

CASE STUDIES IN WOMEN'S EMPOWERMENT

A story from Eastern Europe

Bożena Łopacka, workers' rights advocate in Poland

Edited by Anita Seibert, Karat Coalition



The first win

In 2004, Bożena Łopacka, a former employee of the discount supermarket chain Biedronka ('Ladybird'), owned by the Jerónimo Martins Group, took her employer to court for not paying her overtime. Three years later she was awarded PLN 35,000 (approximately Euro 10,000). This court victory, however, signifies much more than the amount of money won by the plaintiff – it marks the beginning of a systemic change in working conditions throughout Poland.

When the Polish economic system transformed to capitalism in 1989 as a consequence of strikes led by the trade union Solidarity, followed by negotiations with the communist government and the country's first free elections, Łopacka was working as a waitress in a restaurant located in the historic section of a small town of 10,000 residents. She was not overly concerned with the socio-economic change taking place in Poland, as she was happy with her economic circumstances. Her tips alone, which she mainly received from German tourists, allowed her to hire taxis to a nearby larger town and back, buy nice clothes and pay for entertainment. Her parents-in-law built a house and gave half of it to her and her husband. Other Poles were embracing capitalism by erecting stalls in the streets, but Łopacka was convinced that permanent employment, rather than her own business, was all that she should aspire to.

In 1992 Łopacka gave birth to a long-awaited daughter, and took maternity leave. While she was not initially interested in the transformation of Poland, she was now happy to enjoy the fruits of this change. Thanks to her husband's income and her mother's pension she could buy imported jars of baby food, disposable nappies and fragrant baby oils for her daughter, none of which were available in Poland before 1989. She enjoyed these 'gifts' of capitalism and took them for granted. Unfortunately, the family income decreased after the death of her mother; as a result,

in 1997, Łopacka decided to take employment at Biedronka. And this is when she became acquainted with hours upon hours of exhausting labour, and fainting women colleagues who had miscarriages because of the strain.

Łopacka was working as a manager at one of Biedronka's supermarkets. As a consequence of the workload of all the employees had to work overtime, but when Łopacka asked the regional manager to pay the overtime of 10 employees she was refused. The regional manager even tore up the employees' submitted timesheets. Łopacka choked back tears, thinking about the 14- to 20-hour workdays she and her co-workers spent unloading products and cleaning the supermarket. The employees received only the basic wage every month, and Łopacka was able to 'negotiate' payments for overtime maybe only four times a year. When she objected to the situation she was told very rudely that if she did not like it, she could resign, but of course she did not want to lose her job. As the timesheets had to be in line with the wages paid Łopacka was forced to forge them, documenting only 'official' working hours and not the overtime put in by herself and the other workers.

Łopacka began to write letters of complaint against the regional manager who forced her to forge the timesheets. Her colleagues warned her that she would not win this battle; many of them distanced themselves from her, not wanting to be associated with the 'troublemaker'. They were prudent to do so; although the regional manager was dismissed, the man who replaced her was instructed to get rid of Łopacka. She was told that if she would not resign, she would be set up – planting stock in employees' personal belongings and then dismissing the 'thief' was a well-known unwritten policy at Biedronka. To get out of this situation, Łopacka went on sick leave. She easily got the required doctor's certificate: the stress at work had sent her blood pressure soaring and she was at serious risk of a stroke. Staying at home led to serious depression. Łopacka stayed in bed, did not change her clothes, and was constantly haunted by the thought that if she lost the job her family would have nothing to live on. This was of particular concern in a small community, which at that time experienced an unemployment rate of 30 per cent, and where nobody would be likely to employ a 'troublemaker' such as her.

At that point Łopacka decided to commit suicide; it was only the thought that it would be her daughter who would find her body that made her change her mind at the last moment. This was a turning point: she resolved to take her employer to court for not paying her for 2,600 hours of overtime that she had worked between 2000 and 2002.

The case began in 2004, and at first the court ruled in favour of Łopacka. The verdict was appealed, however, and she was asked to document her claim more thoroughly. In the following court case an extra expert witness engaged by the court calculated that in fact she was entitled to a greater sum than she had originally requested.

While this was not part of her claim, Łopacka has also shown that she worked for 12–17 hours a day, although only her official hours were recorded. In a media interview she has stated that she once worked for six months without a single day off. On another occasion she spent a week without leaving her workplace; during that period she slept on a table on towels sold in the supermarket.

Łopacka did not believe that she, as an individual, poorly supported woman, could win a case against a large and wealthy company. Most people in her immediate environment were similarly pessimistic about her chances. Her fears were reflected in reality when Biedronka used all its power and resources to delay provision of evidence and prolong the process. Biedronka claimed, for instance, that the other employees had to work such long hours because of bad organisational skills on the part of Łopacka. It was also claimed that she forged timesheets on her own initiative.

During the court proceedings it became evident that Biedronka had the resources to develop an infrastructure allowing it to exploit both workers and suppliers. Part of this involved using the services of one of a large legal firm in case of any claims by workers and suppliers. Łopacka was fighting for financial compensation, but she stated that it was not money but rather a need to protect the dignity of herself and other workers that inspired her. The fact that she loved her work was another motivating factor. She wanted to fight for the thousands of workers employed not only by Biedronka but also by other supermarkets. Not only had these employees been working for free, they had been also treated in a disrespectful manner. According to Łopacka, Biedronka exploited the fact that the high unemployment rate in Poland forces people to accept work in appalling conditions – in fact, she referred to such conditions as ‘contemporary labour camps’, where women were forced to carry loads so heavy that back injuries and miscarriages were common. While Łopacka’s win has been a great personal success, it more importantly led the way for other exploited employees to take their employers to court.

Today Bożena Łopacka is no longer a depressed, stressed worker at Biedronka. From modest manager at a discount supermarket, she has become a protector of

workers' rights. She has been compared in the Polish context to Lech Wałęsa, legendary leader of the Solidarity movement and later president of Poland, or in a more international context to US anti-pollution advocate Erin Brockovich¹, made famous in a 2000 Hollywood film. She herself modestly plays down such comparisons.

Why have Poles accepted exploitation of workers?

Until Łopacka filed her case in court, it was widely known that many employers in Poland, including large, international supermarket chains, exploit workers, but very little was done about it. The workers themselves felt powerless and not organised, and there was little social and no institutional support for any attempts to change this situation. In most cases workers were unprepared (or unequipped) to take any action, they had little or no real support from trade unions and society at large, and they could not afford private legal assistance.

The transformation of Poland began in 1989 after a spectacular and unexpectedly successful social movement uniting workers, intelligentsia and the church led to the overthrow of the dictatorship of the Soviet-controlled government. The economic consequence of the movement was a transformation of Poland's economic system from a centrally controlled and non-market-oriented system to a market-controlled capitalist system.

While Poland's economic transformation has to be seen as a positive event, particularly as it was accompanied by the development of the democratic political system, it is alarming that the transformation ignited by Solidarity has led to over a decade and a half of rampant exploitation of workers' rights. In fact, the first decade of capitalism in Poland, often referred to as 'wild' capitalism, was characterised by an unspoken permission for the breaching of workers' rights. Not respecting workers' rights was commonly perceived as part of the new economic and social order. Individuals (employees) or small and usually not very powerful groups (for example, NGOs) who were attempting to change the situation felt powerless, as the mechanisms to defend workers' rights which function in most of the old capitalist

¹ Erin Brockovich-Ellis (full name Erin Brockovich-Ellis) was an American legal clerk who, despite the lack of a formal legal school education, in 1993 was instrumental in constructing a case against the PG&E company based in California. A Hollywood movie was based on the story of Brockovich.

states (such as the EU states, Australia and even the US) either did not exist at all or existed only on paper.

A good example of this is the Polish labour code, which has been amended in prior and after Poland joining the EU in 2004, to reflect EU requirements associated with aligning laws of New Member States with existing EU laws, but which often fails to offer real protection to employees. Firstly, it applies only to parties involved in a formal employer–employee relationship. In Poland large numbers of workers are employed informally,² and the labour code is therefore not applicable to them. Additionally there is an increasing trend for employees to be requested by their employers to be self-employed, which means they must register their own small, one-person firm and work for their employer as an independent subcontractor. In these cases the labour code again does not apply. Finally, in a labour market characterised by high unemployment, many employees have been prepared to overlook the rights ensured for them by the labour code. The ‘wild capitalism’ has become less dominant as Polish people have become more experienced and informed participants in the market system but also as a consequence of the fact that since joining the EU large number of Polish workers³ have left the country to work in UK, Ireland and other ‘old’ EU states which have open their labour market to workers from NMS. As a consequence of labour force shortages and greater assertiveness of the workers themselves employers are forced to provide better working conditions. Unfortunately, specific groups such as low-skilled workers, women, young people, ethnic minority groups, and residents of regions with particularly high unemployment rates are still at risk.

In many cases, trade unions have been ineffective protectors of women’s rights. There are various reasons for this: generally speaking, trade unions are not very powerful in Poland; many workplaces either prohibit joining unions or establish their own unions; workers themselves do not believe that they can benefit from joining a union; unions are often quite conservative, old-fashioned structures not well equipped for functioning in the contemporary economic and social reality; and trade unions are often not very gender-sensitive and hence fail to protect the rights of female employees effectively.

2. Not enough research focusing on the informal economy in Poland has been conducted, but according to some estimations there are at least 1 million people involved in this sector.

³ According to Polish media it is estimated that between 500 000 and 1 000 000 Polish workers are employed in that in UK and Ireland alone.

At this point it is important to explain the case of Biedronka in terms of the transfer of international capital to Poland. It has been noted several times before that various businesses – particularly supermarket chains, which have good reputations in their home countries and often offer exemplary work conditions – change their behaviour upon moving into ‘new market economy’ countries such as Poland. The supermarket chains have entered these new economies in a very aggressive manner. One of the ways the burgeoning market has been exploited is with the introduction of hyper/supermarket chains by large foreign companies. Currently, French chains of supermarkets such as E. Leclerc, Carrefour and Auchan are the most visible in Poland’s big cities, while others such as Tesco, Real, Media Markt, Albert, Hypernova, Lidl, Lewiatan and Leader Price are visible both in the big cities and in smaller places.

At the very beginning hyper/supermarkets were perceived as a positive phenomenon, primarily because they provided employment opportunities and offered an unrivalled number of cheap products in an age when Polish customers were still accustomed to near-empty shelves and limited product choice. Unfortunately, it soon became evident that the hypermarkets were putting many existing smaller, private family-run shops out of business and were systematically violating employees’ rights in a variety of ways. The employees who have suffered the brunt of these abuses are invariably women, who make up the majority of supermarket and hypermarket staff.

Most hypermarkets do not fully respect state regulations with regard to employee rights and entitlements such as payment for overtime worked, holiday pay, health insurance, social services and retirement regulations. They take advantage of the low social awareness that is especially prevalent among the poorest and most poorly educated groups of citizens.

These violations are also possible because until very recently employees are easily replaceable, with a queue of people waiting to be hired in hypermarkets. Despite long and exhausting work schedules, employees have been badly paid and had no formal guarantees that they will keep their position. What is more, they have been forced to work in very difficult conditions as they are not in a position to answer the implied threats to their jobs by their superiors.

Biedronka is owned by Portuguese firm Jerónimo Martins. It has the largest number of cheap supermarkets in Poland. There are 820 Biedronka outlets across the

country, in which around 46 per cent of Polish citizens do their shopping. Jerónimo Martins has more than 13,000 employees and is among the most profitable companies in Poland, with 2005 sales of around PLN 5.5 million. In contrast to the existing situation in Poland, its supermarkets in its home country are not discount stores but are considered to be upmarket; it also has a very good reputation in Portugal as far as treatment of its workers and suppliers is concerned. A Portuguese journalist present at workshops organised in Poland in 2006 by the European Coalition for Corporate Justice and Karat stated that Jerónimo Martins is the pride of Portugal.⁴ It has a chain of supermarkets in Great Britain, which are also considered to be upmarket and have a good reputation. At the moment it is planning to open shops in Brazil and Ukraine; it will be interesting to see what model of relationships with employees and suppliers will be implemented in those countries.

Why was Łopacka successful?

Łopacka's success has four main dimensions. The first is her personal determination to begin the battle when she seemed to be in a losing position. Secondly, she managed to secure the assistance of a lawyer, Lech Obara, who was prepared to represent her on a no-win-no-fee basis⁵. This method of legal assistance, while popular in other countries, was until recently very rare in Poland, particularly in such cases as that of Łopacka. It is important to point out that Obara offered his assistance while being fully aware of the considerable resources that would be deployed by Biedronka.

The third factor was the interest of the media and the continuous coverage that the case received. The media did not just write about this 'curious' case once but followed it through, with newspaper articles and TV programmes addressing the story of Łopacka and other workers exploited by supermarkets. The media coverage of the case made a great impression not only on the general public but also on Polish and international firms – for example, at the workshop CSR workshop mentioned above, invited business representatives made reference to the case of Biedronka (though

4. Corporate Social Responsibility – Gender Equality in Employment, Warsaw, 28–29 September 2006, organised by the European Coalition for Corporate Justice and Karat and funded by Friedrich Ebert Stiftung.

⁵ The method of co-operation between the legal firm/body and its client is arranged in such way that the client is represented by the firm free of charge until she/he wins the case. At that stage she/he pays the firm previously agreed amount (usually the percentage of the compensation received).

mainly to blame the media for highlighting only the negative practices in the company and not the positive ones).

Fourthly, and possibly most importantly, thanks to the efforts of Obara, other firms beside his own started to represent women following the example of Łopacka. Thanks to Obara's lobbying, 14 legal firms in Poland are representing workers of Biedronka and other supermarkets, with several dozen court cases already being heard.

Workers rights after Łopacka

Łopacka's win marked a turning point in the fight for workers' rights in Poland. After Łopacka's success, other cases were filled against Biedronka and other supermarket chains at Polish courts. In most cases the plaintiffs were women. Many of the court proceedings have already been completed, with women even being awarded payments before Łopacka despite the fact that they filed their cases later than she did. This is largely due to the fact that Łopacka's case was a precedent and hence was treated with particular attention by the court.

Further, Łopacka's case has led to the launch of a national-scale investigation by the prosecutor's office to establish whether Biedronka implemented an organised system of exploitation of workers. A number of supermarket chains, with specific emphasis on discount chains, have also been investigated by the labour inspector, and a number of practices violating workers rights have been identified.

Biedronka has implemented some positive changes: hand-operated carts for unloading stock have been replaced with electric carts, and electronic registration of work time and a telephone hotline for complaints have been established.

Further, Polish trade unions have become more vigilant in protecting the rights of workers employed by supermarkets. An Association of Persons Wronged by Bidronka Supermatke Chain uniting persons wronged by Biedronka has also been established; it has over 100 members and an equal number of supporters. This association was established independently of Łopacka and is led by a supplier who went bankrupt as a consequence of Biedronka's practices. The association provides

assistance to persons wronged by Biedronka, offering them support, attending court cases and liaising with the media. One of the leading members of the association has become involved in trade unions and acts as a union representative in one of Biedronka's outlets.

Further, from 2008 Karat Coalition is going to be implement a 18 moth long project funded by OSI "Labour Rights Protection from Gender Perspective in the Super/Hypermarkets in Poland". The project will aim at changing permanently employment environment in Poland in order to strengthen the protection of the labour rights of workers, in majority women, employed in the large hypermarkets chains.

The case of Łopacka clearly shows that even in countries where for specific historic or structural reasons it has been impossible for women workers to organise effectively to protect their rights, the situation can eventually change.

The positive change related to workers' rights can also be seen as part of the broader changes taking place in the socio-economic environment of Poland. One example of this is corporate social responsibility (CSR). An increasing number of firms operating in Poland are beginning to implement CSR strategies, and the idea is becoming more 'fashionable' in Poland, as it is in other EU countries. It is still a very new notion In Poland, however, and not many stakeholders understand it. CSR is often treated in a very instrumental way, exclusively as a public relations tool. Still, the fact that CSR has entered Poland should be viewed as positive, as until now most firms have not been concerned about their image in this way. There is hope that this desire to improve their image may lead to improvements in working conditions at many companies. At the same time, it is a point of concern that Biedronka (among others) claims to have already introduced this instrument when the evidence often suggests otherwise.

There are also fears associated with the Łopacka case. Some commentators have stated that, while not being particularly effective, the Polish work code is in theory one of the most protective.

Questions for debate

- What can be done to ensure that firms that have a good reputation as far as work conditions are concerned in their home country and/or other old EU countries do not exploit workers in the new market economies?
- How can trade unions represent female employers more effectively?
- How can the Łopacka case be used to protect the rights of workers in other industries?
- What can be done to address the paradoxes of the Polish labour market, such as a very pro-worker labour code combined with very exploitative practice?
- What role can women's NGOs play in the struggle to mobilise women workers to fight for their rights?
- Are there any opportunities for cross-EU actions aimed at ensuring good working conditions for workers employed in international supermarket chains?