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Legal protection of the self-employed - concept of legal regulation

(Ochrona osób pracujących na własny rachunek – koncepcja regulacji prawnej)

SUMMARY

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The development of innovative technologies as well as the transition from the model of a centrally controlled economy to the model of a capitalist economy caused rapid changes in the Polish labor market. Socio-economic transformation has led to the emergence of new forms of working, which, on one hand, guarantee more flexible terms and conditions of work, but on the other hand, deprive workers of basic employment-related rights. One of the most popular working arrangements is self-employment, which recently became a huge competition for employment under employment agreements. According to the official data shared by the Central Statistical Office in Poland, there were more than 1.33 million self-employed individuals in the first quarter of 2020 which makes them a large group of workers in the Polish market.

Despite the importance of self-employment in the development of the Polish economy, provisions of Polish law do not establish a comprehensive and unambiguous concept of self-employment. Laws and regulations establishing rules of collaboration with self-employed individuals are fragmented and scattered over several different pieces of legislation, thus creating gaps and overlaps. It seems that legal provisions regarding self-employment are introduced accidentally and as a consequence, they cannot correspond to the factual needs of the self-employed. This current state of affairs is particularly worrying in the context of the crisis linked with COVID-19 epidemic as well as uncontrolled development of bogus self-employment and consequently, requires legislative action.

The main aim of the dissertation was to analyze currently binding laws and regulations establishing protection for self-employed individuals in Poland in order to propose a brand-new legal concept of self-employment that may be introduced in the near future by the Polish legislator. The underlying thesis of the dissertation is that the Polish legislator has provided self-employed individuals with basic employment-related rights which however are not sufficient considering the standards of legal protection granted to the self-employed by international law, EU law as well as the Polish Constitution.

The dissertation has been divided into three parts.

The main objective of the first part was to analyze the phenomenon of self-employment from a socio-economic perspective. The presented deliberations aimed to answer the question why self-employed individuals have become a large group of workers in almost all countries in the world. Particular attention has been paid to the historical origins of self-employment as well as factors increasing interest in becoming self-employed. The first part of the dissertation also

includes in-depth analysis of statistical data which helped to determine the scope of self-employment phenomenon in Poland as well as in other parts of the world. A thorough analysis showed that the increased level of self-employment is partially linked with the current economic situation which forces workers to start their own business.

In the second part of the dissertation, I have analyzed legal standards of protection of the self-employed. The main aim of this part was to analyze the evolution of the laws and regulations protecting self-employed individuals in Poland as well as the scope of legal protection guaranteed to the self-employed. Considering this need, this part of the dissertation contains a detailed description of the applicable laws guaranteeing basic rights to the self-employed. Importantly, analysis of the Polish laws and regulations establishing rules of protection of self-employed individuals was made considering EU law as well as international law which guarantee many privileges to the self-employed. Particular attention was paid to the protection of the life and health of self-employed individuals as well as other problems threatening their well-being, including discrimination, non-equal treatment, workplace bullying. In addition, I have also examined the scope of parental rights granted to self-employed individuals as well as rules of protection of their remuneration. Moreover, I have also analyzed the collective rights of the self-employed as well as their holiday-related entitlements. The most important assumption derived from this research is the necessity to adjust applicable rules of protection of the self-employed which do not guarantee them minimum protection mentioned in EU law, international law as well as the Polish Constitution. It has been also argued that lack of sufficient protection increases the risk of bogus self-employment.

The last part of my dissertation was focused on proposing a brand-new concept of self-employed protection. I have argued that despite flexible working conditions, conducting business activity by the self-employed more and more often depends on their clients which makes self-employment similar to employment relationship. For this reason, self-employed individuals conducting business activity in a business environment shaped mainly by their client should be provided with similar protection as employees. Consequently, the third part of the dissertation suggests a new legal definition of the self-employed person as well as proposes some solutions which may be used by the Polish legislator in order to create a comprehensive model of protection of the self-employed. Particular attention was paid to the need for revision of the currently binding laws and regulations which do not guarantee the self-employed adequate protection, especially in terms of parenthood-related entitlements, holiday leave entitlement as well as right to work in an environment free of workplace bullying. Having said

that, it was argued that despite many similarities between self-employment and employment relationship, rights granted to self-employed individuals should differ from the employee's entitlements due to the different nature of performance of work as self-employed. In the third part of the dissertation, I have also presented practical solutions that may be adopted by the Polish legislator in order to combat bogus self-employment which recently has become a big issue in the Polish market.

The analysis presented in three parts of the dissertation has shown that the Polish legislator is gradually granting protective measures to the self-employed individuals. Even though, self-employed are guaranteed some basic, employment-related rights, the adopted regulations do not correspond to the provisions of international and EU law as well as provisions of the Constitution of Poland which makes the adopted solutions insufficient. Taking into account the current political and economic situation, as well as the necessity to adopt innovative solutions after the end of the COVID-19 pandemic, the Polish legislator should introduce solutions aimed at promotion of self-employment.

There is no doubt that growing interest in self-employment is associated with the need to introduce an appropriate and unambiguous model of protection of the self-employed as well. Lack of appropriate legislation in this regard increases the risk that self-employment is a helpful tool used in order to circumvent employment law rules which as a consequence, increases risks linked with the development of bogus self-employment. Consequently, the concluding remark of the dissertation is that the Polish legislator should decide to adopt a new legal act establishing rules of protection of the self-employed. Importantly, a new piece of legislation should set various levels of protection of the self-employed individuals based on the criteria such as the level of their independence from clients. Taking this into account, I have proposed a brand-new definition of self-employed as well as economically dependent self-employed which may be used by the Polish legislator in order to introduce significant changes to the unclear standards of protection applicable to the self-employed.

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