

He was in the right to carry out inspection!

The court decided that the Head of the Plant's Solidarity Trade Union had the right to enter the Plant after (his) work time and to carry out inspection of how the Employer observes the labour and safety laws, and that penalizing him for doing it was groundless.

(here the picture of Alima-Gerber Plant Office Building)

Mr. Jacek Kotula, the head of Plant's Committee of the Solidarity Trade Union at Alima-Gerber S.A. was penalized with reprimand for not observing the Plant's Work Regulations. He was accused of entering willfully the Plant before midnight on the 6th June last year without superior's permit/agreement and without recording the entry with his identification badge.

The head of the Solidarity Trade Union was of the opinion that this penalty was groundless and filed the appeal against this decision of reprimanding him, arguing that he entered the Plant in order to inspect work and safety conditions. Since the Employer disregarded (*rejected*) his appeal, Mr. J. Kotula went to court on 23rd July 2007, (*suing the Employer and*) demanding an annulment/repeal of the penalty.

In justification of the sue, he explained that he entered the Plant on request of the Work Safety Inspector who wanted a representative of the Plant's trade union to be present during his inspection of working conditions for the third-shift employees. The direct cause of the inspection were a multiple requests from the employees for check of the correct working and safety conditions. During one-hour-long inspection, abnormalities were in fact discovered, including those which created risks of accidents. Besides, the head of the Solidarity Trade Union argued that the Employer has given the reprimand based on the regulations of the new Plant's Work Regulations, which cannot be considered as being in force because they were introduced without the legally required agreement with the *Plant's* trade-union organization. Whereas, in accordance with the, actually binding, old *Plant's* work regulations, the head of the Solidarity Trade Union has the right to be on the premises without the consent of the Employer. The regulation, introduced with the new work regulations, which makes it impossible for him, restricts trade-union activities and the rights of the trade-union representatives.

Upon analyzing the case, on 22nd November 2007 the Regional Court in Rzeszow issued its verdict, annulling the reprimand penalty imposed on Mr. J. Kotula, and it charged Alima-Gerber company with the costs of court proceedings. The Employer appealed against this court verdict to the Regional Court in Rzeszow. However, on 15th May 2008 the Court upheld the original verdict of the first instance and thus the verdict became legally valid. (je-kl)

Commentary on page II

The Court decided we were right

The proceedings before the Court have shown that the reprimand penalty imposed by the Employer on the Head of the Solidarity Trade Union at Alima-Gerber Plant was groundless. By deciding that Mr. J. Kotula was right, the court acknowledged that the trade union has legislative basis for inspecting the Employer as concerns the/his observance of the labour law regulations.

In accordance with the Art. 26 item 3 of the Act of 23rd May 1991 on Trade Unions, the range of activities of the Plant's trade-union organization covers, among others, the exercising of inspection over the observance of the labour law regulations in the Plant, in particular the observance of work safety regulations and rules. In fact, the Head of the Solidarity Trade Union participated in the inspection on request of the Work Safety Inspector and represented the trade union during its course. He did not record his entry with his identification badge because he did not perform his usual employee obligations at that time, whereas the inspection was carried out beyond/off his work time and it resulted from his social function.

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The Court stressed at that occasion that life experience and the essence of inspection procedures show that, in order for them to be effective, it is not advisable to inform the inspected subject of the intention to carry out inspection, because, being warned in advance, the inspected subject could undertake actions that would falsify inspection results.

Also, we managed to show in court that the work regulations, effective in the Company from the 1st January 2007 have no valid force. The Court took the position that, as the term for finalizing the negotiations on work regulations was not agreed upon, the Employer could not determine its text alone, i.e. implement the work regulations without agreeing it with the trade unions. Thus, the old work regulations remain in force at Alima-Gerber.

Monika Wojak
Lawyer for the Regional Board
of the Solidarity Trade Union