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The Impact of Art. 25 of the European Social Charter on the Protection of Claims of Employees in the Event of the Insolvency of Their Employer in the Polish Law

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Abstract. The purpose of this article is to assess whether Poland could, at present, ratify and become legally bound by Article 25 of the European Social Charter. The question remains all the more pertinent in view of the reference to the content of the Charter in the European Court of Human Rights judicial practice, even in case of the States that have not accepted a particular part of the Charter. The aforementioned provision requires that the State, as a signatory to an international agreement, establish a public institution responsible for ensuring that employees receive their benefits for a specified period when, due to objective reasons such as bankruptcy, liquidation, or an industry crisis, their employer cannot make these payments. This responsibility of the public authority is essential for upholding the sustenance role of wage compensation and alleviating the impact of job loss due to economic factors. The article describes the current state of the law, the institution of the Guaranteed Employee Benefits Fund, along with the way it is financed, emphasizing the unique definitions of 'employee' and 'employer' and the concept of insolvency within the reviewed legislation. Equally important is highlighting the international and European legal sources that bind the Republic of Poland, which influenced the legislator in developing the components of the social security system.

Keywords: European Social Charter, Guaranteed Employee Benefits Fund, employer's insolvency, protection of employee claims, compensation for work

JEL Classification: K31, K33, K38.

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I. THE EXTENT TO WHICH THE REPUBLIC OF POLAND IS BOUND BY ART. 25 OF THE EUROPEAN SOCIAL CHARTER

Poland, along with a vast majority of countries, is not bound by all paragraphs of the European Social Charter of 18 October 1961[1]. In 2022, only 58 out of its 72 paragraphs remain binding upon the Polish party[2]. One of the numerous provisions of the Charter that are not binding upon the Polish state is Art. 25 concerning the issuance of a legal regulation by the treaty countries to ensure employees effective enforcement of their right to protect their claims in the event of the insolvency of their employer. The regulation was introduced into the Charter by the Additional Protocol signed in Strasbourg on 9 November 1995, which came into force on 1 July 1998. It is worth noting that Poland has not ratified the whole Additional Protocol yet. Art. 25 mentioned requires the state to create a public institution which will guarantee payment of claims or will make it possible to achieve this purpose through other solutions. When analysing the legislation in force in Poland, an attempt should be made to determine whether employees performing work under the jurisdiction of Polish courts are ensured the rights described in Art. 25. Or are there any real obstacles making it impossible to create a system guaranteeing workers' rights in the event of the insolvency of the employer, which would justify leaving Art. 25 of the European Social Charter legally invalid? This question is all the more relevant considering the fact that the judicial practice of the European Court of Human Rights shows a tendency for recognising the Charter as the legal basis for its decisions[3] despite the fact that the Charter is not a document binding upon the Court. Therefore the fact of not being bound by Art. 25 of the Charter may turn out to be an insufficient argument in case the issue of protecting claims of employees against the insolvency of their employer is raised in a complaint against Poland filed within a human rights protection system implemented under the European Convention on Human Rights[4].

II LEGISLATION IN FORCE IN POLAND

At present the issues covered by Art. 25 of the Charter are regulated by the Act of 13 July 2006 on the Protection of Workers' Claims in the Event of the Insolvency of Their Employer[5], hereinafter referred to as the Act, however, elements of protection of employees in the event of the insolvency of their employer can also be found in the Polish Bankruptcy Law in the form of priority of employee liabilities as a category paid from the bankruptcy estate (Antonów et al., 2022, p. 480). The Act determines the rules, scope, and mode of protection of workers' claims in case it is impossible to satisfy them due to the employer's insolvency. The Act introduces certain limitations to the state's liability, creating its own definition of an employer, different from the one provided in the Labour Code, and determining in detail which situations constitute insolvency within its meaning. It also indicates which claims of employees under the labour law against an insolvent employer are covered by the guaranteed protection of the state.

The provision of Art. 2 of the Act determines entities considered to be employers within its meaning. These are mostly entrepreneurs within the meaning of Art. 4, sec. 1 of the Act of 6 March 2018 - Law of Entrepreneurs[6], namely natural persons, legal persons, or organisational units other than legal persons, which are granted legal capacity by a separate act, conducting business activity. It should be noted that an entrepreneur within the meaning of the above provision is only a person performing repetitive tasks so that they form a certain whole and do not

[1] Journal of Laws of 1999 No. 8, item 67.
[2] Retrieved from https://archiwum.mrips.gov.pl/spoleczne-prawa-czlowieka---niowa/rada-europy--europejski-system-ochrony-praw-czlowieka/europejska-karta-spoleczna/wykonywanie-europejskiej-karty-spolecznej-przez-polske/, accessed on 4 April 2022.
[3] Cf. the judgement of ECHR of 21 April 2015 in the case of Junta Rectora Del Ertzainen Nazional Elkartasuna (Er.N.E.) v. Spain (No. 45892/09), ECLI:CE:ECHR:2015:0421JUD004589209.
[4] Journal of Laws of 1993 No. 61, item 284.
[5] Journal of Laws of 2020, uniform text, item 7.
[6] Journal of Laws of 2021, uniform text, item 162.

constitute an isolated case or repeated provision of certain goods or services[7]. Pursuant to the Act, an employer covered by the state's guarantees is also a branch of a foreign bank located on the territory of the Republic of Poland within the meaning of Art. 4, sec. 1, point 20 of the Banking Law Act of 29 August 1997[8]. and a foreign entrepreneur from a member state of the European Union or a member state of the European Free Trade Association - parties to the Agreement on the European Economic Area, which established on the Territory of the Republic of Poland a branch or a representative office referred to in the provisions of the Act of 6 March 2018 on the Terms on Which Foreign Entrepreneurs and Other Foreign Persons May Participate in Economic Trade[9]. Within the meaning of the Act, pursuant to Art. 2, sec. 2, the term "employer" does not include legal persons subject to the obligation of being entered into the register of associations, other social and professional organisations, foundations, or independent community health care centres, referred to in Chapter 3 of the Act of 20 August 1997 on the National Court Register[10], entered into the register of entrepreneurs due to performance of business activity, entities classified into the public finance sector pursuant to separate regulations, or natural persons running a household and employing persons performing paid work in the household. Lack of protection of employees employed by individual farmers has been strongly criticised in the labour law doctrine (Pietrzela & Rudnik, 2019, p. 71). What is also interesting is the fact that employees of higher education institutions, both public and non-public, are exempt from the protection (Latos-Miłkowska, 2019, p. 30).

The Act also provides its own definition of insolvency, which is slightly different from the common understanding of the term[11]. It covers, among others, situations referred to in Art. 6 and 8 of the Act with regard to all employers. Insolvency may mostly occur when a Polish bankruptcy or restructuring court, pursuant to the provisions of the Bankruptcy Law or the Restructuring Law, issues a decision to:

1) Declare bankruptcy of the employer or initiate secondary insolvency proceedings against the employer;
2) Initiate restructuring proceedings referred to in Art. 2, points 2-4 of the Restructuring Law Act of 15 May 2015[12];
3) Dismiss the employer's bankruptcy petition if the employer's property is not enough or is only enough to cover the costs of the proceedings;
4) Dismiss the bankruptcy petition in case it finds that the debtor's property is subject to a mortgage, pledge, registered pledge, tax lien, or maritime mortgage to such an extent that the debtor's remaining property is not enough to cover the costs of the proceedings.

An effect in the form of the employer's actual insolvency may also occur without a formal declaration of bankruptcy or restructuring in situations provided in Art. 8 of the Act or in case the adjudication of bankruptcy is issued by a court outside the Polish jurisdiction, or in case a Polish bankruptcy court issues an adjudication pertaining to a foreign entity operating on the territory of the Republic of Poland.

Within the meaning of the Act on the Protection of Workers' Claims in the Event of the Insolvency of Their Employer, the notion of a worker also differs from the one used in the Labour Code[13]. It means not only a natural person who, pursuant to the provisions of the Polish law, is employed by an employer, but also a person employed based on a home-based work contract, or performing work based on an agency contract, a commission contract, or a different service contract, to which, pursuant to the Civil Code[14], commission provisions apply, or performs paid

[7] Ruling of the Court of Appeal in Łódź of 6 August 2019. III Aua 1312/18, LEX No. 2730942.
[8] Journal of Laws of 2021, uniform text, item 2439, as amended.
[9] Journal of Laws of 2018, item 650, as amended.
[10] Official Journal of Laws of 2021, uniform text, . item 112, as amended.
[11] The solution adopted by the legislator is criticised due to a lack of precision – *see* Liskowski (2018), p. 187.
[12] Journal of Laws of 2021, uniform text, item 1588, as amended.
[13] Journal of Laws of 2020, uniform text, item 1320, as amended.
[14] Journal of Laws of 2020, uniform text, item 1740, as amended.

work on a basis other than an employment relationship for an employer being a farming cooperative, a farmers' cooperative association, or a different cooperative dealing with agricultural production, provided that this makes the person subject to compulsory social insurance, except for housekeepers employed by natural persons.

The Act also narrows down the scope of workers' claims covered by guaranteed state protection with regard to all amounts due in connection with the employment relationship. Pursuant to Art. 12, sec. 1 of the Act, these are principal amounts due with regard to:

1) remuneration for work;
2) amounts due to the employee pursuant to generally applicable provisions of the labour law:
   a) remuneration for the time of a layoff caused through no fault of the employee, for the time of non-performance of work (leave), and for the time of different, justified absence at work,
   b) remuneration for the time of the employee's incapability to work because of illness, referred to in Art. 92 of the Labour Code,
   c) remuneration for the time of holiday leave,
   d) severance pay due pursuant to provisions on special rules of terminating employment relationships for reasons that do not concern employees,
   e) payment in lieu of holiday leave, referred to in Art. 171 § 1 of the Labour Code, due for the calendar year in which the employment relationship was terminated, and for the year immediately preceding it,
   f) compensation referred to in Art. 36(1) § 1 of the Labour Code,
   g) compensatory allowance referred to in Art. 230 and 231 of the Labour Code.

The party that can apply for the covering of claims in place of the employer is mostly a worker or a former worker, but also a family member entitled to receive a family pension following the death of a worker or a former worker. Furthermore, the Social Insurance Company will be entitled to receive the amounts due from the bankrupt employer with regard to social insurance contributions on account of the payments made from the Guaranteed Employee Benefits Fund.

Claims listed in point 1 letters a-c are satisfied by the institution acting on behalf of the State for a period of up to 3 months immediately preceding the date on which the employer became insolvent or for a period of up to 3 months immediately preceding the termination of the employment relationship, if the employment relationship was terminated not earlier than within 12 months preceding the date on which the employer became insolvent. Claims referred to in sec. 2 point 2 letters d–f are satisfied, if the employment relationship was terminated not earlier than within 12 months preceding the date on which the employer became insolvent or not later than within 4 months after this date.

It is also worth mentioning that pursuant to Art. 11 sec. 3 of the Act, the date on which workers' claims arose does not matter. They can arise both before the bankruptcy of the employer and after its declaration.

III. ENTITIES RESPONSIBLE FOR THE SAFETY OF WORKERS

The institution established to fulfil the obligations of the state with regard to guaranteeing the payment of the amounts due in the event of the employer's insolvency is the Guaranteed Employee Benefits Fund, hereinafter referred to as the Fund. It is a state special purpose fund - an organisational unit of the State Treasury, but with separate legal capacity and capacity to be a party in court proceedings[15], which has resources to pay amounts due under the employment relationship in place of the bankrupt employer, and then it is obligated to make an attempt to recover the amounts due from entities originally obligated to pay them. During the first years after the Act became effective, until 1 January 2012, the Fund had its own legal personality, however, the Act of 27 August 2009 on Public

[15] Ruling of the Supreme Court of 30 September 2015. I CSK 772/14, LEX No. 1943202.

Finances[16] introduced new rules for the operation of state funds, as a result of which those having legal personality separate from the state lost it. The character of the State Fund for Rehabilitation of Disabled People changed in a similar way. Organisation of new entities was determined by the legislator in Art. 29 sec. 4 of the Act on Public Finances by defining a special purpose fund as a separate bank account administered by a minister indicated in the act establishing the fund or a different body indicated in the act. In the case of the Guaranteed Employee Benefits Fund, the minister in charge of labour issues was appointed the administrator. This body represents the fund in legal actions with regard to both substantive and procedural law.

The idea behind the establishment of special purpose funds in 2012 was to precisely set aside public funds for a statutory public task (Duda, 2014). Therefore, in the colloquial legal language, a special purpose fund is sometimes referred to as a separate bank account. However, this notion is incorrect (*see* Kosikowski & Ruśkowski, 2006, pp. 421-424), and it results from the fact that a characteristic of state entities of this type is that their source of finance is a separate source of public revenue. It is worth noting that the Fund, apart from its primary task of protecting workers' claims in the event of their employer's insolvency, can also pay other benefits in case there are problems with prompt payment of remuneration on account of extraordinary circumstances. Funds can be paid in the case of a flood pursuant to Art. 23 of the Act of 16 September 2011 on Special Solutions Related to Removing the effects of Flooding,[17] during a crisis in the economy or some of its sectors pursuant to Art. 8 of the Act of 11 October 2013 on Special Solutions Related to the Protection of Workplaces[18], and in the case of economic problems of the employer connected with the Covid-19 pandemic or different infectious diseases pursuant to Art. 15gg and 15gga of the Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and emergencies caused by them[19].

The main sources of funding the activity of the Guaranteed Employee Benefits Fund are specific government levies – mandatory fund contributions paid by all employers. They are collected by the Social Insurance Company. The tasks of the pension institution connected with the protection of workers' claims in the event of the insolvency of their employer, include collection of contributions, possibly their enforcement, charging interest for delay and additional fees and fines for the employer's failure to pay contributions within the statutory period.

Pursuant to Art. 9 of the Act, contributions to the Guaranteed Employee Benefits Fund have to be paid by:

1) entrepreneurs within the meaning of Art. 4 sec. 1 of the Act of 6 March 2018 – Law of Entrepreneurs, conducting business activity only on the territory of the Republic of Poland,
2) entrepreneurs conducting business activity also on the territory of other member states of the European Union or member states of the European Free Trade Association (EFTA) – parties to the Agreement on the European Economic Area with regard to the activity conducted on the territory of the Republic of Poland,
3) a branch of a foreign bank,
4) a branch of a loan institution or a branch of a foreign insurance company,
5) a branch or a representative office of a foreign entrepreneur.

The basis for calculating contributions is the number of employed workers, however, the Act excludes:

1) workers returning from maternity leave, leave on terms of maternity leave, parental leave, or extended parental leave within 36 months starting from the first month after returning from maternity leave, leave on terms of maternity leave, parental leave, or extended parental leave;

[16] Official Journal of Laws of 2021, uniform text, item 305, as amended.
[17] Official Journal of Laws of 2021, uniform text, item 379, as amended.
[18] Journal of Laws of 2019, uniform text, item 669.
[19] Official Journal of Laws of 2021, uniform text, item 2095, as amended.

2) workers who turned 50 years of age and within 30 days before employment were registered as unemployed in the District Employment Agency for 12 months, starting from the first month following the conclusion of the employment contract;
3) all workers over 55 years of age in the case of women and at least 60 years of age in the case of men;
4) the unemployed referred by the District Employment Agency, who did not turn 30 years of age within 12 months, starting from the first month following the conclusion of the employment contract.

Employers already declared bankrupt are not obligated to pay contributions. The benefit amount is determined for the following year in the budget act, which allows considerable flexibility in the management of the system by the Council of Ministers to ensure balance between receipts and expenditures of the system (Gersdorf, 2002, p. 81). For more than ten years, it has remained on a constant, stable level of 0.10%. This fraction allows to determine the contribution amount in relation to the social security contribution assessment basis and to apply the limitation to thirty times the forecast average monthly remuneration (Suchanowska, 2013, art. 23, note 3). (This threshold limits the amount of social security contributions to avoid payment of too high benefits in the future.) The legislator's obvious intention is to tie contributions to the compulsory social security insurance to make their collection by the Social Insurance Company easier. It is worth noting that the Fund contributions are only paid by the employer and not by workers.

After contributions are paid to the Social Insurance Company, they are transferred to the bank account of the Fund within 3 working days. In case the statutory deadline for transferring the resources is exceeded, the Fund has the right to statutory interest for delay from the pension institution. The Social Insurance Company receives from the Fund 0.5% of the amount of the collected contributions for collecting and transferring them.

It should be noted that contributions remain the basic but not the only source of funding of the Fund. Its revenue can also come from interest on free funds transferred into management pursuant to Art. 78d of the Act on Public Finances by the Minister of Finance, bequests and donations, workers' voluntary payments, statutory interest for delay on amounts due in connection with overdue benefits paid, a positive difference in the value of sold property and rights connected with it and its equivalent, budget subsidies; revenue from the sale of stocks and shares acquired by the Fund before 1 January 2002, and financial resources from other special purpose funds. Other allowable sources of funding provided in the Act include returned amounts due with regard to the benefits paid and equivalent in property and connected rights taken over by the Fund's administrator for overdue liabilities concerning the benefits paid, and securities established and amounts due in connection with property rental and lease.

A characteristic of the present Polish system of protection of claims of employees in the event of the insolvency of their employer is its decentralisation into provinces and delegation of the tasks described to self-governing provinces pursuant to Art. 14 sec. 1 point 16 of the Act on Provincial Self-Government[20]. Until 1 January 2012, only Field Offices of the Guaranteed Employee Benefits Fund operated on levels other than the national one. After this date, the tasks of the offices along with their employees were taken over by marshals of respective provinces, who carry out these tasks through Provincial Employment Agencies. The activity of marshals is based on powers of attorney given by the minister in charge of labour issues, which are permanent, as provided for by, among others, Art. 31 sec. 2 of the Act, which obligates provincial marshals to draw up contributions to financial plans concerning individual administrative units. On the one hand, decentralisation of the system and its unique government and self-government character ensure greater stability of the system, but on the other hand its purpose is to determine an adequate group of people entitled to benefits considering a strong impact of a given employer and their workplace on the social relationships in a given regional community (Grygutis, 2017, p. 19). In practice, proceedings connected

[20] Official Journal of Laws of 2022, uniform text, item 547, as amended.

with cases concerning handling benefits due in the case of the insolvency of the employer are carried out by departments of the Guaranteed Employee Benefits Fund in Provincial Employment Agencies based on letters of attorney given to their directors pursuant to Art. 8 sec. 5 of the Act of 20 April 2004 on Promotion of Employment and on Labour Market Institutions[21].

Tasks carried out by provincial marshals focus on two areas of determining, by means of administrative decision, parties entitled to benefits from the Fund, and then payment of the amounts due and claim recourse against employers whose obligations the Fund fulfilled. The first area of activity concerns benefits due to entitled parties both for the period before the employer's insolvency occurred and after the employer was found insolvent. In each of these situations parties entitled to benefits are determined in a slightly different way.

The employer's insolvency is usually preceded by a certain transition period, during which there are considerable problems with prompt payment of workers' benefits but the person managing the workplace attempts to save the entity on their own, without initiating procedures aimed at official declaration of insolvency. Entitled persons can then request advance payment against claims not paid by the employer. A condition for receiving it is cessation of business activity by the entity employing workers within the meaning of Art. 12 sec. 2 of the Act. Administrative proceedings aimed at the awarding of advance payment are carried out based on the application of the entitled party that is obligated to demonstrate that the conditions for receiving the benefit have been met. The advance payment is paid in the amount of unpaid benefits, however, it cannot exceed the minimum remuneration for work determined in a given year based on the provisions of the Act of 10 October 2002 on Minimum Remuneration for Work[22]. This regulation ensures the worker basic support. The worker can receive the remaining amount of claims from the Fund only after the employer's bankruptcy has been declared and after the worker has filed the application again. However, the amount of the benefit received can never exceed the average monthly remuneration from the previous quarter, as announced by the President of the Central Statistical Office pursuant to Art. 20 sec. 2 of the Act on Pensions From the Health Insurance Fund[23].

In case the employer's insolvency has been declared, the procedure for payment of benefits by the Fund is slightly different. Pursuant to Art. 15 sec. 1 of the Act, the person administering the property of the employer after their bankruptcy has been declared is obligated to provide the provincial marshal with a list of unpaid claims and persons entitled to them. The employer, receiver, administrator, liquidator, or a different person administering the employer's property, submits the list within a month from the declaration of bankruptcy. Then, upon verification of the aforementioned list and documents enclosed to it, the marshal transfers resources from the Fund to cover the benefits, which are then paid by the employer. Verification proceedings concerning the list and the enclosed documents are carried out pursuant to the provisions of the Code of Administrative Proceedings, but in this case no decision or ruling is made (Góral & Nowak, 2014, p. 214). However, if the statutory conditions for the payment of benefits have not been met, the marshal notifies the entitled party of it in writing, providing reasons for the refusal (Latos-Miłkowska, 2018, art. 20, note 1). The employer can also request advance payment against workers' claims from the Fund during the bankruptcy proceedings. In case the obligation under Art. 15 sec. 1 of the Act has not been fulfilled, also the entitled worker can request payment of the benefits.

The marshal's decision can be appealed against to the Labour Court. This can be done by the employer whose list was not accepted by the marshal or the employee in case the obligation under Art. 15 sec. 1 of the Act was not met. Each of them is entitled to bring the action before the Labour Court[24]. If the court allows the appeal, the

[21] Journal of Laws of 2022, uniform text, item 690.
[22] Journal of Laws of 2020, uniform text, item 2207, as amended.
[23] Journal of Laws of 2020, uniform text, item 504, as amended.
[24] Resolution of the Supreme Court of 2 March 1995, I PZP 4/95, OSNP 1995 No. 16, item 203.

benefits requested from the Fund are awarded. It is worth noting that such a ruling does not cover any interest on delayed payment of benefits by the employer. Interest is only due on delayed payments made by the Fund[25].

The other task of the provincial marshal, apart from organisation of the payment of benefits, is to attempt to recover the benefits paid from the bankrupt employer. Pursuant to Art. 23 sec. 1 of the Act, the provision of financial resources of the Fund to pay benefits and the payment of benefits from the Fund's resources by virtue of law transfer to the provincial marshal acting on behalf of the Fund's administrator claims towards the employer or a different person administering the employer's property, particularly a liquidator or a member of the board, or claims to the bankruptcy estate concerning the return of the benefits paid. The change of the entitled party, however, does not mean that the amounts due become public. They remain private and judicial enforcement of claims has the form of ordinary civil proceedings and not separate proceedings in cases related to the labour law and social security.[26] In such a case, the marshal acts as a representative of the Fund's administrator as only the minister in charge of labour issues has the right to make decisions about the claim, e.g. to reach a settlement with the employer with regard to the payment of the amounts due, to defer the payment date, or to partially remit the debt. However, the administrator frequently has to remit the whole debt as it is impossible to recover it. The conditions for remission are provided by the legislator in Art. 23 sec. 6 of the Act. The marshal also assists in submitting requests for a settlement or covering the amounts due with an agreement in case there are restructuring proceedings carried out against the employer.

It is worth noting that the activity of the provincial self-government is controlled by the Fund's administrator as determined in Chapter 7A of the Act. The control verifies whether the Fund's resources are spent in accordance with their purpose, the rules and mode of spending the Fund's resources, proper documentation and settlement of the Fund's received and spent resources, whether the Fund's claims are pursued correctly, and whether the financial plan is implemented correctly.

IV. INTERNATIONAL LAW SOURCES REFERRED TO BY THE POLISH REGULATION

It is worth noting that the Act of 13 July 2006 on the Protection of Workers' Claims in the Event of the Insolvency of Their Employer, revoking the earlier Act of 29 December 1993, which is currently in force in Poland, was a consequence of Poland's joining of the European Union on 1 May 2004. In terms of the protection of workers' claims in the event of the insolvency of their employer, an effect of the Polish membership in the European Union was implementation of the Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 into the Polish law.[27] The legal act mentioned replaced the Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008.[28] In a broader field of international law, this issue is dealt with by Convention No. 173 and Recommendation No. 180 of the International Labour Organisation (Kordasiewicz, 2000, p. 70).

The existence of international legal standards has its effect on the decisions of courts in cases concerning public guarantees with regard to workers' benefits in the event of the insolvency of their employer. The Directive is considered to be a less complex system of protective guarantees than the Polish Act as in many cases it only provides for a possibility and not an obligation of a member state to establish broader responsibility of the state institution. A significant problem for judicial decisions is posed by Art. 1 sec. 2 of the Directive, which allows member states to exclude a certain group of workers from its application provided that the national legal framework includes a different form of protection of workers' claims in the event of the insolvency of their employer. In case of a conflict

[25] Ruling of the Supreme Court of 26 September 2000, I PKN 53/00, OSNP 2002 No. 9, item 205.
[26] Decision of the Supreme Court of 18 April 2007, V Cz 31/07, Lex No. 970123.
[27] Official Journal of the European Union L. 2002.270.10.
[28] Official Journal of the European Union L. 2008.283.36.

between the Polish regulation and the European law, Polish courts always consider primacy of EU law, where provisions of the Directive can constitute a free-standing basis for action[29]. For example, the Supreme Court recognised responsibility of the Fund for unpaid workers' benefits due from a bankrupt employer - an association that was entered into the National Court Register as an entrepreneur[30]. According to judicial decisions, however, it is unacceptable to interpret the Directive in a manner resulting in considerable extension of the Fund's responsibility for the period before the employer was declared bankrupt[31].

V. CONCLUSION

It should be noted that the Polish system with regard to the guarantee of payment of workers' benefits as a result of the need to fulfil requirements imposed by the European legislator also meets the requirements of Art. 25 of the European Social Charter. The primacy of EU regulations – Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer – over the national law guarantees to a significant extent practical effectiveness of the guarantee of payment of workers' claims after the employer's bankruptcy, regardless of the wishes of the national legislator. The requirements of the European Union law are definitely met by the Polish legislation (Grabowska, 2017, p. 73).

Thus there are no legal obstacles to Poland's accepting the mentioned provision of the Charter. In the labour law doctrine, the above solution does not raise any considerable doubts (*see* Nawacki et al., 2016, p. 102). Therefore ratification of Art. 25 of the Charter should be proposed when making further political and international legal decisions about the change of the extent to which Poland is bound by the Charter. Particularly that it is possible that in the future we will see more decisions of ECHR concerning the issue in question, which will by binding upon the Republic of Poland anyway. The Social Charter provides for a minimum level of protection of social rights on the European continent, which even without the actual ratification of some of its articles shall have an effect on the decisions of Polish courts (Świątkowski & Wujczyk, 2016, p. 436). The standards established by the European Committee of Social Rights may turn out to be very useful when determining the maximum limits on lowering the level of right protection, which cannot be avoided in the face of an economic crisis (Wujczyk, 2018, p. 46).

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[30] Ruling of the Supreme Court of 4 December 2018, I PK 181/17, OSNP 2019 No. 5 item 55.
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