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EMPLOYMENT SECURITY UNDER POLISH LAW – CONSIDERATIONS BASED ON THE CONCEPT OF PRECARIAT BY G. STANDING

INTRODUCTION – CHARACTERISTICS OF THE NOTION OF PRECARIAT

The aim of this study is to present one of the theses on which the concept of G. Standing's precariat is based under Polish legal regulations. The concept of precariat has a sociological basis laid out, inter alia, in the work entitled: "*The Precariat: The New Dangerous Class*"[1]. The precariat, according to the aforementioned author, is a social group deprived of 7 kinds of social security, which were postulates of the industrial class. Thesesecurity forms include:

1. Employment security is the protection of the stability of the employment relationship, the protection against dismissal and the guarantee of compliance with the provisions constituting the basis for termination of employment relations.
2. Security at the level of state protection guarantees is a manifestation of government assurances in the area of conducting "full employment policy".

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[1] In this study the author uses the translation of Krzysztof Czarnecki.

3. Job security, or the ability and opportunity to retain a niche in employment plus the reduction in lowering the value of skills, as well as the possibility of social advancement in terms of status and income.
4. Work security consisting in protection against accidents and illnesses at work through occupational safety and health regulations, working time regulations and holiday regulations. These are regulations that protect life and health, both mental and physical in the workplace.
5. Income security ensuring an adequate and stable income, it is protected through, for example, mechanisms of minimum wage, wage indexation, and universal social security law. These provisions are regulations ensuring freedom from social exclusion.
6. Skill reproduction security consists in the opportunity to gain skills through apprenticeships, employment training and so on, as well as opportunity to make useof competencies. These regulations protect against the lack of opportunities for social advancement, in the era of information society and the economy oriented towards the development of services, knowledge and skills are necessary to perform work in many industries.
7. Representation security means possessing a collective voice in the labor market, through independent trade unions and the right to strike. This security means ensuring the effectiveness of exercising the active and passive right of the coalition[2].

The above social security forms do not refer only to the financial situation, but they have a libertarian dimension and the ability to exercise basic rights and freedoms. They protect against the precarious existence that often affects personal development and failure to fulfill one of the basic human needs according to Maslow's pyramid of needs, in the form of the sense of security[3]. Hence, in the further part, the concept of precarious employment will refer to employment deprived of all or most of the above-mentioned security forms.

G. Standing also presents his concept of social stratification in the present. In his opinion, the elite is the highest in the social hierarchy, that is a group of people with significant capital, thus affecting the economic situation in a given country, as well as the entire world. By conducting large-scale business activities, this class has an impact on employment, thus directly affecting the distribution of goods and services. Another class is the salariat, a class consisting of employees with full social rights. It includes public sector employees as well as people with stable full-time employment in the private sector based on employment contracts for an indefinite period. This group often participates in business management through the activity of trade unions and works councils. Alongside this class there is a group called proficians. It consists of highly qualified professionals and specialists who usually run their own business and provide services. This group, due to its high competencies, has income guarantees and relative social security

[2] G. Standing, *Prekariat-nowa niebezpieczna klasa*, Warszawa 2014, p. 49.

[3] R. Klamut, *Bezpieczeństwo jako pojęcie psychologiczne*, Zeszyty Naukowe Politechniki Rzeszowskiej (Scientific Research Papers of Rzeszow University of Technology), paper 19, No. 4/2012, pp. 42-43.

related to the possibility of saving. Next, there is the working class, which is becoming increasingly smaller, it consists of manual employees. The last group is created by the precariat. The definition of this class was included in previous considerations. This class is very diverse, its personnel is made up both of young people, interns and students, employed on fixed-term contracts, the elderly, immigrants, prisoners, people belonging to ethnic minorities. Unemployed people are below all groups in the stratification[4].

LAW AND DEVELOPMENT OF THE PRECARIAT IN THE CONTEXT OF LOSS OF EMPLOYMENT SECURITY

The establishment of the precariat is not based only on socio-economic processes, but they are reflected in legal regulations that lead to the precariatisation. Hence, the reasons lie also on the side of public authorities, and not only on the part of entrepreneurs employing people for work. The legislative power creates a regulation that allows for precarious employment or creates mechanisms that are not conducive to the creation of safe and stable employment. The executive power contributes to the precariatisation by pursuing an employment policy not favorable for employment in the form of a classic contract. Such a policy can be conducted through the implementation of government programs involving, for example, subsidies from the state to each person employed for an indefinite term for a specified period of time. The executive power also includes all inspection authorities, which, by ineffective activities, also do not motivate entrepreneurs to hire employees. The judicial power, by interpreting the regulations, allows more flexible application of certain provisions of labor law. It should be noted that in recent years, noticeable changes have been introduced in Polish law, which aim to reduce the precariatisation, as will be discussed in more detail later in the study.

This consideration will be devoted to Polish law in view of the need to examine to what extent the concept of precarious employment refers to flexible forms of employment referred to in legal language. Also to what extent they have their basis in normative acts, and also when these normative acts in a silent manner do not allow. Due to the narrow framework of the study, the subject matter will be only one of the security forms. This is employment security.

EMPLOYMENT SECURITY

One of the concepts used by G. Standing is quantitative flexibility. It refers to the possibility of easy "employee replacement by the employer", which is supported by the so-called flexible forms of employment, i.e. those which in the economic dimension do not generate high costs related to the termination of the legal relationship between the employee and the employer. The quantity refers

[4] G. Standing, op. cit., pp. 44-45.

to the number of employees employed[5]. Flexibility is defined in Polish literature also as a necessity of quickly adapting to the changing economic situation and growing competition. It is connected with the expectation from employees of readiness to look for new employment or acquiring new qualifications and changing the profession[6]. From a sociological perspective, we also talk about the risk of flexibility as a permanent feature of the current labor market[7]. This feature is deepening with the further expansion of atypical forms of employment.

Therefore, the author notes that there are two classes of employees in enterprises: the salariat employed on stable contracts and the precariat, i.e. a group of employees whose composition is characterized by high changeability, among others due to low costs of possible dismissals. What is more, the policy of creating regulations increasing quantitativeflexibility was recommended by the World Bank in order to attract foreign investors.

The key term determining the basic difference between the precariat and other social classes according to G. Standing's theory is precisely employment security. Employment security, which G. Standing uses, reflects the Polish concept of legal language, which is the protection of the employment relationship stability. According to H. Szewczyk, the protection of the employment relationship covers all legal guarantees securing against loss of employment provided under a specific legal relationship, within certain limits[8]. Within this protection, one can distinguish between universal and special protection of the employment relationship. Universal protection of the employment relationship contains all measures resulting from the generally applicable law or specific sources of labor law, referring to employees hired on the basis of an employment contract for an indefinite period. On the other hand, special protection of the employment relationship is a set of legal measures resulting from the same sources of law, relating to employees hired on the basis of any employment contract, which limit the employer's right to terminate the employment relationship with or without a notice, due to family or personal circumstances of the employee, or because of social or public functions[9]. Currently, in Polish law, employment stabilization applies only to indefinite employment contracts. In other cases, as in the regulation concerning definite contracts, this protection is differentiated, which is reflected in the employee's weaker position in the field of universal protection of the employment relationship[10].

Due to the narrow framework of the study, only universal protection of the employment relationship will be analyzed, as it is one of the basic features that

[5] Ibid. p. 86 et seq.

[6] L. Mitrus, *Uwarunkowania rozwoju współczesnego prawa pracy*, [in:] K. Baran (ed.) *System prawa pracy*, vol. 1, Warszawa 2017, p. 394.

[7] E. Giermanowska, *Ryzyko elastyczności czy elastyczność ryzyka, Instytucjonalna analiza kontraktów zatrudnienia,* Warszawa 2013, p. 11.

[8] H. Szewczyk, *Powszechna ochrona umownego stosunku pracy po nowelizacji kodeksu pracy*, Z problematyki Prawa Pracy i Polityki Socjalnej, vol. 13, Katowice 1998, p. 26.

[9] A. Rycak*, Powszechna ochrona stosunku pracy*, Warszawa 2013, p. 59 et seq.

[10] L. Mitrus, Op cit., [in:] K. Baran (Ed.) *System prawa pracy*, vol. 1, Warszawa 2017, p. 397.

distinguishes the employment relationship against other forms of employment not based on labor law.

An ordinary way of terminating an employment contract for an indefinite period is termination by notice. There are many means of universal protection of the employment relationship stability. First of all, it is the employer's duty to state the reason for termination of the employment contract for an indefinite period. The reason must exist earlier. According to the judicial interpretation of the concept of „reason", the Supreme Court stated that „*the condition of giving a specific reason for termination of the contract is met when the employer indicates in the justification facts and factual circumstances concerning the employee or his behavior in the process of providing work or events, also independent of him, affecting the employer's decision*"[11]. The doctrine assumes that the general criteria for the validity of termination is the legitimate interest of the employer and the employee's fulfillment of his duties[12]. In the doctrine, this is called the legitimacy of termination of an employment contract for an indefinite period.

Secondly, Polish law provides trade union control over the termination of the employment contract. According to art. 38. § 1. of the Labor Code, the employer notifies in writing the company trade union organization representing the employee about the intention to terminate the employment contract concluded for an indefinite period with the employee, stating the reason justifying the termination of the contract. However, pursuant to art. 38 § 2 of the Labor Code, if the company trade union organization believes that the termination would be unjustified, it may within 5 days from receiving the notification raise the reasoned objections to the employerin writing. These provisions are aimed at the so-called social control of the employment relationship[13]. They do not apply to every employee, but only to the one who is a member of the trade union or applied for and was covered with the company trade union's protection. The objections of the trade union organization are of an opinion nature, hence they are not binding for the employer.

Thirdly, the legislator in the provision of art. 36 § 1 of the Labor Code, provided forthe periods of notice[14]. The period of notice is the time after which the employment relationship is terminated. Until the end of the period of notice, the employee is obliged to provide work for the employer, unless the employer releases him from the obligation to provide work, while retaining the right to remuneration. Periods of notice may be modified in favor of the employee. The shortening of the statutory period will be invalid due to the application of the employee benefit criterion under art. 18 § 2 of the Labor Code, serving the assessment of the admissibility of deviations from the norms of labor law (in this case – the Code of Law), requires an in-depth analysis of contractual provisions[15].

[11] Cf. in the Supreme Court judgment of May 14, 1999, I PKN 47/99, OSNAPiUS 2000, No. 14, item 548.
[12] A. Rycak, Op. Cit., p. 326.
[13] A. Rycak, Ibid., p. 384.
[14] The Act of June 26, 1974. The Labor Code, consolidated text of the Journal of Laws of 2016, item 1666, hereinafter referred to as the Labor Code.
[15] Cf. the judgments of the Supreme Court of November 16, 2004, I PK 36/04, OSNAPiUS 2005, No. 8, item 106

Fourthly, the Polish legislator adopted a model of annulment of faulty legal acts of the employer aimed at terminating the employment relationship, therefore the termination of the employment contract is always effective. However, in the event of its unlawful or unjustified termination, the employee is entitled to claims for recognizing ineffectiveness of termination, reinstatement to work and compensation. The legislator adopted a model of restitution claims, that is, claims to reactivate the legal relationship. In order to lay these claims, it is necessary to appeal to the labor court within 21 days from the delivery of the notice of termination. The regulations presented above are a manifestation of the protection of the employment relationship of the so-called salariat in the realities of the Polish market economy.

The protection of this relationship is strong and requires considerable effort from the employer related to the legitimacy of the dismissal, in particular, this protection is strengthened by the claim for the reinstatement of such an employee, which limits the freedom of contract in the employment relationship. Employment for an indefinite period is not supported by the extensive procedure, which is partly discussed above. On the one hand, these regulations have an impact on the lower cost effectiveness of dismissing such employees without a justified reason. They also allow the employee to feel the psychological comfort associated with employment stability, which is why universal protection of the employment relationship means employment security in the private sector.

These provisions give a sense of stability and security to the employee in the employee-employer relationship. For the purposes of this article, I treat the employer as synonymous with the concept of the workplace. In the period of the centrally planned economy, there was a concept of the workplace community. Currently, this concept is not approved in the doctrine of labor law, mainly due to socialist provenance. One can, however, find the views of the doctrine of, for example, A. Sobczyk that this concept, despite the change of the economic system, still has its justification under labor law. This concept assumes that the workplace is a community of people that arises around a given enterprise or organizational unit. This community is managed by its members, who are both the employer, employees, as well as family members of employees. All these entities participate in its management, with the division of competences not being equal[16]. The employer manages the workplace and employees are subject to his management, however employees are not completely deprived of the voice. It manifests itself even in the collective representation of the trade union organization in terms of agreeing on specific sources of labor law, such as collective agreements or arrangements regarding the suspension of company acts[17]. Similarly, family members of employees are partly subject to the influence of the community, an example may be an obligation to pay death severance pay. What binds community members is a common interest which is the good of the workplace, without

and October 2, 2003, I PK 416/02, OSNP No. 19/2004, item 328.

[16] A. Sobczyk, *Wolność pracy i władza,* Warszawa 2015, p. 120.

[17] Art. 238 et seq. and art. 9^1 of the Labor Code.

which the employer would not be able to profit and employees would be deprived of work. Similarly, G. Standing believes that the stability of employment builds the community and gives a sense of belonging, without which it comes to alienation as in the case of the precariat.

The certainty of employment also affects the employee-family relationship, because the employee is aware of the impact of stable income and a sense of stability, therefore this form encouraged establishing families, which stimulates demographic growth.

Another aspect of such employment has a dimension of the employee-credit institutions, employees hired for an indefinite period have greater payment credibility than non-employed persons or employed in the form of flexible forms of employment. This translates into the possession of creditworthiness, which builds trust between the bank and the client, and also provides psychological comfort to the employee that his employment relationship will not be terminated in a relatively easy way, so that he will be able to pay off his commitment.

FLEXIBLE FORMS OF EMPLOYMENT AS FORMS OF REDUCING EMPLOYMENT SECURITY

The legislator allows for making employment more flexible by using atypical forms of employment, also known as flexible forms of employment. These are other forms of employment than the employment under a full-time indefinite employment contract[18].

The first form are fixed-term contracts, which occur as: an employment contract for a definite period and a contract for a trial period, so-called fixed-term-contracts. Such contracts have a common feature: they are concluded for a strictly specified time, after which the employment relationship is terminated and the employer is not obliged to sign another contract. Most labor law provisions apply to such contracts. However, it differs significantly in terms of the rules of its termination.Firstly, such a contract can be terminated by the employer without an obligation to give a reason. Secondly, the termination of such a contract does not require prior consultation with the trade unions to which the employee belongs or which have covered the employee with protection. Thirdly, the employee in the event of terminating such a contract without notice has only a claim for the payment of compensation, he has no claim for the reinstatement to work. Assessing the above regulation from the perspective of the rules of protection of the employment relationship stability, this protection is much weaker than in the case of the employment contract for an indefinite period. This is manifested in fewer procedures connected with such a termination and with the lack of an obligation to state the reason for the termination and the lack of a restitution claim, hence the employer will not be obliged by the labor court to continue employing the employee against his will.Summing up this part of the argument from the

[18] J. Męcina, *Zatrudnienie niepracownicze z perspektywy rynku pracy i polityki społecznej*, [in:] K. Baran (ed.) *System prawapracy*, vol. VII, Warszawa, 2015, p. 38.

perspective of the employer, the advantage of this form of employment is greater flexibility in terms of termination of the employment relationship, which may translate into lower costs of employing such an employee. Another advantage is the possibility of employment for the time when there is a real need for a given type of work with the possibility of terminating such a contract also by notice. It also has its benefits for an employee, because the existence of a more flexible form of employment, which at the same time ensures the majority of guarantees under labor law, e.g. paid holidays or the guarantee of minimum remuneration, encourages employers to hire employees on the basis of labor law, and not to circumvent these provisions. The obvious disadvantage on which I focused in my considerations is the lack of employment security.

Another atypical form of employment is temporary work. It was regulated in the Act of July 9, 2003 on the employment of temporary workers[19]. This form consists of three entities (temporary employment agency – temporary employee – employer-user). The assumption of this form is to direct the employee to another entity (the employer-user) by the temporary work agency.These employees are employed by the agency which is their employer. Therefore, the agency is obliged to pay remuneration and public-law benefits as a payer of social security contributions and advances for personal income tax (PIT). However, the work itself is performed under the management of the employer-user. This employee is not subordinate to the agency in the process of providing work[20]. Temporary work has been limited subjectively to the following types of work:

1. of a seasonal, periodic and occasional nature,
2. or whose timely performance by employees hired by the employer-user would not be possible,
3. or whose performance is the responsibility of an absent employee hired by the employer-user.

The advantage of temporary work from the perspective of the employer-user is the ability to replace an employee without the need to terminate the employment relationship with him, which is also an advantage for the employee, because the agency can refer such an employee to a different temporary work. This leads to the continuity of employment of such an employee, only the entity for whom the work is actually performed changes. In the absence of such a legal solution, a certain group of employees could periodically be deprived of work after the termination of their employment relationship, here, however, such an entity can be smoothly directed somewhere else.

An important disadvantage is the exclusion of temporary employees outside the workplace's community, and as long as they are agency employees, they are deprived of employment for an indefinite period. In practice, this means that they have been deprived of legal relationship, apart from the relationship of purely actual management. Such persons know that at any moment their place of work can

[19] Journal of Laws No. 166, item. 1608.

[20] D. Dorre-Kolasa, *Zatrudnienie pracowników tymczasowych*, [in.:] K. Baran (ed.) *Prawo pracy i ubezpieczeń społecznych*, Warszawa 2013, p. 267.

be changed by a unilateral decision of the employer, which is the agency. This may happen, for example, at the request of the employer-user himself, then the temporary employee may be transferred to perform temporary work for another employer-user. Changing the workplace will also mean a change of the work environment, including co-workers. Another argument for the precarity of this form is the conclusion of contracts with such an employee for a definite period, and consequently such anemployee not only has no legal certainty as to the place of work, but additionally he has no guarantee of employment by the agency for the next period after the end of the contract. In addition, such employees, according to surveys, earn on average 30-40% less than permanent employees[21]. It is this form of atypical form of employment that is considered the most characteristic form of precarious employment[22].

In the case of temporary work in the management literature, the right view appeared that temporary work is an outsourcing of the HR personal function[23]. Outsourcing is a way of doing business, the essence of which consists in using external resources in the form of: people, property or entire enterprises to perform activities previously carried out by the enterprise itself. There is also another form of outsourcing beyond the use of temporary work, namely merchandising[24]. This means providing sales support by an external company in order to increase the efficiency of operations on the market. The external company along with the commodity directs to the store employees stacking goods on shelves, hostesses and other employees. It is nothing but hiring people to provide work by an external company. The question is whether this practice complies with Polish law. The current legal regulation does not explicitly prohibit such practices and, in principle, is silent on this subject. Due to the principle of freedom to conduct business, limiting the use of such a practice should be a statutory restriction because of the constitutional nature of this right, as a subjective right[25]. Due to the lack of statutory regulation in this area, this practice should be considered permissible.

Outsourcing, according to G. Standing, is seen as one of the main economic reasons for the emergence of the precariat, which actually shifts responsibility for employment to another entity.

The last form that I would like to discuss is the use of civil law contracts in employment. According to J. Stelina, the subject of the employment relationship is determined by the type of work. It is work subordinated to the employer. On the other hand, the subject of the civil law relationship is determined by means

[21] A. Reda, *Ochronne rozwiązania prawa pracy w zatrudnieniu tymczasowym*, [in:] M. Seweryński i J. Stelina (ed.), *Wolność i sprawiedliwość w zatrudnieniu*, Gdańsk 2012, p. 251.

[22] G. Standing, Op cit., p. 88 et seq.

[23] P. Korzyński, *Koordynacja pracy rozproszonej przy pomocy agencji pracy tymczasow*ej, Zarządzanie Zasobami Ludzkimi, 2005, paper. 5, p. 67.

[24] A. Reda, Op. Cit., [in:] M. Seweryński i J. Stelina (ed.), *Wolność i sprawiedliwość w zatrudnieniu*, Gdańsk 2012, p. 254.

[25] Art. 31 paragraph 3 of the Constitution of the Republic of Poland requires that restrictions in the use of constitutional freedoms and rights may be established only by Act and only if they are necessary in a democratic state for its security or public order, or for the protection of the environment, health and public morals, or freedoms and rights of others. These restrictions shall not violate the essence of freedoms and rights.

of a parameter of specific legal or factual acts or a specific task[26]. These are contracts of mandate, a specific task and a contract for the provision of services, which are often innominate contracts, to which the provisions on the contract of mandate apply respectively. These three types of contracts are most commonly found in legal transactions.

The use of civil law contracts in employment is closely related to the so-called concept of self-employment. It consists in providing work under a registered business activity. Such a person has the status of an entrepreneur and concludes a contract for the provision of services with his contractor for whom he performs work[27]. According to the Central Statistical Office, in 1995, out of a total of over 15,400 thousand working people, over 10,114 thousand were employed under the employment relationship; in 2005, it was respectively over 12,890 thousand and 9,500 thousand people[28], at the end of 2013 – 14,200 thousand and 10,400 thousand people[29]. The gradual increase in the number of self-employed people, noticeable in recent years, is also worth emphasizing. In 1995, it was over 5,200 thousand people, in 2005 this value dropped to just over 3,200 thousand, and at the end of 2013, it amounted to over 3,700 thousand. At the same time, in the fourth quarter of 2014 only 645 thousand were employers[30].

Civil law contracts do not have the basic feature of a contract of employment, that is, the universal protection of the employment relationship. They can be terminated with immediate effect without a notice period. In addition, a person employed under a civil law contract has no claim to reactivate such a legal relationship, he has at most a claim for compensation. These characteristics deprive these people of employment security. The advantage of these agreements, which is a "catalyst" for their conclusion, both for employees and employers, are lower labor costs. An example may be employment of a student who is under 25 years of age. The commissioning party is not obliged to pay an advance payment for social security contributions for such an employee.

In summary, the precariatisation of employment is based on the use of legal forms existing under civil law and labor law, in particular such as civil law contracts and fixed-termemployment contracts or temporary work. Some of the provisions existed during the centrally planned economy, these are fixed-term contracts and civil law contracts, and some regulations were adopted after 1989, as for example temporary work. Analyzing the above regulations, the creation of the precariat is the result of "escape" from typical forms of employment in atypical forms of employment, and this happens on the basis of legal provisions.

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[26] J. Stelina, *Komentarz do art. 22 Kodeksu Pracy*, [in:] A. Sobczyk (ed.), *Kodeks pracy – komentarz*, Warszawa 2015, p. 96.

[27] Ibid., p. 96.

[28] *Rocznik Statystyczny Rzeczypospolitej Polskiej* (Statistical Yearbook of the Republic of Poland 2006), p. 236.

[29] Ibid., p. 239.

[30] *Aktywność ekonomiczna ludności Polski* (Economicactivity of the Polishpopulation), IV kwartał 2014 (The fourthquarter of 2014), p. 81.

ATTEMPTS TO COUNTERACT THE OVERUSE OF ATYPICAL FORMS OF EMPLOYMENT

It should be noted that the legislator has attempted to counteract the overuse of the above-mentioned flexible forms of employment. This is reflected in the creation of legal regulations aimed at limiting their use.

In the case of fixed-termcontracts, such an action is determining the upper limits of the period of employment, which can be exceeded only in strictly defined cases. Fixed-termcontracts were overused by concluding contracts for very long periods of time, such as 7 years, or by concluding a large number of such contracts for short periods of time. These activities were usually caused by praxeological considerations and ease of termination of the employment relationship with such an employee, as discussed above. The amendment to the Labor Code, which entered into force on February 22, 2016, established a new rule on the basis of art. 25^1 § 1 of the Labor Code, that the period of employment under an employment contract for a definite period, as well as the total period of employment based on employment contracts for a definite period in the employment relationship concluded between the same parties, may not exceed 33 months, and the total number of such contracts may not exceed three. An exception to this rule was established in art. 25^1 § 4 of the Labor Code. The provision of § 1 does not apply to employment contracts concluded for a definite period:

1. in order to replace an employee during his justified absence from work,
2. in order to perform occasional or seasonal work,
3. in order to perform work during the term of office,
4. if the employer indicates objective reasons lying on his side– if their conclusion in a given case serves to meet the actual periodic demand and is necessary in this respect in the light of all circumstances of the conclusion of the contract[31].

This provision can be circumvented while there is no change in the type of work and working environment by changing the employer within the same capital group. Such a change may take place by concluding a contract on the same terms with another entity participating in a given group. An interesting way of taking measures to discourage employers from using fixed-term contracts is to impose additional obligations on employers. In France, fixed-term contracts were charged with an additional benefit, resulting directly from the Act, in the form of compensation in the amount of 10% of remuneration.

In the case of overusing civil law contracts, a measure to counteract this is an action for establishing an employment relationship that has its legal basis in 22 § 11 of the Labor Code.According to this provision, employment under the conditions determined in § 1 is employment based on the employment relationship, regardless of the name of the contract concluded by the parties. In accordance with these provisions, the court may determine the employment relationship.

[31] Consolidated text of the Journal of Laws of 2016, item 1666.

Such determination will result in the imposition on employers of any obligations under labor law and social security. The procedural guarantee is the right of the State Labor Inspector to bring an action to establish an employment relationship without the consent of the employee[32]. The employer will both be obliged to pay benefits which civil law contract usually does not provide, for example: severance pay based on regulations, the equivalent for unused vacation or compensation. Apparentness of a civil law contract often leads to non-payment of public-law benefits under social insurance. The applicable law allows for imposing on the employer an obligation to pay overdue social security contributions by the decision of the Social Insurance Institution. It also gives the Social Insurance Institution the right to bring an action because it may have a legal interest in it. These sanctions, although *prima facia* seem to be severe, in fact the courts rarely establish the existence of an employment relationship. According to P. Grzebyk's research, in the proceedings before the court of first instance, presenting the result of decisions in the subject of claims for establishment[33]. Out of a total of 167 cases in 74 cases (44.3%), the claim was upheld in principle, in 70 cases (41.9%) it was dismissed, and in 23 cases (13.8%) a settlement was reached (judicial or non-judicial). In the second instance, as a result of appeals brought, only 42 cases were heard. Thus, 74.9% of all cases examined (125) ended at the stage of the first instance court. Courts of second instance changed sentences of first instance courts only in three cases (7.1% out of 42). Appeals were dismissed in 37 cases (88.1% out of 42), in two (4.8%) discontinuing the proceedings as a result of withdrawal of the appeal[34]. The above statistics show that establishments were made in fewer than half of the cases.

In addition, the replacement of an employment contract with a civil law contract is an offense against the employee's rights, as stipulated in art. 281 item 1 of the Labor Code and it is liable to a fine from PLN 1,000 to PLN 30,000. The body authorized to control compliance with labor law is the State Labor Inspectorate,it may impose fines up to PLN 2,000. However, the imposition of a higher fine requires conducting court proceedings. It is often an ineffective sanction due to the low amount of the fine imposed.

SUMMARY

In summary, the use of forms leading to the deprivation of employment security leads to the emergence of a new class – precariat, also in Poland. This is favored by legal provisions regulating the use of atypical forms of employment, which lead to withdrawal from using typical employment in the form of an employment contract for an indefinite period of time. Throughout this discussion, one can not forget about the advantages of such forms of employment, which include lower labor costs and reduced risks associated with employment for an

[32] Art. 63^1 of the Act of November 17, 1964. The Code of Civil Procedure, Journal of Laws No. 43, item. 296.

[33] P. Grzebyk, *Analiza orzecznictwa sądowego w sprawach o ustalenie istnienia stosunku pracy. Zatrudnienie pracownicze a zatrudnienie cywilnoprawne*, Warszawa 2015, p. 59.

[34] Ibid., p. 73.

indefinite period. From the perspective of employers who do not have significant resources to employ an employee for an indefinite period, these regulations may mean that a given entity will make a decision to give "work" to another person, if there were not any, he might not employ anyone at all. The existence of these forms may therefore affect the reduction of the unemployment rate or the increase in net wages. The latter situation will occur in the case of students under the age of 25 employed on the basis of civil law contracts. The development of this form of employment was influenced by the legislator's actions.

The legislator introducing mechanisms to counteract the overuse of flexible forms of employment does not establish any incentives that would encourage the conclusion of employment contracts for an indefinite period. The policy that is conducted is ineffective in practice, because the provisions can be easily circumvented, which was presented in the above considerations on the use of fixed-term contracts and temporary employment. Hence, these solutions are absolutely not conducive to improving the existence of employees, only to creating a mechanism that seemingly protects an employee, because these systems are based on penal or civil law sanctions. The problem of these sanctions consists in the lack of proper enforcement of provisions, as shown by statistics, in particular related to establishing the employment relationship. However, in the case of penal sanctions, setting too low penalties that may be imposed by the Labor Inspector leads to the lack of preventive impact of these provisions.

In the author's conviction, the precariat in Poland will be growing. The reason for this is the lack of measures motivating the return to typical forms of employment, in particular since the use of atypical forms of employment leads to significant savings in the financial sphere. As long as it is profitable for employers to choose such forms of employment without an effective sanction discouraging their use, the precariat will be growing.

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Summary: The author of this study explains the concept of precariat according to G. Standing. The text is an analysis of the legal causes of the emergence of a new class – the precariat in Poland. The author compares employment conditions based on an employment contract for an indefinite period with atypical forms of employment and indicates that the latter are deprived of elementary security. The text also explains what actions the Polish state has taken to minimize the number of people belonging to the precariat.

Key words: precariat, employment, security

BEZPIECZEŃSTWO ZATRUDNIENIA NA GRUNCIE POLSKIEGO PRAWA – ROZWAŻANIA W KONTEKŚCIE KONCEPCJI PREKARIATU G. STANDINGA

Streszczenie: Autor niniejszego opracowania wyjaśnia pojęcie prekariatu według G. Standinga. Tekst jest analizą przyczyn prawnych powstawania nowej klasy prekariatu w Polsce. Autor porównuje warunki zatrudnienia opartego o umowę o pracę na czas nieokreślony z nietypowymi formami zatrudnienia oraz wskazuje, że te ostatnie są pozbawione elementarnej ochrony. Tekst wyjaśnia też jakie działania podjęło państwo polskie celem minimalizacji osób należących do prekariatu.

Słowa kluczowe: prekariat, zatrudnienie, bezpieczeństwo