

Karol Muszyński

**Legal policy towards employment regulations in Poland.
Economic crisis and destandarisation of employment relations**

abstract of PhD dissertation

This dissertation tries to bridge the gap between sociology of law, economic sociology, and labour law to understand the background and scope of destandarisation of employment relations that took place in Poland after the outbreak of the global economic crisis. The crisis has been largely absent in Polish social and legal sciences. The dissertation argues that changes on Polish labour market, such as declining role of standard open-ended labour code contracts, as well as spread of non-standard contracts and labour law violations, were largely influenced by public policies carried out by the government and basic elements of institutional design.

The dissertation consists of an introduction, four chapters, and conclusions. Chapter one introduces methodology and theory: i.a. new institutionalism as methodological approach (that presents institutions as blends of formal and informal elements), theory of gradual institutional change (that shows different ways in which institutions can undergo change without formal, legislative reform), varieties of capitalism approach (that shows how different elements of institutional design can interact to produce efficient economic framework). The chapter also depicts Poland as a “dependent market economy”, which comparative advantage lies in low labour costs.

Second chapter describes basic anti-crisis public policies implemented in Poland: fiscal and monetary actions, austerity policies, and changes in employment regulations. With regard to employment regulations, I distinguish between intended liberalisation policy and unintended policy of “drift”. The former was rather limited in scope, as most of the changes on Polish labour market happened without direct governmental intervention. “Drift” describes a situation where institution (here: standard open-ended labour contract) changes not due to formal legislative reform, but because it becomes increasingly neglected by market actors who use it (enterprises, employers, employees, public agencies, etc). Actors may for instance circumvent or openly violate regulations, e.g. use non-standard contracts where standard labour contract should be concluded; deprive employees of their overtime pay, etc. I show that the institution of standard employment was maladjusted, lacked normative support, and proper monitoring mechanisms, which encouraged actors to violate and circumvent it.

Third chapter tackles the structural aspects of drift. I argue that drift happened also because market actors were given a viable alternative in a form of non-standard contracts, that

due to ambiguity of formal regulations were easily used as substitutes for standard labour code contracts. A variety of non-standard solutions – fixed term contracts, civil law contracts, and temporary work – have been reinterpreted and changed to serve as alternatives for standard labour code contracts. That was enabled by vague and imprecise formal regulations. Moreover, actors were motivated to replace labour code contracts with civil law contracts by public policies that were carried out. Minimum wage pressure policy conducted after 2007, in conjunction with regressive tax system, encouraged to conclude civil law contracts to lower taxes. “Cheap state” paradigm implemented by the government promoted hiring non-standard workers in public agencies. Replacing standard contracts with civil law contracts, as well as violating labour law regulations also allowed to enhance Polish firms’ main competitive advantage of low labour costs, which is consistent with dependent market economy theory.

Fourth chapter carries out more general conceptualisations. First, I try to show that the changes on Polish labour market can be seen as particular form of liberalisation undertaken in dependent market economy. This liberalisation was not however implemented by direct governmental action, but rather took shape of labour law violations and uncontrolled rise of non-standard contracts, enabled by imprecise law and ineffective monitoring mechanisms. Secondly, I argue that the drift of standard employment and changes in non-standard employment allowed to minimise the problem of incompatibility between some public policies implemented after the crisis. Most importantly, it allowed to eliminate discrepancies between minimum wage pressure (that increased wages of low wage workers) and cheap state paradigm (that tried to “save” on low wage workers), as well as between aforementioned minimum wage pressure and comparative advantage of low labour costs (minimum wage pressure increased labour costs, thus threatening comparative advantage). I argue that the use of non-standard contracts that are outside minimum wage regulations not only allowed to buffer negative externalities, but even contributed to the emergence of “unintended fit”, in which contradictory policies mutually reinforced each other.

In the conclusion I move beyond the timeframe of the dissertation (2008/2009-2015) and I try offer some solutions to the problems that Polish labour market and labour law face. The fact that market actors “worked out” ways to deal with inconsistent policies and divergent elements in a way that enabled Poland to avoid serious economic disturbances remains – paradoxically – a great obstacle. Non-standard contracts and labour law violations have become well-fitted elements of Polish economy. I suggest that policy makers have various ways to tackle destandardisation of work – ranging from reforming standard labour code contract to expanding more broadly understood welfare state.

Keywords: legal policy, labour law, non-standard contracts, economic crisis, labour law violations, Poland