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CONCEPT OF ATYPICAL EMPLOYMENT IN EUROPE

The connection between the dynamic development of non-standard forms of employment in the European countries and the consequences of the transformation of the international labor market have become the objective of the article. On the one hand, the unregulated non-standard employment, particularly in relation to has negative consequences for the international labor market, on the other hand, the non-standard employment is a kind of lever to address the problems of employment, which are no longer able to decide the dominant conception of employment regulation.

Keywords: employment; atypical employment; transformation; regulation; regulatory legal rights support.

In market economy, employment has a special place. It affects both the social and economic results of the efficiency of the economy. This is natural, since most social, demographic, economic phenomena to a certain extent represent factors or the results of the processes taking place in the area of employment. Employment serves as an important indicator by which to judge the welfare of society, on the effectiveness of the chosen course of development of the country.

Atypical work can provide considerable economic and social benefits. It opens up the labour market to people for whom full-time employment is unfeasible or unattractive. It also provides more flexibility, mobility and dynamism to the labour market, which in turn may contribute to an innovative culture, improved economic performance and efficiency. However, since many labour and social protection laws

and institutions are still based on the profile of the imaginary "typical worker", atypical workers often find that regulations and criteria are - for no good reason - less favourable for them, andor not tailored to their situations.

As a consequence, atypical work often does not turn out to be an economic and social opportunity, but a position in which reduced working hours are combined with inferior working conditions and lower pay; a fate which - as was already stated - mostly concerns women (although women have a stronger presence in some types of atypical work (e.g. part-time work) than in others (e.g. self-employment))[1].

The multidimensional nature of atypical employment makes it notoriously difficult to define (Casey 1988; Polivka/Nardone 1989; Roosenthal 1989; Pollert 1991; Ewing 1996; Polivka 1996; Casey et al. 1997)[2]. "Atypical employment can be conceived under very general headings such as: contingent work, alternative work arrangements, flexible working practices, or under less general headings such as independent contractors, on-call workers, temporary help agency workers and workers provided by contract firms." [3].

A distinction must be made between atypical (special) employment as a legal form and atypical work. The former refers to the legal forms of working that are not traditional or typical such as the well-known outworking legal relation, which has recently fallen into the background, or casual work, expanding telework, part-time employment, individual or collective self-employment, temporary employment and fixed-duration employment (contracted employment).

Atypical work, however, means that the frame, condition and location of the activity differ from those of typical work such as working outside of the premises of the institution or company or working in one or more departments (costumer service office, telehouse, salesman activity)[4].

In the early 1970's, as the deviation from the typical forms of the employment relationship of employees began to increase, the literature defined the not typical employment relationship as atypical work (legal) relations. Then, the actual appearance of atypical work was rare; thus, the typical atypical pair of concepts spread in the beginning in the literature on the law of labour. "Atypical working thus

originally only referred to the atypical forms of work legal relation known by the national rights, namely usually to the employment relationship contacted for fixed-duration and for part-time and recently to seasonal working, temporary employment and telework"[5].

Different areas of science define atypical employment in different ways. Lawyers of labour define it as working in a not typical way, statisticians define it as concrete ratios and sociologists refer to each form that differs from the traditional. In the literature on the law of labour, atypical employment and atypical labour relations are the most widespread comprehensive expressions referring to the not typical forms of employment. A further problem with this definition is that innovative and flexible categories have begun to merge with the category of atypical employment.

ILO (International Labour Organisation) defines atypical employment as employment that differs from the usual and, in most cases, has been concluded with a contract and strongly protected by social rights. Because of the diversity of the forms of employment, the changing system of relations on the labour market, and the effect of globalisation, it is not easy to determine the advantages and disadvantages of the different forms of employment for the society, the employees and the employers[2].

The forms of employment different from the traditional ones have less legal regularisation and, thus, milder protection for the workforce. Employers, however, tend to apply them for this reason. Simpler regulation makes its application easier. The rigidity of the labour relations perfectly harmonized with the slow return of physical capital, the irreversible nature of the investments, and the rigid structure of the large-scale industry in the employment model of industrial society. In this model, employment was also stable.

The most common forms are fixed-term contracts and part-time contracts. This study will try in a first section to analyse how these two well-known types of contracts have been reformed during the crisis, taking into consideration the European directives regulating them.

Temporary agency workers are also considered as falling within the category of atypical workers. However, evidence shows that most amendments made in this area

are related to the implementation of Directive 2008/104 on temporary agency work. This paper will therefore not be addressing temporary agency work issues [11].

When dealing with atypical forms of employment contracts, this report will also focus on the introduction of new types of contracts that are often less protective and target specific groups of workers, mainly the young. With specific regard to young workers, this paper will also focus on measures being taken in relation to apprenticeships and traineeships.

Fixed-term and part-time work contracts are regulated by two European directives transposed by all 27 EU Member States: Directive 1997/81/EC (supplemented by Directive 98/23/EC) on Part-Time Work and Directive 1999/70/EC on Fixed-Term Work.

The context and rationale behind the adoption of the directives regulating these kinds of contracts is that most Member States were at that time experiencing an overall increase in the rate of part-time and fixed-term employment, with concern being raised about the working conditions of employees on such atypical contracts, which were often different to – not to say less favourable than – those for workers on "standard" contracts.

Such contracts imply a risk of an even more segmented labour market emerging, particularly if part-time work becomes more marginal, targeting specific categories of workers, and if fixed-term work fails to act as a stepping stone to open-ended employment. Both directives thus aim to provide such workers with common standards of protection against unequal treatment and discrimination, in line with those enjoyed by standard workers[7].

However, since the onset of the economic crisis, attempts have been observed to reform rules on fixed-term and part-time contracts for the benefit of labour market flexibilisation, in many cases trampling on the protective framework of the two Directives.

Nevertheless, according to a recent evaluative study ordered by the European Commission, "the Directives have lost none of their relevance when looking at the

evolution of these types of employment in the EU"[7] and still constitute a necessary framework to protect atypical workers' interests.

Atypical work such as fixed-term and part-time employment are regulated by European Directives to prevent abuses regarding unequal treatment or excessive use.

Through adopting new types of contracts, Member States have often opened up ways of circumventing the legal framework of the Directives by "eloquently using" the possibilities offered by the directives to exclude certain contracts from their scope[8]. Indeed, those contracts frequently offer less employment protection than standard contracts by weakening for instance rights to unemployment or social benefits, severance pay, or offering reduced wages.

Such contracts are implemented with the idea of "helping" particular categories of workers, mainly those who have been affected the most by the recession, i.e. young and older workers.

In the same way, this idea was supported by employers' representatives during a thematic panel "Tackling the youth employment crisis and the challenges of the ageing society" at the ILO's Ninth European Regional Meeting in April 2013, who argued that "non-traditional forms of employment constitute a good stepping-stone to open-ended contracts'[8].

As a way of tackling the youth unemployment crisis and the challenges of the ageing society – as the thematic panel at the Ninth European Regional Meeting was called -, France and Spain have recently introduced so-called "generation contracts".

In Spain, this is one of the hundred measures proposed in March 2013 to promote youth employment[9]. The idea of such a contract is to cut social security contributions by 100% for young entrepreneurs recruiting experienced people for their projects. This measure targets young self-employed workers under the age of 30 and encourages them to recruit long-term jobseekers over 45. When they sign a part-time or full-time permanent contract, their social security contributions will be completely suspended for the first year of the contract. The measure will be maintained until unemployment decreases to below 15%.

In a different way, since February 2013 companies in France are being encouraged to continue employing young workers under the age of 26 under open-ended contracts while at the same time retaining older employees. Companies with less than 300 employees can receive financial support for this[10]. For larger companies, there is an obligation to negotiate an agreement on this matter. The agreement must include commitments for training and sustainably integrating young people, for the employment of older workers, and for skill and knowledge transfer.

These commitments will be linked to objectives, some of which must be quantified, an implementation schedule and ways of tracking and evaluating their fulfilment. Companies with 300 or more employees, or belonging to a group of that size, have until September 30, 2013 to reach a company-level or group-level agreement or, in the absence of such agreement, to present an action plan; otherwise they become liable to a fine (either 1% of the total sum of salary payments made to employees during the period in which the company is not covered by a generation agreement, or a reduction in certain social security contribution exemptions)[10].

It is still a bit too early to assess the effect of such measures. Nevertheless, it should be pointed out that when the French government tries to deal with the unemployment of older workers through this "generation contract", it appears that the measures do not match the issues. The causes of such unemployment are numerous and retaining older workers in a company is not the only solution. Easier access to training and skill development should be promoted, as well as the reorganisation of work taking its physical stress into consideration. Such criteria are not sufficiently taken into account in the "generation contract".

In Poland, service contracts, also known as "trash contracts", were adopted during the crisis35. This particular type of contract is not covered by labour law but by civil law. Many of them are also not covered by social security regulations.

Trade unions consequently asked for these contracts to be brought under the social security system. However, in October 2012, the Prime Minister announced his decision not to do so, stating his desire to maintain employment levels.

This decision appears to be quite surprising, as the 2012 Country Specific Recommendations for Poland, adopted in the framework of the European Semester, indicated that "the partial abuse of self-employment and civil law contracts which are not governed by Labour Law appear to be a cause of labour market segmentation and in-work poverty, which is among the highest in the Union". Its recommendation was "To combat labour market segmentation and in-work poverty, limit excessive use of civil law contracts and extend the probationary period to permanent contracts"[11].

As a consequence of the Prime Minister's refusal to change the legislation in this field, the 2013 Country Specific Recommendations stated that since "the use of revolving civil law contracts with significantly reduced social protection rights is widespread", Poland should "combat in-work poverty and labour market segmentation through better transition from fixed-term to permanent employment and by reducing the excessive use of civil law contracts"[12].

The United Kingdom is somehow "well-known" when it comes to adopting liberal measures. Recent concern has been raised about a particular form of contract called 'zero hour contracts', under which no specific working hours or pay are guaranteed, with workers staying at home until their employer calls them[13].

The Office for National Statistics' Labour Force Survey released data according to which the number of workers on such contracts doubled between 2005 and 2012, up to 200,000 people now[14].

The Government is under pressure to outlaw such contracts, with trade unions denouncing the fact that they leave workers in a very uncertain position. Another disputed invention coming from the UK is the introduction of a highly controversial new type of contract, whereby employees will be given shares in exchange for waiving certain employment rights, notably including those related to unfair dismissal, redundancy and certain statutory rights to request flexible working and time-off for training.

In March 2013, during debates at the House of Lords, Lord Pannick, an independent crossbencher at the vanguard of moves to abolish this new contract form, made this very relevant statement: "Employment rights were created and have been

protected by all governments - Conservative and Labour - precisely because of the inequality of bargaining power between employer and employee. To allow these basic employment rights to become a commodity that can be traded by agreement frustrates the very purposes of these entitlements as essential protection of the employee who lacks effective bargaining power."[15]

Nevertheless, after many debates and after rejecting the bill twice, the House of Lords finally approved the so-called 'employee ownership bill' allowing workers to give up some of their labour rights in return for shares in the company[16]. But there have been concessions. Employers will have to offer free legal advice to employees who agree to the system. The bill is expected to come into force as foreseen in September 2013.

As mentioned before, these new types of contract are mostly adopted as a way of bypassing legal frameworks already in place, and more particularly the European Directives regulating fixed-term and part-time work. With the alleged purpose of improving employment among specific categories of workers such as young and older employees, those unprecedented rules and contracts offer less protection and security, often leaving workers in a very uncertain position, with the justification that it is better to have that kind of job rather than no job at all.

However, this is not a commonly shared opinion and the legitimacy and legality of some of these new types of contract have been questioned before international bodies.

In the previous ETUI Working Paper on The crisis and national labour law reforms: a mapping exercise, Greece was cited for introducing a new "youth contract" that provides for considerable support measures to hire people up to the age of 25 on wages 20 per cent lower than the previous rate for first jobs, with a two-year probationary period, no social contributions for employers and no entitlement to unemployment benefits at the end of the contract. A complaint was submitted to the European Committee on Social Rights (ECSR) by Greek trade unions, claiming that this new type of contract was in breach of numerous articles of the European Social Charter. On May 23, 2012, in reply to complaint 66/2011 – General Federation of