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# Cost of pensions to be borne in solidarity (principle of social insurance solidarity)

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The article deals with the terminological issue of the relationship between the notion of social insurance solidarity and insurance equivalence. They are not contradictory – the principle of social insurance equivalence emphasises the dependence of the amount of the benefit on the contribution, while the principle of insurance solidarity underlines the importance of bearing the cost of currently financed insurance benefits in solidarity. Both the outgoing and the current pension system are based on the principle of insurance solidarity, but they differently define the reciprocity of contributions and insurance benefits in solidarity. The calculation of pensions from the number contributions means greater equivalence, while solidarity of the insured, determined as a result of the insurance risk community, actually depends on real subordination to the norms determining the obligation to cover social insurance contributions. Bearing the cost of pensions in solidarity requires appropriate one to emphasise not only of the insured persons forming the risk community, but also the contributors action.

**Key words:** insurance solidarity, intergenerational contract, pension system, principle of solidarity

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## Introduction

Bearing the cost of insurance benefits in solidarity results from the general application of the principle of insurance solidarity, on which the social insurance law is based. In a normative social insurance system, however, obligations to pay contributions, and in particular mutual relations between benefits and insurance contributions, are diversified – not only in the individual types of social insurance, but also in the legal models defined for a few social (professional) groups. This may encourage insured persons to undertake actions contrary to the solidarity principle together with payers of contributions, in breach of the applicable law.

The objectives of this paper are consistent with the objectives of the research related to the efficiency of the social insurance law, which requires addressing the question of the cost of pension benefits borne in solidarity. Recognition of this last economic phenomenon requires reference to the legal and financial principle of social insurance solidarity and derogations from this principle defined in the normative system for bearing the cost of insurance. Results of analyses are to provide a basis for axiological assessments of the differences that arise in the material scope of the social insurance law. The article is an attempt to answer the question – whether the unequal proportions of contributions and benefits achieve the principle of insurance solidarity and whether these do not discourage respect for the rule of law in the area of social insurance.

The methods that have been used in this paper to achieve such objectives include the logical and theoretical conclusions based on the analysis of social insurance legal and economic literature. For a fuller illustration of the problems associated with the lack of insurance solidarity in agricultural pension insurance, we will also use empirical studies on the amount of contributions in the context of farmers' ability to pay them.

## Solidarity in sharing burdens and costs of pension insurance

The solidarity in burdens-sharing in the social insurance law is particularly characteristic of social insurance law, considering that also other branches of law implement the principles of solidarity.<sup>1</sup> This involves financing of the contribution, *i.e.*, the input to the joint fund financing the risk borne both by the insured persons and the payers. Contribution are the basic source for financing social insurance. In economic terms, it is a burden on earned income. *De lege lata* it is financed by the insured person and the payer, although

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<sup>1</sup> Cezary Kosikowski considers solidarism as a concern for mutual understanding, cooperation between individuals, social groups and the state, with the principle of solidarity being linked to the principle of social justice (See: C. Kosikowski, *Gospodarka i finanse publiczne w nowej Konstytucji*, "Państwo i Prawo" 1997, No. 11–12, p. 156).

from a historical point of view, until the end of 1998 it was paid exclusively by enterprises, which was not deemed a derogation from the principle of insurance solidarity. As emphasised by Tadeusz Zieliński, the contribution is an unpaid part of remuneration for work and therefore the insured persons are involved in the creation of the insurance fund through contributions paid by employers.<sup>2</sup> Similarly, Wacław Szubert assumed that the insurance contribution is a reduction of current earnings for the benefit of funds being a kind of “deferred pay,” intended to meet the future social needs of the insured persons associated with the occurrence of random risks.<sup>3</sup> Thus, the classic approach to the principle of solidarity refers to the solidarity of the risk community and the relationships between the insured persons and not enterprises. In this way, the assumption is made that the remuneration used to finance social insurance benefits belongs to the person employed or serves his or her insurance interests.

Contributions paid to the old-age pension insurance are a burden imposed on labour costs. Due to the fixed contribution rates and the way they are collected from gross remuneration, many authors consider them as a type of public tribute similar to a tax.<sup>4</sup> Such a simplification is not acceptable from a legal point of view, and even from an economic perspective: the thesis of the tax nature of the contribution is a false one. The social insurance contribution may not be an economic phenomenon limited to the perspective of production costs or public tribute. The economic purposes of the pension contribution and the accumulation of all pension contributions in insurance funds are of prime importance. This approach to the problem is also confirmed by the solidarity-based relations between members of the risk community and not between the entities financing the contributions.

Each pension contribution can be perceived as a joint and multiple input of insured persons to financing the costs of benefits borne by the risk community in favour of persons affected by risks of a given type. However, due to the division of costs of this contribution between the employee and the employing entity, certain doubts are expressed as to the understanding of the solidarity in bearing the cost of social insurance, because the financing of pension contributions is not possible without the payer.

On the one hand, it seems that the financing of contributions by contribution payers is a type of insurance on behalf of a third party in connection with the performance of work or with some other employment title. Social insurance, which employs the civil law genotype, has its own regulation, but its nature corresponds to the private insurance regulation of Art. 808 of the Civil Code. On the other hand, some doubts may arise as to whether the employing entity has an insurance interest in financing the pension contribution. Financing of pension contributions by payers who do not have the status of insured is, on the one hand, the realisation of insurance coercion, but on the other

2 T. Zieliński, *Idea wzajemności w socjalistycznym modelu ubezpieczeń społecznych*, “Państwo i Prawo” 1981, No. 4, p. 11.

3 W. Szubert, *Ubezpieczenie społeczne*, Warszawa 1987, p. 218.

4 R. Gwiazdowski limits the meaning of contributions to that of excise duty on labour (see R. Gwiazdowski, *Emerytalna katastrofa. Jak się chronić przed jej skutkami*, Poznań 2012, p. 68).

hand – a manifestation of insurance solidarity or a specifically understood principle of solidarity in bearing the burdens of insured persons (weaker and stronger together protect the weaker). Insurance contributions, including pension contributions, are paid to implement legal norms whose content is imposed by the insurance interest of the contribution payer. Who is therefore in solidarity with whom in financing the benefits? Do we mean here entities included in the group of payers, where all are on competitive terms according to the same employment rules and bear equal costs in financing the contributions? Or perhaps the insured persons because they all participate in the risk community? And finally: who bears the cost of insurance: the payer or the insured person?

At first it should be assumed that no perspective – that of the payer or of the insured person – may be ignored due to the normative division of the contribution obligation between them and the economic dimension of salary, which always includes the amount of contributions irrespective of who is legally obliged to pay them. However, in the case of pension insurance, the most important is the insurance interest of the employee, and not the interest of the payer, because the possibility of incurring the negative consequences due to the occurrence of the insurance risk applies only to the insured person.<sup>5</sup> Providing an employee with a specified pension income is not in the immediate interest of the payer as a provider, but mainly in the interest of the insured person. In addition, W. Szubert is right to observe that the fact of paying the contribution by employers does not have to be tantamount to bearing its burden, because it can be shifted to other entities in the form of price increases.<sup>6</sup> In an economic approach to cost-bearing solidarity, one should take into account not only the level of insurance solidarity, which primarily covers insured persons, but also the level of entities financing pension contributions that actually allow one to accumulate funds for social insurance.

## Genesis and understanding of the social insurance solidarity principle

The principle of insurance solidarity is distinguished *inter alia* in the works of T. Zieliński, who indicates that it is synonymous with the principle of reciprocity.<sup>7</sup> However, he notes that the latter principle does not correspond to contractual (civil law) reciprocity. In his opinion, the insurance solidarity consists in bearing the insurance burden by insured persons themselves, according to the formula “one for all, all for one.” The above deliberations on the pension contribution show that such an understanding of this principle is somewhat simplified, because it disregards the role of employers and takes insufficient

5 Cf. W. Mogilski, *Umowa ubezpieczenia na rzecz osoby trzeciej* [in:] *Ubezpieczenia w gospodarce rynkowej*, ed. A. Wąsiewicz, Bydgoszcz 1994, pp. 95–98.

6 W. Szubert, *op. cit.*, p. 218.

7 T. Zieliński, *Ubezpieczenia społeczne pracowników*, Warszawa–Kraków 1994, p. 130.

account of the concept of economic contribution of many entities exposed to risk, in favour of the few who are affected by this risk. Besides, the sense of solidarity is illustrated not only by the motto of the musketeers, which became popular thanks to Aleksander Dumas, but also by St. Paul's recommendation to bear each others' burdens.<sup>8</sup> It should also be noted here that the insurance solidarity involves not only burdens, but also the right to obtain benefits, because the solidarity is reflected in a mechanism of bearing burdens and/or obtaining benefits for oneself and for the whole community.<sup>9</sup>

During the last 20 years, pension law has evolved, and this evolution was due to the rapidly growing group of beneficiaries in relation to the group of contribution payers. The change in paradigms<sup>10</sup> has led to the situation where, in addition to solidarity, insurance equivalence has appeared, and the pension insurance system is becoming a system of benefits proportional to contributions. On account of this insurance equivalence, pension insurance began to gain more features of civil law reciprocity, which was unthinkable in the defined-benefit system, analysed by T. Zieliński from a legal standpoint.

The principle of insurance solidarity is less frequently distinguished in the most recent subject literature. For example, Kamil Antonów discusses these issues from the point of view of two separate principles – the principle of solidarity of the risk community and the principle of insurance reciprocity. He points out that both of them interconnect, but he does not define the superior concept that connects them.<sup>11</sup> It seems that both of these principles better explain what insurance solidarity involves and their distinction results from a different scientific approach. One should agree that the constitutional obligation of “solidarity with others,” raised to the rank of the constitutional principle, respect for which is “an unshakable foundation of the Republic of Poland,” primarily relates to the solidarity of the risk community.<sup>12</sup> The sense of insurance solidarity should be associated with the insurance risk community. If there is a similar situation of people exposed to the same or similar risks, the joint and several effort of financing the cost of social security is useful for all. Since all are similar through being exposed to the risk, they can achieve more and for less through the joint action than individually through insurance contracts. Application of the notion of insurance solidarity, and not only the solidarity of the risk community is encouraged by the greater efficiency of the former. In the practical application of law there are instances of abuse of the solidarity rules in

8 “Bear one another's burdens, and so fulfil the law of Christ” (Gal 6,2). The recommendation on how to implement the New Testament through the mutual bearing of one's neighbour's burden is discussed, among others, in: T. Knut, *Analiza egzegetyczna wypowiedzi św. Pawła Apostoła “jeden drugiego brzemiona noście” (Ga 6,2) w kontekście Ga 6,1–5*; “Studia Koszalińsko-Kołobrzeskie” 2016 (23), pp. 43–54.

9 K. Antonów, *Prawo pracy i ubezpieczeń społecznych*, ed. K. Baran, Warszawa 2015, p. 644.

10 See.: U. Kalina-Prasznic, *Społeczne zabezpieczenie emerytalne pracowników. Między prawem a rynkiem*, Warszawa 2012, p. 1. The author also indicates in her monograph that the detailed normative solutions are based on political decisions that have doctrinal determinants – the shift towards the increasing role of the state (social solidarism and redistribution), or the increasing role of market mechanisms (liberalism and individual precaution). In the opinion of the author, the conducted reforms of pension systems are paradigmatic in nature and the radicalisation of paradigmatic reforms was forced by the financial crisis (Cf. *Ibid.*, pp. 31–36).

11 K. Antonów, *op. cit.*, p. 644.

12 *Ibid.*

the form of reaping the unauthorised benefits from the insurance fund resources accumulated by the community – abuses of benefits should not be discussed in terms of a lack of solidarity in bearing mutually the risk costs, but in terms of the mutual right to use the fund, which finances risk effects.

Analysis of the concept of insurance solidarity requires its conceptual distinction from the principle of insurance reciprocity (equivalence). Research into the complex legal relationship in social insurance carried out by the author of this paper proves that these concepts are reciprocal in such a way that the contribution obligation corresponds to the insurance protection obligation with the content defined by law.<sup>13</sup> From the financial and economic perspective, insurance reciprocity can be understood as fund equivalence and compensatory equivalence. Fund equivalence arises when global contributions correspond to the aggregate amount of paid pensions.<sup>14</sup> And the compensatory aspect is related to answer the question as to the extent to which the analysed social security or social insurance system is to cover losses arising from the occurrence of social risks.<sup>15</sup>

Each social insurance is to a certain degree mutual, when the rights to insurance benefits are acquired on the basis of insurance contributions – without the need for quantitative dependence, a functional relationship is sufficient. In the area of old-age pensions (which in fact do not implement the insurance mechanism assuming that many persons contribute to the benefits of a few, which ensures a low cost of insurance services), it is intended to define the legal reciprocity of benefits to meet the principles of compensatory equivalence, *i.e.*, the calculation of pensions based on the number of contributions paid. In other branches of social insurance, the reciprocity of benefits consists only in providing a level of insurance coverage, defined by law, which would correspond to the normatively determined level of the contribution that may be lower than the actual cost of financing pension benefits. Insurance equivalence in a defined-contribution pension system means a proportional relation between previously paid contributions and the amount of due (received) pension. In the defined-benefit pension system, insurance equivalence was only partially realised – where the direct reference to insurance input was used in the pension formula, *i.e.*, the insurance period was used as the multiplier, and the basis for pension assessment as the remuneration received.

Insurance solidarity may be treated from an economic and financial perspective as a technique of repartition in financing the effects of risk occurring in a risk community, one operating jointly and separately. The principle of solidarity should ensure that contributions are financed within an intergenerational system, as it confirms the importance of continuing the obligation to pay contributions. In questions about improving the efficiency of the pension insurance system, the direction of extending the personal and material scope of contributory liabilities is often mentioned, which on the one hand ensures

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<sup>13</sup> R. Pacud, *Stosunki prawne ubezpieczenia emerytalnego*, Warszawa 2011, p. 421 *et seq.*

<sup>14</sup> T. Szumlicz, *Ubezpieczenie społeczne. Teoria dla praktyki*, Bydgoszcz–Warszawa, 2005, p. 94.

<sup>15</sup> T. Szumlicz, *Ekwiwalentność funduszowa i kompensacyjna w systemie zabezpieczenia społecznego – aspekt ubezpieczeniowy*, „Wiadomości ubezpieczeniowe” 2017, No. 2, p. 9.

a higher attributed contribution, and on the other hand, a higher level of social insurance protection. However, allowing the contributions to be calculated from the whole wage/salary fund by all legal entities through individual goal-orientated employment or business activity, requires a very thorough examination of the possible social and economic consequences of such a profound change in the law. From the legal and systemic point of view, it should be noted that while tax law is supposed to be equal and neutral for the economy against phenomena that result in taxation,<sup>16</sup> in the case of establishing an amount of contribution obligation, it is possible to apply the policy of pro-fiscal and pro-productive nature. In implementing the first policy one must accept the impact of regulation on the labour market, including the choice of employment forms that allow one to limit the contribution obligation. And as regards the second, it would be necessary to reduce the equalised levels of contributions calculated from the wage/salary fund (any form of pay) so that the impact on the production costs and the labour market would be marginalised, and the economic advantage of law violation be reduced.

## Insurance solidarity and social solidarity as axiological determinants of pension contributions

Establishing the legal mechanism to ensure the accumulation of pension contributions implements not only the principles of social insurance universality, but also other legal principles, in particular the relationship between social insurance and work and also the social risk, which generally involves the risk of losing that work. In general, insurance solidarity, the group of addressees of the social insurance law should be defined as broadly as possible so that everyone who performs work is covered by social insurance. In this case the insurance solidarity would ensure the low cost of the insurance organisation and would guarantee pension benefits based on the social division of the generated product.<sup>17</sup> The aim to determine the proportion of contributions and benefits appropriate for the risk for all insured persons, and if possible equal for persons in the same situations, with which a specific normative obligation is connected, one defining the level of the contribution obligation, is derived from the very concept of insurance solidarity.

The concept of insurance solidarity can be opposed to other solidarity bonds that are important for social insurance. This would primarily include national solidarity, which is the axiological foundation for subsidising the Social Insurance Fund by the state budget. It is also worth to mention social solidarity, which should be understood

<sup>16</sup> R. Mastalski, *Prawo podatkowe*, Warszawa 2006, p. 9.

<sup>17</sup> R. Pacud, *Baza ekonomiczna ubezpieczenia społecznego jako przedmiot badań* [in:] *Baza ekonomiczna ubezpieczenia społecznego*, ed. R. Pacud, Warszawa 2019, p. 22.

as a principle of solidarity adjusted through the principles of social justice. Due to the declining social acceptance for high pension contributions and the resulting problem of accumulating sufficient funds for financing pension benefits, consideration should be given to whether the application of the principle of social solidarity should not be extended.

It is worth noting here that the concept of insurance solidarity has a different purpose and object than the constitutional principles of social justice referred to in Art. 2 of the Constitution. The provision stipulating that “the Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice” aims at achieving political democracy and social democracy.<sup>18</sup> The principle of the social justice state has not only a social but also an economic context and is superior in the system of values realised in all branches of law.<sup>19</sup> It remains a constitutional guideline for the activity of the state and its bodies, which are to be based on such values that serve the rule of law well. The departure from the principles of social solidarity in pension insurance is noticeable,<sup>20</sup> although they can be always perceived where no clear insurance rules have been applied. This is particularly evident in the prohibition of the selection of risk in social insurance legislation, which consists in the fact that the contribution is calculated without differentiating the conditions for its assessment on grounds of gender (Article 2a[3] of the Social Insurance Act),<sup>21</sup> which is further associated with the rule that the right to an old-age pension is not determined on the basis of separate average life expectancy tables for men and women. No one can be excluded from the pension insurance and the contribution is adjusted in equal proportion to the income earned or the income declared on the basis of the insurance titles indicated in Art. 8 of the Social Insurance Act, even if the expected number of contributions is not sufficient to finance the minimum pension specified in Art. 87 of the Act of 17 December 1998 on pensions from the Social Insurance Fund.<sup>22</sup> However, the question of social solidarity relates to a greater extent to conditions of acquiring benefits than to the obligation to pay contributions. For example, from a scientific point of view, in early old age, when the insured persons are usually still able to work,

18 K. Wojtyczek, *Granice ingerencji ustawodawczej w sferę praw człowieka w Konstytucji RP*, Kraków 1999, pp. 177–178.

It is worth adding that in the German meaning of social democracy, in contrast to liberal democracy or socialist democracy, both self-interest and community interest is the motive for law creation and the way to achieve it is based on agreement and not on the absolute freedom to make rational decisions, or the desire to create a new individual who would consider the community interest as his or her own interest. T. Meyer, N. Breyer, *Die Zukunft der Sozialen Demokratie*, Bonn 2005, p. 33.

19 K. Strzyczkowski, *Zasada państwa sprawiedliwości społecznej jako zasada publicznego prawa gospodarczego*, “Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2007, No. 4, p. 11.

20 A. Wypych-Żywicka, *Solidarność społeczna jako aksjologiczna podstawa ubezpieczeń społecznych a solidarność jako wartość konstytucyjna*, conference materials from the XXVIII academic conference of PSUS (typescript), p. 1.

21 Cf.: Act of 13 October 1998 on the social insurance system, hereinafter: the Social Insurance Act, consolidated text: Journal of Laws of 2019, item 300, as amended.

22 Consolidated text: Journal of Laws of 2018, item 1270 as amended, as pointed out by U. Kalina-Prasznica, equivalence is individual and personalised, while solidarity is primarily limited to insurance solidarity, *i.e.*, to the risk community in the process of accumulating funds through pension contributions and their distribution through old-age pension benefits (Cf. U. Kalina-Prasznica, *op. cit.*, p. 226).

the risk is not so great as to justify the replacement of their entire income from work.<sup>23</sup> Pro-social solutions are applied in social insurance, and the very determination of the retirement age remains a choice of social policy, for which the principles of social justice may be more important than the insurance solidarity principles in a situation when this age is not adjusted to actual old age. It seems, therefore, that under pension systems that respect the principle of insurance solidarity, the principles of insurance equivalence and social justice may be taken into account to varying degrees, which depends on the policy pursued, and in particular on democratic choice and legal policy. Insurance reciprocity in the pension law becomes a compromise between the application of the principle of equivalence of contributions and benefits and the principle of social justice. The principles of insurance reciprocity are adjusted by the principles of social justice, which create derogations from these principles. The phenomenon of flattening the amount of pensions in relation to contributions in the current pension system is an example of such a derogation. Insurance equivalence is not fundamentally incompatible with insurance solidarity, these principles are even complementary in pay-as-you-go pension insurance systems. Some authors note that equivalence in European pension insurance is already prevailing over solidarity.<sup>24</sup> This is how the modern dimension of insurance reciprocity is shaped in pension insurance – the principle of compensatory equivalence is more important.

The idea of abolishing the cap on the maximum pension contribution in order to increase the importance of the social solidarity principle is coming back in the course of works on the improvement of fiscal efficiency for social insurance contributions. Authors of this proposal assume that the surplus over thirty-fold average monthly remuneration is already a non-reciprocal and non-returnable tax, and not an insurance contribution. Unanswered remains the question as to whether this will not have the opposite effect, because the improvement of the fiscal efficiency of the Social Insurance Fund always occurs in economic conditions, which are connected with an application *per analogiam* of Adam Laffer's theorem. It should be examined whether raising the amount of contributions will not cause a decrease in the ascribed contribution due to the possibility of diversifying social insurance titles in order to reduce contributions. Some unlawful activities may be also observed in actual legal relationships of pension insurance coverage, as an attempt to rescue the payer's organisation from liquidation, which may be probable in certain industries due to rising labour costs.

23 The survival to a stipulated age does not cause damage to the personal rights of the insured person and in itself does not mean damage to property. However, the financial needs of the insured person increase in the event of an incapacity for work, which depends on the health condition of pensioners or their care needs. Elderly people may incur increased expenses due to higher costs of medical services and medicines, but not in every case; besides, property and investment needs decrease over time. M. Krajewski notes that the increase in expenses for treatment and care is generally lower than the decrease in costs associated with the resignation from activity in other areas of life. Cf. on this subject: M. Szczepańska, M. Fras, *Wypadek ubezpieczeniowy* [in:] *Zagadnienia prawne i ekonomiczne dotyczące umów ubezpieczeń na życie*, <https://sip.lex.pl/#/monograph/369416435/7> (accessed 16.1.2018).

24 U. Kalina-Prasznic, *op. cit.*, p. 226.

## Contribution privileges as derogation from the insurance solidarity

The phenomenon of “benefits differentiation” is characteristic for social insurance. Insurance schematicism does not have to result in establishing uniform conditions for bearing contribution burdens and acquiring benefits for all. Problems arise, however, when a derogation from insurance solidarity becomes socially unacceptable at a given time. It is emphasised in the subject literature that the regulation of the pension provision is based on political solutions regarding the scale of funds redistribution between generations, sectors and industries.<sup>25</sup> However, political choices, and, above all, the conditions for conducting social policy change. Nevertheless, trade privileges laid down in the law are often strengthened, which means that pension contributions in the general social insurance system need to be increased.<sup>26</sup>

In academic studies on social insurance law, there is growing criticism of the differentiation of conditions of contributions payment. K. Antonów, for example, points out that the quality of protection against the occurrence of social risks is determined by the proper organisation of the risk community, without excluding some professional groups from this community (so-called risk selection) or their privileging at the community's expense.<sup>27</sup>

Trade privileges, and thus contributory privileges, are accepted in law due to the implemented redistribution idea and practical choices of redistributive aspects, which is associated with the answer to the question as to the financial participation rules that should be established in the social security system and in its insurance systems. In the literature on social policy, it is noted that solidarism should be clearly differentiated in individual subsystems of social security. The researchers point out that the financing of *e.g.*, health insurance should be treated differently than the financing of pension provision, because the former should take into account the necessary income solidarity and the absolute solidarity of risk, and thus a much greater scope of redistribution than the latter.<sup>28</sup> On the other hand, even in the area of pension provision, there is no single scale of redistribution for all insured persons due to the deterioration of conditions of participation in pension systems, which takes place only “forwards,” in relation to younger genera-

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25 U. Kalina-Prasznic, *op. cit.*, p. 1.

26 T. Szumlicz notes that before the pension reform of 1999, trade benefits, in addition to other solutions, in fact reduced the retirement age. It was estimated that if no social group was covered by more favourable regulations regarding the retirement age, the contributions for pension insurance could be lower by one third. Cf. T. Szumlicz, *Ubezpieczenie społeczne...*, *op. cit.*, p. 164.

27 K. Antonów, *op. cit.*, p. 656.

28 Cf. T. Szumlicz, *Ekwiwalentność funduszowa...*, *op. cit.*, p. 9. It seems, however, that such social expectations are subject to a different rationalisation, although it is not easy to convince others to balance economic and social reasons (importance given to particular reasons).

tions.<sup>29</sup> The diversification of the types of pension rights or the level of contributions in the situation of a shortage of sources for financing pension insurance creates a problem of costs division between various groups of entitled persons, *inter alia* – according to Stanisława Golinowska – between generations: the increased contribution for the younger generation or a contribution lower than input for the older generation.<sup>30</sup> The diversification of conditions regarding contributions and conditions for the acquisition of pension rights (and in particular excessive differences in this respect) may result in the creation of subjective assessments related to the fact that the adopted division of contribution burdens is unfair. For this reason, it is necessary to periodically review the scope of the conditions of participation in social insurance systems, and especially in the pension system. It seems that due to reduced economic efficiency and limited public trust in the solvency or sufficiency of pension benefits, the privileges for individual social or trade groups may be negatively assessed in future by the majority of the population, which incurs high pension contributions. For this reason, lawyers may also perceive a conflict with the principles of social justice, as well as worse conditions for the implementation of the rule of law as a subordination to the legal standard in the implementation of contributory obligations. In the economic literature it was noted that the issue of privileges was more acceptable in old pension systems with limited insurance equivalence – without a proper relation between individual contributions and the subsequent old-age pension, the privileges do not violate individual interests, because everything is already financed by the contributions of all system participants.<sup>31</sup> It is worth here discussing the two types of privileges that have been troublesome in Poland.

First of all, attention should be paid to the privileges directly related to contributions. Under the Act of 20 December 1990 on farmer social insurance, farmers pay low contributions. This results from the fact that farmers constitute a homogeneous risk community separated from the whole society covered by general insurance. This has become the subject of calls for social movements that are the source of revolt against the intergenerational contract. I mean here such slogans as “everyone to KRUS” raised by persons who do not fully recognise the redistributive function of social insurance.<sup>32</sup> In the current legal situation, farmers are easily granted preferential insurance protection. Pursuant to Art. 6 of the Act of 20 December 1990 on farmer social insurance, the farmer covered by this special solution represents any natural adult person, residing in the territory of the Republic of Poland and conducting in this territory, personally and on his/her own account, agricultural activity on an agricultural holding that remains in his/her possession, also within the group of agricultural producers, as well as a person who has allocated the land of his/her farm for forestation. Apparently, the Act sets a very

29 Cf. R. Pacud, (*Utracona sprawiedliwość międzypokoleniowa*, “Praca i Zabezpieczenie Społeczne” 2016, No. 2, p. 2 *et seq.*

30 S. Golinowska, *O zagrożeniach stabilności systemu emerytalnego i utrzymaniu dotychczasowego kierunku reformy* [in:] *Nowe dylematy polityki społecznej*, ed. M. Boni, S. Golinowska, Warszawa 2006, pp. 172–174.

31 T. Szumlicz, *Ubezpieczenie społeczne...*, *op. cit.*, p. 163.

32 R. Gwiazdowski, *Emerytalna katastrofa i jak się chronić przed jej skutkami*, Poznań 2012, p. 187 *et seq.*

low ceiling of requirements which must be met to be covered by a privileged form of insurance protection. According to Art. 16 of this Act, it is sufficient that the farmer's agricultural holding occupies an area of agricultural land above 1 hectare in area or is covered by a special division. The legislator does not define any requirements as to how such a small area should be managed. After meeting this condition, the whole family may be covered by social insurance in exchange for a very low contribution, and by 31 December 2017 they also had the right to be granted a pension at a lower retirement age.<sup>33</sup> In accordance with Art. 17(1) of the Act on farmer social insurance, the monthly contribution for each insured person is 10% of the basic pension rate. From the third quarter of 2018 to the first quarter of 2019, the contribution is PLN 91 per month<sup>34</sup> with this being also a lump sum for very wealthy farmers whose land ownership covers even 50 hectares. Taking into account the average price of the land in Wielkopolska,<sup>35</sup> a farmer, with land capital of PLN 3.7 million, still has the right to the lowest pension contribution rate. The contribution is slightly increased after exceeding 50 ha (12% of the basic pension – Art. 17[4] of the above-mentioned Act). The detailed presentation of pension contributions in comparison to the total insurance contributions in force in agriculture is presented in the table below.

In the case of the most affluent farmers, who manage over 300 ha of land, the maximum amount of pension contributions (basic and additional) is only PLN 527 per month, although such assets are worth PLN 10-25 million (depending on their location). Such contribution privileges for people with such large assets are socially unjust. This injustice is all the more and more glaring when one considers these farmers are also the beneficiaries of direct payments for each hectare.

The above mentioned regulations and amounts of pension contributions do not prove a lack of insurance solidarity, because farmer social insurance is a separate system, but they do prove a lack of social solidarity, because the understatement of contributions in relation to expenditures results in greater redistribution of the entire society's resources to rich farmers as compared to the value of their land. The basis for the separation of this system and the creation of a homogeneous risk community should be not only the fact of holding a farm, and thus being entitled to contribution privileges, but also existence of requirements for land cultivation and agricultural production, so that all consumers could benefit from the privileged treatment of a group guaranteeing society's food security.

33 Art. 19(2) of this Act provides that an agricultural pension is also granted to an insured farmer who meets the following conditions jointly: 1) has reached the age of 55 (a woman) or 60 (a man); 2) has been covered by pension insurance for a period of at least 30 years; 3) ceased to conduct agricultural activity. However, the privileged conditions as to the retirement age are being phased out from 31 December 2017 – these conditions have to have been met before that date.

34 <https://www.krus.gov.pl/aktualnosci/dokument/arttykul/informacja-dla-rolnikow-oplacajacych-skladki-na-ubezpieczenie-spoleczne/> (30.3.2019).

35 In Wielkopolska, the selling price per hectare of agricultural land was PLN 74.2 thousand in 2018 Cf.: <https://pomorska.pl/ceny-ziemi-rolnej-2018-w-polsce-ile-kosztuje-hektar-gruntow-w-województwach/ar/12945612> (30.3.2019).

The amount of contributions in farmer social insurance in the first quarter of 2019							
Status of the insured person and farm size	The amount of insurance contribution in PLN						
	old-age and disability pension insurance				accident, sickness and maternity insurance		contributions total amount from one insured person quarterly
	basic monthly contribution	additional monthly contribution	total monthly contribution (2 + 3)	quarterly	monthly contribution	quarterly	
<b>I. Farmer running a farm</b>							
up to 50 ha	91.00	0.00	91.00	273.00	42.00	126.00	399.00
over 50 ha up to 100 ha	91.00	110.00	201.00	603.00	42.00	126.00	729.00
over 100 ha up to 150 ha	91.00	219.00	310.00	930.00	42.00	126.00	1,056.00
over 150 ha up to 300 ha	91.00	329.00	420.00	1,260.00	42.00	126.00	1,386.00
over 300 ha	91.00	438.00	529.00	1,587.00	42.00	126.00	1,713.00
Household member (in each area group of a farm)	91.00	0.00	91.00	273.00	42.00	126.00	399.00
<b>II. A farmer engaged in non-agricultural business activity and running a farm</b>							
up to 50 ha	182.00	0.00	182.00	546.00	42.00	126.00	672.00
over 50 ha up to 100 ha	182.00	110.00	292.00	876.00	42.00	126.00	1,002.00
over 100 ha up to 150 ha	182.00	219.00	401.00	1,203.00	42.00	126.00	1,329.00
over 150 ha up to 300 ha	182.00	329.00	511.00	1,533.00	42.00	126.00	1,659.00
over 300 ha	182.00	438.00	620.00	1,860.00	42.00	126.00	1,986.00
Household member engaged in non-agricultural business activity (in every area group)	182.00	0.00	182.00	546.00	42.00	126.00	672.00

Source: <https://www.krus.gov.pl/krus/krus-w-liczbach/wymiar-kwartalnych-skladek-na-ubezpieczenie-spoleczne-rolnikow/> (30.3.2019)

Secondly, it should be noted that miners, who are covered by different conditions for acquiring old-age pensions, but do not pay contributions adjusted to these conditions, also have the right to a privileged participation in pension insurance. In the case of this trade group, it is not directly the type of contribution privilege, but rather a benefit privilege as compared to other regulations of general social insurance. However, due to the fact that the level of pension compensation for miners is significantly higher thanks to the favourable conditions for acquiring old-age pensions in the absence of appropriate

adjustment of contributions, in relation to this profession we should speak of a privileged form of participation. It seems that the mining industry should fully belong to general pension insurance without a privileged form of acquiring benefits or should be a separate solution based on self-financing, in which expenditures on mining pensions would be adjusted to the amount of contributions paid in the mining industry.

Insurance solidarity and contribution privileges should also be viewed from the perspective of the practical dimension of the intergenerational contract implementation. The concept of an intergenerational contract is not of a legal nature, because it is a kind of social contract, which is distinguished in the theory of the state in order to emphasise the importance of specific political regulations in the creation and strengthening of statehood itself.<sup>36</sup> On the basis of such a contract, the ruler is already a plenipotentiary of the state community,<sup>37</sup> but the law is created in a manner consistent with the rules applicable to society, which provides the ruler with a mandate to exercise power. Czesław Znamierowski notes that there are many more such regulative ideas of great importance to the social structure. It seems that the intergenerational contract should be included in these ideas, because this is the social basis for the stability of pension insurance irrespective of the significance of law application. The diversification in pension law of the types of pension rights or the level of contributions in the situation of a shortage of financing sources for pension insurance creates diversification of the costs of contributions between different groups of entitled persons. The resulting differences may be excessive in social opinion, and thus lead to negative opinions that the adopted division of the contribution burden is unfair, and for this reason groups that bear higher contribution burdens may feel aggrieved and demand privileges also for themselves. The race for privileges is never ending, and if it is dynamised between industries, it will lead to the end of a certain intergenerational contract and will weaken social bonds.<sup>38</sup> Maintaining the system of preferences, both in contributions and benefits, usually has an exaggerated or over-estimated axiological justification, more often giving rise to contradictions with the principle of social justice than implementing them.<sup>39</sup>

## Conclusions

When answering the main research questions posed at the beginning of this paper, it should be assumed that in the legal system using the social insurance method, the principle of insurance solidarity is always implemented. However, the dilemmas of establishing

<sup>36</sup> In the legal literature, it is critically assumed that the concept of a social contract is not a description of a historical fact, but a regulative idea pertaining to the relationship between the people and the ruler. See: C. Znamierowski, *Szkola prawa. Rozważania o państwie*, Warszawa 1999, p. 323

<sup>37</sup> *Ibid.*, p. 324.

<sup>38</sup> J. Sikora, L. Wanat, I. Widerska, *Solidarność, ekwiwalentność, sprawiedliwość. Dylematy zarządzanie wiekiem emerytalnym*, Częstochowa 2018, p. 151.

<sup>39</sup> *Ibid.*, p. 151.

pension contributions are inseparably connected with the problem of the choice of rules of insurance reciprocity within the realized social insurance solidarity.

Both the expiring and the current pension system are based on the principle of insurance solidarity. However, each of them differently defines the issue of the reciprocity of contributions and insurance benefits. Insurance equivalence should not be opposed to insurance solidarity, but at most to social solidarity. The first principle concerns the dependence of the benefit amount on the contribution, and the latter emphasises the role of cost-sharing in insurance benefits as currently financed. The increasing emphasis on social solidarity may justify differentiation in the contribution rate, although in actual relationships this course often weakens the legalism in the activities of both the payer and the insured person who finance pension contributions. As a consequence, this weakens the rule of law in the implementation of relations of social insurance coverage (through the social infiltration of non-supportive actions).

Amendments to the law require a prospective approach to the future behaviour of small enterprises; increase in the contributions paid by stronger enterprises would be more acceptable for social and economic reasons. Such a course in social insurance law evolution would, however, require limiting the narrowly understood principle of insurance solidarity, assuming the adjustment of the rate of general contributions to the insurance risk, and would increase the importance of solidarity in the economic dimension, *i.e.*, solidarity of entities bearing the costs of pension benefits. The increased significance of solidarity between entities bearing the cost of pension contributions could be justified even by the fact that, as a general rule, the contribution financed by the payer does not affect its benefits related to the membership of the pension system. The economic position of individual payers in social insurance can be combined with the role of the creator of the wage/salary fund, from which equal pension contributions are deducted, but also *de lege ferenda* can be differentiated due to the ability to bear pension costs, which also have a fiscal and solidarity features. The preamble of the Constitution defines the duty of solidarity with others as a principle whose respect is the unshakable foundation of the Republic of Poland. When creating social insurance law, it is necessary to create legal institutions based on the principle of insurance solidarity, the content of which is a compromise between the principles of insurance equivalence and social solidarity.

The results of the analysis presented in this study clearly show that it is necessary to set new directions for establishing the rules for bearing the cost of pension benefits. In the classic approach to the problem of social insurance, the contribution burden of every economic form of work requires the consistent application of equal rates in relation to risk. Due to the diversity of payers' capital and their ability to compete, and in order to mitigate the negative effects of non-competition in specific markets, consideration should be given to the question of the progressive differentiation of contributions based on the assumption that the contributions of large enterprises (characterised by a specified level of income or concentration on the market) may be higher. In this way, it would be possible to implement the principle of solidarity between contribution payers who – by their joint effort – provide jobs and, therefore, indirectly finance pensions.

The article indicates that there are two levels of coverage the cost of pension benefits in solidarity: the level of those who bear the cost of the contribution, and those who bear the insurance risk.

In setting down the rules for paying social insurance contributions (implementation of the programmatic norm of Art. 67 of the Constitution) one should not lack ideas for stimulating the number of contribution-payers, contributing to third party social insurance. However, one should stop linking contributions to insured persons' employment or business activity and consider the possibility of calculating them by taking into account business transactions with the participation of the insured persons. This problem requires separate research and a broader study.

On the basis of the cases considered as "privileges in contributions payment", analysed in this paper, it should be noted that they may result from the concept of risk community of groups of farmers or miners, improperly developed in law, in particular in terms of the participation and financing of their benefits. The mentioned situations provide the basis for a broader discussion on the application of the principles of social solidarity, which in the case of miners and farmers can be assessed negatively when referred to the principle of equality and justice. Closer consideration of this problem requires, however, an in-depth axiological and teleological assessment, which should also examine the rationale of other regulations resulting in a preference in pension provision, such as those related to uniformed services (the armed force and the police) judges and public prosecutors.

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## Solidarne ponoszenie kosztu świadczeń emerytalnych (zasada solidarności ubezpieczeniowej)

W artykule rozpatrzono kwestię terminologiczną relacji pojęcia solidarności ubezpieczeniowej do ekwiwalentności ubezpieczeniowej. Nie są one przeciwstawne sobie – zasada ekwiwalentności ubezpieczeniowej podkreśla zależność wysokości świadczenia od składki, natomiast zasada solidarności ubezpieczeniowej podkreśla znaczenie wspólnego ponoszenia kosztu obecnie finansowanych świadczeń ubezpieczeniowych. Zarówno ustępujący, jak i obecny system emerytalny są oparte na zasadzie solidarności ubezpieczeniowej, lecz różnie definiują wzajemność składki i świadczeń ubezpieczeniowych. Obliczanie emerytur ze składek oznacza większą ekwiwalentność, natomiast solidarność ubezpieczonych wyznaczana ze względu na wspólnotę ryzyka ubezpieczeniowego faktycznie zależy od rzeczywistego podporządkowania normom określającym obowiązek ubezpieczenia społecznego. Solidarne ponoszenie kosztu świadczeń emerytalnych wymaga podkreślenia działań płatników składek, a nie tylko ubezpieczonych tworzących wspólnotę ryzyka.

**Słowa kluczowe:** solidarność ubezpieczeniowa, umowa międzypokoleniowa, system emerytalny, zasada solidarności