus far (Germany)³⁵.

From the point of view of these considerations, it is important that, in the case of coming to an agreement on the conditions of participation, the employees are not represented by trade unions, but by a new, unheard of entity – the 'special negotiation team'. The members of this entity come from countries in which companies participating in the creation of the European Company employ workers. The European Union legislator does not pinpoint entities, which are responsible for choosing the member of the special negotiation team, leaving this decision to the legislation of member states. The Polish Act on the European Company³⁶ implements Directive 2001/86 as the primary rule for appointing members of the special negotiation team and determines their appointment through a representative union organisation. It is only in the case when this procedure is unsuccessful that the right of appointment is given to the employees – team meeting (Article 65 of the Polish Act on the European Company). First of all, this leads to a conclusion that trade unions

34 More on the issue see: J. Stelina, *Zakładowy dialog społeczny*, Warszawa 2014.

35 Regulation No. 2157/2001/EC of 8 October 2001 on the Statute for a European company (SE), (OJ ECL 294 of 10.11.2001), here in after referred to as 'regulation on the SE statute'.

36 B. Keller, F. Werner, *The Establishment of the European Company: The First Cases from an Industrial Relations Perspective*, "European Journal of Industrial Relations" 2008, vol. 14, No. 2, p. 163.

have a decisive influence on the appointment and activity of the representatives of 'Polish' employees in a special negotiation team³⁷. Second of all, there is no doubt that the members of the special negotiation team will consist of people that come from different companies from numerous countries, who have different experiences in the field of industrial democracy. As a result of the fact that the appointed representatives can have contradictory interests, there is a fear that this type of a structure can weaken the negotiation power of the employees.

The key meaning in the context of the forms of representative democracy in the now established European Company is had by the freedom that the parties have when choosing the way in which employees will participate in the management. The European Union legislator is proposing participation by means of forms foreseen in representative democracy, i.e. through a new – compared to trade unions – entity, which is the 'representative body' as well as through the representatives of employees that are in the management body (in the monistic model³⁸) or in the supervisory body (in the dualistic model). It should especially be emphasised that the parties of the agreement on employee participation can determine – instead of the representative body – another (authorial) procedure of informing and consulting (Article 4, section 2, item 'f' of Directive 2001/86).

The participation of employees in the management of a European Company is realised through a mechanism that includes informing, consulting and participation³⁹ (Article 2, section 'h' of Directive 2001/86). Therefore, it not only relies on the appointment of representatives, but also on the active influence when it comes to company matters, which is especially visible in the case of informing. In literature, it is rightly noticed that employees have the right to information, which is of a 'vital significance' for them⁴⁰, and the bodies representing the employees are obliged to communicate information as well as state the stance and interests of the employees⁴¹.

37 Ustawa z dnia 4 marca 2005 r. o europejskim zgrupowaniu interesów gospodarczych i spółce europejskiej (Dz.U. z 2005 Nr 62, poz. 551 z późn. zm.) [Journal of Laws of 2005 No. 62 item 551 as amended], herein after referred to as the 'act on European company'.

38 In such a situation, the literature says about treating employee representations as a prolonged arm of trade unions. See: J. Wratny, Związki zawodowe i inne formy przedstawicielstwa pracowniczego. Panorama zagadnień, (in:) Aktualne problemy..., *op. cit.*, p.15.

39 In a monistic system, there is only the Management Board in a company, whereas in a dualistic system – the Management Board and the Supervisory Board. In the European company, founders, while drafting a company's statute, have a right to choose freely one of the models of directing a company, what is provided for in Article 38b of the regulation on the SE statute.

40 As it results from Article 2 pt k of Directive 2001/86, participation means not only the influence of the body representative of the employees and/or the employees' representatives in the affairs of the company by way of the right to elect or appoint some of the members of the company's supervisory or administrative organ, but also the right to oppose the given candidatures.

41 J. Wratny, Prawo pracowników do informacji i konsultacji w sprawach gospodarczych, "Praca i Zabezpieczenie Społeczne" 2006, No. 6, p. 30.

To sum up, it must be stated that the main trend of changes in the field of employee participation on a European level is dependent on the 'elasticity and the use of soft law techniques'⁴². This is primarily supported by the experiences of member states in the field of works on the statute of a European Company, which, for over thirty years, were not able to make uniform settlements on employee participation because of the different cultural traditions. Therefore, the view stating that no fundamental increase (improvement) of the mechanisms of industrial democracy should be expected in a European Company through the introduction of 'hard law' seems to be correct⁴³.

It should also be noted that, because of the priority of negotiation forms of participation, in practice, we can come across substantial differences between different European Companies. The content of agreements concerning employee participation, adapted to the needs of the negotiation parties without prior substantive standards, can therefore lead to a situation where it will be hard to talk about any common, homogeneous system of industrial democracy in a European Company.

5. Summary

'The relationship of capital and work is fundamentally undemocratic', as was noticed by D.R. Biggins⁴⁴. Even at the end of the 19th century, it was noticed that the existing differences between capital and work need to be overcome on the path to the democratisation of industrial relationships. In particular, this thought was expanded upon after the traumatic experiences of World War II. The development of industrial democracy was meant to 'ease' tensions and to make the labour market more just.

Initially, the regulations of given countries were dominated by the model of industrial democracy, in which every negotiated agreement between the employer and the employee was part of a battle and not a compromise established as part of cooperation. The decisive role in this model was played by trade unions. Means of representation that were not part of trade unions became more popular after World War II. The idea of industrial democracy in its theoretical conceptualisation was perceived in a similar way, i.e. through the operation of trade unions. A theory

42 A separate problem, omitted here due to its wideness, is determination whether there has been an access to information on employees non-associated in trade unions, under the Polish act on European company.

43 B. Keller, F. Werner, *Industrial democracy from a European perspective: The example of SEs, "Economic and Industrial Democracy"* 2010, vol. 31, No. 4S, p. 44.

44 *Ibidem*, p. 49. Additionally, this conclusion is supported by prolonged works on regulation concerning European private company, where it is envisaged that employees' participation in management will be regulated in an act directly binding in member states – in a regulation. See more on the issue: Giedrewicz-Niewińska, *Wpływ wielkości pracodawcy na uczestnictwo pracowników w zarządzaniu zakładem pracy*, (in:) G. Goździewicz (ed.), *Stosunki pracy u małych pracodawców*, Warszawa 2013, pp. 269-274.

appeared, which treated the right to collective negotiations as an element of the status of citizens, who have the right to associate themselves with trade unions. Due to the above, it was thought that citizens have social rights that are acquired not only through the use of political rights (e.g. the choice of appropriate authorities), but also through collective negotiations. In this way, the concept of a 'secondary' industrial citizenship appeared.

The changes that occurred in industrial relationships (as a result of globalisation and the development of IT technologies), as well as the decreasing number of trade unions⁴⁵, required the search for universal values, which were independent of national traditions and union movements, forming the basis for industrial democracy and industrial citizenship on the European level. In modern conceptions, it is clearly emphasised that democracy in a workplace cannot be a sheer example of political democracy. It should be acknowledged that industrial democracy should only be based on democratic assumptions; it should create a 'democratic space'⁴⁶. Therefore, on the one hand, there is an attempt to justify industrial democracy using some philosophical values and, on the other hand, using arguments of an economic nature. Currently, it is recognised that the justification for employees to participate in management is perceiving the company as a community, the members of which (including workers) have defined rights. Moreover, it is accepted that, since the democratic system assumes active participation of its citizens not only in voting, then workers should be given a share in company matters in order to ensure self-fulfilment and effectiveness.

The directions of changes that are present in the theory of industrial democracy can also be found in the regulation concerning a European Company. It must be emphasised that the 'model' of employee participation in a European Company is different than national models. Employees have acquired the ability to represent their interests through a representative body, which is independent of trade unions, as well as through membership in a company. Non-confrontational methods of membership have gained major importance. It should be noted that such relationships are influenced by the necessity of reaching an agreement on employee participation in order to be able to register a European Company (Article 12 of the Act on the European Company). This is why there is no need to use conflictual solutions (strikes) when conducting negotiations. As it appears, in this case, the inability to register

45 D. R. Biggins, *Democracy at Work*, "Social Alternatives" 1993, vol. 12, No. 2, p. 39.

46 A similar situation, when it comes to union movement, existing in the USA, did not lead to formation of non-union forms of employee participation. In the United States, employees receive specific social rights by means of individual negotiations with employers, effects of which are written down in employee contracts. It comes from the assumption that respective groups of employees have different needs. See more on the issue: C. L. Estlund, *Citizens of the corporation? Workplace Democracy in a Post-Union Era*, New York University School of Law, Public Law & Legal Theory Research Paper Series, Working Paper No. 13-84, New York 2013.

a European Company is a sufficient means of putting pressure on the employer. As a summary, it should be stated that the legal regulation in force in a European Company is continuing a process, which was initiated in 1994 by the directive on European workplace councils, making the principles⁴⁷ of employee management on a European level more flexible, which, in turn, leaves the parties with the ability to make autonomous decisions concerning the level and shape of industrial democracy.

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47 V. F. Caimano, *Executive Commentary*, "Academy of Management Executive" 2004, vol. 18, No. 3, p. 96. Democracy, in a political sense, is based on certain set of values and principles related to the society and the state, composed of: a) the principle of the civil society sovereignty, b) the principle of the freedom and equality of individuals in the society, c) the principle of competition of public life entities, d) the principle of majority, e) the principle of pluralism, f) the principle of consensus, meaning that individuals or organizations competing with each other on formally equal rights, consent to respect the rules of the game and agree to the generally common goals of this game (competition). Also: A. Jamróż, *Demokracja*, Białystok 1996, p. 6.

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