THE RIGHT TO WORK AND PRECARIOUS WORK

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Abstract

This article aims to bring to the fore the emergence of the phenomenon of precarious work, starting from the legislative enshrinement of the fundamental right to work. The need for this analysis is the result of accelerated social and economic change, and employment status is only one of the many problems facing workers in the economy, since ancient times, until now. Work is an essential factor for the existence of a society, which is why it is included in the category of fundamental rights, being enshrined in the country's Constitution itself. It could also be said that the right to work is integrated into the category of natural rights, as it gives expression to the human right to live as a result of obtaining the necessities of life. Precarious work has emerged in the context of economic development and growing job insecurity. Precarious work occupies a special place in the European work model, so it is important to analyze the reasons behind the emergence and spread of this phenomenon and also outlining a definition and its essential conditions, a concept that will become a separate legal institution.

Keywords: *the right to work, precarious work, worker, economic development, atypical form, source.*

JEL Classification: K33, K34

1. Introduction

In the context of accelerated social and economic changes, employment status is only one of the many problems facing workers in the economy, from ancient times to the present.

But what is work? This concept has been defined as a specific activity, exercised manually or intellectually, in order to produce the goods necessary to meet people's needs[2].

"Given the importance and value of labor in modern societies, the state power has also been concerned with adopting appropriate legal provisions for its regulation so as to achieve maximum efficiency, to best harmonize the interests of capital with those of labor, to ensure the necessary protection for those who provide it."[3]

Work is an essential factor for the existence of a society, which is why it is included in the category of fundamental rights, being enshrined in the Basic Law itself[4].

It could also be said that the right to work is integrated into the category of natural rights, as it gives expression to the human right to live as a result of obtaining the necessities of life.

From a legal point of view, the right to work has two meanings. According to Constitutional sense, the right to work includes the freedom to choose a profession, trade or occupation, place of work - in or out of the country, social protection of labor, wage employment, the right to collective and individual bargaining, stability[5]. In a narrow sense, the right to work includes freedom of employment and stability in employment, under market economy conditions.

2. A brief history of fundamental rights

People have always had a concern for guaranteeing fundamental rights and freedoms. In this sense, they have grouped into various forms of association, formal and informal, in order to obtain the defense of their rights, which would translate today with the existence of civil society.

The state has been and is the only one that can guarantee the exercise and respect of the

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[2] Ș. Beligrădeanu, I.T. Ștefănescu, *Dicționar de drept al muncii*, Ed. Lumina Lex, Bucharest, 1997, p. 106. In the same vein, see Al. Țiclea, *Tratat de dreptul muncii*, Ed. Rosetti, Bucharest, 2006.

[3] S. Ghimpu, Al. Țiclea, *Dreptul muncii*, ed. 2, 1994, Casa de Editura Sansa, Bucharest, 1994.

[4] Not only does the Romanian Constitution enshrine the fundamental right to work, but it is also taken from Art. 23 of the Universal Declaration of Human Rights states and adopted by many states that have adhered to this universal declaration.

[5] Al. Athanasiu, L. Dima, *Regimul juridic al raporturilor de munca in reglementarea noului Cod al muncii,* Partea I, Pandectele romane, 2003.

fundamental rights and freedoms of citizens, through a normative framework based on unanimously recognized principles and values.

The principles of organization and leadership of a state are prior to any Constitution, they represent the foundation of constitutional identity, even a priori their registration in the Constitution, as it enters the collective consciousness of a society through customs and usages.[6]

The development of civil rights issues is, on the one hand, a natural consequence of the expansion of the role of the state and its evolution in the contemporary era and, on the other hand, the result of socio-economic and political claims of disadvantaged social strata[7].

Fundamental rights and freedoms, regulated and enshrined in the fundamental laws of the rule of law, which make up human rights, arose as a result of the struggle of various social categories against feudal absolutism[8].

Thus, the first text mentioned in this regard was the Magna Charta Libertatum, dating from 1215, proclaimed by John without a country, an act that lists the privileges granted to the church, nobles and merchants.

Although in terms of the protection of the rights of ordinary citizens, this document contained very little or no mention of their rights, the document is important because, for the first time in history, the king was limited by law and the principle that no free man he will be arrested, imprisoned, exiled and will not be harmed, except on the basis of a legal trial.

Reference to the history of human rights is the United States Declaration of Independence (adopted by the US Congress in 1776), as well as the Declaration of the Rights of Man and Citizen of the French Revolution of 1789[9].

Since the second half of the nineteenth century, there has been a movement for the economic emancipation of the disadvantaged in Europe, and under this pressure, the rulers of more and more countries will proceed to recognize rights in favor of the working class[10].

In this sense, the trade union activity in Germany, England and France will be noticed during this period.

Subsequently, the twentieth century, with particular emphasis on the post-World War II period, saw a profound change of vision and a spectacular evolution of regulations dedicated to the consecration, defense and guarantee of fundamental rights and freedoms. This is also the time when international bodies and structures emerged that promoted and protected fundamental rights and freedoms, such as the UN, the European Commission, the Inter-American Commission on Human Rights.

Thus, in 1948, the UN General Assembly adopted the Universal Declaration of Human Rights, a document that constitutes the first act of public international law containing an enumeration of rights recognized to any person[11].

Thanks to this document, we have a human rights institution, expressed functionally and organizationally, both universally and nationally[12]. It should be emphasized that the repercussions of this document have spread both globally, regionally and nationally.

Thus, worldwide, following the publication of the Universal Declaration, the Covenant on Economic, Social and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1976) were adopted.

At regional level, the following have been adopted: European Convention for the Protection of Human Rights, American Convention on Human Rights, African Charter on Human Rights, Arab Charter, Charter of Fundamental Rights. At national level, this issue has been transposed by enshrining constitutional rights and guarantees.

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[6] Andreea Stanciulescu (Alexe), *Puterea Constituanta. Teoria si practica puterii constituante*, Ed. C.H.Beck, Bucharest, 2019, p. 161.

[7] Cristian Ionescu, *Tratat de drept constituțional contemporan*. 3rd ed., C.H. Beck, Bucharest, 2019.

[8] C. Bîrsan, *Convetia Europeana a drepturilor omului: comentariu pe articole*. Vol. I, C.H. Beck, Bucharest, 2005.

[9] M. Safta, *Drept Constituțional și instituții politice. Vol I – Teoria generala a dreptului constitutional. Drepturi si libertati,* Ed. Hamangiu, Bucharest, 2020.

[10] Ibid., p. 6

[11] C. Bîrsan, *op. cit.,* p. 129.

[12] I. Muraru, *Perspective ale Drepturilor omului in secolul XXI* in *In honorem Corneliu Bîrsan*, Ed. Hamangiu, Bucharest, 2013.

The state and the legal norms that make up the entire legal system are those mediators who ensure the citizen the manifestation of these fundamental rights, to prevent the generation of abuses, to ensure respect for these rights, to ensure human freedom. But freedom does not mean being allowed to do anything!

Freedom means doing everything that does not harm him, so the exercise of these natural human rights has only one limit, ensuring the use of the same rights for other citizens. These limits can only be determined by law.

Fundamental rights and freedoms are based on the idea of freedom and equality and even more, the idea that a social contract is concluded between the citizen and the state, ie a legal relationship that generates rights and obligations for both parties.

The literature enshrines the idea that fundamental rights are natural rights, which are exercised implicitly from birth, however it should be noted that for their exercise requires compliance with certain rules of conduct, social norms, which the state in as their guarantor, imposes them.

A major importance in substantiating the theory of fundamental rights and freedoms is the substantiation of new tools and methods for exercising them. Today, the constitutional doctrine is concerned with finding the justification and legitimacy of citizens' rights, with outlining new practices for expanding their field of action, with finding new methods and tools for exercising and guaranteeing them[13]. Moreover, it is possible for a citizen of a state whose rights have been violated to apply to international bodies, such as the European Commission of Human Rights.

Also, at national level, special importance is given to the role of the courts in defending the values contained either in the declarations of rights or in the constitution.

In connection with the theoretical (philosophical) or practical (political, legal, sociological) substantiation of fundamental rights and freedoms, we reiterate the aspects presented above, in the sense that it was concluded that they are inherent in the human being, the state being obliged to recognize them, to guarantee them and to protect the individual from any violation of his rights[14].

The realization of fundamental rights, recognized by law, presupposes the obligation of the state to stimulate the economic progress of the society, so that the citizen benefits from the material conditions corresponding to the exercise of the recognized rights, and on the other hand, the obligation of the state to protect itself legally. to defend the rights of citizens and to sanction their violation[15]. This prerogative reveals that states voluntarily give the whole of civil rights and freedoms an indisputable constitutional value[16].

Regarding the legal nature of fundamental rights, the doctrine states that the main human rights and freedoms enshrined in the constitution are subjective civil rights.

The notion of fundamental rights is a category of legal science that designates their content and fixes them in relation to the other legal and contractual rights that an individual enjoys. For this reason, the unanimous conclusion of theorists is that fundamental human rights are subjective rights, under which their holders may conduct a certain conduct and ask others to conduct correlative to their right, under the sanction provided by law, in order to capitalize on a personal and legitimate interest.

Given that fundamental rights are subjective rights, the state and public authorities have an obligation to respect them and not to violate them. The fundamental character of rights derives from their social importance, from the political character of the citizenship relations from which they derive and last but not least, from the fact that they are included in the fundamental law of the state.

The protection and guarantee of fundamental rights are vital for the civic status of the individual, being essential for his life and dignity, especially in the context in which international

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[13] If in the eighteenth-century governments were concerned with the proclamation of fundamental rights, in the twenty-first century, the preoccupation of rulers focuses on finding new constitutional and political ways to guarantee the real right to defense of the person whose fundamental rights have been violated, either before national or international courts. Cristian Ionescu, *op. cit.*, p. 313.

[14] The only exception is nihilistic theories that converge on the denial of fundamental rights as a consequence of their subjective quality.

[15] C. Ionescu, *op. cit.*, p. 316.

[16] C. Debbash, *Droit Constitutionnel et institutions politiques*, Paris, 1983.

documents enshrining fundamental rights have priority in the legal order of states.

Although fundamental rights are vital to the condition of the individual, their exercise may be restricted under certain conditions, a situation which is not translated into the restriction or suspension of the right as such, but only of the exercise thereof. The restriction of the exercise of certain rights is provided by the Romanian Constitution itself in art. 53, is limited in time, proportionate to the reasons justifying it and imposed by expressly established circumstances[17].

Last but not least, it should be noted that there are no rights without duties, and this principle also applies to fundamental rights.

Thus, the right of the citizen to claim from the state a certain conduct corresponds to the obligation of the state to comply. At the same time, the state has the right, in turn, to ask the individual to comply with certain duties.

Only the state is entitled to ask the citizen to comply with certain obligations, just as only the citizen has the right to demand that the state recognize and guarantee his fundamental rights. The content and main objective of the fundamental duties are diverse, each state establishing, according to the realities and social requirements existing at a given moment, the fundamental duties of the citizens.

From reading any constitution, it follows that the state is not the only beneficiary of the observance of fundamental duties, the final beneficiary is the citizen himself. In fact, the observance of the duties by the citizens, allow the state to act to protect the interests of its citizens.

In conclusion, it must be emphasized that the notion of fundamental duties means the set of fundamental duties that the state establishes in the constitution at the expense of its citizens.

Therefore, we can draw a first conclusion, namely that it is essential for good governance to respect the fundamental rights of citizens, regardless of the category of these rights, being essential for ensuring democratic governance.

The continuing concern for the recognition and guarantee of fundamental rights practically ensures the evolution of the rule of law, which is forever anchored in the social, economic and legal issues of the individual.

At the end of the 18th century and in the 19th century, under the influence of the Declaration of the Rights of Man and of the Citizen of 1789, emphasis was placed almost exclusively on civil and political rights: equality, freedom of opinion and thought, freedom of religious beliefs, right to resist repression, the right to will, assembly, association, the right to private property, etc.

At this stage, public rights and freedoms were institutionalized, initially in declarations and later in the constitutions, thus being guaranteed by the state.

The content of fundamental rights was not very extensive, nor were the actual rights many in number[18], but in essence they marked the political and social rise of the bourgeoisie interested in removing forms of dependence specific to feudalism, legal inequality between people and creating political levers that would allow him access to power, to the detriment of the feudal nobility[19].

Starting with the second half of the 19th century, in Europe, against the background of an accentuated industrial development, there is an increasing social movement for the emancipation of disadvantaged blankets. This progressive movement for emancipation is ideologically supported by the two Socialist Internationals.

Under pressure from labor movements, rulers in more and more countries are beginning to make economic and social concessions to the working class by accepting union demands. Trade unions in England, France, Germany and the United States played an important role in this regard.

After the First World War, under the influence of economic progress and the general diversification of economic activities, but also as a reward for surviving fighters, in various constitutions, certain economic and social rights are proclaimed: the right to work, adequate pay, leave, labor security, social equality, freedom of association and association, the right to strike, the

[17] As is the situation of establishing the state of emergency and restricting some fundamental rights in the case of the Covid pandemic.
[18] The 1789 Declaration had 17 articles, and the 1791 US Bill of Rights had 10 ratified amendments.
[19] C. Ionescu, *op. cit.*, p. 309.

right to a pension, etc. In this way, political democracy has been associated with economic and social democracy.

Also, a novelty is the fact that from a political point of view, there is a universal expansion of universal suffrage, with the consequence of increasing the electorate and intensifying the role of political parties.

After World War II, greater emphasis was placed on economic and social rights, especially in Marxist doctrine, which insisted on the importance of civil rights.

In recent decades, new rights have emerged, the so-called third generation rights: the right of nations or peoples to self-determination, the right of the people to exploit natural wealth, the right to the environment, the right to racial or religious non-discrimination, the right to life, peace, education, specific rights of young people, children, disadvantaged people, the right of citizens belonging to a national minority to forms of development and affirmation of personality from the perspective of culture and traditions, including mother tongue in the legal framework of the state where they live and live with the majority.

From a simple reading of these rights, it can be deduced that they indisputably have an individual side.

Another segment of the human rights issue is the international protection of war fighters, including protection against terrorism.

The constitutional regulation of public rights and freedoms in the eighteenth and nineteenth centuries, which was based on the philosophical thinking and reflections of the sixteenth and seventeenth centuries, was continued internationally, through the agreement of states, civil rights and freedoms. Human rights can be found in all international documents.

Moreover, international human rights probation and cooperation structures have emerged, such as the UN, the Council of Europe, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights.

General human rights standards have been institutionalized through international documents with a universal vocation, such as the Universal Declaration of Human Rights adopted by the UN on 10.12.1948 and the two International Covenants adopted in 1966 or documents adopted by the Council of Europe, either in instruments adopted at meetings of the Confederation for Security and Cooperation in Europe (from the Final Act of the Helsinki Conference signed on 1 August 1975 to the Charter for the New Europe adopted in Paris in November 1991[20]).

In December 2000, the European Parliament announced the adoption in Nice of the Charter of Fundamental Rights, which contains 54 articles, and on 04.11.2000, Protocol no. 12 of the European Convention on Human Rights, which prohibits all forms of discrimination, has been opened for signature by the Member States. The protocol was signed by 25 member states, including Romania.

3. The concept of work

With the constitutional enshrinement of the right to work, special attention was paid to this activity, and in 2016, the European Parliament adopted the definition of labor provided by the International Labor Organization, inviting Member States to take into account the following criteria in order to establish a relationship Employee, Employer:

- "work is carried out in accordance with the instructions of another party and under its control;
- work involves the integration of the worker in the organization of the enterprise;
- work is carried out exclusively and mainly for the benefit of another person;
- work must be performed personally by the worker;
- work is carried out during specific working hours or at a place of work indicated by the party requesting the work or at a place agreed with it;
- work has a defined duration and has a certain continuity;

[20] C. Ionescu, *op. cit.*, p. 312.

- work involves the availability of the worker or involves the provision of tools, materials and equipment by the party requesting the work;

- the worker is paid regularly, this being his only or main source of income, and payments could also be made in kind, such as food, accommodation or transport;

- the worker has rights such as the weekly rest period and annual rest leave"[21].

Obviously, the concept of decent work has been defined as a natural consequence, which sets out the conditions that an employment relationship (a contractual relationship) must meet in order to meet international standards, so that work can be done freely, fairly, safe and dignified. Work whose level falls below these standards must be considered as violations of the human rights of the affected worker, and it must be considered that, in this case, we are not dealing with a free employment relationship.

In the ILO's view, decent work summarizes people's aspirations during their "work" means access to a productive occupation that generates a fair income, job security, social protection for the family, better prospects for personal development and integration. social, to create that freedom that allows its subjects to express their opinions, to organize and participate in making those decisions that influence their lives, and in addition, equal opportunities and treatment for all.

In 2015, ILO estimated that more than 600 million new jobs would need to be created by 2030 and that working conditions for 780 million people needed to be improved. Based on this idea, it was concluded that economic development should not only be an end in itself, but that concentrated action is needed to create new jobs for decent work[22].

In the historical context of the last decade of the twentieth century and the first decade of the twenty-first century, when a large part of European economies, driven by technological change, experienced a profound restructuring, a dramatic relocation of energy resources was triggered. From one sector to another, and millions of workers have thickened their ranks.

We are currently facing a new modernity, a society built around a post-traditional order, in which the individual is subjected to the influence of an increasingly broad, global social environment, dependent on the consequences of events and influences. removed, which affects him as if they were very close to him.

The worker became nomadic, dislocated by his close horizons, was disconnected from the known geography, and from the experience of previous generations, from the need for flexibility of work.

Workers are forced to accept geographical and functional mobility (the change of profession), as they have never been forced before, the flexible organization of work forces them to a continuous change and the need to take risks.

4. Precarious work phenomenon

In this context, the studies analyzed the emergence of the phenomenon of precarious work as a result of rampant economic changes, to provide a legal framework for this new reality, whose consequences are seen not only legally, but also economically and socially.

Etymologically, the origin of the term precariousness first appears in French literature, around 1970, when this name was associated with poverty, with a lifestyle below the level of decency, and later, in connection with the relations of the work.

Precariousness was defined, in the first phase, as synonymous with the insufficiency or absence of a certain future at work, the absence of career prospects, insufficient or irregular income, and health problems caused by work, lack of stability in general[23].

Later, the authors argued that precariousness is in fact the root of all social problems[24].

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[21] See art. I point 1 of the European Parliament Resolution (2016/2221(INI))

[22] A. Popescu, *Dreptul internațional al muncii*, Ed. C.H. Beck, Bucharest, 2008, p. 39-45.

[23] A first definition of precarious work appears in the writings of Agnes Pitrou in 1978 – *La vie precaire, des familles face a leur difficultes.* Etudes CNAF, Paris.

[24] This point of view, according to which precariousness is first and foremost a social problem and not a legal one, appears in 1998 in the author's writings Boudeau P – *La precarite este aujourd hui partout. Contre-feux*, Paris, France.

An European Commission study published in 2012[25] on precarious work shows that in order to understand and define the phenomenon of precarious work, it is important:

- Gaining a better understanding of the spread of precarious work and its role in the economy,
- Analysis of the measures taken over the years by the Member States of the European Union in relation to this phenomenon,
- Conceptualization by the Member States of the phenomenon of precarious work, by reference to standard forms of work,
- Identify fundamental, basic rights for all workers in the Member States.

Precarious work is one of the main concerns for contemporary labor law[26]. The need to closely analyze the notion of precariousness in labor relations has emerged in the context of globalization and automation, phenomena that led to the closure or replacement of traditional work models in the first decade of the 21st century and led to increased flexible forms of work.

Precariousness usually arises in two situations: on the one hand, in developing countries with an atypical/informal economy (with workers who do not enjoy the protection of a standard employment contract) and on the other hand, in highly developed countries, which approach a custom economy - gig economy[27], also with an atypical economy, but in a sophisticated way, where labor law can't keep up with the development and changes of the economy.

The European Parliament has defined precarious work as "a form of employment which does not comply with EU, international and national rules and standards and/or which does not provide sufficient means for a decent standard of living or adequate social protection", noting that the risk of precariousness depends on the type of employment contract, but also on the following factors:

- insufficient or non-existent job security due to the non-permanent nature of work, such as involuntary and often marginal part-time contracts, and, in some Member States, unclear work schedule and shifting workloads cause of work on demand;
- rudimentary protection and lack of sufficient social protection in case of dismissal;
- insufficient remuneration for a decent living;
- non-existent or limited social protection rights;
- protection against non-existent or limited discrimination;
- non-existent or limited prospects for advancement in the labor market or for career development and vocational training;
- low level of collective rights and rights limited to collective representation;
- working environment which does not comply with the minimum health and safety standards.

This has promoted the first European definition of precarious work, which, although not mandatory for Member States, has the power of a formal European Union recommendation, which will certainly serve future EU regulations as a starting point.

5. Conclusion

The literature has also tried to provide a definition of precarious work, but this phenomenon,

[25] Sonia McKay, Steve Jefferys, Anna Paraksevopoulou, Janoj Keles, „Study on Precarious Work and Social Rights carried out for the European Commission" VT/2010/084.

[26] Izabela Florczak, Jeff Kenner and Marta Otto, *Precarious Eork and Labour regulation in EU: current reality and perspectives. Precarious work The Cjallenge for Labour Law in Europe*. Edward Elgar Publishing, UK, p. Xi.

[27] Gig Economy = custom work. The concept of working anytime, anywhere - that's what it would mean for employees "gig economy" or sharing economy. In Romanian, the closest correspondent to the original meaning would be economy on demand or work on demand. But, no matter how we choose to call it, it is an increasingly widespread trend worldwide that is also entering the Romanian market more and more successfully and which will fundamentally change the way we do business, for example. to hire and work. The "gig" or sharing economy is defined as an online market where demand meets supply, respectively service providers / freelancers meet future customers. The first services of this kind to emerge and spread successfully were transportation and food orders (Uber, Lyft or Grub Hub had the greatest impact in America). This was followed by space rentals (Airbnb, CouchSurfing) or various services (Task Rabbit, Gog Walk, Wonolo). And the ones that changed the traditional way of recruiting were the online talent platforms (Upwork, OnForce, Work Market HourlyNerd or Fiverr).

which has been extensively written about, still seems inexhaustible.

In 2012[28], the Marxist philosopher Slavoj Zizik observed that in the contemporary world, the chance for man to be exploited through long-term employment contracts is considered a privilege.

Later, in 2014, The Economist published that, after the economic crisis of 2008, stable jobs are hard to find.

In this context, unions around the world have come to the conclusion that the phenomenon of precarious work has reached a global level, in the form of zero-hour employment contracts, unpaid internships, short-term employment contracts, insecure, all these have become the rule. in the matter of work.

This change is associated with the decline of the legal institution of the standard employment contract and the increase of the precarious work phenomenon.

Precarious work means[29] work that is unsafe, unstable, vulnerable, at risk.[30]

In an attempt to define the concept of precariousness, in the legal literature, a number of terms began to be used, referring to precarious work: atypical forms of work, non-standard work, temporary, seasonal, work at home, self-employment, flexibility and so on.

A number of studies show that the expansion of the precarious work phenomenon is taking place globally, impacting workers in new areas of the economy, where there is the factor of industrialization, in areas such as Europe and North America.

Examining punctually the phenomenon of precarious work, in part-time, temporary contracts, it was concluded that for this category, the phenomenon of precariousness is applicable, resulting from low wages, limited or reduced access to benefits, pension or social insurance, access limited promotion[31].

In the UK, the legal literature has appreciated as an expression of precarious work: non-standard employment contracts (part time, fixed term, agency, temporary contracts), all these, for the same reasons seen above, are generating precarious work.

Precarious work has been described as that type of work with low pay, insecurity and limited benefits, i.e. that type of work whose character depends on: type of employment (standard contract or self-employment), form (permanent or temporary), size of insecurity on the labor market, social context, location of the worker, parts of the employment relationship, social categories, etc.

Another opinion of the specialized literature is that precarious work can be associated with non-standard work[32], and the regulations regarding this aspect are addressed to certain vulnerable groups such as: part-time workers, fixed-term workers, with temporary work agent, as well as other atypical forms of work.

It was believed that by regulating this issue at the level of interest groups, labor law would have found its practical purpose, that of regaining its legitimacy.

In this context, a detached approach to this phenomenon would be in the sense that this crisis generated by precarious work must be seen as an opportunity for an overview, for a vision of the concept of vulnerability in labor relations.

The doctrine has identified a number of risks in the economy, which put workers in uncertain and vulnerable situations. When these risk factors combine, workers enter the so-called vector of vulnerability, which means that they are trapped in poor quality work, non-standard work, with an increased risk of unpleasant experiences and social problems, all of which constitute gateway for this vector of vulnerability.

In conclusion, in the context of the above approach, precarious work should be defined according to the following four elements:

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[28] Stephen Edgell, Heidi Gottfried, Edward Growter, *The Sage handbook of the sociology of work and employment*, Sage Publication, London L.A., 2015, Precarious Work – Kevin Hewison, p. 428.

[29] Ibid, p. 17.

[30] Kalleberg, A., *Pecarious work, insecure workers: employment relations in transition*, „American Sociological Review", 2009, p. 137.

[31] Ibid.

[32] Lisa Rodgers. Labour Law, *Vulnerability anf the Regulation of Precarious Work*. 2016. Edward Elgar Publishing. UK, p. 217.

- time - the duration of work directly influences the precarious nature of work;

- the organizational element - working conditions, salary, individual and collective control of work are also defining elements for precarious work;

- social insurance/pensions/social protection - are again elements whose observance or not depends on the precarious nature of work;

- health and safety at work - are elements on the observance of which depends certainly the birth or not of precariousness.

So, another definition of precarious work[33] would be in the sense mentioned above, more precisely, whenever we are in the presence of a fixed-term employment contract, with extended or insufficient working time, with low pay, improper working conditions, without minimum benefits on social insurance, pensions and social protection or minimum protection on health and safety at work, then the elements of this legal and social phenomenon are outlined. In addition, compared to the previous list, it should be noted that associated with precarious work is the vulnerability of the subject of labor law.

Labor law was built around and based on the standard employment contract, but as these contracts fell through, changed, there was no legal framework to ensure the protection of the individual, who suddenly found himself in a vulnerable situation.

Practically, precarious workers, vulnerable both socially and legally, do not have to comply with labor law regulations, as the situation in which they find themselves is a niche one, unregulated or regulated in some places, for a few isolated situations.[34]

In Japan, precarious work has been defined in the context of the neoliberalization of economic policy[35], which coincided with the emergence of a new group of nonstandard workers who have experienced the phenomenon of precariousness.

These non-standard workers most often face working conditions characterized by precariousness[36], lack of protection created by collective labor agreements, low wages, rapid change in the type of work.

However, judicial practice in Japan shows that these workers have been able to obtain numerous benefits in court as a result of the promotion of collective actions. In some cases, however, the solidarity of precarious workers has even led to the collapse of temporary employment agencies, thus demonstrating that workers' refusal to work can lead to changes in the labor market.

The experience of precariousness, however, has the potential to motivate workers who experience work through anger, anxiety, injustice, alienation and separation, to change the approach of employers and legislators.

A relatively recent study[37] shows that sociologists are best placed to explain and provide an overview of changes in employment.

Precarious work could be described, in the context of social change, as that atypical and insecure kind of work, with implications beyond the legal employment relationship, being certainly associated with social problems[38].

Another opinion[39] shows that precarious work must be defined beyond the legal norm of labor law, it must be seen as an independent institution, located at the intersection of standard labor law with the rules governing social insurance, containing elements of social insecurity and in work, all this with the mention that there is no universal characteristic of precariousness, any of the characteristics listed can generate the phenomenon of labor law.

A precarious life includes both the idea of precarious work and the social conditions that

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[33] Ibid, p. 23

[34] See atypical employment contracts.

[35] Saori Shibata, *Contesting Precarity in Japan. The Rise of nonregular workers and the new policy dissensus*. Cornell University Press, 2020, p. 26.

[36] Ibid, p. 27.

[37] Kalleberg, A., *op. cit*, 2009, p. 138.

[38] Anderson, B., *Migration, Immigration controls and the fashioning of precarious workers.* „Work, employment and society", 2010, vol. 24(2), p. 300.

[39] Clement, Mathieu, S. Prus and Uckardesler E., *Precarious lives in the new economy: comparative intersectional analysis*, Working paper, 2010.

arise around this phenomenon.

Recent literature[40] shows that precariousness is a consequence of the neoliberal, capitalist economy, which essentially involves a financial risk, which implicitly destabilizes the labor market and social protection. Thus, economists of these times appreciate that precariousness is associated with the idea of flexibility and development of the labor market, while legal practitioners appreciate that precariousness is the absence of clear regulations or the exclusion of this concept from legal regulations, which in practice raises many controversies.

At the end of the opinions of the legal doctrine, we will mention a point of view with which I resonate[41], according to which precarious work is that type of work that does not ensure minimum living conditions, including minimum conditions on social protection. This situation is not only found in the case of atypical employment contracts or self-employment, but also in the case of standard employment contracts, with a salary below the minimum level.

So, what is precarious work? In short, precarious work is that phenomenon, in contrast to undeclared work and the opposite of the concept of decent work.

From our point of view, precarious work is that vulnerable situation in which the worker is placed, exposed to situations characterized by insecurity, instability, unpredictability, risky, dangerous, changing situations, practically the lack of any stability and security at work.

In relation to decent working conditions, precarious work does not provide minimum living conditions or social protection, does not provide a decent wage level, does not provide minimum protection in the event of dismissal, non-existent or limited prospects for advancement in the labor market or career development and training, a work environment that does not meet minimum health and safety standards.

In fact, the practical situations faced by workers can best outline the definition of the concept of precarious work, they can experience precarious situations, regardless of the form of work (standard employment contract, atypical contract, self-employment), whenever in the equation factors of risk, vulnerability, insecurity and instability intervene at work, whenever the worker struggles to defend his rights.

The definition of this concept is difficult to achieve because, so far, there is no clear regulation or unanimous doctrinal opinion, but only a "feel of the substance" as law practitioners would say.

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[40] Seymour, R., *We are all precarious – on the concept of precariat and its misuses*, New Left Project, 2012, p. 75.

[41] The point of view I understand to refer to in this study was published in 2009 by the German Federation in the Federal Statistical Office.

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