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HAPHAZARD ESTABLISHMENT OF COMBINES CRITICIZED IN POLAND

Summary: A new form of combine is being set up in Poland, although the legal relationships within a combine and between a combine and other economic organizations have not been clearly defined. Such haphazard establishment of combines threatens the success of an organizational reform which has been hailed in Poland as an important element in the new stage of economic reform.

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The industrial combine, a new form of organizing economic activities in Poland, is being introduced without clearly defining the legal relationships with the plants, enterprises and other subsidiaries, or with the association and the ministry to which it belongs, without providing the combine with a truly independent advisory board, and without establishing a procedure the combine could employ to defend its rights. (1) These and other shortcomings point to the haphazard way in which one of the key elements (2) in the new stage of economic reform is being introduced in Poland.

History of the Combine in Poland

The reforms initiated in Poland in 1956 included a program for increasing the independence of state enterprises, for establishing combines, and for introducing a form of workers' self-management. Although the 1950 decree defining the position of the state enterprises was amended, "no new legal regulations on state enterprises were worked out." (3) In fact, the

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- (1) Ludwik Bar, "Legal Elements in the Structure of an Industrial Combine," Panstwo i Prawo, No.8-9, August-September, 1970, pp.219-236.
 - (2) Other key elements include a new material incentive system, a reformed foreign trade organizational structure, a program of "planning from below," and a new financial system.
 - (3) Bar, op. cit.
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legal status of enterprises was not completed in the 1960s according to Ludwik Bar, a Polish legal specialist on state enterprise law. The association of enterprises was pushed to the forefront and began to replace the central administrations within the economic ministries. For the most part, the association was a grouping of enterprises rather than an integrated economic organization. Similarly, the first combines were no more than a loosely organized group of economic units. It was the Council of Ministers resolution of 23 October 1969 on the establishment of industrial and construction combines which transformed the combine into a vertically integrated economic unit consisting of staff, production, marketing, technical, and foreign trade organizations in a particular industry.

The New Type of Combine

A Council of Ministers resolution adopted in October, 1969, opened the way to establishing vertically integrated combines. (4) Resolutions by the Fifth PUWP Congress (held in November, 1968) and by the Second PUWP Plenum held in April, 1969 provided the basis for the enabling resolution of the Council of Ministers.

On 1 January 1970, 13 industrial combines, associating 66 enterprises, went into operation within the Machine Building Ministry. (5) Eight were established in the machine tool and implements industries and five others producing standardized machine parts, such as bearings and hydraulic components, cables, electrical fittings, installations and equipment for cable communications. Included in the integrated combines were four central design offices, three marketing offices, eight experimental institutes and a central laboratory for plastic applications. The 66 enterprises included in the first 13 combines represented more than 20 per cent of the total number of production plants in the Machine Building Ministry. These enterprises employ about 100,000, have industrial property valued at more than 14,000 million zloty at their disposal, produce about 17 per cent of the output of the machine building industry, and account for 16 per cent of the industry's total exports (they account for 30 per cent of the industry's exports to nonsocialist markets). (6)

In April, two combines were established in the chemical industry, for sulfur and salt products. (7) The first combine in the food industry was formed in August. (8) The meat combine

(4) Trybuna Ludu, 9 November 1969.

(5) PAP in English, 13 January 1970; Trybuna Ludu, 14 January 1970.

(6) PAP in English, 9 June 1970; Trybuna Ludu, 9 June 1970.

(7) Trybuna Ludu, 20 April 1970.

(8) Zycie Warszawy, 7 August 1970.

replaced the old association of enterprises. Preparations for the first four combines within the Ministry of Construction are also "considerably advanced." (9) They are to be based on four factories for the production of prefabricated elements, to be located in Bydgoszcz, Gdansk, Lodz and Warsaw. The construction combines are to become operative at the end of 1971, when the so-called "house factories" are completed. The establishment of a huge combine in the shipbuilding industry has also been suggested. (10) It is to become operative as of 1 January 1971.

Sources of Difficulties in Establishing Combines

Following the initial launchings of the new type of combines in Poland, the law institute (INP) of the Polish Academy of Sciences (PAN) held a discussion on the problem on 16 June 1970. Scientists from various universities and institutes and representatives of combines, associations, ministries and other central organizations participated. It was generally agreed that much research needs to be done on this new form of economic organization. The areas in need of special attention included an analysis of the "special traits of the industrial combine as a state enterprise; the composition of the combine; the various plants within a combine; the rights of the combine's director, of workers' self-government, and of the superior bodies; supervision; discrepancies between practice and regulations; and the performance of legal-organizational experiments." (11)

The Combine and Its Subsidiary Units

The 1969 Resolution of the Polish Council of Ministers provided for the establishment of combines with only one type of organizational unit, a provision similar to that prevailing in East Germany but different from that of the Soviet Union. As in East Germany, the Polish subsidiary units were to be created without having a separate legal identity. However, when the first combines were established within the machine building industry, some of them included various types of units; a number of the subunits retained their legal identity and had separate accounts. Mixed combines were created in Poland. The Polish economic ministries have decided to shape the combines differently from the way provided for in the resolution.

(9) Trybuna Ludu, 1 October 1970.

(10) Perspektywy, 9 October 1970 (Translated in Polish Press Survey No. 2254, Radio Free Europe Research, 11 November 1970).

(11) Bar, op. cit.

The combines in the chemical industry grouped the subunits into two classes -- Group A, which included plants, and Group B, which covered units with their own legal identity. The latter group, however, is considered to be a "part of the combine as far as its operations are concerned." (12)

Both in the case of the machine building and the chemical combines, whenever some of the subunits retain their legal personality, a number of legal problems arise. One problem raised is whether the enterprise with its own legal identity can enter into agreements with other subunits of the same plant which do not enjoy the same legal privilege. The same problem arises whenever bilateral agreements are envisaged between plants, neither of which has a separate legal identity.

Differences in approach are also found among combines on the question of establishing a "leading plant" or enterprise. The resolution states that "essentially, one of the plants should play the role of the leading plant in the combine." While the machine building industry charters for the combine provide for the establishing of a "leading plant," this provision is clearly absent in the case of the chemical combines. Furthermore, where a plant has been selected as the leading plant, there is no clear definition of its role. Doubts exist about its powers, rights, and duties, while its relationship to the other or "nonleading" plants has yet to be clarified. In reviewing the current situation, the Polish legal specialist on economic organization observed that this situation may enlarge the "scope of experimentation" and that several legal solutions may develop. However, he noted that "this will be very advantageous, providing these solutions do not affect the formation of the combines' structure." At this moment, it is difficult to see how this type of experimentation would not affect the combines' structure.

The Uncertain Role of the Combine Director

The provisions of the Council of Ministers' Resolution state that the combine director is the sole person in charge of the combine and that the authority of the directors of subsidiary units (those without a separate legal personality) is to be determined by the combine director.

Bar argues for the establishment of the plant director's legal rights in regulations adopted and applied generally for subunits of all combines, particularly as they relate to the plant's external relations. Such a provision would follow the example set in Bulgaria in 1969, where enterprises may grant their subsidiaries certain rights to conclude agreements in their own name, as well as the one set in East Germany in 1970. This type of provision could ensure a minimum degree of

(12) Ibid.

decentralization within the combine.

For Bar, the establishment of the combine director as "the sole person in charge of the combine" by the Council of Ministers Resolution is tantamount to accepting "the principle of one-man directorship." He would prefer, instead, the creation of a "collegial body" within the combine. The Rumanian and Bulgarian introduction of the collegial system of management during 1968-1969 within enterprises and associations is viewed with approval. However, such a collegial body, according to Bar, must be independent of the combine's director. Without such a provision, "codecision" would be a farce because, if members of the collegial body were creatures of the director, they would be in no position to make independent recommendations.

Another difficulty springs from the looseness with which the resolution defines the "greater independence" of the combine director. The combine statutes have not improved the situation even when they include all of the rights provided in the resolution. In most cases, the combine statutes only state that "the combine is headed by a director, who is the only man in charge of the combine, in accordance with mandatory regulations and on the basis of the guidelines issued by the chief director of the association." These guidelines have yet to be defined in specific terms. The implied subordination of the combine to an association seriously threatens the combine's independence. According to Bar, "the combine may be led out of this complicated situation onto the path to greater independence if we work out legal regulations which state that the combine is in charge of all its affairs, except for matters reserved for the superior body."

The Combine and Workers' Self-Government

Bar sees no real threat to workers' self-government as a result of the establishment of combines. He notes that the Chairman of the Council of Ministers and the Chairman of the Central Council of Trade Unions issued a joint letter on 12 December 1967 which provided the guidelines concerning the principles of the form of workers' self-government within combines. The provision which permits the chairmen of the plants' Conference of Workers' Self-Government to attend "important sessions" of the combine's collegium and provides them with a consultative vote is viewed by Bar as an adequate guarantee for the representation of workers' views. This type of provision, however, is far short of the powers granted to trade union representatives in Hungary, where they have been given various degrees of the right to veto management decisions and are endowed with other consultative powers. The Polish provisions also fall short of establishing the type of self-management developed in Yugoslavia. Even worse, the guidelines contained in the joint letter have yet to be published in the official legal gazette of Poland. In

reviewing the situation in Poland, Bar concluded that "to work out a draft of a new solution is an urgent task facing science and practice." He would like to see the establishment of one Conference of Workers' Self-Government in a combine, supplemented by sectional councils operating in the various subsidiary units of that combine. This would be similar to the form of indirect self-management being developed in Yugoslavia.

Supervision of the Industrial Combine

Supervision by the supervisory unit over the combine, as provided by the Council of Ministers' Resolution, is largely "limited to establishing tasks and means ensuing from the need to maintain developmental proportions and to exercising state supervision." However, concrete supervisory regulations have yet to be provided in the resolution or in the combine statutes. In the discussions conducted under the auspices of the law institute of the Polish Academy of Sciences held in June, two general views were presented on the issue of supervision. One view favored limited supervision. The manner and the circumstances under which the supervisory body could impose its presence in the sphere of enterprise activities would be defined by law. The second view favored over-all supervision, a view which would, in effect, deny the independence of the combine and would seriously limit the role assigned to the new form of the combine.

According to Bar, the areas where "authoritative supervision" of the combine could be permitted might include:

- a) the right and duty to control the combine's operations from the economic, technical, social, and legal viewpoints;
- b) to issue, during the control, current orders when this is necessary to put a halt to a delinquent state, to prevent the development of a delinquent state, to avert impending major damage, or to eliminate a state contrary to the law;
- c) to ratify, in definite cases specified by law, external regulations prepared by the combine director, as well as other permanent legal acts that are to be mandatory on a wide scale;
- d) to halt the implementation of a decision made by the combine director which is contrary to the national economic interest or goes beyond the combine's scope of activity;
- e) to cancel the combine director's decisions issued without legal basis or on a scale exceeding his authority;

- f) to impose on the combine lawful tasks ensuing from the need to protect the country, to combat natural disasters, or to promote an urgent public interest;
- g) to act in the place of the combine director, if, in cases defined by the law, failure on the part of the combine director to fulfill his duties threatens major damage to the national economy.

The acceptance of these forms would provide broad, but defined areas for supervision. However, such provisions would not exclude "nonauthoritative supervision," which still would, according to Bar, remain "essentially unlimited."

In many cases, the supervision would be exercised by the association. The associations in Poland have yet to receive new regulations on this subject. In reviewing the problems concerning which agency should perform the supervising functions, Bar approvingly reviewed Hungary's experience, based on the state enterprise law of 1967. Among the things he discussed was the establishment of the control and rehabilitation commission in Hungary, particularly the practice of including specialists outside the economic unit, a representative of the founding agency and the bank, and, if the Minister of Finance wishes, also his own representative. He also noted the consultative function of the trade union. Bar also reviewed the supervising commissions established in economically important Hungarian enterprises, some of the members of which are independent of the enterprise, and others of whom represent the trade union and the founding agency.

The Polish jurist also saw no reason at all why the association should be established as an intermediary supervisory body between the combine and the ministry. For him, this would only mean the re-establishment of the old multistage organization, only this time the association would include very large organizations -- namely, the combine. He would rather permit combines to form associations on the basis of mutual agreement whenever the combines felt the need to establish such organizations for specific purposes. Such a solution would follow the practice pursued in Hungary and Yugoslavia in a number of instances.

Equally important was Bar's concern with the establishment in Poland of an adequate procedure which could be employed by the combine to defend its rights. His proposals on this

matter have been discussed in another RFE report. (13)

Consequences of Inadequate Preparations

It is clear from the report on the discussions held at the June legal symposium and from Bar's analysis of the legal problems associated with the establishment of combines in Poland that the preliminary work on the legal status of the combine has been very inadequate and that the introduction of the new combine form has been largely haphazard. There can be little doubt that, if many of the important legal relations are not clarified soon, the success of the new reorganization will seriously be threatened. Merely to speak of the initial efforts in the establishment of the combine in Poland as an "experiment" belies the fact that such an experiment is being conducted under very adverse conditions. The most likely net result, therefore, may be permanently to place the heavy imprint of the old economic relationships on the new organizational structure even before it gains a foothold, thereby compromising many of the principles on which the economic reformers are placing such high hopes.

Harry Trend

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- (13) Harry Trend, "Pleas for Strengthening Legal Protection of Subordinate Economic Units," Economics Background Report/13, RFE, 25 August 1970.