

PRECARIOUSNESS: THE NEW STAGE OF ECONOMIC DEVELOPMENT OR ECONOMIC PREVALENCE IN THE NEW STAGE?

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Abstract

When we talk about job insecurity, it is essential to analyze the very nature of this phenomenon. This article dedicated to precarious work wants to describe the nature of this phenomenon, using the most common situations in society, the old conflict between market demand and the lack of skilled workers. This conflict is accompanied by risk and insecurity, which strengthens the precariousness of labor relations. So, precariousness has, in addition to the legislative component, a psychological component that can generate various dysfunctions and long-term repercussions.

Keywords: precariousness, economic development, labor law, work.

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1. Introduction

The new world is obviously marked by precariousness. This phenomenon appears in various forms on the labor market. Employers use a variety of forms of work that allow them to be creative while exploiting legislative gaps and insecurity in order to increase profit and competitiveness in the labor market.

The phenomenon of precariousness can be investigated starting from the analysis of the causes and circumstances that generated major changes in the labor legislation and that led to the decrease of the use of the standard form of the employment contract.²

The reality is that it cannot be called a single factor that led or leads to the emergence and / or maintenance of the phenomenon of precariousness, but we must consider a complex of circumstances that create a strong sense of insecurity and instability among workers.

When we talk about job insecurity, it is essential to analyze the very nature of this phenomenon.

This part of the study dedicated to precarious work wants to describe the nature of this phenomenon, using the most common situations in society, the old conflict between market demand and the lack of skilled workers. This conflict is accompanied by risk and insecurity, which strengthens the precariousness of labor relations.

The phenomenon of precariousness cannot be analyzed without taking into account its "niche" nature and some easily identifiable risks. It is quite clear that the root of these "special" aspects of precariousness, together with the associated risks, are rooted in domestic and European legislation.

Marginalized workers could be defined as representatives of vulnerable groups of workers, such as women, immigrants, salaried workers, young people, workers without employment contracts, groups of workers of different minorities and ethnicities, ages, victims of human trafficking, as well as any other workers whose work does not comply with the legal norms in force.

These representatives of marginalized groups may be workers who perform work on the basis of fixed-term contracts, employment contracts containing irregularities, seasonal employment contracts, so-called "zero-hour" employment contracts, all of which may increase the feeling of instability, risk etc.

Another result of the combination of these marginalized workers with discriminated workers would be the emergence of difficulties resulting from cultural differences, lack of motivation and poor efficiency in the workplace, difficulty in accessing organizational resources, access to development opportunities and even conflicts at work and family.

So, precariousness has, in addition to the legislative component, a psychological component that can generate various dysfunctions and long-term repercussions.

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² Mihaela Emilia Marica, *Contractele de munca atipice*, Universul juridic, 2019, p. 42.

Risk, one of the aspects directly associated with the idea of precariousness, is considered to be an indicator of danger, of future accidents, an uncertain aspect, independent of the human will, but which causes various effects on the person.³ These risks may include retirement age, temporary or permanent incapacity for work, work disabilities, accidents at work or any illness related to work, unemployment, lack of any family income or severe/serious life situations.

The rate of these risks can only be calculated with approximation, for example: a person with disabilities can find a job and interact with the world around them, while another person cannot work for multiple reasons, which would lead to its marginalization and consequently to precariousness.

In this sense, the risk is not completely unpredictable, but for a social analyst, the question that arises is what increases the frequency of these situations that turn social risk into exclusion of the person? This aspect is really unpredictable, because it depends on many factors.

Other definitions of risk refer to risk understood as insecurity. Insecurity most often occurs in the context of instability, insecurity and technological change.

The link between risk and insecurity is quite common, the risk being measurable and insecurity not. However, it is not possible to determine the wide range of causes of risk and insecurity, nor the possibilities by which success can be achieved in a particular activity, since very few aspects are known about these issues.

Even if the definition of precariousness has already been outlined, and its origin already identified, its characteristics require continuous analysis. The precariousness presented of a new phenomenon is a crucial question whether it is considered a stage of economic development of the labor market or a new facet of the economy against those people who are too weak to negotiate more advantageous positions?

As the phenomenon of precariousness could not be understood until now, I noticed that it is related to a new economic reality - generically called "gig economy" (freelance workers etc.).

2. Factors that influenced the emergence and spread of precarious forms of work

A study dedicated to the analysis of atypical employment contracts⁴ shows that "economic and social changes since the mid-1970s, following the process of global development, have had significant effects on the structure and dynamics of the standard employment contract. European states have been forced to cope with the high level of unemployment and, implicitly, the imbalance that has been created on the labor market, the economies being unable to generate full-time jobs for all employees."

On the other hand, shows the same author⁵, the globalization of markets and the development of labor relations have increased the level of competitiveness, unpredictability and insecurity among companies. Therefore, in response to these conditions, only companies that have been able to adapt to these changes, that have become innovative and that have implemented flexible work programs, have been able to survive and cope with the growing demands of customers.⁶

An article recently published by professor Raluca Dimitriu states that: "The building of labor law is a very elaborate, baroque one - and, in our works, we often do nothing but attach a new ornament to this building. But what will we do if the very foundation of this edifice — that is, the social relations it regulates — changes? Digitization produces a paradigm shift right at the foundation of labor law. (...)"

³ Barbara Godlewska- Bujok, *Skitecznosc prawa zatrudnienia*, Sejmowe, 2015, p. 29.

⁴ Mihaela Emilia Marica, *op. cit.*, 2019, p. 18.

⁵ Idem, p. 19.

⁶ Without insisting, a very important factor for the success of companies and which makes a difference at a competitive level, is the knowledge held by a person, who has changed the nature and perception of employment relationships. This knowledge is in fact a good at the discretion of the employee, who decides whether and in favor of each employer uses his expertise. Compared to the traditional rigid work relationship between employer and employee, the employer is currently expected to be willing to invest in professional qualification courses as well as career development opportunities. See Lubica Bajzikova, Helena Sajgalikova, Emil Wojcak, Michaela Polakova, *Are Flexible Work Arrangements Attractive Enough for Knowledge-intensive Businesses?*, *Procedia - Social and Behavioral Sciences* 99, p. 771-772.

Digitization leads to the disappearance of some manual jobs, but it does not, in itself, lead to an increase in unemployment, because as some jobs disappear, others appear, which involve the use of information technology. Sometimes, digitalization challenges workers to a rather entrepreneurial attitude, in the sense that it causes them to manage their careers the way an entrepreneur organizes his business.

There are two categories of digital workers: „some who work under an employment contract, (and here we have either telemarketers or workers who use information technology, but who do it from the employer's office), no matter where they work, they are employees, another category of digital workers is formed by those who work on digital platforms without necessarily having an employment contract, and whose legal relationship, although marked by the subordination that usually characterizes the employment relationship, is more difficult to legally frame (as is the case precarious workers).”

Extrapolating, the conclusions of the previously presented analyzes, regarding precarious work, we can speak, without denying, of the influence of globalization on the phenomenon of precarious work, of the development of technology and digitalization that determined the development of precariousness.

Another particularly important aspect of precarious work has been the feminization of the labor force in recent decades, especially after 1960, when a large number of women entered the labor market.

The increase of women's employment increased with the development of the tertiary sectors of the economy, respectively the development of the industrial sector and the service sector, being associated with the drastic reduction of the male population in the postwar period, which opened new job opportunities for women.⁷

Despite these social changes, the responsibilities towards women attributed to women in industrial society have not diminished, but have become an additional obligation, while generating the premises for unequal competition between women and men in the labor market.⁸

There is no doubt that the assumption of this dual role by women, as opposed to men, has given rise to many controversies and indirect gender discrimination in terms of, for example, participation in the labor market.

Precariousness was born as a consequence of the existence of atypical jobs, a phenomenon that was mainly reflected in the sphere of social protection and the level of protection offered by labor legislation⁹.

Given that women constitute a majority in these precarious forms of work, the creation of a solid system of social protection for precarious workers is absolutely necessary.

Insufficient social protection for precarious workers undermines the principle of gender equality in the labor market (although there is currently both doctrine and jurisprudence on this subject).

The strong gender influence associated with new forms of precarious work may be one of the effects of the European principle of flexicurity, whose active policy has been to promote employment by creating flexible, temporary and part-time jobs. This policy has resulted in attracting more women to the workforce, as they have been accessed primarily by women.

We can therefore say that the gender difference has contributed to the development of the phenomenon of precarious work.

Another key factor in those linked to the emergence of new forms of precarious work that create precariousness is the legislative and institutional environment of each Member State as the legal perspective differs from one state to another.

It is obvious that there is a close link between the degree of involvement of States at the legislative level and the development of the precariousness phenomenon.

⁷ Mihaela Emilia Marica, *op. cit.*, 2019, p. 17.

⁸ *Idem*, p. 17.

⁹ Precariousness involves several dimensions: in terms of low income, low level of social protection and safety, low level of qualification. To be seen J. Buelens, J. Pearson, *Standard work: an anachronism?*, Intersentia, 2012, p. 23.

The reduction of industrialization, the digital revolution and the increase of the globalization of trade and the financial field have reconfigured the European labor market.

Recent studies of the structure of globalization in recent years have led to the conclusion that one of the most widespread and growing problems is the duality of the labor market. This aspect would translate into the division of the labor market into two, on the one hand, permanent employees, and on the other hand "precarious employees" and/or unemployed.

According to a document issued by the European Parliament in 2016, precarious employees have the highest risk of precariousness, as a direct result of the phenomenon of digitalization and the gig economy.

Despite all the social and economic implications of job insecurity in the European market, to which is added the lack of internal regulations, "precarious work" cannot be treated as a stand-alone concept in European legislation.

However, with the regulation of abuse of rights in labor relations, which has led to precarious working conditions, including the emergence of atypical employment contracts, the recently adopted European Pillar on Social Rights has taken a step forward in realizing the importance of maintaining the European social model.¹⁰

In any case, given the ambiguous regulation of this document, it is not enough per se to give effectiveness to the protection rules on precarious work in Europe.

In essence, when trying to define a phenomenon of precarious work, more should be considered than the purpose of the employee-employer relationship, but should be considered if there are incidents and other aspects related to work: social security and so on.

The latter aspect, although seemingly unrelated to the concept of precarious work, can be a serious component of precariousness.

The gaps in European legislation regarding the definition of precarious work, together with the centralization of the legislative model on standard and non-standard forms of work, have left aside the concept of precarious work, which has been found in academic debates since the 1960s.

The European agenda of the 1990s focused, instead, on observing the general conditions of precariousness, instead of trying to limit the negative consequences of the rigidity of labor legislation, facilitating the conclusion of a variety of employment contracts.

This idea was presented at the European Commission "Green Paper" in 2006, when the modernization of labor legislation was brought into discussion, to meet the challenges of the 21st century of non-standard labor relations, encapsulated in the concept of precarious work.

In the "Green Paper", those precarious workers were characterized as those workers who occupy the "gray area" of work, where the protection of labor and social rights are significantly reduced, thus giving rise to a situation of insecurity regarding the future employment work and consequently including the employee's private life.

In the context of the economic crisis of 2008, the policy of non-regulation of precarious work and/or additional protection of the employee was strongly preached. Consequently, the European Commission has promoted a series of measures and legislative reforms in order to protect the interests of employees, etc.

What was followed by this approach was a revival of the labor market by creating new jobs, in parallel with regulations and legislative adjustments, but in reality, after the economic crisis, precarious employment situations have increased substantially.

Recently, however, the discourse and direction of European policy has changed from "employee safety" to "quality jobs", an issue that has raised the issue of precariousness, as a concept in its own right.

In the "Annual Growth Survey 2017", the Commission recognized that precariousness, the division of the labor market and its impact on productivity must be analyzed in this social economic

¹⁰ European Commission (2016a) Communication from the E.C to the European Parliament, the Council, the Economic and social Committee and the Committee of the Regions, Launching a consultation on a European Pillar of Social Rights COM 2016, 127 final. Strasbourg.

context, so as to reduce the negative impact on domestic demand and profit¹¹.

Consequently, in the Commission's view, the creation of new jobs in the context of a flexible labor market must come with legal instruments that make the transition to permanent employment contracts, even in the context of a flexible market.

The European Parliament has also tried in its recent resolutions to limit the negative impact of the economic crisis in terms of rising unemployment, poverty, precariousness and inequality in employment.

From the point of view of the European Parliament, the improvement of living conditions means the improvement of standard working conditions, the improvement of the labor force, of legal regulations, etc.

In the European Parliament's view, a real problem is precarious work, which denotes that type of work which does not comply with international or EU standard rules and which does not provide sufficient resources to ensure a decent life or adequate social protection.

Consequently, precariousness is a social phenomenon with multiple facets, which depends not only on the type of employment contract concluded, but also on the following factors:

- Lack of job security or reduced job security, which usually occurs in the case of part-time or no-time employment contracts, or unclear or suddenly changing work tasks;
- Rudimentary protection of social rights in case of dismissal or resignation;
- Low wages, insufficient to ensure a decent standard of living;
- Lack or insufficiency of social protection;
- Lack or insufficient protection in case of discrimination;
- Lack or insufficient career prospects;
- Low level of collective rights;
- A working environment that does not ensure standard health and safety conditions.

It should be noted that the focus on reducing labor market segmentation/division has been emphasized in the new Council of Europe instructions, which emphasized the importance of prioritizing and setting clear directions for labor policy for all EU member states as a common strategy for 2020.

The last instruction noted was that of measures to increase flexibility and safety at work, which must be balanced and mutually supportive.¹²

Finally, the EU has increased the protection of social rights for precarious workers by adopting the "European Pillar on Social Rights".

This act, expressly recognizes that precarious work is an economic and social problem of the EU and the adoption of a normative act regulating a minimum of social and safety rights, is the starting point for this new paradigm.

The European Pillar on Social Rights was adopted on 17.11.2017 by the EP, the Council and the European Commission and established 20 key principles on equal opportunities and access to the labor market, fair working conditions, social protection, etc.

In essence, the European pillar approves some rights of European citizens, already established by the European IQ and lays the foundations for new rights that must be implemented and that require legislative regulations.

The purpose of this normative act is to combat discrimination and to promote fairness and social equality between women and men, between generations, dialogue between employee and employer, protection of children's rights and human health.

Both the principles and the rights regulated in the European Pillar have a rather ambitious goal, in the sense of a successful market economy, a fair society in terms of working and living conditions, in all EU member states.

¹¹ European Commission Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank: Annual Growth Survey 2017, Brussels, 16.11.2016, COM (2016) 725 final.

¹² Recommendation for a Council Recommendation of 27.4.2010 on board guide-lines for economic policies of Member States and of the Union part I of the Europe 2020 Integrated Guidelines, COM 2010, 193 final, 21.

In this context, the pillar addresses social changes, changes on the labor market, in light of the emergence of new types of work, derived from the new digital and technological revolution.

At the same time, the European pillar is the first official document that explicitly addresses the precariousness of work, adding to the agenda the challenges that the "modern world" faces.

The analysis at European level shows that the purpose of EU regulations is to provide equal treatment to employees with atypical or non-standard employment contracts with those employed with standard employment contracts, in order to prevent the spread of the precariousness phenomenon at European level.

In the current context, an effective measure to combat precariousness would be the adoption of the Directive on protection against precarious work, which regulates equal treatment between employees, protection against abuse and facilities for access to typical employment contracts.

The practical implementation of this idea, however, is problematic, as it would attract political challenges. But these measures can be implemented by hiring the social partners, either collectively or in part.

So, the most effective measure remains the transposition of the principles and rights of the directive into the national law of each Member State.

By explicitly regulating the abuse of rights in employment relationships that leads to precarious working conditions, the abuse of atypical employment contracts, a step forward will be taken in terms of awareness of this phenomenon of precariousness.

Although at the moment, the legislation does not offer a uniform regulation and protection regarding precariousness, studies show that it would be possible to introduce, at least at European level, mechanisms for regulating and counteracting the phenomenon of precariousness, as at this time these workers are excluded from the protection offered by labor law.

3. Conclusion

In the context of accelerated economic change, in the absence of clear legislative provisions and clear social protection, employment status is only one of the many complex precariousness problems facing workers in the current economy. The new technology may be liberating for consumers and workers, but it does not provide a valid excuse to evade the law.

Legislative clarification is needed to ensure that workers are protected by law. It is important for those working in the current economy to have opportunities to contribute to pensions and to contribute to social security and tax contributions in a similar way to other workers employed under traditional employment contracts.

Expanding and deepening the scope of labor protection, tax classification and social security reforms and imaginative approaches to licensing regulation can give platforms the freedom to operate in fair competition with established suppliers, while guaranteeing decent work.

Bibliography

1. Barbara Godlewska- Bujok, *Skitecznosc prawa zatrudnienia*, Sejmowe, 2015.
2. J. Buelens, J. Pearson, *Standard work: an anachronism?*, Intersentia, 2012.
3. Lubica Bajzikova, Helena Sajgalikova, Emil Wojcak, Michaela Polakova, *Are Flexible Work Arrangements Attractive Enough for Knowledge-intensive Businesses?*, Procedia - Social and Behavioral Sciences 99.
4. Mihaela Emilia Marica, *Contractele de munca atipice*, Universul juridic, 2019.
5. European Commission (2016a) Communication from the E.C to the European Parliament, the Council, the Economic and social Committee and the Committee of the Regions, Launching a consultation on a European Pillar of Social Rights COM 2016, 127 final. Strasbourg.
6. European Commission Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank: Annual Growth Survey 2017, Brussels, 16.11.2016, COM (2016) 725 final.
7. Recommendation for a Council Recommendation of 27.4.2010 on board guide-lines for economic policies of Member States and of the Union part I of the Europe 2020 Integrated Guidelines, COM 2010, 193 final, 21.