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Are self-employed “zombies” more important
than classic workers? A few comments on the Polish approach
to supporting labour market during the COVID-19 pandemic*

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1. *Introductory remarks*

We would like to begin this paper with a brief note about what this paper is not about. First, we do not intend to present the entirety of the social, legal and economic debate on the entitlements that the self-employed should enjoy, especially the self-employed who are economically dependent on a single contractor. These issues are analyzed in both Polish and European labour law doctrine¹. This discussion has undoubtedly been further reinvigorated as a result of the experience of the COVID-19 pandemic. Again, it is not our goal to present or summarize the full picture of tools that EU member states have used to support the self-employed during the pandemic. We do not attempt to draw lessons from the diverse situations in individual

* The thoughts contained in this paper are solely the authors' conclusions and comments, and can no, under no circumstances, be equated as the views of any institution.

¹ As an example: NATO, *The Self-employed and the EU Court of Justice: towards new social protection of vulnerable EU citizens?* in *ELLJ*, 2021, vol. 12, n. 1, pp. 17-36. In Polish doctrine: SKUPIE, *Praca na własny rachunek w ramach Unii Europejskiej w wietle prawa i orzecznictwa*, in *SPPracPol*, 2022, vol. 29, n. 3, pp. 279-290; MORAS-OLA, *Mo liwe kierunki regulacji ochrony pracy samozatrudnionych ekonomicznie zale nych*, in *Acta Univ. Lodz*, 2022, n. 101.

countries. In this area, too, the pandemic was a “driver” of many new discussions². The purpose of the paper is decidedly more modest. We want to show an example from Poland where, support for the self-employed was disproportionately huge compared to support for classic employees.

So the aim of the paper is to describe Polish case in which public authority, in a situation of destabilization of labour market due to the COVID-19 pandemic, makes a choice regarding the distribution of support primarily to self-employed rather than people working under an employment contract. In our opinion, it is closely related to the paradigm of economic development that Polish ruling elites adhere to (regardless of political provenance) in which individual entrepreneurship as such has a higher rank than classic employment.

The COVID-19 outbreak has surprised labour market participants as well as the public authorities. In Poland, the effects of the pandemic were much less severe than in many EU Member States. Poland came through the COVID-19 pandemic with fewer “losses” in the labour market than other member states. Referring to a single indicator such as unemployment, it should be noted that in 2019 the average for the EU 27 was 6.8% (Eurozone – 7.6%), Poland – 3.3%. In 2020 – EU27 average unemployment was 7.2% (Eurozone – 8.0%), Poland – 3.2%. And in 2021 – EU27 average unemployment was 7.0% (Eurozone 7.7%), Poland 3.4%. And in 2022 – EU27 average unemployment was 6.1% (Eurozone 6.7%), Poland 2.9%.

However, it was necessary to adopt a wide range of employment support programs financed from the state budget. Characteristically, this support was focused primarily on self-employed people. It consisted mainly of two forms: exemption from paying social insurance contributions and payment of the standstill benefits (*wiadzczenie postojowe*). This benefit also concerned the people under civil law contracts, i.e. people who are not formally entrepreneurs (because they have not registered a business) and are party to contracts for the provision of services, i.e. they perform work in an economic sense but are not subject to protection under the labour code.

On the other hand, the support for classic employees was much lower and consisted mainly in co-financing shortened working time schemes (under Polish regulations, the funds were received by the employer who, if

² As an example: GRUBER-RISAK, HATZOPOULOS, MULCAHY, *Policies to support the self-employed in the labour markets of the future*, in *BPB*, 2022, n. 8.

met certain criteria, could apply for them and use them to co-finance employees' salaries and social security contributions). The government has in no way responded to the trade unions' demands to significantly increase the amount of unemployment benefits, which is still abnormally low compared to most EU Member States.

We decided to find an answer to the question of what causes such a noticeable disproportion in the distribution of aid funds that focused on directing them mainly to the self-employed, most of whom function as “zombies”. It is worth clarifying right away what we mean by this word. The practice of self-employment on the Polish labour market has been developed widely for people who, in fact, are not able to function independently in the market reality, which means that in any potentially crisis situation they are at risk of “economic death”. We call them “zombies” self-employed, because they come to life only after administering a “drip” from public funds³. The sudden economic collapse caused by the COVID-19 pandemic has become a brutal opportunity to test in practice the ability of this type of entrepreneurs to survive.

A hypothesis will be presented that such a distribution of accents in the activities of the government's actions in relation to the broadly understood labour market during a pandemic is part of the overall narrative regarding the vision of the future of socio-economic development, in which the key assumption is to distinguish self-employment (understood rhetorically as entrepreneurship) as by definition better than subordinated work – allegedly providing about greater independence and responsibility of the individual. Symptomatic confirmation of the idea that this belief is rooted in Polish reality is the fact that there is a lecture subject in secondary school: entrepreneurship, while secondary schools' students are not familiarized themselves with the basic principles of labour law, which makes them noticeably helpless when they appear on the labour market for the first time.

We will try to answer the question of what has led to the fact that in the Polish labour market there are so many self-employed people who do not have any capital at their disposal to survive the period of economic downturn. We will pay attention to such issues as:

- lack of compliance with the existing regulations on the obligation to

³ We would like to expressly emphasize that the form of such a “drip” has been also available before the COVID-19 pandemic as well as now – exemptions from the obligation to pay social security contributions or radical reduction in its amount.

conclude employment contracts including drawing attention to the jurisprudence of the Polish Supreme Court, which increasingly draws attention to the key importance of the factor of the will of the parties and not the objective features of the relationship between them, including the existence of subordination;

- the importance of the preferences of the labour market participants themselves. Generally, low wages result in a greater “temptation” to use any legal form that leads to higher net income;

- economic and social rhetoric, presented both in the mainstream media and social media. It is a legacy of the neoliberal assumptions underlying the transformation carried out after the collapse of the authoritarian system in Poland and describes self-employment (understood rhetorically as entrepreneurship) as a life attitude by definition more creative, appropriate or responsible than being an employee.

Then, we will show what kind of support was received by the self-employed (and those who were party to so-called civil law contracts) during the COVID-19 pandemic. And finally, we will consider the reasons that make public authorities, but also social partners fail to notice the disproportions in the structure of providing support to various groups of labour market actors during the pandemic.

Why does this issue seem important? Primarily because it sheds additional light on the common (but false in case of Poland) narrative that can be summarized as follows: during the pandemic, full-time employees used job retention programs directed to them by employers (such as a short-term work scheme). On the other hand, the self-employed, or atypical workers were provided with not sufficient support that allowed them to survive the pandemic⁴.

The Polish example seems to us to be interesting as an *ad-hoc* standstill benefit was created, which could be collected by a self-employed person (regardless of whether he/she would have access to unemployment benefit) in a situation when the amount of this benefit was higher than the unemployment benefit, what showed a clear preference of the public authority for a specific form of activity in the labour market.

⁴ SPASOVA, GHAILANI, SABATO, VANHERCKE, *Social protection for atypical workers during the pandemic. Measures, policy debates and trade union involvement in eight member states*, in ETUI-REHS WP, 2020.

2. *Where do zombies come from, about the specific position of the self-employed on the Polish labour market?*

The percentage of the self-employed in the Polish labour market among people aged 20–64 is one of the highest in the EU (18.4% in 2021). The solo self-employed dominate among them (14.3%). In this regard, Poland is in second place after Greece⁵. The explanation for this phenomenon should be sought in historical conditions of relatively recent date. Until 1989, Poland was in the orbit of a centrally planned economy, where the concept of the labour market as such did not really exist due to the omnipotence of the state in all socio-economic matters. The political changes brought about by the collapse of the Soviet empire triggered a transition towards a market economy model, with the consequences of accelerating privatisation and restructuring of large state-owned enterprises. A real labour market, governed by the laws of supply and demand, emerged in Poland. Labour shortages, which had been artificial during the period of a centrally controlled economy, disappeared, while there was an excess of labour supply, which was the cause of the rapidly rising unemployment rate – a phenomenon officially absent during the socialist economy. The unemployment rate rose from zero in 1989 to 16.4% in 1993⁶.

Although foreign direct investments directed to Poland by multinational corporations were growing rapidly, they were not able to absorb the surplus labour force. An additional risk factor was the policy of the state successively tightening the criteria of access to unemployment benefits, shortening the period of their receipt and reducing their amount. While in 1990 80% of the unemployed were entitled to the benefit, in 1995 it was 52% and in 2000 – only 20.3%⁷. The above factors, combined with liberal business regulations, resulted in a rapid increase in the number of microenterprises, largely one-person enterprises. To date, this type of entrepreneurship dominates in Poland. In 2017, among 2.3 million microenterprises, almost 2/3 were self-employed⁸.

⁵ Eurostat, *Self-employed people without employees (own-account workers) by country in Q3 2009, 2019 and 2021*, EC, 2022.

⁶ STEINEROWSKA-STREB, *Rynek pracy w gospodarce transformującej się: przykład Polski*, in PAN-GSY-KANIA, SZCZODROWSKI (eds.), *Gospodarka polska po 20 latach transformacji: osi gni cia, problemy, wyzwania*, Instytut Wiedzy i Innowacji, 2010.

⁷ SZYŁKO-SKOCZNY, *Polityka rynku pracy w III RP – do wiadzenia i wyzwania*, in *ProbPol-Spol*, 2014, vol. 26, n. 3, pp. 25–42.

⁸ PIE, *Mikrofirmy pod lupą*, Polski Instytut Ekonomiczny, 2019.

But why do self-employed zombies still exist on the Polish labour market in a situation where, for several years now, the economic situation has been excellent, the unemployment rate is getting lower and lower, and large companies are desperately seeking qualified workers? There may be several reasons for this. First, the importance of the preferences of labour market participants themselves, which are further stimulated by incentives from the state. Despite the acceleration of wage growth in Poland over the past few years, it is still not sufficient, as evidenced by the fact that almost 10% of Poles are “working poor”⁹. Although this percentage is below the EU average and is gradually declining, almost 1.6 million people may be willing to look for additional income at any cost. In general, low wages result in a greater “temptation” to use any legal form that leads to higher net wages. And here, the self-employed receive clear bonuses in terms of paying social security contributions compared to a person employed based on a contract of employment. There are numerous discounts for starting a business, the health contributions are not dependent on the size of the business. Another issue is sickness insurance for such persons only at their will.

Since May 2018, the “relief for start-up” is in force, i.e. the possibility of not paying social security contributions for the first 6 months of running a business. After using this relief, entrepreneurs can benefit from preferential contributions for 2 years – the lowest basis from which they can calculate contributions is 30% of the minimum salary (compared to a basis of at least 60% of the average salary with standard contributions). There is also a possibility to pay lower social insurance contributions. It can be simply stated that it is addressed to potential zombies. If you are a sole proprietor and have been in business for at least 60 days in the year preceding the submission of your return you may apply for lower Social Insurance contributions. In addition, their annual income in the previous year must not have exceeded PLN 120,000 (approx. €27,000)¹⁰. In addition, there are very flexible rules regarding the possibility to suspend business activity or favourable tax rules (above all, a flat tax of 19%). All this results in a noticeable difference in the net income of a self-employed person in comparison with a contractual employee.

⁹ MUSTER, *Employees’ poverty: Poland in comparison to other EU countries*, in *ProbPolSpol*, 2021, vol. 52, n. 2, pp. 26–53.

¹⁰ Here and hereafter, conversion according to the average exchange rate in 2020.

Of course, employment based on an employment contract is the most stable basis for activity in the labour market, it is connected with paid holiday leave, specific rules on maternity protection etc. but in common practice, it is not connected, for example, with the employer’s investment in the qualifications and competences of the average employee. In Poland, for example, there are no sectoral training funds. In general, employer involvement in employee development is relatively limited. Looking at this, one can choose self-employment with the knowledge that being an employee would not give the expected possibility of professional development anyway.

Secondly, there are no effective legal mechanisms to counteract the shift from employment contracts to self-employment in situations of obvious economic dependence. This may explain the strange regularity that the number of self-employed increases during periods of economic crises, which, after all, are not conducive to the establishment of new businesses and, on the contrary, may cause businesses to fail. For example, before the COVID-19 pandemic, in Q4 2019, about 1 million 595 thousand people were self-employed; in Q4 2020, it was already approx. 1 million 630 thousand people. This means that the number of self-employed increased by around 35,000 in 2020. It is hard not to suspect that this may be related to “pushing out workers into fictitious self-employment”¹¹.

The situation is complicated by the inconsistency in the case-law by the courts in relation to types of employment. On the one hand, the Supreme Court has repeatedly ruled that in a situation where the risk of conducting business activity is not borne by the self-employed person, but only by his/her exclusive client, and in addition, the remuneration for this activity is determined in a lump sum, it means that the person conducting business activity is, in fact, an employee¹². However, other decisions of the Supreme Court increasingly often suggest the superiority of the freedom of contract contained in the Civil Code (i.e. the possibility of arranging a legal relationship at the discretion of the parties, as long as its content or purpose does not contradict the nature of the relationship, the law or the principles of social co-existence) over the provisions of the Labour Code indicating that the performance of work in conditions of subordination is employment

¹¹ PIE, *W koronakryzysie fikcyjne samozatrudnienie coraz bardziej powszechną formą zatrudniania pracowników*, in *TG PIE*, 2021, n. 14.

¹² E.g. ruling of the Supreme Court I PK 142/18 and II PK 189/14.

under an employment relationship, regardless of the name of the contract concluded by the parties¹³. As it seems, the case law practice of courts is more and more often leaning towards the latter interpretation. This is important because in Poland all issues of assigning work providers to the appropriate regime have been left primarily to judicial decisions, which, in addition, must be based on general provisions of the Labour Code unchanged for several decades¹⁴.

And finally, an image issue that cannot be ignored here. The positive vision of entrepreneurship as an activity which is generally more creative than “ordinary” paid work has been promoted practically from the very beginning of the socio-economic transformation. This rhetoric presented both in mainstream media and in social media is a legacy of neoliberal assumptions of the initial period of transformation in Poland, based mainly on the theses of the Washington Consensus. In this view, self-employment itself is seen as a life attitude that is by definition more appropriate or responsible than being a formally dependent worker. The (undisclosed) existence of such a paradigm accepted by the ruling elites, regardless of their political provenance, may be confirmed by the fact that for years secondary schools have been teaching the following lecture: fundamentals of entrepreneurship (now to be called: business and management!), but not equipping students with the necessary knowledge on their future functioning on the labour market.

In Poland, there is a broad consensus on the adequacy of the description of existing employer-employee relations as very strongly hierarchical and characterised by a high degree of subordination. The term “landowner” (*folwarczny model pracy*) model of work is often used to describe the Polish work model. The widespread use of “management” of human resources with the use of such pressure mechanisms as anger, giving orders in a very explicit manner, shouting, and expecting results regardless of the objective capabilities of the employee would be, among others, a consequence of the long-lasting institution of serfdom in Poland. Additionally, a very low level of confidence of Poles in the state and in any emanation of public authority is indicated, which is supposed to be the aftermath not only of the communist period but also of the earlier partitions (when the country’s territory remained

¹³ E.g. ruling of the Supreme Court II UK 201/12.

¹⁴ GRZEBYK, *Analiza orzecznictwa s dowego w sprawach o ustalenie istnienia stosunku pracy. Zatrudnienie pracownicze a zatrudnienie cywilnoprawne*, Instytut Wymiaru Sprawiedliwości, 2015.

under foreign occupation). In such conditions, it may be assumed that a certain group of people “escapes” into self-employment as a form of escape from employer-employee relations characterised by lack of comfort in mutual relations.

The low internal geographical mobility of Poles (resulting from the post-transformation collapse of local public transport and the lack of a developed housing market) may be another factor. Thus, in specific areas of the country, the choice of self-employment rather than seeking subordinated work became a necessity.

The last element is the low popularity of part-time work. This is due to a strong belief among employees that they will be paid in proportion to their working hours while their responsibilities will reflect full-time work. We are talking here more about prevailing beliefs – such as that a part-time worker is by definition not promotable. In such circumstances, when someone wants to work *de facto* less than 40 hours a week, they often choose self-employment and then economic dependence on one contractor.

3. *COVID-19 pandemic and (strange) directions of public support for labour market participants*

In response to the crisis caused by the COVID-19 pandemic, the Polish government quite efficiently prepared successive legislative packages to protect the economy and workers. These were called Anti-Crisis Shields. The first of the Shields, adopted in March 2020, was followed by others. The financial instruments adopted in relation to employees were directed at their employers and made it possible to subsidise salaries in the event of economic downtime or reduced working hours. The initial amount was PLN 1,533.09 (approx. € 365) per full-time employee together with social security contributions. Companies could claim a wage subsidy if turnover decreases by a minimum of 15% (any two months of 2020 compared with the same period of 2019) or by a minimum of 25% (from January 2020 compared with the previous month). It is estimated that in 2020 the sum of these benefits amounted to PLN 6.802 billion so € 1.479 billion¹⁵. This represented 0.3%

¹⁵ SURDYKOWSKA, *Job retention schemes in Europe – Poland*, in J. DRAHOKOUPIL, T. MÜLLER (eds.), *Job retention schemes in Europe. A lifeline during the Covid-19 pandemic*, ETUI, 2021.

of GDP and was therefore one of the lowest values across the EU, although of course this must be regarded as preliminary data as there are no studies covering the entire pandemic period. At the same time, the public authority decided to provide extensive support to self-employed persons. Provision was made for them to receive a standstill benefit of PLN 2080 (€667). Initially, this was a universal solution – regardless of the sector.

Self-employed persons had to prove that in the month preceding the application their income was at least 15% lower. Initially, the standstill benefit was only paid to self-employed people whose income in the previous month did not exceed PLN 15,595.74 (approx. €3,463). Later, this income limit was abolished. Under the second regulation from autumn 2020, support for the self-employed was linked to activities in specific sectors. The provision of support was linked to the following conditions: the income from the activity in October or November 2020 had to be at least 40% lower than in the same period of the previous year; the self-employed person had to suspend the business as a result of COVID-19; the self-employed person had previously received standstill benefit.

The third regulation of 2021 made the grant of support conditional on a documented fall in turnover. In the event of a decrease in turnover of: at least 30%, support could be granted in the amount of 50% of the monthly minimum wage (PLN 1,300; approx. €289); at least 50%, support could be granted in the amount of 70% of the monthly minimum wage (PLN 1,820; approx. €405); at least 80%, support could be granted in the amount of 90% of the monthly minimum wage (PLN 2,340; approx. €520). In each case, support was available for a maximum period of 3 months. The standstill benefit was also due to those self-employed who suspended their business after 31 January 2020. In this situation, the entrepreneur does not have to meet the condition of a decrease in income.

Successive waves of COVID-19 were associated with successive “waves” of standstill benefits for the self-employed, which were combined with non-refundable loans. However, this already applied only to specific industries that were likely to be affected by the anti-covid restrictions imposed. For example – the restrictions that came into effect from 15 December 2021 consisted of the closure of discos, dance clubs or other forms of recreation in an enclosed space. Those whose business activities related to these areas received a renewed standstill benefit of PLN 2080 (approx. €462) – with a fall in income in one of the two months preceding the month of application

following a COVID-19 of at least 40% compared to the comparative period. Additionally, they were entitled to: a one-time grant to cover current costs of running business activity in the amount of maximum PLN 5,000 (approx. € 1111) – in the event that the income obtained in December 2021 was lower as a result of the occurrence of COVID-19 by at least 40 percent in relation to the income obtained in the relevant comparative period and exemptions from social security contributions for December 2021 – with a decrease in income in one of the two months preceding the month of application following the occurrence of COVID-19 of at least 40% in relation to the comparative period. The standstill benefit for the self-employed totalled about PLN 5 billion (approx. € 1.11 billion) in 2020-21.

Additional support for the self-employed should also be mentioned, namely the exemption from paying social security contributions. This meant a *de facto* declaration of financing of accounting entries on individual accounts of these people in the Social Insurance Fund, which results – in addition to the right to health experience – also in support from the state budget for their future pensions. In 2020-21, the total amount of this type of support for entrepreneurs employing fewer than 50 people was approximately PLN 15.5 billion (approx. € 3.44 billion), including PLN 2.288 billion (approx. € 0.64 billion) for solo self-employed.

If we compare the support directed to self-employed workers and to employees during the COVID-19 pandemic, it seems that it was definitely more beneficial for the former. While the funds allocated to support employees during the economic downtime also included a social security contribution, the amount paid depended on the economic situation of the individual enterprise. In the case of self-employed people, they could choose not to pay their contribution in full, and it was still credited to their pension accounts.

What caused a very nervous negative reaction from the trade unions was the amount of standstill benefit for self-employed people, which was significantly higher than the amount of unemployment benefit. This meant that a self-employed person who stopped working was in a better situation than an employee who lost his job. Admittedly, as of September 2020, the unemployment benefit was raised to PLN 1,200 (approx. € 267), but the trade unions still regarded this as insufficient. During the presidential election campaign, incumbent president Andrzej Duda, running for re-election, agreed and pushed through the introduction of the so-called solidarity al-

lowance in the amount of PLN 1,400 (approx. € 311) which was to be paid for a period of 3 months to people losing their jobs between June and September 2020, as part of an agreement with the NSZZ Solidarno trade union. However, it was a temporary solution that could not satisfy trade unionists. The other leading trade union centre, OPZZ, regularly demanded that the unemployment benefit be increased to the level provided for in Convention 168 of the International Labour Organisation, i.e. at least 50% of the last received salary.

When one traces the history of support provided to labour market actors during the pandemic, one cannot help but notice a certain dichotomy. In the case of employees, this support was not only limited and channeled through employers, but was also accompanied by measures allowing for (temporary) lowering of standards in the workplace (e.g. the possibility of suspending the social fund in companies, or limiting the inspection powers of labour inspectorates). Economically dependent self-employed workers were treated on an equal footing with the rest of entrepreneurs, benefiting from a whole range of allowances and subsidies which made their income situation less threatening than that of employees of companies in trouble.

4. *Self-employed zombies as proof of the hidden paradigm of the Polish labour market?*

In the point on the response of public authorities to the effects of the COVID-10 pandemic in the labour market area, we highlight emblematic features of this response. The benefits received by the self-employed were more favorable than those received by those working under a contract of employment or losing their job. In fact, it could be argued that during the COVID-19 pandemic, the self-employed, who had previously failed to generate their own means of subsistence despite existing financial incentives from the state, received an additional “drip” of aid during the crisis.

This means that the state has *de facto* supported the self-employed zombie who, due to their inability to function independently as entrepreneurs, should seek their future on the labour market as employees. Moreover, the pandemic period has not caused the public authorities to reflect on the need for radical changes to the unemployment benefit system. With this in mind, we would like to take a look at the dominant view of the

labour market and labour law in Poland to seek an explanation why public authorities took the decisions they did during COVID-19. In other words, what is behind the dominant discourse on the greater role of entrepreneurship (self-employment) in economic and social development over subordinated work.

The first issue is the attitude to unemployment benefits. One can get the impression that the approach of most political elites ruling Poland since the beginning of the transformation is similar, treating the state of unemployment as an alien phenomenon to be avoided in every way (including by encouraging own entrepreneurship) rather than as a normal challenge for active labour market policies. It is a truism to state that during the period of the centrally controlled economy, unemployment did not theoretically exist. Of course, there was a great deal of hidden unemployment, if by this we mean economically irrational over-employment in particular positions in particular workplaces. It is also a truism to state that unemployment has become the basic social problem during the period of political and economic transformation. The very strong and dynamic remodeling of the economy was expressed in the privatisation of state enterprises or the liquidation of big agriculture state farms, with obvious consequences for the situation of the labour force. Labour was becoming a precious good. Poland faced an exceptionally high scale of unemployment in the pre-accession period to the EU, which resulted in massive emigration of Polish citizens to the EU member states that opened their labour markets first. Emigration processes after 2004 are treated in Poland as an unhealed wound – the source and cause of growing demographic problems. It is not important that empirically this thesis does not make sense (the cause of the currently growing demographic problems is a collapse at the beginning of the 1990s and the phenomenon of a fundamental decline in fertility rates also occurring in other countries) – what is important is that the fear of unemployment as a social phenomenon that may cause a “nightmare” effect is socially or politically very strong. In such a paradigm, everything is better than unemployment (even the low labour force participation rate), understood as the presence of people on the labour market looking for work and expecting active support from the state (benefits, costly labour market services). Since the beginning of the political transformation, no political party has seriously tried to push through the concept of unemployment insurance – understood in such a

way that the amount of benefit is in any way related to lost wages. The unquestioned assumption was that the Polish economy could not afford it; the contribution would constitute an excessive non-wage labour cost. The criteria for accessing the unemployment benefit was gradually tightened and in return, a simple message was being offered to those at risk of losing their jobs – “take matters into your own hands and register as self-employed”. More and more social security reductions were introduced to make it as cost-effective as possible for solo self-employed people to enter the market.

It is a picture in which the period of unemployment is not treated as a certain transfer period between one employment and another, but as an individual and social disaster. For example, it should be stressed that the special fund – Labour Fund (which comes from employers’ contributions, the amount of which is determined annually in the Budget Act), which is supposed to serve the purpose of activating the unemployed, has in most years not been used for passive (unemployment benefits) and active forms of combating unemployment (for example, training, vocational guidance, improving the quality of job placement, etc.), but have been allocated by the public authorities for other purposes not related to the labour market. The bitter truth is that the current system of supporting the unemployed in Poland is characterized by: overrepresentation of unemployed people without the right to unemployment benefit, who are not unemployed in economic terms (who are not looking for a job) and register with employment offices only in order to obtain the right to health benefits; a significant proportion of the “real” unemployed (jobseekers) who are not entitled to unemployment benefits; a very low amount of the allowance, which in practice does not allow you to function above the subsistence level; a limited number of funds allocated to the active fight against unemployment and improvement of the qualifications of the unemployed; spending funds from the Labour Fund for purposes that are not within the scope of its tasks (such as, for example, co-financing the system of additional savings for the retirement under Employee Capital Plans). The Labour Fund became a “piggy bank” from which the government could draw for de facto any purpose. This has been a permanent subject for protest from both trade unions and employers’ organisations. It is hard to resist the impression that the vision of the system of support for the unemployed assumes that such persons will almost immediately and independently find another job or will deactivate themselves on the labour market or

start a business. This helps us to explain the phenomenon of self-employed zombies.

There is also the other side of the coin, related to existing labour law regulations. The Polish Labour Code dates back to 1974 (of course, it has been partially amended hundreds of times), so it contains regulations being a legacy of the communist times, to a large extent not adjusted to the needs of the contemporary labour market. As a result it limits the freedom of employers in shaping the workforce in their companies, which makes them more willing to use the wicket allowing for large-scale solo self-employment (economically dependent on one contractor) or civil law contracts (in practice – contracts of mandate). On the other hand, the general weakness of social dialogue mechanisms in Poland causes that trade unions are very reluctant to attempt to modernize the labour law limiting legislative protection of an employee and unions’ own rights. One may get the impression that in order to defend the existing *status quo*, they are de facto ready to accept the existence of self-employed zombies.

In light of the above considerations, it is possible to put forward a thesis that the functioning of the self-employed zombie is a reflection of a much more serious problem of the Polish labour market. This is confirmed by the experience of the COVID-19 pandemic. It shows that the increase in the number of people receiving unemployment benefits is still treated as the greatest disaster, rather than as an objective phenomenon that requires an appropriate response. In contrast, the fact that the number of self-employed people has not decreased during the crisis is treated as a major success, even though this statistic is largely due to the zombie drip of self-employment.

Directing serious support from public funds to this group during the COVID-19 pandemic, while failing to modernise the system of unemployment benefits, reveals the hidden paradigm of betting on the development of individual entrepreneurship as the main engine of the Polish economy. This is additionally supported by the phenomenon of what we call post-traumatic stress disorder of Polish politicians associated with the experience of mass unemployment in the 1990s. In such an approach, any type of unemployment, even if resulting from objective reasons (e.g. technological unemployment), does not become a challenge for active labour market policies, but a threat that can be prevented by an (illusory) incentive for independent economic activity.

5. *Concluding remarks*

In our opinion the deep attachment of both the public authorities (irrespective of the political orientation of particular governments) and society to the idea that a high scale of self-employment is beneficial as it indicates the development of entrepreneurship constitutes a visible problem for the Polish labour market.

This is manifested in the widely accepted perception that an increase in self-employment means that Poland is moving in the right direction economically and socially. Within this paradigm, it is often emphasized that self-employment as such is more beneficial to society, the economy and the individual than an employer-employee relationship (employment contract). Such a discourse has dominated the Polish labour market debate since the beginning of the transformation, i.e. since 1989. Occasionally there are voices (more numerous than in the past, but still isolated) that such a high scale of self-employment as is currently the case is not beneficial to economic development, as the self-employed persons are less effective than other categories of people present on the labour market. More often than in the past, there are also claims about excessive tax and contribution preferences for the self-employed. However, it is difficult to speak of any breakthrough in the perception of this phenomenon.

In this paper, we did not address the issue of EU regulations on self-employment. It would be interesting to ask the question whether and to what extent they have influenced/are influencing Polish regulations in this area? We will not attempt to answer this question. It seems to us that one could defend the thesis that to a small extent. As you know, freedom of doing business is guaranteed by Article 16 of the Charter of Fundamental Rights. In the Charter we also have guarantees for the exercise of the right of establishment and the provision of services in all Member States (Article 15). The Union's goal of encouraging this form of activity is expressed in Principle No. 5 of the European Pillar of Social Rights. The key point is that the concept of self-employed is not defined autonomously in European Union law. Acts of EU law refer in this regard to the definitions contained in the legal orders of the member states. It is, of course, the case law of the Court of Justice can be pointed to, first of all, the judgment of November 20, 2001 in the case of *Aldona Malgorzata Jana and others v. Staatssecretarissen van Justice* (C-268/99). Of course, the context of this ruling was specific (distinguishing

the provision of sexual services from prostitution in subordination to the person organizing this practice). Nonetheless, the criteria indicated in that judgment: carrying out an economic activity outside of any relationship of subordination, in terms of the choice of this activity, the conditions of work and the conditions of remuneration, on one’s own responsibility and in exchange for remuneration paid to this person directly and in full, are crucial for defining self-employment (compare the judgment of the CJ of December 15, 2005 in the joined cases against Claude Nadin Nadin- Lux Sa (C-151/04) and Jean-Pascal Durre (C-152/04). As we pointed out in earlier discussions, the Polish legislator allows de facto self-employment under conditions of perceived subordination.

The differentiated support situation of both groups of individual labour market actors during the COVID-19 pandemic seems to confirm the thesis about the permanent character of dichotomy between self-employed and employees. Let us emphasise again that the amount of the standstill benefit for the self-employed was higher than the amount of unemployment benefit and was addressed to all the self-employed whose turnover had dropped as indicated, taking the benefit was not connected with the necessity to terminate business activity (the necessity to deregister it) and the benefit was addressed to all the self-employed, both to those who could potentially cease their activity and acquire the right to unemployment benefit and to such self-employed persons who, due to the radically low contribution they paid, could not acquire the right to unemployment benefit even potentially.

In our opinion, such dichotomous solutions applied in the framework of support for the participants of the labour market in relation to COVID-19 have discriminatory features and should be assessed in the light of the Constitution of the Republic of Poland and the principle of “social justice” contained therein. Article 2 of the Constitution indicates that the Republic of Poland is a democratic state under the rule of law, implementing the principles of social justice. With this in mind, the question arises whether the scale of support addressed to the self-employed – even if it was of a virtual nature (an accounting entry in an individual insurance account) is fair in the context of comparability of measures addressed to different categories of persons present on the labour market.

As brutal as it may sound, the COVID-19 pandemic was a missed “opportunity” to purge the Polish labour market of people running businesses but having neither capital nor specific marketable skills or a concept of how

to run a business. It is obvious that the extraordinary situation related to COVID-19 would necessitate reconstruction of various elements of support for all labour market participants (including a radical increase in unemployment benefits). Of course during the pandemic crisis, it seemed necessary to create an ad hoc support for self-employed people who were not entitled to unemployment benefit. However, for axiological reasons it should be lower than the latter one financed after all by the person previously paid contribution and not by the government's helicopter money. All this submits us to uphold the thesis of the blind faith of the ruling politicians in the vision of entrepreneurship that will revive even zombies.

Abstract

The paper discusses the nature of the support received by self-employed persons (and those who are parties to so-called civil law contracts) during the COVID-19 pandemic in Poland. The authors point out that the benefit received by such people, the so-called “standstill benefit” (*świadczenie postojowe*) was higher than unemployment benefits. This may raise serious doubts both ethically and from the point of view of the rationality of the functioning of the socio-economic system. In the authors’ opinion, this is due to the blind adherence of successive governments in Poland to the idea of entrepreneurship as a solution to all possible problems and challenges in the labour market..

Keywords

Labour market, COVID-19, self-employed, unemployment, entrepreneurship.

