https://doi.org/10.31971/16401808.46.3.2019.1

Karol Muszyński

ORCID: 0000-0003-1697-0485
University of Warsaw
Faculty of Law and Administration[1]

Normalisation of "junk contracts". Public policies towards civil law employment in Poland[2]

Summary

"Junk contracts", i.e. civil law contracts used to regulate relations similar to employment relationship, have become extremely widespread after the economic crisis in Poland. The paper explains the reasons and the effects of this, and subsequently describes public policies towards civil law employment, implemented between 2014 and 2019 by the governments formed by Civic Platform (Platforma Obywatelska, PO)—Polish People's Party (Polskie Stronnictwo Ludowe, PSL), and by the United Right (that includes Law and Justice [Prawo i Sprawiedliwość] party). The public policies were relatively coherent and aimed to extend some of protective provisions characteristic for labour code contracts on civil law contracts. This lead to "normalisation" and quasi-acceptance of civil law employment as an alternative to labour code-based employment. The paper claims that the chosen trajectory was a result of the failures of plans to deeply reform the labour law and labour market, and can be dangerous, as it may result in prolonged stabilisation of a situation where non-standard forms of employment are abused.

[1] Wydział Prawa i Administracji, Uniwersytet Warszawski, ul. Krakowskie Przedmieście 26/28, 00-927 Warszawa; author's email address: k.muszynski@wpia.uw.edu.pl.

[2] This paper was written as a part of the project "Polityka prawa pracy po początku kryzysu ekonomicznego w Polsce. Segmentacja rynku pracy i naruszenia prawa pracy" [Labour law policy after the economic crisis in Poland. Labour market segmentation and labour law violations], funded by (Polish) National Science Centre on the basis of decision number UMO-2015/19/N/HS5/01227.

Key words: civil law contracts, non-standard contracts, labour market segmentation, public policy, labour law

Introduction

The impact of the global economic crisis has reinforced and amplified some of the negative developments on the Polish labour market. Employers have started to make extensive use of atypical forms of employment (Arendt, 2014; Arak, Lewandowski, Żakowiecki, 2014), often failed to comply with standards and violated labour law (Muszyński, 2019a), and some groups of employees, primarily in the public sector, experienced stagnation in wages (Czajka, 2016). Very negative assessments of employment standards in Poland resonated through public discourse. "Junk contracts", considered as an exemplification of all the worst features of the Polish labour market, became one of the most pressing issues (especially since 2011/2012[3]). Although this term was used in public debate in an imprecise way, it was usually referred to civil law contracts (most often contracts for mandate [umowy zlecenia] or contracts for a specific task [umowy o dzieło]) that were used in conditions similar to employment relationship (Kubot, Kowalski, 2016).

The paper is organised as follows. I will first describe the factors behind the growth of popularity of civil law contracts in Poland. From legal point of view, the most important behind their growth was a lack of a precise boundary between civil law and labour code-based employment. This problem assumed a specific form in the temporary work agency sector, where the use of civil law contracts resulted from a legislative error that had been accepted for years. From the economic point of view, civil law contracts enabled to reduce labour costs. These costs were going up significantly as a result of the minimum wage increases implemented by the government. The "junk contracts" were used as a cheaper alternative to labour code contracts. At the political level, low standards promoted by the public sector played an important role in the spreading civil law contracts.

In the second part of the article I will describe and evaluate public policies undertaken by the Polish governments in the field of civil law employment until the moment of finishing of this paper (October 2019). I will try to show that the actions undertaken by the liberal-conservative government of Civic Platform–Polish People's Party and the right-wing Law and Justice[4] government were basically coherent and aimed at "normali-

[3] This is shown e.g. by the rise of searches for "junk contracts" [umowy śmieciowe in Polish] on the Internet, see Google Trends, available at: https://trends.google.pl/trends/explore?date=all&geo=PL&q=umowy%20śmieciowe

[4] Formally, since 2015, the government is formed by the "United Right", a parliamentary coalition formed between three right-wing parties—Law and Justice, United Poland (Polish: Solidarna Polska) and the Agreement (Polish: Porozumienie). However, due to the predominant role of the biggest party in the coalition—Law and Justice—this government is most often called "Law and Justice" government, both in Poland and internationally. I will use the term "Law and Justice" government due to this fact.

sation" of civil law contracts. At the same time, they did not aim at counteracting their utilisation. Normalisation involves an extension of particular elements characteristic for labour code contracts to civil law contracts. This simultaneously makes these contracts an alternative to labour code contracts. This is questionable from a normative point of view, since public policies should promote standard employment.

Growth of civil law contracts as a public problem. The extent of the use of civil law contracts in the economy

Information on the use of civil law contracts comes from divergent sources and does not allow to fully accurate assess the scope of the phenomenon.

Table 1. Summary of existing sources of information on the use of civil law contracts in Poland (only data and estimates showing the dynamics of changes)

Source of data or estimates / Year	GUS, 2014; GUS 2016b; GUS 2018a[1]	GUS, 2018b[2]	Ministry of Finance, 2009–2014 (years 2008–2013); access to public information (years 2014–2017)[3]	Social Security Institution (ZUS); access to public information[4]	CBOS, 2018[5]
2000	–	–	401 801		–
2001	–	–	460 412		–
2002	–	–	579 638		–
2003	–	–	600 283		–
2004	–	–	665 366		3%
2005	–	–	737 097	399 100	–
2006	–	–	777 659	471 000	–
2007	–	–	749 513	515 800	–
2008	–	–	758 613	525 600	–
2009	–	–	690 155	573 600	–
2010	576 700	–	795 692	637 000	–
2011	1 012 900	–	894 319	734 900	–
2012	–	1 350 000	916 277	815 800	–
2013	1 248 200	1 400 000	974 151	886 000	–
2014	1 168 700	1 300 000	1 036 000	918 000	6%
2015	1 205 200	1 300 000	1 038 000	1 030 000	–

Table 1. Cont.

Source of data or estimates / Year	GUS, 2014; GUS 2016b; GUS 2018a[1]	GUS, 2018b[2]	Ministry of Finance, 2009–2014 (years 2008–2013); access to public information (years 2014–2017)[3]	Social Security Institution (ZUS); access to public information[4]	CBOS, 2018[5]
2016	1 144 600	1 250 000	1 001 000	1 016 000	–
2017	–	1 200 000	965 000	–	–
2018	–	–	–	–	5%

[1] The data is based on the reports of enterprises employing more than 9 employees that are submitted to the Central Statistical Office (GUS). Numbers include contracts for mandate and contracts for a specific task. Data for the years 2013–2016 are a sum of the reported number of contracts of mandate and contracts for specific task, i.e. in 2013 there were 1,021,200 contracts of mandate and 227,000 contracts for specific task, in 2014: 965,900 contracts of mandate and 202,800 contracts for specific task, in 2015: 1,017,600 contracts of mandate and 187,600 contracts for specific task; in 2016: 1,000,800 contracts of mandate and 143,800 contracts for specific task.

[2] This is an estimate of the Central Statistical Office (GUS) based on data from the Central Statistical Office, the Ministry of Finance and the Social Insurance Institution (ZUS).

[3] The data is based on tax settlements submitted to Ministry of Finance. They cover persons earning income only from the activities performed in person, as described in the Article 13 of the Personal Income Tax Act. The data for the years 2014–2017 were obtained by the author through access to public information in July 2019.

[4] The data include persons submitting declarations to the Social Insurance Institution (ZUS), who pay contributions exclusively on the basis of the contract of mandate, agency agreement and contract for the provision of services. The data were obtained by the author through access to public information in July 2019.

[5] This is a CBOS (Public Opinion Research Center) estimate based on CAPI studies, n = approx. 1000. The percentage refers to persons declaring work on the basis of civil law contracts as the main source of income among economically active persons.

Source: own elaboration.

In addition to the above mentioned data, studies and estimates that allow to capture the dynamics of the changes, we also have additional sources of piecemeal information. The Central Statistical Office (GUS, 2016a) based on a module survey conducted together with the Labour Force Survey (LFS) (Badanie Aktywności Ekonomicznej Ludności, BAEL) on a random sample of respondents over 15 years of age (n = approx. 12,500 people) estimated that in the period between January and September 2014, 1.09 million employees worked under non-standard contracts (including civil law contracts and dependent self-employment). The National Bank of Poland (NBP) (2015) estimated on the basis of a quantitative survey (revaluing enterprises employing more than 50 employees) that in 2014, approximately 4% of employees worked under civil law contracts.

Available data and estimates show a significant increase in the number of people working on civil law contracts until 2013/2014 in a fairly consistent way. After 2014, there

is a certain stabilisation in the number of these persons, with a slight downward trend. However, the phenomenon of employment on the basis of civil law contracts is still very widespread and affects about one million persons. Moreover, available information allows to conclude that a significant percentage of civil law contracts are concluded in conditions necessitating the use of labour code contracts. The Ministry of Finance, on the basis of tax returns, estimates that this is true for a several hundred thousand contracts concluded each year, i.e. several dozen percent of all employees on civil law contracts (Chrostek, Klejdysz, Korniluk, Skawiński, 2019, p. 35). National Labour Inspectorate (Państwowa Inspekcja Pracy) audits show that from several to about twenty percent of all civil law contracts are concluded in conditions characteristic for the employment relationship and thus necessitating labour code contract (National Labour Inspectorate, 2008–2018).

Summary review of explanations related to the growth of popularity of civil law employment

The reasons for the attractiveness of civil law employment in Poland are complex and multidimensional. In general, this phenomenon is part of the global trend of growing role of non-standard contracts, i.e. contracts other than standard open-ended labour code contract, on the labour market. This is associated with the transformation of the modern economy (the demands for greater flexibility of workforce), the destandarisation and fragmentation of supply chains and the servitisation of economies (which is related, inter alia, to the weakening of trade unions and increased bargaining power of employers towards employees), as well as the emergence of new patterns of living and reconciling work and private life (Koch, Fritz, 2013).

From the legal point of view, the basis for such a wide use of civil law contracts for structuring work relations was a very imprecise boundary between "employment" and "non-employment" forms of work. There is no presumption of the existence of an employment relationship under Polish law. To determine whether the relationship between the parties requires the conclusion of a labour code contract, the so-called typological method is applied. It consists of comparing the properties of the employment relationship with the other possible legal relationships (Grzebyk, 2015). However, the boundaries are unclear—neither the labour law doctrine nor the jurisprudence determines precisely when it is permitted to conclude a civil law contract and when a labour code contract is required. This has resulted in the civil law contracts being used in a "creative" way as an alternative to labour code contracts (Gersdorf, 2013; Duraj, 2011), as a form of "minimal" formalisation of relations between a person commissioning and performing work (Muszyński, 2016). Apart from the legal uncertainties, weak mechanisms of surveillance were an additional factor enabling this to happen. Labour Inspectorate is inefficient and lacks appropriate legal tools, and trade unions, whose presence in the workplace positively affects labour law compliance, are weak (Gardawski, 2015; Muszyński, 2018).

From an economic point of view, an important reason behind the rise of civil law employment was the increase in the minimum wages combined with a high tax wedge for

low-wage labour code employees. Between 2007 and 2014 minimum wages were increased relatively fast (although these were increases compensating for a very slow minimum wage growth in 2001–2007). It incentivised employers to fire low-wage labour code employees and offer them civil law contracts with lower taxation (Kamińska, Lewandowski, 2015; Muszyński, 2019b). An alternative in the form of a civil law contract was also attractive for employees, as they received a higher net salary in such a situation. Notably, the tax wedge (i.e. the difference between the total cost for the employer and the employee's net salary) increased still further for low-wage employees in the period in question due to the fact that the tax-free amount was not raised. This resulted in a relative increase in the taxation, which most substantially affected low income labour code employees (Myck, Kundera, Najsztub, Oczkowska, 2016). This may have contributed to a greater acceptance towards civil law contracts of low-wage workers. Civil law contracts were a form of tax optimisation allowing to maintain a relatively similar income in the face of public levies that effectively were growing.

The growth in the use of civil law contracts was significantly influenced by two temporary factors. Firstly, the public sector was affected by austerity policies that froze the remuneration fund. Public agencies started to outsource a significant part of public tasks as a result of that. This took the shape of both subcontracting, as well as employing persons under civil law contracts directly by the public administration, because they fall into a different category of public expenditures (the number of such persons increased from about 20,000 in 2010 to almost 45,000 in 2016) (GUS, 2014; GUS, 2018a). Outsourcing took place under strong pressure to reduce spending in the public sector, which meant that public tenders often assumed hourly rates requiring companies to conclude civil law contracts, which allowed them to circumvent the minimum wage regulations (Duda, 2016; Muszyński, 2019b). Secondly, temporary employment agencies played an important role in the growth of civil law contracts. It will be discussed further in this paper.

Brief overview of the views on the consequences of the growth of civil law employment

The growth of civil law employment has led to a number of consequences both for the employees, and for the functioning of some key institutions. From the point of view of employees, the replacement of labour code contracts by civil law contracts meant limiting access to a number of protection mechanisms and effectively partial legal exclusion. Such employees were covered by mandatory social insurance to a limited extent and were not protected by the provisions on minimum wages (from 2016, the minimum hourly rate includes contracts for mandate and contracts for the provision of other services). They are not protected against dismissal, have no guaranteed right to leave and are not subject to restrictions on working time and minimum rest periods. Persons working under contracts for specific task also have partially limited access to health insurance (because it is voluntary). Civil law workers have also limited access to litigation the event of breaches by employers, as with certain exceptions, persons employed under civil law contracts are

not subject to the procedures characteristic for labour law, which are relatively more favourable for employees. Employees working under civil law contracts also did not have the right (until 2019) to establish and join trade unions.

The above-mentioned factors led to civil law workers being exposed to a number of negative developments affecting labour market periphery. Such workers have lower employment stability and occupational mobility (Kiersztyn, 2014), partly because employers practically do not invest in their skills (Palczyńska, 2016). Such workers on average receive lower wages (Dias da Silva, Turrini, 2015) and have difficult access to mortgage loans. There are certain reasons to believe that due to the life instability introduced by precarious conditions, the increased use of civil law contracts was associated with a certain scale of political radicalisation and delegitimisation of the political order, especially among the younger generation (Mrozowicki, 2016; Theiss, Kurowska, Petelczyc, Lewenstein, 2017; slightly different opinion: Kiersztyn, 2018).

At the macro level, one of the most serious consequences of the popularity of civil law agreements was the worsening financial situation of the social security system (Lewandowski, Sawulski, Stroński, 2016). In the long run, the spread of civil law contracts could significantly contribute to lowering of replacement rate in Poland (Lewandowski, Keister, Stroński, 2016).

Public policies towards civil law employment

The subsequent subsections will describe the various reforms carried out by consecutive governments. The discussion about "junk contracts" has firmly established itself in the public discourse around 2012/2013. There was a growing awareness of the problem among policy-makers. In January 2014, Polish Prime Minister Donald Tusk announced his intention to "end the infamous era of junk contracts" (Kiełbasiński, 2014). The beginning of public policies towards civil law employment could be dated at this year. The Prime Minister's promises announced actions aimed at eliminating the phenomenon of the regular use of civil law contracts to shape quasi-employment relations, although the actually undertaken steps were much more modest.

An important context of public policies conducted in relation to civil law employment were finally not implemented plans of deep reforms of the labour market. At the end of term of the Civic Platform–Polish People's Party government, Ministry for Labour started a discussion on the introduction of a single employment contract, i.e. a contract under which some of the employee's rights would expand over time. During Law and Justice's government there were plans of adopting a new Labour Code, which would transform the existing forms of employment in Polish law. Both plans for deep reforms were unsuccessful. Civic Platform–Polish People's Party's government never undertook any steps towards implementation of a single contract, although such an idea appeared in the electoral programme of the Civic Platform in 2015 (Civic Platform, 2015, pp. 11–12). Two drafts of new Labour Codes (individual and collective) developed by the Commission for Codification of Labour Law during Law and Justice government were abandoned—for vari-

ous reasons—after deep criticism from both employers' organisations and trade unions. Both governments also planned to reform the tax wedge, i.e. to reduce the tax wedge for low-income workers through the introduction of a single contribution combining income tax and social security contributions. In the case of the Civic Platform, this was to be combined with the introduction of a single contract (Civic Platform, 2015, pp. 11–12), but remained within the sphere of electoral promises of 2015. The Law and Justice government has taken some steps towards the introduction of a single contribution. Under the Chairman of the Permanent Committee of the Council of Ministers, Henryk Kowalczyk, an initial draft of reform was prepared and submitted to the Ministry of Finance. It was quickly dropped after facing negative reactions, especially from employers' organisations (Cieślak-Wróblewska, 2016).

Another important context of reform failure were intentions to reform healthcare system, announced by Minister of Health during Law and Justice's government. It intended to abolish health insurance contributions and National Health Fund and finance healthcare directly from the state budget (and not from health insurance contributions) (Ministry of Health, 2016). It should be noted that this idea was also included in the Civic Platform programme in 2015 (Civic Platform, 2015, pp. 11–12), although it was also included in the Law and Justice programme (Law and Justice, 2014, p. 117). The plan to abolish health insurance contributions and move to financing universally accessible health care directly from the budget was motivated, among other things, by a large number of persons working under contracts for a specific task who were deprived of access to health care (Radziwiłł, 2017).

As a result, public policies in the area of civil law employment have been fragmented and piecemeal in comparison to the failed plans for broader reforms. In 2014–2019, the following reforms have been carried out:

1) expanding insurance obligations in relation to contracts for mandate (under the Civic Platform–Polish People's Party [PO–PSL] government) were increased;
2) introduction of an hourly minimum rate for contracts for mandate and some other civil law contracts (under the Law and Justice government);
3) granting civil law workers a right to coalition (under Law and Justice government, as a result of the Constitutional Court's ruling in 2015, following the motion submitted during the period of PO–PSL government by the biggest trade union confederation—OPZZ);
4) clarification of the uncertainty regarding the use of civil law contracts in temporary work agencies (under the Law and Justice government);
5) introduction of a new type of civil law contract—contract for harvesting work (under the Law and Justice government).

Extending insurance obligations in relation to contracts for mandate

In order to deliver on the promises made by Donald Tusk, in October 2014, already at the time when Ewa Kopacz was Prime Minister, a law was passed extending the obligation to pay social security contributions from contracts for mandate. In the case of several

contracts for mandate, it was decided that the payment of social security contributions would be mandatory at least up to the minimum wage base. Prior to the introduction of the Act, persons holding several titles to social insurance were generally insured under one title, either the first or the one of their choice. This regulation made it relatively easy to circumvent insurance obligations and allowed for far-reaching tax optimisation at the expense of insurance security and the stability of the social insurance system. In order to reduce the social security contributions costs, it was sufficient to conclude two contracts of mandate (one providing for low wage and one with higher wage), and to pay the insurance only from a contract of lower value.

The analysis of the justification to the Act and the statements of the government representatives suggest that the fundamental goal of the reform was not the improvement of the situation of workers, but the expansion of the tax base and the improvement of the financial condition of the Social Insurance Fund which situation was drastically deteriorating (Council of Ministers, 2014, p. 18ff). The reform has led to an alignment of the insurance situation of persons working under contracts for mandate with those working on labour code contracts stipulating minimum wages. However, this did not affect the situation of persons working under contracts for a specific task, and still left the path to tax optimisation, as contractors earning more than the minimum wage were able to pay lower rates than those working under labour code contracts.

Introduction of a minimum hourly rate for contracts for mandate and other civil law contracts

Law and Justice government introduced a minimum hourly rate of PLN 12 gross for workers on contracts for mandate workers and contracts for provision of services (in fact: those who worked as solo self-employed) in July 2016. The logic of the changes repeats, with some modifications, the one behind the expansion of insurance obligations for contracts for mandate introduced during Civic Platform–Polish People's Party government. Moreover, the minimum hourly rate of PLN 12 for contracts of mandate was an element of the Civic Platform's 2015 electoral program (Civic Platform, 2015, p. 11). Such plan was not included in the Law and Justice program from 2014.

The political goal of the reform was to limit the negative consequences of the abuse of civil law contracts, which resulted in low incomes of those employed under civil law contracts (Council of Ministers, 2016, p. 1). This was to be done not by preventing the conclusion of such contracts and promotion of labour code agreements, but by a fragmentary extension of protective mechanisms characteristic for labour code contracts for contracts for mandate and self-employment. What is particularly interesting, the minimum hourly rate set by the government for contracts for mandate and the self-employed was higher than the possible-to-calculate theoretical hourly rate provided for labour code contracts.[5]

[5] For labour code contracts, only the monthly minimum wage is protected. Theoretical hourly rate can be calculated by dividing monthly minimum wage by the most common monthly working

This shows an evolution in thinking about civil law contracts as alternatives to labour code employment.

Extending the right to coalition to civil law workers

People working under civil law contracts and the self-employed could not join or form the trade unions. This factor made self-organisation of workers more difficult and constituted a significant barrier to the development of trade unions (Kohl, 2009). Trade unions tried to convince the government to implement legal changes extending the right to coalition to non-standard workers by, among others, inspiring pressure from international organisations (International Labour Organisation, 2012). After the government had ignored trade unions, in 2013 OPZZ (biggest confederation of trade unions in Poland) filed a motion to the Constitutional Tribunal on this matter, arguing that Polish solutions were in violation of the Constitution and the San Francisco Convention on Freedom of Association and Protection of the Right to Organise of 1948. In June 2015, the Constitutional Tribunal in its ruling No. K 1/13 found the Act on Trade Unions to be in breach of the Constitution in the scope in which it limited the right to establish and join trade unions to employees within the meaning of the Labour Code.

The law implementing the ruling was prepared by the government and parliament for a very long time, only partly due to a complicated public consultations process. The law was adopted in July 2018 and entered into force on 1 January 2019. As a result of the amendment, the right to join and form trade unions was granted to all persons performing employment also on the legal basis other than labour law contracts. Although the reform was finally implemented, it should be noted that the government was indeed forced to do so by a Constitutional Tribunal ruling.

Clarification of ambiguities regarding the use of civil law contracts in relations with temporary employment agencies

More attention should be given to the temporary agency work sector in view of its role in the rise of civil law contracts and the fact that it has partially separate regulations.

---

time that usually amounts to between 160 and 176 hours. Under this assumption, it would turn out that in 2016, the theoretical hourly remuneration labour code contracts was PLN 10.51 gross (assuming 176-hour working month) or PLN 11.56 gross (160-hour working month), while the minimum hourly rate for contracts for mandate and contracts for the provision of services was PLN 12.00 gross. A similar situation occurred in subsequent years. In 2017, such theoretical rate would amount to PLN 11.36 gross (assuming 176 hours) or PLN 12.50 gross (assuming 160 hours) compared to PLN 13.00 gross minimum hourly rate; in 2018—the theoretical rate would be PLN 11.93 gross (176 hours) or PLN 13.12 (160 hours) as compared to PLN 13.70 gross minimum hourly rate, and in 2019—PLN 12.78 gross (176 hours) or PLN 14.06 (160 hours) in comparison to PLN 14.70 gross minimum hourly rate.

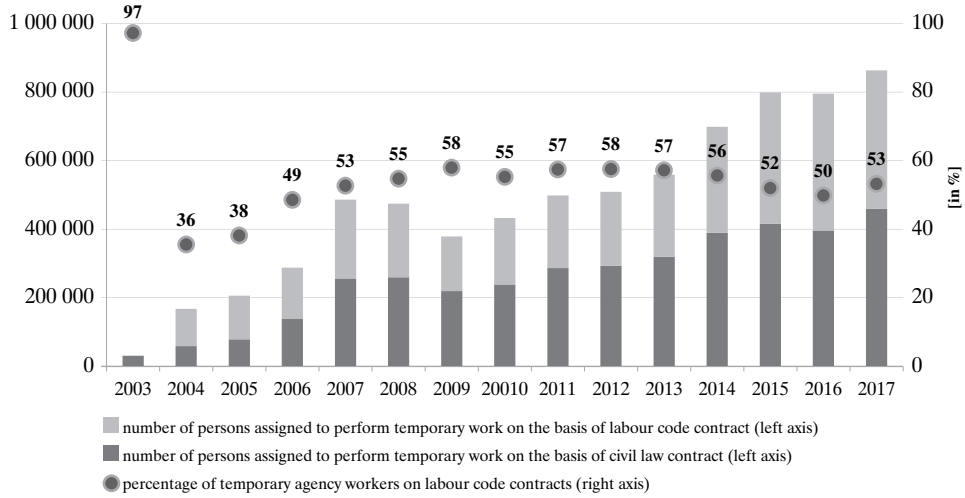

Figure 1. Workers of temporary work agencies between 2003–2017

Source: Ministry of Labour and Social Policy/Ministry of Family, Labour and Social Policy, 2004–2018; own elaboration.

Between 2005 and 2017, the number of persons assigned to perform temporary work on the basis of civil law contracts increased from approximately 79,000 to approximately 460,000. At the same time, since 2006, about half of temporary employees have been working under civil law contracts. It is also easy to see that temporary agency workers constitute a very important part of all people working under civil law contracts.

The use of civil law contracts in temporary work was allowed only because of a legislative error that had been accepted for many years. Temporary agency work is subject to a separate regulation: 2003 Act on the employment of temporary workers. The provisions of the Act were very ambiguous (Sobczyk, 2009). The justification to the draft Act explicitly claimed that temporary work agency workers were to be employed exclusively on labour code contracts. According to Article 7 of the old wording of the Act, "a temporary work agency employs temporary workers on the basis of a fixed-term labour code contract or a labour code contract for the duration of performance of a specific job." The youngest employees, who were allowed to be hired on the basis of civil law contracts, were to be an exception (Council of Ministers, 2003, p. 19). It was reflected in Article 26 of the Act, which in the first subparagraph stated that "to persons aged from 16 to 18 years who are students, directed to temporary work on the basis of a civil law contract, the provisions of the Labour Code concerning the employment of juveniles for a purpose other than professional preparation apply *mutatis mutandis*", while in the second subparagraph that "to persons directed to temporary work on the basis of a civil law contract, the provisions of Article 8, 9 paragraph 1 and Article 23 apply *mutatis mutandis*."

Arkadiusz Sobczyk (2009, p. 112) pointed out that "provision (…) was deeply flawed from legislative point of view." From the purely literal point of view, it was possible to

interpret that art. 26 p. 2 referred to all workers without restrictions to workers aged 16–18 and thus that hiring workers on civil law contracts is in principle allowed. Labour Law Department of the Ministry of Labour, the same Ministry that prepared the justification for the Act claiming otherwise, followed this type of "literal interpretation" a few months later (Makowski, 2006, pp. 127–128). This was later accepted in the case law (Rotkiewicz, 2010, pp. 125–126). Although this interpretation was clearly contrary to the intentions of law-makers, a situation in which temporary employment agencies directed temporary employees to work on the basis of civil law contracts had been accepted for many years.

The use of civil law contracts in relations with temporary employment agencies was finally explicitly allowed by the 2017 amendment to the Act on the temporary workers, which repealed Article 26 of the Act and added a provision allowing agencies to assign temporary workers on the basis of civil law contracts. At the same time, the reform introduced some solutions to equalise the rights of persons working under civil law and labour code contracts and limited some of the loopholes used by temporary employment agencies to extend the time of assignment to the same employer-user.

Introduction of a new type of civil law contract—a contract for harvesting work

In May 2018, an amendment to the Act on farmers' social insurance came into force. It introduced a new type of civil law agreement for the agricultural sector—a contract for harvesting work. This contract covers the provision of aid (such as harvesting plants, processing and sorting, preparing for transport, storage or sale) to harvest hops, fruit, vegetables, tobacco, and herbs by a farmer's "assistant" (amended Article 91a(2) of the Act). If these activities are carried out on the basis of a contract on harvest assistance, they do not constitute employment within the meaning of the Labour Code. In total, the farmer may carry out these activities for a maximum of 180 days per year, although the contract may be terminated at any time (the termination is effective at the end of the day on which the contract is terminated). In the scope not regulated in the agreement on aid for harvesting, the provisions of the Civil Code apply.

The intention behind the Act was regulating the situation of casual workers in agriculture, in particular to prevent the employment of such workers informally or under contracts for a specific task. It was also intended to limit red tape and reduce labour costs for farmers (Council of Ministers, 2018, p. 2 of the rationale). The "assistants" are covered by compulsory health insurance and accident, sickness and maternity insurance paid in lump sum and low amounts. Contracts are not covered by any minimum wage.

The Act intended to both to offer a very advantageous form of contract to the agricultural sector, allowing to use casual work, as well as to improve the financial situation of the farmers' social insurance system (KRUS) (Council of Ministers, 2018, pp. 5–6 of the Regulatory Impact Assessment). The Regulatory Impact Assessment prepared for the Act predicted that approximately 500,000 people would be employed in this form of employment, i.e. a very significant number. The regulation offers a very limited protection

of working conditions for farmers' assistants, without providing neither adequate protection of occupational health and safety (such as maximum lifting capacity limits or the use of personal protective equipment) nor standards of working time and pay. However, it has made it possible to extend the tax and contribution base to the newcomers. It is controversial whether the exclusion of persons working under contracts for harvesting work from numerous protective regulations and standards meets the conditions of compliance with the Constitution of the Republic of Poland and European law (Surdykowska, 2018).

Discussion and summary. Normalisation of civil law employment in Poland and labour market segmentation policies

Actions taken in relation to civil law employment by the government are part of a broader and well-described problem of public policies taken in relation to labour market segmentation. In the literature, there are several strategies that public policy makers can undertake in relation to labour market segmentation (Deakin, 2013; Freedland, Countouris, 2011).

Firstly, they may aim at extending the scope of application and the use of the standard employment contract itself, most often by making it more flexible or fundamentally transforming it formally. It is also intended to "bring" into the scope of application of a standard employment contract as broad groups of employees as possible and potentially make it more difficult to conclude contracts other than standard contracts. This logic was presented e.g. by the unrealised plan of the Civic Platform to introduce a single employment contract.

The second possibility for law-makers is to take action alongside employment regulations, which would limit the consequences of labour market segmentation through the universalisation of certain social policies. The aim of such actions is to de-commodify the welfare state instruments and to effectively limit the social consequences of having a non-standard contract. Such logic was presented e.g. by an unrealised plan of both the Civic Platform and the Law and Justice to abolish health care insurance contributions and universalise access to health care. This would lead to a reduction in the social consequences of having non-standard contract—it would ensure access to healthcare for such persons, without interfering with the nature of the contract.

Thirdly, it is possible to address labour market segmentation by allowing the use of non-standard contracts, together with consistent policies aimed at extending certain rights specific to labour code contracts to non-standard contracts. This logic was followed, for example, by the draft Labour Code proposed while Law and Justice was in power. It did not eliminate non-standard contracts, but granted a number of key rights to persons working under such contracts (e.g. the right to paid holidays, rest, partially regulated working time etc.).

In an incomplete form, this logic is also reflected in the policies pursued by the governments of the Civic Platform–Polish People's Party and the Law and Justice. In principle, the Polish law-makers aimed at "normalising" the civil law employment by granting

selected rights specific to labour code contracts to those working on certain civil law contracts.

This applies primarily to employees working on the basis of contracts for mandate and self-employed, because the situation of workers with contracts for specific tasks did not change. Contracts for mandate in the scope of duties and rights are as of end of 2019 equal in terms of social security protection with labour code contracts with minimum wage. An hourly minimum wage is also stipulated for those contracts, which is even higher than the possible-to-calculate hourly rate provided in labour code contracts. All workers, regardless of the legal form of their relation with employer, have also been granted the right to form and join trade unions.

The policies of the governments of the Civic Platform–Polish People's Party and the Law and Justice towards civil law employment display continuity, although at the same time they should be assessed as fragmentary and insufficient. The introduction of a minimum hourly rate for contracts for mandate should even be considered as a result Law and Justice's government implementing the Civic Platform's programme. At the same time, public policies do not try to eliminate the civil law employment, which is still massive and affects about one million people. This is demonstrated, above all, by formally allowing temporary work agencies to use civil law employment (which was always a large extent phenomenon, although it was at least controversial from legal point of view) and by the creation of a new form of civil law contract—a contract for harvesting work.

It seems that the "normalisation" of civil law contracts has become a good argument for using this form of employment to regulate the situation of workers in the peripheral labour market. This is a worrisome situation, as it allows—through acceptance of the use of non-standard contracts—a departure from the normative model of the standard open-ended labour code based employment. Such a model should be promoted because of the European regulations (resulting from the Council Directive 1999/70/EC, which explicitly obliges governments to promote standard employment) and the fact that such contracts most fully implement the workers' protection (Florek, 2015). Instead of promoting the standard contracts, "normalising" the civil law employment, legitimises a situation in which a large group of employees is deprived of numerous rights, such as the right to leisure, paid holiday or overtime pay. In fact, it also validates depriving workers of protection of some provisions important from the OHS (in Polish: BHP) perspective, such as those related to working time and minimum rest.

It should also be noted that the policy of normalisation of civil law employment was a piecemeal alternative to broader projects that could genuinely address the problem of the abuse of civil law contracts in the economy. Without a return to plans for deeper and broader reforms—undertaken in the spirit of standard employment reform or in the spirit of "decommodification"—it is difficult to imagine that the problems of civil law workers will be resolved. The resulting trajectory of normalisation suggests that ideas for improving situation of workers in peripheral parts of the labour market by creating new forms of civil law contracts or by fragmentarily encompassing them by some provisions

characteristic for labour code contracts may re-emerge in the future. This situation is unwelcome because it legitimises the departure from the normative model of a standard open-ended employment, which should be promoted by public policies.

References

Arak, P., Lewandowski P., Żakowiecki, P. (2014). *Dual labour market in Poland—proposals for overcoming the deadlock*. IBS Working Paper, no. 1/2014. Warszawa: Instytut Badań Strukturalnych.

Arendt, Ł. (2014). Wykorzystanie umów terminowych w Polsce w kontekście skutków światowego kryzysu gospodarczego. *Polityka Społeczna*, vol. 41, no. 9, pp. 12–18.

CBOS (2018). *Sytuacja zawodowa Polaków i gotowość zmiany zatrudnienia*. Warszawa: Centrum Badania Opinii Społecznej.

Chrostek, P., Klejdysz, J., Korniluk, D., Skawiński, M. (2019). *Wybrane aspekty systemu podatkowo-składkowego na podstawie danych PIT i ZUS 2016*. Warszawa: Ministerstwo Finansów.

Cieślak-Wróblewska, A. (2016). Rząd rezygnuje z jednolitego podatku, ale reforma systemu wciąż konieczna. *Rzeczpospolita*, 21.12.2016.

Civic Platform [Platforma Obywatelska] (2015). *Polska przyszłości. Program Platformy Obywatelskiej RP 2015*. Warszawa.

Council of Ministers [Rada Ministrów] (2003). *Projekt ustawy o zatrudnianiu pracowników tymczasowych*. Druk nr 1349. Warszawa.

Council of Ministers [Rada Ministrów] (2014). Rządowy projekt ustawy o zmianie ustawy o systemie ubezpieczeń społecznych oraz niektórych innych ustaw. Druk nr 2242. Warszawa.

Council of Ministers [Rada Ministrów] (2016). Uzasadnienie do projektu ustawy o zmianie ustawy o minimalnym wynagrodzeniu za pracę oraz niektórych innych ustaw. Druk nr 600. Warszawa.

Council of Ministers [Rada Ministrów] (2018). Projekt ustawy o zmianie ustawy o ubezpieczeniu społecznym rolników oraz niektórych innych ustaw z projektem aktu wykonawczego. Druk nr 2334. Warszawa.

Czajka, Z. (2016). Zmiana relacji płac pracowników państwowej sfery budżetowej (rok 2002 i 2014). *Polityka Społeczna*, no. 10, pp. 19–26.

Deakin, S. (2013). Addressing labour market segmentation: The role of labour law. Geneva: Governance and Tripartism Department International Labour Office.

Dias da Silva, A., Turrini, A. (2015) Precarious and less well-paid? Wage differences between permanent and fixed-term contracts across the EU countries. Economic Papers 544, February 2015. Brussels: European Commission.

Duda, K. (2016). *Outsourcing usług ochrony oraz utrzymania czystości w instytucjach publicznych. Wpływ publicznego dyktatu najniższej ceny usług na warunki zatrudniania pracowników przez podmioty prywatne*. Wrocław: Ośrodek Myśli Społecznej im. Ferdynanda Lassalle'a.

Duraj, T. (2011). Tradycyjne ujęcie pracowniczego podporządkowania. *Studia Prawno-Ekonomiczne*, vol. LXXXIII, pp. 35–61.

Florek, L. (2015). Umowa o pracę na czas określony. *Praca i Zabezpieczenie Społeczne*, no. 12, pp. 2–7.

Freedland, M.R., Countouris, N. (2011). The legal construction of personal work relations. Oxford: Oxford University Press.

Gardawski, J. (2015). Przestrzeganie prawa pracy a obecność w zakładzie związków zawodowych. *Polityka Społeczna*, vol. 42, no. 4, pp. 21–26.

Grzebyk, P. (2015) *Analiza orzecznictwa sądowego w sprawach o ustalenie istnienia stosunku pracy. Zatrudnienie pracownicze a zatrudnienie cywilnoprawne*. Warszawa: Instytut Wymiaru Sprawiedliwości.

GUS (2014). *Rocznik Statystyczny Pracy 2012*. Warszawa: Główny Urząd Statystyczny.

GUS (2016a). *Pracujący w nietypowych formach zatrudnienia*. Warszawa: Główny Urząd Statystyczny.

GUS (2016b). *Rocznik Statystyczny Pracy 2015*. Warszawa: Główny Urząd Statystyczny.

GUS (2018a). *Rocznik Statystyczny Pracy 2017*. Warszawa: Główny Urząd Statystyczny.

GUS (2018b). *Wybrane zagadnienia rynku pracy (dane dla 2017 r.)*. Warszawa: Główny Urząd Statystyczny.

International Labour Organisation [ILO] (2012). Complaint against the Government of Poland presented by the National Commission of the NSZZ "Solidarność". Available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3057194 [access date: 22.11.2019].

Kamińska, A., Lewandowski, P. (2015). *The effects of minimum wage on a labour market with high temporary employment*. Warszawa: Instytut Badań Strukturalnych.

Kiełbasiński, A. (2014). Dlaczego umowy śmieciowe są złe? Pięć grzechów głównych wg "Wyborczej". *Gazeta Wyborcza*, 13.01.2014.

Kiersztyn, A. (2014). *Niepewność zatrudnienia. Kto jej doświadcza? Czy to stan chwilowy?*. Warszawa: Zespół Porównawczych Analiz Nierówności Społecznych, Instytut Filozofii i Socjologii Polskiej Akademii Nauk.

Kiersztyn, A. (2018). Labour market precarity and political alienation. Przegląd Socjologiczny, vol. 67, iss. 3, pp. 35–61.

Koch, M., Fritz, M. (eds.) (2013). *Non-Standard Employment in Europe: Paradigms, Prevalence and Policy Responses*. Basingstoke, UK: Palgrave Macmillan.

Kohl, H. (2009). *Freedom of Association, Employees' Rights and Social Dialogue in Central and Eastern Europe and the Western Balkans*. Berlin: Friedrich-Ebert-Stiftung.

Kubot, Z., Kowalski, S. (2016). *Współczesne problemy zatrudnienia. Wykorzystanie umów śmieciowych dla "ukrycia" stosunku pracy*. Warszawa: Wydawnictwo C.H. Beck.

Law and Justice [Prawo i Sprawiedliwość] (2014). *Program Prawa i Sprawiedliwości 2014. Zdrowie—rodzina—praca*. Warszawa.

Lewandowski, P., Keister, R., Stroński, K. (2016). Labour market segmentation and pensions in the Polish defined-contribution scheme. *Problemy Polityki Społecznej. Studia i Dyskusje*, no. 33 (2), pp. 111–137.

Lewandowski, P., Sawulski, J., Stroński, K. (2016). *Labour market segmentation and the financial situation of the pension system in Poland*. IBS Working Paper, no. 10/2016. Warszawa: Instytut Badań Strukturalnych.

Makowski, D. (2006). *Praca tymczasowa jako nietypowa forma zatrudnienia*. Warszawa: Difin.

Ministry of Finance [Ministerstwo Finansów] (2009–2014). *Informacja dotyczące rozliczenia podatku dochodowego od osób fizycznych za rok 2008–2013*. Warszawa.

Ministry of Health [Ministerstwo Zdrowia] (2016). *Narodowa Służba Zdrowia. Strategia zmian w systemie ochrony zdrowia w Polsce 2016–2018*. Warszawa.

Ministry of Labour and Social Policy / Ministry of Family, Labour, and Social Policy [Ministerstwo Pracy i Polityki Społecznej / Ministerstwo Rodziny, Pracy i Polityki Społecznej] (2004–2017). *Informacje o działalności agencji zatrudnienia 2003–2018*. Warszawa.

Mrozowicki, A. (2016). Normalisation of precariousness? Biographical experiences of young workers in the flexible forms of employment in Poland. *Przegląd Socjologii Jakościowej*, vol. 12, no. 2, pp. 94–112.

Muszyński, K. (2016). Factors behind the growth of civil law contracts as employment contracts in Poland—a study of labour law violations. *Prakseologia*, vol. 1, no. 158, pp. 323–359.

Muszyński K. (2018). Labour law violations as innovations in Central Eastern European countries. *Przegląd Socjologiczny*, vol. 67, no. 3, pp. 9–34.

Muszyński, K. (2019a). *Polityka regulacji zatrudnienia w Polsce. Kryzys ekonomiczny a destandaryzacja stosunków pracy*. Warszawa: Wydawnictwo Naukowe Scholar.

Muszyński, K. (2019b). The emergence of unintended fit and the theory of gradual institutional change: a case study of Polish employment regulations and post-crisis public policies. Zarządzanie Publiczne / Public Governance, iss. 1 (47), pp. 33–47.

Myck, M., Kundera, M., Najsztub, M., Oczkowska, M. (2016). *Zamrożony PIT i utrzymane wyższe stawki VAT—jak brak zmian w podatkach wpłynie na budżety gospodarstw domowych?*. Szczecin: CenEA.

National Bank of Poland [NBP] (2015). *Badanie ankietowe rynku pracy. Raport 2014*. Warszawa: Narodowy Bank Polski.

National Labour Inspectorate (2008–2018). *Sprawozdania Głównego Inspektora Pracy z działalności Państwowej Inspekcji Pracy za lata 2007–2017*. Warszawa: Państwowa Inspekcja Pracy.

Palczyńska, M. (2016). *Rodzaj umowy o pracę a umiejętności i ich wykorzystywanie*. Warszawa: Instytut Badań Edukacyjnych.

Radziwiłł, K. (2017). *Wywiad dla RMF24*. Available at: http://www.rmf24.pl/tylko-w-rmf24/popoludniowa-rozmowa/news-konstanty-radziwill-ludzie-pracujacy-na-umowie-o-dzielo-to-n,nId,2344006 [access date: 22.11.2019].

Rotkiewicz, M. (2010). Zatrudnianie pracowników tymczasowych. Warszawa: Wydawnictwo C.H. Beck.

Sobczyk, A. (2009). *Zatrudnienie tymczasowe: komentarz*. Warszawa: Wolters Kluwer.

Surdykowska, B. (2018). Kontrowersje wokół umowy o pomocy przy zbiorach. *„Młody Jurysta". Kwartalnik Studentów i Doktorantów Wydziału Prawa i Administracji UKSW*, no. 3, pp. 3–17.

Theiss, M., Kurowska, A., Petelczyc, J., Lewenstein, B. (2017). *Obywatel na zielonej wyspie. Polityka społeczna i obywatelstwo społeczne w Polsce w dobie europejskiego kryzysu ekonomicznego*. Warszawa: IFiS PAN.

Normalizacja „śmieciówek". Polityki publiczne wobec zatrudnienia cywilnoprawnego w Polsce

Streszczenie

„Umowy śmieciowe", czyli umowy cywilnoprawne wykorzystywane w celu regulowania stosunków zbliżonych do stosunków pracy, stały się w Polsce niezwykle popularne po kryzysie ekonomicznym. Artykuł tłumaczy przyczyny i skutki tego zjawiska, a następnie opisuje polityki publiczne podejmowane wobec umów cywilnoprawnych w latach 2014–2019 przez rządy Platformy Obywatelskiej i Polskiego Stronnictwa Ludowego oraz Zjednoczonej Prawicy. Działania kolejnych rządów były zasadniczo spójne i zmierzały do rozszerzenia części uprawnień charakterystycznych dla umów kodeksowych na niektóre z umów cywilnoprawnych. Doprowadziło to do „normalizacji" i swoistego zaakceptowania zatrudnienia cywilnoprawnego jako alternatywy dla umów kodeksowych. Artykuł pokazuje, że obrana trajektoria wynikała z klęsk głębszych reform rynku i prawa pracy i może nieść za sobą ryzyko długotrwałej akceptacji nadużywania niestandardowego zatrudnienia.

Słowa kluczowe: umowy cywilnoprawne, umowy niestandardowe, segmentacja rynku pracy, polityka publiczna, prawo pracy