Solidarity in social insurance

Risk community

Principle of insurance solidarity

Solidarity in pension, sickness, accident and farmers’ insurance

Control of the amount of sickness benefits
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Publisher:
The Polish Social Insurance Institution (ZUS)
3, 5 Szamocka street
01-748 Warsaw

Editorial office:
3, 5 Szamocka street
01-748 Warsaw
room: C025/ C335
+48 022 667 24 65
e-mail: redakcja.us@zus.pl
Ladies and gentlemen,

we are pleased to provide you with a collection of articles developing thoughts set out in papers presented during the XXVII academic conference of the Polish Social Insurance Association “Solidarity in social insurance,” held in Gniew on 13-14 September 2018.

The conference was organised primarily to provide a forum for discussion on the role of solidarity in social insurance, both in the aspect of creation (de lege ferenda remarks), evaluation and interpretation as well as the application of particular legal solutions regarding the system of the mentioned benefits.

Solidarity determines the interrelationships between people and is a significant element in community relations because an individual lives and acts as a social being. In the area of social insurance, it is assumed that social solidarity means unequal participation in the creation and use of the fund, because the risk community lacks symmetry between the contribution and the benefit. According to Kreikebohm, this entails a close relationship between individualism and solidarity in the construction of social insurance: I help to be helped (“egocentric altruism”), with potential benefits and deferred reciprocity as the motives of solidarity.

According to traditional approaches, the discussed idea determines the shape and content of the obligations of insured persons and governs the rules for the creation and functioning of their community.

The reflection and debate on the role of solidarity in social insurance, undertaken by the speakers and participants of this conference, is justified by transformations in key social institutions, i.e., the market, labour, family and social security law. Analysis of this law reveals an erosion of previously adopted rules and models of responsibility, justice, solidarity or the redistribution of national income. Paid employment is no longer an indispensable condition for safeguarding social insurance benefits. It is meaningful that the boundaries between tasks imposed on the risk community and on the national community have become more blurred. There is a clear trend to put more emphasis than before on the social security of households than that of individuals, as exemplified in the Polish social legislation by the systems of insurance and non-insurance benefits (not related to paid employment) developed to support various socially desirable family functions.

In addition, new burdens imposed on the social insurance funds, different from their nature, have become a reality. This is an issue of the tasks of the benefits system, both those existing and new, being an additional burden for these insurance funds – in particular the old-age, disability and sickness funds.

Analysis of the nature of social solidarity and its changing and relatively new role in social insurance, which takes into account the changing legal, social and economic conditions, is important for defining the risk community, and thus the personal scope of social insurance obligation. Verification of the existing risk community and the determination of a new, taking into account axiological, legal, economic and social conditions, should
more effectively adjust the scope of protection, rate and basis for calculating contributions for particular types of insurance to the present needs and possibilities.

I hope that the published texts by Kamil Antonów, Ph.D., Prof. Urszula Kalina-Prasznic, Ph.D., Radosław Pacud, Ph.D., Ariel Przybyłowicz, Ph.D., Dorota Dzienisiuk, Ph.D., Helena Pławucka, Ph.D. and Szymon Kasprowski M.Sc. will improve knowledge about solidarity in social insurance, leading to a greater recognition of rights and obligations as determined by this value and principle, as well as a better understanding of the decisions of the legislator or the choices of insured persons and contribution payers.

Renata Babińska-Górecka, Associate Professor
University of Wrocław
The author of the paper regards the solidarity of a risk community as a principle of social insurance law that is expressed by an unequal (both in relation to period and amount) bearing of social insurance costs (contribution payments) in relation to expected (yet only potential) profit, i.e., a benefit obtained only in the event of social risk materialisation and meeting legal conditions for the granting of a benefit. While determining the scope of the use of solidarity mechanisms, no behaviour should be tolerated, nor a mechanism introduced that are aimed at the abuse of insurance cover (e.g., by using a particular personal situation to obtain high benefits while employment is fictitious), disloyalty to the risk community (i.e., avoiding social insurance obligation or the concealment of income that is subject to deductions for contribution purposes) or encumbering the risk community with payment of benefits in favour of persons who are not members of the community (e.g., in the event of not taking up employment or any other paid occupation due to the need for the personal care of an ill family member). Acceptance for such activities leads to violation of both the integrity of the risk community and the financial balance of the social security system.

**Key words:** financial balance of the social insurance system, insurance cover abuse, social insurance law, solidarity of risk community

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The concept of risk community solidarity

Jan Jończyk has introduced the concept of “risk community solidarity” into the legal language, indicating that it is connected with the financing of social security and is a derivative of the “obligation of solidarity with others” expressed in the preamble to Basic Law. Its essence consists in spreading the risk burden, i.e., the cost of insurance financing, to the widest possible group, but without symmetry between the input (contribution) and the profit (benefit), yet only the potential, because it is not granted if there was no risk (no “damage”). For the legal construction of “risk community solidarity”, characteristic is inequality in bearing the burden of contributions, both in terms of their duration and amount. ²

It should also be borne in mind that in the insurance model “a contribution […] is only a measure of the overall input to the creation of an insurance fund,”³ which means that its payment does not only result in an entitlement to one’s own benefits, but also consent to the financing of benefits for other members of the risk community. This rule is an expression of insurance reciprocity, which is sometimes directly identified with the insurance solidarity principle.⁴ In my opinion, however, while perceiving the links between these insurance categories, there are sufficiently strong grounds to treat the solidarity of the risk community as the principle of social insurance law⁵ – separate from insurance reciprocity – which is based on such elements as: balanced contribution, fair compensation or maintaining the proportion between the contribution and the benefit.⁶ This principle, as not laid down expressis verbis in the social insurance law, is subject to reconstruction based on the analysis of the applicable legal standards, from which it is reproduced (interpreted).⁷

Non-legal aspects should not be disregarded in the general characteristics of the solidarity of the risk community, because this solidarity also has a deep, though often underestimated, moral and social meaning. As a result of using various types of solidarity

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⁴ Ibid, pp. 23 and 130.
⁶ See J. Jończyk, op. cit., p. 40.
⁷ This is one way of formulating the principles of law in legal texts (see S. Wronkowska, M. Zieliński, Z. Ziembiński, Zasady prawa. Zagadnienia podstawowe, Warszawa 1974, p. 94 et seq.).
mechanisms – enabling the redistribution of income from those more wealthy to the poorer, from those who live shorter (men) to those who live longer (women) or from single to married persons\(^8\) – the inequalities in individual input to the cost of insurance are compensated,\(^9\) and – as a result – the social significance of insurance is clearly visible in the mutual (selfless) aid in situations where members of the community are exposed to similar threats. This is how the conditions are created to strengthen social bonds and a sense of responsibility for others according to the saying “one for all, all for one.” This also corresponds to the promotion of behaviours in line with the implementation of the idea that the Republic of Poland constitutes the common (collective) good of all citizens (Art. 1 of the Constitution of the Republic of Poland).

At the same time, and this will be addressed by the present paper, legal institutions based on solidarity should not be used in the event of violation of the integrity and financial balance of the risk community, which is reflected in:

1) abuse of the solidarity rules in the form of reaping unjustified benefits from the funds “generated” by the community,
2) avoiding the obligation of social insurance, and hence the obligation to bear burdens (pay contributions) in favour of the community,
3) unjustified integration of certain persons to the risk community.

Therefore, it is worth considering whether, taking into account the existing legal regulations in the field of social insurance, the scope of solidarity of the risk community has been properly formed.

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**Abusing the risk community solidarity**

The phenomenon of abusing risk community solidarity is connected with the imbalance between the input (contribution paid) and the level of the benefit received, which, as a consequence, gives grounds for an opinion of unfair compensation of “damage,” and sometimes also leads to unequal treatment of the insured persons in the calculation of benefits,\(^10\) although the conditions of social insurance coverage are the same.

To illustrate this issue, at the outset, one should indicate the cases of obtaining exces-
sive remuneration in the short period (\(i.e.,\) an income constituting the contribution basis, and also the benefit calculation basis), which leads to the receipt of maximum benefits from sickness insurance (sickness or maternity allowance) in the long term. There is no place for discussing these issues in this paper, but they have been widely analysed both


\(^9\) Addressing of inequalities understood in this way is referred to as “social compensation” (*Ibid*, p. 43) or “commonality” of risk (see D.E. Lach, *op. cit.*, p. 124).

in the subject literature" and in the case law. Ultimately, formally speaking, the related controversies have been removed in connection with the ruling of the Constitutional Tribunal of 29 November 2017, in which the Tribunal stated that:

[...] the amount of contractual remuneration, which affects the contribution assessment basis, may and should be subject to verification due to [...] the public-law nature of the insurance relationship;

in this way, it “prevents various attempts to obtain undue or excessive benefits under false pretences [...]” In other words, there is no social (related to the protection of the risk community) justification for obtaining benefits from the social insurance system if it is done in violation of the rules of the loyalty of one group of insured persons to another group, which in this case consists in taking advantage of one’s personal situation (e.g., pregnancy). Although, the enhancement of the quality of insurance cover is not, in itself, reprehensible, this should not be done by unlawful actions, i.e., increase in the basis for contributions assessment in spite of the actual non-performance of work or non-payment of increased remuneration. Such conduct is detrimental to the interests of the risk community as a whole, and thus undermines the rules of solidarity.

Another type of transgression of the solidarity limits of the risk community is the institution of contributions distribution on the sub-account (Art. 40e of the Social Insurance System Act) and the guaranteed payment (Art. 25b of the Act on pensions from the Social Insurance Fund). The mentioned institution of contributions distribution on the sub-account duplicates the legal solutions adopted in chapters 12 and 13 of the Act on the organisation and functioning of pension funds, governing the distribution of funds in the event of divorce or marriage annulment and the death of a member of an Open Pension

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12 This concerns in particular the resolution of the Supreme Court of 27 April 2005, II UZP 2/05, OSNPUISiSP 2005, No. 21, item 388, in which the Supreme Court did not challenge Social Insurance Institution (ZUS) entitlements to question the amount of remuneration constituting the basis for assessing sickness insurance contributions, if the circumstances of the case show that it had been paid on the basis of a contract, which was incompatible with law, principles of social coexistence or which was designed to circumvent the law (Art. 58 of the Civil Code). However, this view does not apply to persons subject to voluntary sickness insurance (e.g., persons engaged in non-agricultural activities), because the Supreme Court in its resolution of 7 judges of 21 April 2010, II UZP 1/10, OSNPUISiSP 2010, No. 21–22, item 267 concluded that ZUS was not entitled to challenge the declared amount (Art. 18[8] in conjunction with Art. 20[3] of the Social Insurance System Act) as the basis for assessing the contribution if it falls within the limits set by law, i.e., from 60 to 250%; see K. Antonów [in:] Kodeks postępowania cywilnego. Postępowanie odrębne w sprawach z zakresu prawa pracy i ubezpieczeń społecznych. Komentarz, ed. K. Antonów, A. Jabłoński, Warszawa 2014, pp. 307–308.


The scope of risk community solidarity

Fund. Without going into details, under the applicable legislation, contributions are paid out (once or in instalments) in the amount of 50% (if the deceased insured person was married at the time of death) or 100% (if the deceased insured person was not married at the time of death) of the indexed amount of contributions, resources, interest for late payment and a prolongation fee, recorded on the sub-account. This payment is made in cash to the entitled persons or, if they have not been indicated, to the heirs of the deceased insured member of the Open Pension Fund. The problem, however, is that these payments, taking into account the pay-as-you-go method of financing benefits, burden the risk community, reducing the cash generated thereby and intended for the payment of current pensions. This results not only in the depletion of Social Insurance Fund revenues, but also disintegrates the risk community, and this is because the beneficiaries of these transfers are often people outside this community, i.e., persons who do not have the status of an insured person under the Social Insurance System Act as a result of not being covered by this insurance (e.g., payment after death of the insured person for a judge, prosecutor, professional soldier or police officer or an officer of other uniformed services).

And as regards the guaranteed payment, this institution allows the pensioner to name one or several individuals as beneficiaries, in favour of whom a lump-sum cash payment is to be made after the pensioner’s death. However, the pensioner is not allowed to indicate, without the consent of the spouse, a person other than that mentioned in Art. 67 of the Pension Act (i.e., a person entitled to a survivor’s pension) and the right to this benefit may only be acquired if the death of the pensioner occurred within three years from the month from which the pension was first paid. And a failure to indicate a beneficiary means that the spouse has been indicated as a beneficiary, provided that at the time of death, the pensioner remained with him or her in the statutory marital community. Otherwise, the guaranteed payment is included within the estate. As a result of these provisions – similarly as in the case of the institution of contributions distribution on the sub-account – some resources allocated for the payment of current pensions are distributed to spouses, and when there are no spouses, to other heirs of the pensioner, including those from outside the risk community, if the spouses or other heirs (except for children – see footnote 17) were not covered by general social insurance. Bearing this in mind, the critical assessment of such regulations expressed in the analysis of the distribution of contributions on the sub-account remains in force.

Hence, it can be briefly summed up that the existing legal solutions allow – at the expense of the risk community – to make asset transfers to persons who have not borne any social insurance burdens (have not paid any contributions), as they have not been the members of this community and have not participated in the creation of funds with the strictly defined purpose associated with the coverage of pension expenditure. This way of managing public funds (satisfying the private interests of persons outside the risk community) distorts the

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16 For this matter precisely see K. Antonów, Sytuacja prawna składek zaewidencjonowanych na subkoncie w ZUS w razie rozwodu lub śmierci ubezpieczonego albo śmierci emeryta, “Praca i Zabezpieczenie Społeczne” 2011, No. 5.
17 Of course, this reasoning does not include children who are not insured by their nature.
18 Cf. as regards this institution: D. Dzienisiuk, Wypłata gwarantowana jako odrębne świadczenie ze społecznego ubezpieczeń emerytalnego, “Ubezpieczenia Społeczne. Teoria i praktyka” 2016, No. 1.
structure of social insurance, where the application of the solidarity mechanism should at least depend on the willingness to incur insurance costs by persons who are members of that organisation by virtue of being covered by a given type of social insurance.

In the analysis of issues related to the abuse of risk community solidarity, attention should be also paid to the issue of the pension rights of miners. And I do not criticise the lower – than the universal (60 and 65 years) – retirement age of this professional group (determined according to Art. 50a of the Pension Act at the level of 55 or 50 years irrespective of gender) or even the special right to a mining pension irrespective of age and occupied position after at least 25 years of mining work carried out underground permanently and full time (Art. 50e of the Pension Act). Of special concern is the way of calculating mining benefits in relation to the bridging pensions. Since special employment is the criterion for separating both benefits, remembering also that contrary to the mining pensions, the payment of bridging pensions is financed from funds created specifically for this purpose (Bridging Pensions Fund) whose revenues, apart from subsidies from the state budget, come from a special (at the level of 1.5% of the assessment basis) contribution paid for employees performing work in special conditions or of a special nature (see Art. 30[1][1], Art. 32[1][1], Art. 35[1] and Art. 36[1] of the Bridging Pensions Act) – it is unacceptable to have such a far-reaching differentiation in the calculation of the amount of these benefits. It consists in the fact that while the amount of mining pensions is calculated using the defined-benefit formula (Art. 53[1] of the Pension Act), the formula of defined non-capitalised contribution is used to calculate the bridging pensions (Article 14[1]-[2] of the Bridging Pensions Act).

Therefore, the rate of mining pensions to a much greater extent than the rate of bridging pensions is affected by elements not related to the individual course of insurance (especially

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19 I am writing about the willingness to incur insurance costs, realising that there are situations in which – due to the rapid realisation of social risk (e.g., the occurrence of an accident at work shortly after starting employment and related insurance) – the input to incurring these costs may be minimal in relation to the value of due benefit of a long-term or even permanent nature. However, the granting of such benefit in this situation is not contrary to the principle of solidarity, because the sense of solidarity of the risk community is expressed precisely in the existence of such inequality (see J. Jonczyk, op. cit., p. 40).

20 When we look at the conditions of acquiring the right to the mining and the bridging pension, it seems that – if miners were covered by the Act of 19 December 2008 on bridging pensions (consolidated text: Journal of Laws of 2018, item 1924; hereinafter: the Bridging Pensions Act) – the conditions for granting the pension (in terms of age and employment period) would probably differ from the general conditions for acquiring the right to the bridging pension formulated in Art. 4(2)-(3) of the Bridging Pensions Act and would be defined similarly as in Art. 50a of the Pensions Act as a result of covering miners by a separate provision, as this is currently happening in relation to some persons who perform work in special conditions or of a special character, listed in Art. 5–11 of the Bridging Pensions Act.

21 Thus, due to the way bridging pensions are financed differently than the financing of the rest of pensions (including mining pensions), persons entitled to this benefit create an autonomous risk community, which, however, uses to some extent the external funds due to the existing mechanism of paying contributions to the Bridging Pensions Fund also for these employees who are covered by the retirement insurance for work in special conditions or of a special character, but who cannot acquire the right to such old-age pension due to part-time work or work performed from 1 January 1999 (see the resolution of 7 judges of the Supreme Court of 28 September 2016, III UZP 10/16, LEX No. 2113358).

the social part of the pension), as well as those which are dependent on the insurance period, but are constructed in a different way (e.g., calculation of the basis of assessment of the mining pension from a specified insurance period, but not the whole insurance period, as is the case with the bridging pension). Considering this – even taking into account that the ratio of the assessment basis is limited to 250% (Art. 15[5] of the Pension Act), which results in the so-called flattening of benefits (degression) – the pension formula concerning miners puts this professional group in a clearly more advantageous financial situation in comparison with many representatives of other professions included in the group of people who perform work in special conditions or of a special character. Hence, due to the model of calculating the amount of benefits (Art. 2a[2][3] of the Social Insurance System Act), it is an example of unequal treatment of beneficiaries distinguished for the same significant feature (special employment). The distorted equality in the realisation of benefits from insurance after the occurrence of social risk also has a negative impact on the perception of solidarity, because it is believed that one of the insured groups is favoured in relation to others. There is, indeed, a violation of the financial balance of the risk community, which results from the fact that expenditures on mining pensions are not really balanced with receipts from the contributions, because if they came exclusively from employment in mining, they would not cover liabilities in respect to mining pensions. Therefore, if miners have a special (more favourable) – in comparison with other persons performing work in special conditions or of a special character – system of determining the pension amount, and at the same time the cost of their financing, differently than in the case of bridging pensions, is incurred also by other people covered by pension insurance, it seems justified that one should either create a separate risk community with its own insurance fund adjusted to the payment possibilities of this occupational group, or increase the amount of contributions for performing mining work to make the incurred insurance cost (relatively low) more realistic as compared with the (relatively high) level of insurance cover.

Avoiding social insurance burden for the benefit of the risk community

A typical example of avoiding insurance burdens (insurance coverage and payment of contributions) is the phenomenon of ostensible employee outsourcing (euphemistically referred to as the so-called optimisation activities), in fact consisting in reducing the

24 According to the Supreme Chamber of Control, in 2007-2015, the estimated value of the deficit of the Social Insurance Fund, resulting from the lack of coverage of mining disability and old-age pension payments by contributions to these benefits transferred by hard coal mining entities, totalled approximately PLN 58.4 billion; annually from about PLN 4.7 billion in 2007 to about PLN 7.7 billion in 2015 (see Najwyższa Izba Kontroli, Funkcjonowanie górnictwa węgla kamiennego w latach 2007–2015 na tle założeń programu rządowego. Informacja o wynikach kontroli, LKA.410.038.2015, Warszawa 2017, pp. 61–62).
costs of business activity, in particular regarding the payment of public levies (taxes and contributions). Formally, such practices usually involve a faulty transition of a part of the workplace to another employer pursuant to Art. 231 of the Labour Code, due to the fact that it is not uncommon that the working conditions are not changed because the work is still performed in the same place, using the same tools and under the orders of the same people, and with the continued payment of remuneration from the resources of the previous employer, only subsequently through an outsourcing company. In practice, therefore, it is a fictitious referral of employees to another economic entity, however, with the actual use of the effects of their work by the previous employer, but without paying social insurance contributions. Therefore, in such a situation there can be no question of changing the contribution payer (from the original one to the supposedly acquiring entity) and all social insurance obligations burden the existing employer, even if the acquiring entity has been paying social insurance contributions, because they are reckoned ex officio towards the dues in respect of the contributions of the actual contribution payer (i.e., the one identified by Social Insurance Institution [ZUS]) (Art. 38a[4] of the Social Insurance System Act).

When writing about avoiding social insurance burdens, one should also mention the elimination of contribution charges as a way to increase competitiveness in tendering procedures for cleaning services or property supervision services. This is done mainly by means of offering such services to be performed by persons employed under civil law contracts, in particular contracts for specific work exempted from the social insurance obligation. However, it is rightly argued in the case-law that the provision of services of cleaning, guarding objects or packing fruit or vegetables does not result in the creation of actual work, because the objective is not to achieve a certain effect but to carefully perform certain operations. According to the judgement of the Supreme Court of 26 March 2013, the contract for the specific work does not consist in simple and repetitive operations (e.g., pruning plums), as they do not have a separate (individual) character and purpose. Therefore, these works may not be performed under the specific-work contracts or even – in the case of a public contract for services or construction works – commission contracts in a situation where the awarding entity specifies in the description of the object of the contract the requirement that the contractor or subcontractor should employ on the basis of an employment contract persons to perform activities indicated by the awarding entity within the scope of the contract, if the said activities are to be carried out in the manner defined in Art. 22(1) of the Labour Code (see Article 29

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25 See the judgement of the Supreme Court of 27 January 2016, I PK 21/15, LEX No. 1975836 and the judgement of the Supreme Court of 19 January 2016, I UK 28/15, LEX 2043737, and (in the context of the so-called tax optimisation) the judgements of the Voivodeship Administrative Court: in Kraków of 21 September 2017, I SA/Kr 137/17, LEX No. 2384011 and in Rzeszów of 15 March 2018, I SA/Rz 71/18, LEX No. 2467863.

26 For example the Supreme Court in its judgement of 25 October 2016, I UK 446/15, LEX No. 2163323. See also orders of the Supreme Court: of 10 April 2018, II UK 265/17, LEX No. 2490629 and of 21 March 2018, II UK 239/17, LEX No. 2490627.

27 The judgement of the Supreme Court of 26 March 2013, II UK 201/12, LEX No. 1341964.
The scope of risk community solidarity

paragraph 3a of the Public Procurement Law\(^{28}\).\(^{29}\) Therefore, both in the case-law and in the applicable law, barriers are created to stop the instrumental use (for the purpose of circumventing the provisions of social insurance law) of contracts for specific work as one of the forms of employment.

At the end of the discussion, we should mention the issue of cooperation between the insured person and the contribution payer in avoiding the obligation to pay contributions. If such a practice is discovered, ZUS may refuse to record on the insured person’s account an unpaid (due) pension insurance contribution and to cancel the one that has already been recorded (Art. 40[8] of the Social Insurance System Act). Due to the fact that the practical use of this provision by pension authorities is not widely known, one can only speculate as to the scale of this conduct by both parties to the insurance relationship. However, we certainly deal with such types of conduct in the so-called grey economy, where income from business activities is concealed, e.g., in the form of paying (covered by insurance and taxed) minimum remuneration for work along with unregistered (not covered by insurance and untaxed) additional income for work actually performed. Such actions, aimed at lowering current labour costs, often gain the approval of persons employed (insured) thus increasing their actual earnings by that part which would be the gross wage/salary. However, this is done with the obvious disadvantage for the risk community and at the risk of the unprotected employee (not always aware of the situation) who, by obtaining temporary financial advantage in respect of the unrecorded income, exposes him/herself (and also his/her family) to a very low level of insurance protection (and thus a low quality of life), for example in the event of long-term sickness absence or an incapacity for work resulting out of the general condition of health or due to an accident at work, and – in the long run – also to negative consequences in terms of lower benefits after reaching the retirement age, not to mention the consequences of the death of such a “cheaply” insured person.

Unjustified integration of certain persons to the risk community

The issue of unjustified integration of certain persons to the risk community by covering them by compulsory pension insurance entails setting limits for the excessive extension of this obligation to non-profit-making social insurance titles. Thus, if the socio-economic


\(^{29}\) In the literature on public procurement it is emphasised that, in particular, the operations performed by cleaning staff (cleaning activities) and bodyguards (security services) have the nature of an employment relationship. See J.E. Nowicki, *Prawo zamówień publicznych. Komentarz*, Warszawa 2018, commentary to Art. 29(46); E. Wiktorowska, *Prawo zamówień publicznych. Komentarz aktualizowany*, LEX/el 2018, commentary to Art. 29.
purpose of social insurance is to mitigate the effects of social risks arising in connection with the performance of paid work or gainful activity, so – considering that contributions for non-profit-making activity are paid from the state budget (see, e.g., Art. 16[8] of the Social Insurance System Act) – the extension of insurance coverage to persons who do not take part in bearing the cost of social insurance must be a well-founded exception. In other words, the reason for granting this protection in such cases should be strongly related to the life (personal) situation of the insured person who is temporarily not able to perform some sort of gainful activity, for example due to sickness, childbirth or child raising in the early stages of life.

As regards sickness, bearing in mind the typical shortness of such a physical condition on the one hand and its frequency on the other hand, a lack of insurance obligation during the period of incapacity for work in this respect is understandable, which does not change the fact that a protective mechanism is introduced here, under which the sick pay periods, periods of receiving rehabilitation and sickness benefits are deemed to be contributory periods (Article 14[3] of the Social Insurance System Act). This means that the fact that these benefits are received for over 30/90 days does not result in the cessation (interruption) of sickness insurance, and thus in the resumption of the qualifying period for the acquisition of the right to the next sickness allowance pursuant to Art. 4(1) of the Act on cash social insurance benefits in respect of sickness and maternity.30 The situation is different in the case of childbirth and child care until the child reaches the age of 6 years (in typical situations). Those titles have been covered by the insurance obligation in connection with the receipt of maternity allowance and the use of the child-care leave (Article 6[1][19] of the Social Insurance System Act) and the exercise of personal care over the child (Art. 6a and 6b of the Social Insurance System Act). This is fully justified both from the insurance and social point of view, because these periods are closely related to the earning-related title to social insurance (i.e., some form of employment covered by the insurance obligation),31 and at the same time they deserve to be covered by insurance due to pursuing the important social purpose, i.e., the “well-being of the family” and “assistance for mothers before and after childbirth,” also in the constitutional understanding of these concepts (see Art. 71 of the Constitution of the Republic of Poland).

In my opinion, such a strong justification cannot be formulated in relation to two other types of non-profit-making insurance titles. I mean here the insurance titles laid down in the following regulations:

1. Art. 6(2) of the Social Insurance System Act in conjunction with Art. 42 of the Act of 12 March 2004 on social assistance,32

31 In particular, the maternity (parental) leave and the child-care leave are included within the employee’s seniority (they form part of the employment period).
2. Art. 6(2a)-(2c) of the Social Insurance System Act in conjunction with Art. 16a–17 of the Act of 28 November 2003 on family benefits and the Act of 4 April 2014 on the determination and payment of allowances for carers.

The above regulations provide for compulsory coverage by the pension insurance of persons who resign from employment or other gainful activity or even do not take them at all (as in the case of persons receiving care allowance, special care allowance or a carer's allowance) due to the necessity of taking direct personal care of a long-term or seriously ill family member and mother, father or siblings not residing together (point 1) or due to the permanent care of a person with a ruling on a severe degree of disability or a decision on disability with the following indications: the need for permanent or long-term care or assistance of another person due to the significantly reduced possibility of an independent existence and the necessity of the constant participation of a child’s carer on a daily basis for the process of a child’s treatment, rehabilitation and education (point 2).

The justification of the insurance coverage under the above titles seems much weaker in comparison to the birth and raising of a child, because there is no relation to the profit-making title to social insurance, if the insurance coverage is granted under the condition of refraining from or giving up employment or other gainful activity. Hence, it is possible under the applicable legislation, that a person who has never been covered by social insurance in respect of any employment, may be entitled to benefits without first making their own input to the risk community, because their contributions have been paid (for no longer than 20/25 years) from budgetary funds (appropriated allocations). This way of ensuring social protection is much closer to the ancillary and not insurance method of social security, in which benefits are financed from tax sources: and instead of the risk community there is a national (general social) community ensuring rights to benefits “in situations where the individual is not able to overcome certain life difficulties due to the lack of their own (paid) rights.” Understanding the differences between social security provided in an insurance or ancillary form has been recently shown in the Act of 31 January 2019 on parental supplementary benefit, which is provided to a mother who has given birth to and raised or who has raised at least four children or to a father who has raised at least four children – in the event of the death of the mother or the abandonment of children by the mother or a long-term cessation of the children’s upbringing by the mother (Article 3[1] of this Act). However, unlike in the case of the non-profit making titles discussed above,

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35 Payment of contributions for old-age and disability pension insurance during this period is necessary to acquire the right to at least the minimum pension at the age of 60 or 65 years (see Art. 87[1] of the Pension Act).
the parental supplementary benefit and its servicing costs are financed from the state budget (Art. 10[3] of the Parental Benefits Act), which undoubtedly determines the non-insurance qualification of this benefit.

**Summary**

At the end of these deliberations, it should be stated that the principle of solidarity of the risk community in terms of financing the cost of social insurance – although based on the assumption of inequality in terms of bearing contribution burden and taking advantage of benefits\(^3\) – cannot allow for a too far-reaching loosening of the relationship between one’s own input (contribution) and the expected, potential profit (benefit). The barrier to the use of solidarity mechanisms should therefore be the abuse of insurance coverage (e.g., the use of a particular personal situation to obtain high benefits while employment is fictitious), disloyalty to the risk community (i.e., avoiding social insurance obligation or the concealment of income that is subject to deductions for contribution purposes) or encumbering the risk community with the payment of benefits in favour of persons who are not members of the community (e.g., in the event of not taking up employment or any other paid occupation due to the need for the personal care of an ill family member). Each acceptance for this type of activities (which are contrary to solidarity) leads to violation of both the integrity of the risk community and its financial balance, which in consequence is connected with the inability to correctly define the scope (boundaries) of applying the legal rules of solidarity.

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\(^3\) This means that sometimes the financial contribution will exceed the value of the benefit (if the benefit is paid at all), and in other times the expenses for the given benefit will be higher than the total amount of the contributions paid to an individual account.

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**SOURCES**

The scope of risk community solidarity

Zakres solidarności wspólnoty ryzyka

Autor opracowania traktuje solidarność wspólnoty ryzyka jako zasadę prawa ubezpieczeń społecznych wyrażającą się w nierównym (co do czasu i rozmiaru) ponoszeniu ciężaru finansowania kosztu ubezpieczeń społecznych (opłacania składek) w stosunku do oczekiwanej (leczy tylko potencjalnej) korzyści, tj. świadczenia otrzymywanego wyłącznie w razie ziszczenia się socjalnego ryzyka i spełnienia ustawowych warunków przyznania świadczenia. Przy określaniu granic (zakresu) stosowania mechanizmów solidarnościowych nie należy zatem tolerować zachowań lub wprowadzać rozwiązań, których celem jest nadużywanie ochrony ubezpieczeniowej (np. w postaci wykorzystywania określonej sytuacji osobistej dla celów przyznania wysokich świadczeń przy jednoczesnej fikcyjności zatrudnienia), nielojalność wobec wspólnoty ryzyka (tj. unikanie obowiązku ubezpieczeń społecznych czy ukrywanie przychodów podlegających oskładkowaniu) czy też obarczanie wspólnoty ryzyka wypłatą świadczeń na rzecz osób faktycznie pozostających poza jej kręgiem (np. w razie niepodejmowania zatrudnienia lub innej pracy zarobkowej z powodu sprawowania opieki nad chorym członkiem rodziny). Akceptacja dla tego typu działań prowadzi do naruszenia integralności wspólnoty ryzyka i równowagi finansowej ubezpieczeń społecznych.

Słowa kluczowe: równowaga finansowa systemu ubezpieczeń społecznych, nadużywanie ochrony ubezpieczeniowej, prawo ubezpieczeń społecznych, solidarność wspólnoty ryzyka
Social solidarity in pension insurance

Principles of solidarity and social solidarism are characterised by separate personal scopes, sources of financing, instruments and the scale of the redistribution and historically shaped degree of social acceptance necessary for their accomplishment. Solidarism promotes mutual assistance and charity. In contemporary times it is reflected in social protection and social assistance systems. It is based not on the fact of work (employment) but on civil and human rights. Solidarity in the pension insurance is not based on charity but on the rationality of the replacement of individual precaution with a group precaution which finds its basis in the actuarial calculations. It is based on the joint responsibility and joint action of persons exposed to the same risks, who form the insurance community of risk. The fundamental paradigm of the system of the insurance solidarity is the redistributory function. The scope and the scale of the redistribution within pension insurance depends on the structure of the contribution, the form of the organisation of the compensation fund and the form of the benefit. The restriction of the redistribution weakens the realisation of the principle of the social solidarity within pension insurance.

Key words: benefit form, compensation fund, contribution structure, pension insurance, solidarism, solidarity

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Introduction

The fundamental paradigm of universal old-age pension insurance is the principle of social solidarity based on redistribution within the risk community, supplemented with the principle of social solidarism based on nationwide redistribution.

Social solidarity in the pension insurance is a gradable category, measured by the scale and scope of redistribution brought about by the specific method of financing the system. The insurance paradigm of social solidarity is extended or restricted through changes in: the structure of the pension contribution, the structure of the compensation fund or the form of the benefit. These changes may depend on economic, political and demographic factors, which strengthen or weaken the sense of social solidarity and affect the acceptance or lack thereof for this pension insurance paradigm, based on compulsory collective responsibility for the protection of the risk of old age.

The aim of the paper is to show how, through changes in the contribution structure, in the organisation of the insurance fund and in the pension benefit formula in different periods and to a different degree, elements of the social protection and the social assistance system were introduced to the pension insurance system, which changed the scope and scale of redistribution within these communities. These changes, destabilising the pension system, also undermined trust in the state and in social insurance institutions as guarantors of benefits payment.

Solidarity and solidarism in pension insurance

Each type of insurance is organised on the principle of solidarity. In pension insurance, it is supplemented by the principle of social solidarism. They together provide the population exposed to a specific random risk (survival to the retirement age) with social security, which involves the awareness of being guaranteed entitlement to pension benefit.

The principles of solidarity and social solidarism are characterised by separate personal scopes, sources of financing, instruments and the scale of the redistribution and historically shaped degree of social acceptance necessary for their accomplishment. Treating these concepts as synonyms is etymologically unauthorised and erroneous in the area of social security law.

Social solidarism is based on the assumption that the common interest of all people is more important than the individual goal of the individual. This socio-political trend emerged in the nineteenth century in France in opposition to the dominant liberalism, which recognised the primacy of individual interest over that of the community. Social solidarism grew out of Christian teachings and Christian values such as love thy neighbour, help for the weak and the poor. It promoted mutual assistance and charity.
Today, it is reflected in the social protection and social assistance systems and in the promotion of non-administrative activities (non-governmental, charitable and philanthropic organisations).¹

Social solidarism prevails in countries that have chosen social protection systems. Social welfare institutions originating from earlier periods were expanded there. Social benefits are not based on the fact of work (employment), but are treated as an expression of civil and human rights. They are of a claim or discretionary nature. Their level is necessarily limited, which leaves room for private insurance.²

In countries with prevailing insurance systems, the idea of social solidarism is demonstrated primarily in state guarantees for the payment of pension benefits, in the payment of contributions from public resources for specific groups of people (e.g., the unemployed, recipients of maternity allowances, persons caring for a sick family member) and in the systemic share of the state budget in insurance institution expenses.

The principle of social solidarity is the key principle in pension insurance. Due to its compulsory and universal nature and economic impact on the standard of living of a country’s inhabitants, it is decisive for the preservation of the social and economic order.

Social solidarity involves the sense of togetherness and the cooperation of a relatively homogeneous community aimed at ensuring the social security of its members exposed to a certain risk. Thus understood, social solidarity in pension insurance is, in principle, based on the compulsory collective precaution, organised by the state in the form of a community of people who bear the risk of survival to the statutory retirement age, which is a random event characterised by the uncertainty of occurrence and the possibility of loss due to loss of income from gainful activity. Obligatory creation of the risk community is a guarantee of the ability of its members to bear insurance burdens. The members of the risk community jointly bear the costs of compensating for the economic effects of these events, i.e., payment of benefits to people who have reached retirement age. The bigger the community and the more people incurring the costs of a particular risk, usually the smaller are the individual efforts of the insured person.³

The principle of social solidarity has its source in the rationality of replacing individual precaution with group precaution, which finds its basis in actuarial calculations. Phenomena that are unpredictable in the perspective of an individual are predictable for a given population (group) bearing the risk of specific random events.

Solidarity in the pension insurance is not based on charity, but on the obligation to contribute to the joint fund to qualify for the benefit. Joint responsibility and cooperation of the community consists in sharing, on the part of all its members, the costs of pension benefits paid only to those who reach old age, in accordance with the insurance principle “the majority finances the minority.”

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² See M. Orlicki, *Ubezpieczenia obowiązkowe*, Warszawa 2011, p. 34.

The principle of social solidarity imposing an obligation to distribute the burden of benefits among the wider group of people covered by the old-age insurance is therefore a justification for its redistributive function.4

The scale and scope of redistribution become a “measure” of social solidarity, which is a gradable category. The insurance paradigm of social solidarity is extended or restricted through changes in: the structure of the pension contribution, the structure of the compensation fund or the form of the benefit. These changes may depend on economic, political and demographic factors, which strengthen or weaken the sense of social solidarity and affect the acceptance or lack thereof for the pension insurance paradigm, based on the compulsory collective responsibility for those who have reached old age.

Contributions paid to old-age pension insurance

As is emphasised in the subject literature, the principle of social solidarity refers mainly to the obligations of the beneficiaries of the system, and not to their entitlements. Thus, participation in the risk community and contributing to its financing should be assessed in the light of this principle.5 The risk community is created based on the assumption that it includes members who are able and ready to bear, although to a different extent, the costs of protection against the effects of a particular risk. For the implementation of the principle of social solidarity, it is important to accumulate insurance capital in the form of contributions, because they are an instrument of internal (and external) redistribution within the pension system. Hence – in the aspect of solidarity – the assessment of the contribution should take place according to a uniform or non-uniform interest rate on a variable amount (with possible restrictions) of the assessment basis.

The uniform contribution rate results from the principle of social solidarity and ensures the adequacy of the insurance contribution to its income (and not to individual risk as in private insurance). On the other hand, the effects of the diversification of the contribution rate depend on the diversification criterion. For example, if it is an occupational criterion (manual workers, clerical workers) or a trade criterion (miners, seamen, railwaymen), then the scale of redistribution is reduced and the equivalence of contributions and benefits within an occupational (trade) community increases, but the level of social solidarity decreases for the entire community of insured persons. If the diversification depends on the legal status of the workplace (state-owned, local government, co-operative, private), the pension system becomes a tool for achieving non-insurance goals, such as weakening the private sector. The diversification may also depend on income, with contributions assessed, for example,


Social solidarity in pension insurance

according to a progressive scale. The system of progressive contributions involves an increase in the contribution rate in proportion to income increase and results in strengthening the solidarity effects and in income redistribution from high to low income groups.⁶

In Poland, the structure and nature of the insurance (pension) contribution has been frequently “manipulated” for purposes not related to the protection of social risks. For example, in 1949 the diversification of the contribution paid for manual workers (21.18-33%) and clerical workers (23.6-32.7%) was abolished, and the principle of diversifying contributions due to differences in entitlements to the benefits of individual groups of employees was withdrawn. At the same time, the amount of contributions was diversified depending on the sector of the economy in which the enterprise operated. The total amount of social insurance contributions was: 22% of the assessment basis – for state-owned and local government enterprises, 25.75% – for other public enterprises, 30.0% for non-public enterprises and individuals employing others.⁷ In 1950, the total social insurance contribution from state-owned and local government enterprises was reduced to 21% and from other public enterprises to 25% of the assessment basis.⁸ Hence, the social insurance contribution has become an ideological instrument for the redistribution of income from the private sector to the public sector, creating a higher profitability for the latter.

In 1951, separate contributions for individual social insurance branches were abolished. Instead, a single joint contribution was established, which increased redistribution within the insurance community between various risk groups, and at the same time strengthened the principle of social solidarity in relation to employees in the public sector.⁹ At the same time, contributions to additional miners’ insurance were eliminated, which triggered a permanent mechanism of redistribution of insurance funds (contributed by other members of the community) and non-insurance funds (mainly tax funds) in favour of persons employed in this industry.

As of 1952, the calculation of the contribution has been simplified, by providing that its assessment should be based not on the individual earnings of employees, but on the total payment of certain wage fund components. This solution was mainly addressed to public enterprises, because the majority of non-public enterprises and all individuals employing others continued to pay contributions in an individualised way, based on their earnings.

In 1955-61 the amount of contributions paid by non-public enterprises was diversified (15.5-30.8%), based on socio-economic criteria.

The actual amount of the pension contribution paid into a joint fund also depends on the amount of the assessment basis and on the determination of its components at

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6 Such a system functioned, among others, in the United Kingdom in 1985.
7 The Act of 1 March 1949 on the amendment of certain provisions on social insurance (Journal of Laws No. 18, item 109); Regulation of the Council of Ministers of 8 March 1949 on the amount of the social insurance contributions (Journal of Laws No. 18, item 121).
8 Regulation of the Council of Ministers of 1 April 1950 on the amount of the social insurance contributions (Journal of Laws No. 14, item 132).
9 Regulation of the Council of Ministers of 10 February 1951 on the amount of the social insurance contributions (Journal of Laws No. 9 of 1951, item 70).
a full or limited rate, and then on the calculation of the contribution amount based on the whole or part of the basis defined in this way. If there are no restrictions on the assessment basis and on the level of the benefit, significant disproportions emerge in the system, regarding the amount of pensions paid (minimisation of redistribution). If there are restrictions on the assessment basis and on the level of the benefit, the effect of pensions “flattening” (maximisation of redistribution) arises.\footnote{For example, the Act of 13 October 1998 on the social insurance system (consolidated text: Journal of Laws of 2017, item 1777, as amended) introduced the maximum annual basis for calculating the disability and old-age pension contribution, which could not be higher than thirty amounts of the projected average monthly earnings in the national economy for a given calendar year.}

As a result of the 1998 reform, one contribution paid from the wage fund has been replaced with four contributions for four types of insurance, including old-age pension insurance.\footnote{Act of 13 October 1998 on the social insurance system.} The pension contribution was later divided into two parts: a pay-as-you-go component, registered in an individual account kept by ZUS (the so-called first pillar) and a funded part transferred to an open pension fund and to a sub-account managed by ZUS (the so-called second pillar).\footnote{The sub-accounts have been created on the basis of the Act of 25 March 2011 on the amendment of some laws connected with the social insurance system operation (Journal of Laws No. 75, item 398).}

As a result of these changes, the pension contribution in the new system is of a non-uniform nature, because an indivisible, undivided or divided contribution is paid, depending on the age of the insured person.\footnote{This accurate terminology was introduced by J. Jędrasik-Jankowska in: Pojęcia i konstrukcje prawne ubezpieczeń społecznego, Warszawa 2018, pp. 58–60.} The indivisible contribution is registered on the individual account of an insured person born before 1 January 1949.

The undivided contribution is registered on the individual account of an insured person born after 31 December 1948 but before 1 January 1969, if such person has not made a declaration as to the division of the contribution.

The contribution divided into the pay-as-you-go and funded part is mandatory for insured persons born after 31 December 1968, and voluntary for insured persons born after 31 December 1948 but before 1 January 1969, if such a person has submitted the relevant declaration on joining an Open Pension Fund.

The divided contribution was initially paid to an individual account in Social Insurance Institution (ZUS) and to the settlement account in the Open Pension Fund. In 2011, the contribution under the funded scheme was divided: one part was registered in the newly created sub-account, another was credited to the settlement account in the Fund.\footnote{Act of 25 March 2011 on the amendment of some laws connected with the social insurance system operation.}

As of 2014, a part of the contribution payable to the Open Pension Fund is voluntary.\footnote{Act of 6 December 2013 on the amendment of certain laws in connection with the establishment of rules of pension payment from funds accumulated in Open Pension Funds (Journal of Laws item 1717, as amended).}
Such a division of the pension contribution has not only organisational and financial, but also insurance effects. This is due to the fact that the insured persons are divided into three groups, one of which accumulates pension rights only in an individual account, the second – in an individual account and sub-account, while the third – in an individual account, in a sub-account and settlement account (until the end of the so-called “security slide” action).

Contribution amounts registered in the individual account and in the sub-account of the insured person are then subject to indexation according to non-uniform methods. Contributions indexation (annual, quarterly) in an individual account in ZUS is based on an index of changes in consumer goods and services. On the other hand, indexation of contributions in the sub-account in ZUS is based on the average annual dynamics of the value of gross domestic product. The first index is used to alleviate the effects of inflationary price increases and to counteract the fall in the purchasing power of the “input” of the insured person. The second index is used to provide the insured person with a share in the economic growth.

The fact that contributions are registered in different accounts, has a different effect on the assessment of the pension calculated in the defined-benefit formula (indivisible contribution) or defined-contribution formula (divided and undivided contribution). The pension calculated on the basis of the indivisible contribution depends on the employment period and earned income of the insured person, while the pension calculated on the basis of the divided and undivided contribution depends on the total amount contributed and the average life expectancy.

As a consequence, pension benefits paid by ZUS vary in the scale of redistribution and social solidarity, which – in terms of old age protection– is implemented to the fullest extent in the indivisible contribution system.

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**Old-age pension insurance fund and the principle of social solidarity**

Financing of pension benefits may be of an insurance, social protection or mixed nature, because its structure is based on the principles of social solidarity or social solidarism. These choices are also reflected in an extra-budgetary pension fund or pension fund merged with the state budget, separated or not from the insurance finances.

If the risk of old age is financed from a separate pension fund, the social solidarity covers as a rule only the community of this risk. In formal terms, such a situation took place in 1945-1949, when the following funds existed: manual workers’ pension fund, clerical workers’ pension funds, clerical workers’ material protection fund, material protection fund for employees of enterprises with organisational and financial autonomy. In practice, these funds were net linked to the state budget, and the shortages of the manual workers’ pension fund were covered by the financial surplus of the clerical workers’ pension fund.
and of the surplus in insurance against accidents at work and occupational diseases.\textsuperscript{17} In this way, through the mechanisms of redistribution, the principle of social solidarity covered communities of other risks, and through guaranteed subsidies from the state budget, the pension system was also based on the idea of social solidarism.\textsuperscript{18}

Due to systemic factors, in certain periods the social solidarism prevailed over the principle of solidarity in pension insurance. This was reflected, among others, in organisational and financial solutions in social insurance in the years 1951-1967.\textsuperscript{19} Insurance funds were incorporated into the state budget (totally or partially), but social insurance contributions retained their tax nature, which meant that the pension system had both insurance and social protection elements. At the financial level, it was possible that contribution income exceeded expenditure on benefits or that this expenditure exceeded contribution income. In the first case, the financial surplus was used in budgetary policy for general social (economic) purposes. One could call it the external redistribution, from the pension risk community to the whole society, when “the minority financed the majority”. In a situation of a shortage of funds in pension finances, budget revenues (mainly tax) were redistributed to the risk-of-old-age community and “the majority (taxpayers) financed the minority (beneficiaries)”. In both situations, the scale of redistribution based on the principle of social solidarity was growing as it went beyond the pension risk community.

Separated funds, from which pension benefits were financed, also functioned in the years 1965-1986. In 1965, the Social Insurance Fund for Craftsmen was established, in 1966 – the Social Insurance Fund for Certain Population Groups, and in 1968 – the extra-budgetary Pension Fund.\textsuperscript{20} In 1972, the voluntary pension insurance fund of clergy – members of the Catholics’ Association “Caritas” was incorporated into the Pension Fund. In 1977, the Craftsmen Fund and the Fund for Certain Population Groups were also incorporated into the Pension Fund, which at the same time repaid to the state budget a loan previously taken out by the Craftsmen Fund. In 1987, the Pension Fund was liquidated and its assets and liabilities were taken over by the newly created Social Insurance Fund.\textsuperscript{21} It was a special-purpose, extra-budgetary fund in which the social insurance finances, previously included in the Pension Fund and the state budget, were merged. Its establishment deepened the processes of redistribution within the social insurance, including the old-age pension insurance, with the simultaneous extension of the scope of solidarity to the old age risk groups of different socio-economic nature. This fund has been liquidated.

\textsuperscript{17} Wybrane źródła i literatura do obowiązującego prawa finansowego, ed. L. Kurowski, Toruń 1949, p. 608.
\textsuperscript{18} The State Treasury has been subsidising the pension system to a certain extent, and at the same time could use its deposits.
\textsuperscript{19} The Act of 2 January 1950 on the Social Insurance Institution (Journal of Laws No. 36, item 333).
\textsuperscript{20} Regulation of the Council of Ministers of 19 June 1965 on the establishment of the social insurance fund for craftsmen (Journal of Laws No. 26, item 173); Regulation of the Council of Ministers of 28 December 1966 on establishment of the social insurance fund for certain population groups (Journal of Laws of 1967, No. 1, item 2), the Act of 23 January 1968 on the Pension Fund (Journal of Laws No. 3, item 7).
\textsuperscript{21} The Act of 25 November 1986 on the organisation and financing of social insurance (Journal of Laws No. 42, item 202).
as of 1 January 1999, and its monetary resources, claims and liabilities were taken over by the pension fund separated from the Social Insurance Fund.  

This separation serves the purposes of internal settlement and financial documentation in the pension system. According to Art. 55 of the Act of 13 October 1998, the Pension Fund is used to finance old-age pensions, expenditure to cover the shortage of funds necessary to ensure payment of pensions under the funded scheme, pensions under the funded scheme, guaranteed funds and lump-sum payments determined based on contributions recorded on the sub-account.

Pension contributions recorded on individual accounts and sub-accounts are the source of financing payments from the Pension Fund (in fact, ZUS is required to guarantee and pay the benefit, not the Pension Fund). They have the form of an electronic record that reflects the share of the insured person in creating the pension risk fund. The right to the resources of this fund is in principle acquired only when the risk materialises and the statutory conditions are met. At the same time, the beneficiaries of this fund may include divorced spouses, heirs or beneficiaries indicated by the insured person (in the event of death), i.e. persons from outside the risk community. Payments to these persons are contrary to the paradigms of social pension insurance, and they change the content and function of the pension fund. Therefore, the individualisation of accounts and its socio-economic effects undermine advantages of creating the joint fund to cover the risk of old age. Payments made to third parties (outside the risk community) obviously violate the principle of social solidarity of insured persons.

The old-age pension formula and the principle of social solidarity

The old-age pension formula is the principle of creating pension receivables, which determines the connection of the benefit with the previous input to the compensation fund (contribution, employment period). In the model approach to income protection in old age, the defined-benefit formula and the defined-contribution formula is distinguished.

The defined-benefit formula (DB) is based on the collective and not individual nature of pension system equivalence, because there is no symmetry between the contribution of a member of the risk community and the benefit obtained. The sense of social solidarity is expressed in asymmetry, because “everyone contributes to the creation of the pension fund, often to an unequal degree and for longer or shorter periods, but compensation is paid only to those who have suffered damage.” Contributing to a joint fund is not

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23 No separate bank accounts are kept for any fund separated from the Social Insurance Fund.
a process of individual “saving for old age,” but a compulsory obligation to accumulate entitlements to secure income after cessation of gainful activity through the payment of resources from this fund in the form of a benefit defined by law.

This formula, supplemented in practice with elements of social solidarism, has been a lasting and dominant solution in the pension system for several decades. The structure of the benefit has been modified many times, often in violation of the principle of social solidarity within the risk community or between communities, e.g., by introducing excessive disproportions between contribution and benefit for specific occupational, age, trade groups, which resulted in the discrimination of one group or in the abuse of benefits by another. Manipulating the defined-benefit formula (especially for non-insurance purposes) infringed the interests of members of the risk community, weakened acceptance of the scale of redistribution and the implementation of the social solidarity principle in financing pensions and resulted in the willingness to escape from “compulsory insurance.”

The formula of the defined-contribution benefit is based on compulsory investment (in the case of the defined contribution [DC]) or compulsory saving (in the case of the notional defined contribution [NDC]). In the first case, the benefit depends on the current market value (price) of assets accumulated on individual accounts. In the second case, the benefit depends on the total amount of contributions paid to an individual account after indexation.

Pension benefit based on the DC and NDC formulas is the quotient of the total amount of funds accumulated on specific individualised accounts and the average life expectancy of the person at the time of retirement.

The defined-contribution formula started to apply from 1 January 2009. It is used to calculate, for those insured persons born after 31 December 1948, the amount of the old-age pension at the statutory retirement age. The legislator allowed the possibility of calculating the pension according to the defined contribution formula also for insured persons born before 1 January 1949, if despite acquiring the pension rights (according to the defined-benefit formula) they have not claimed the benefit before 1 January 2009. The use of the defined-contribution formula in fact eliminates the principle of social solidarity in pension security, because the system is based on the domination of compulsory individual precaution (based on coercion of saving and investing) over the collective precaution (based on the creation of a common compensation fund).

Distribution processes consist in the use of uniform tables of average life expectancy for women and men, which increases the benefits for women by about 15%, and reduces men’s pensions by about 13%. At the same time, the scope of the social solidarity principle has been reduced as a result of the narrowing state guarantee (inter alia in respect of minimum pensions).

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Conclusion

Limiting the principle of social solidarity in pension insurance through the specific structure of the contribution, of the fund and the benefits gives rise to reasonable doubts regarding the implementation of the constitutional right to social security after reaching retirement age, based by the legislator on the pension insurance system and not on social protection and social assistance itself.

Professor Urszula Kalina-Prasznic
Wrocław University of Law
ORCID: 0000-0002-3407-4919

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- Wybrane źródła i literatura do obowiązującego prawa finansowego, ed. L. Kurowski, Toruń 1949.
Solidarność społeczna w ubezpieczeniu emerytalnym

Zasady solidarności i solidaryzmu społecznego charakteryzują się odrębnymi zakresami podmiotowymi, źródłami finansowania, narzędziami i skalą reddystrybucji oraz historycznie ukształtowanym stopniem akceptacji społecznej dla ich realizacji. Solidaryzm promuje wzajemną pomoc i dobroczynność. Współcześnie znajduje odzwierciedlenie w systemach zaopatrzenia społecznego i pomocy społecznej. Opiera się nie na fakcie pracy czy zatrudnienia, a na prawach obywatelskich i prawach człowieka. Solidarność w ubezpieczeniu emerytalnym nie bazuje na dobroczynności, ale na racjonalności zastąpienia przezorności indywidualnej przezornością grupową, co ma podstawy w matematyce aktuarialnej. Opiera się na współodpowiedzialności i współdziałaniu osób narażonych na takie same ryzyka, które tworzą ubezpieczeniową wspólnotę ryzyka. Podstawowym paradygmatem systemu solidarności ubezpieczeniowej jest funkcja reddystrybucyjna. Zakres i skala reddystrybucji w ubezpieczeniu emerytalnym zależy wówczas od konstrukcji składki, formy zorganizowania funduszu kompensacji oraz formuły świadczenia. Ograniczenie reddystrybucji w obrębie wspólnoty ryzyka osłabia realizację zasady solidarności społecznej w ubezpieczeniu emerytalnym.

Słowa kluczowe: formuła świadczenia, fundusz kompensacji, konstrukcja składki, ubezpieczenie emerytalne, solidaryzm, solidarność
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. 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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1 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. Similarly, Waclaw 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. 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. 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 it’s 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.
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. 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. 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. 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

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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. 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.

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 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. 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. 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

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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 Apostola “jeden drugiego brzemiona noście” (Ga 6,2) w kontekście Ga 6,1–5; "Studia Koszalińsko-Kołobrzeskie" 2016 (23), pp. 43–54.


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).


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.¹³ 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.¹⁴ 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.¹⁵

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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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, 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. 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

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. 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. 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, 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), 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. 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,

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. 33.
22 Consolidated text: Journal of Laws of 2018, item 1270 as amended, as pointed out by U. Kalina-Prasznic, 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-Prasznic, op. cit., p. 226).
the risk is not so great as to justify the replacement of their entire income from work.\textsuperscript{23} 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.\textsuperscript{24} 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 \textit{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.

\textsuperscript{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, \textit{Wypadek ubezpieczeniowy [in:] Zagadnienia prawne i ekonomiczne dotyczące umów ubezpieczeń na życie}, https://sip.lex.pl/#/monograph/369416435/7 (accessed 16.1.2018).

\textsuperscript{24} U. Kalina-Prasznic, \textit{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.\(^\text{25}\) 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.\(^\text{26}\)

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.\(^\text{27}\)

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.\(^\text{28}\) 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-


\(^{26}\) 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, Ekwwalentność funduszo..., 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).
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. 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. 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. 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

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.\footnote{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.} 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\footnote{https://www.krus.gov.pl/aktualnosci/dokument/artykul/informacja-dla-rolnikow-o-plocach-na-ubezpieczenie-społeczne/ (30.3.2019).} 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,\footnote{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-gruntu-w-wojewodztwach/ar/12945612 (30.3.2019).} 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 underestimation 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.
The amount of contributions in farmer social insurance in the first quarter of 2019

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<tr>
<th>Status of the insured person and farm size</th>
<th>The amount of insurance contribution in PLN</th>
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<td>old-age and disability pension insurance</td>
<td>accident, sickness and maternity insurance</td>
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<td></td>
<td>basic monthly contribution</td>
<td>additional monthly contribution</td>
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<td>I. Farmer running a farm</td>
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<td>Household member (in each area group of a farm)</td>
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<tr>
<td>Household member engaged in non-agricultural business activity (in every area group)</td>
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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. On the basis of such a contract, the ruler is already a plenipotentiary of the state community, 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. 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.

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

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36 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, Szkoła prawa. Rozważania o państwie, Warszawa 1999, p. 323
37 Ibid, p. 324.
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.

Radosław Pacud, Associate Professor
University of Economics in Katowice
ORCID: 0000-0002-6573-0245

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Cost of pensions to be borne in solidarity (principle of social insurance solidarity)
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 podkreślania działań płatników składek, a nie tylko ubezpieczonych tworzących wspólnotę ryzyka.

Słowa kluczowe: solidarność ubezpieczeniowa, umowa międzypokoleniowa, system emerytalny, zasada solidarności
Solidarity in sickness insurance – selected issues

The author of this paper analyses selected solutions of sickness insurance in terms of the implementation of the principle of solidarity, with the considerations referring to sickness and maternity allowances. A thorough analysis of the regulations concerning the personal scope of sickness insurance, the rules for financing contributions, conditions for the acquisition or continuation of sickness and maternity allowances, the possibility of receiving these benefits after the lapse of the insurance coverage and the basis for contribution assessment leads to the conclusion that sickness insurance is essentially based on the principle of solidarity. However, some detailed solutions violate this principle, by allowing for some abuses at the expense of the risk community or by allowing benefits to be received in a situation where there is no social risk.

**Key words:** maternity allowance, principle of solidarity, sickness allowance, sickness insurance, solidarity

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Introduction

Solidarity is recognised as one of the principles or guiding ideas of social insurance as a legal institution. In literature on social insurance law, it is most often analysed within the context of pension insurance. There seems, however, to be no study that would analyse the sickness insurance regulations (or – to be more precise – regulations on the social insurance in respect of sickness and maternity, referred to by the legislator as “sickness insurance”) in the aspect of solidarity. Therefore, this article is an attempt to carry out such an analysis. Its purpose is to answer the question of whether the current regulations governing sickness insurance implement the solidarity principle.

The idea of solidarity can be analysed in many aspects. As regards pension insurance, it would be of interest to adopt the research perspective proposed by Krzysztof Ślebzak, who has looked at the principle of solidarity in various relationships: between the insured person and the contribution payer, between the insured persons, between the insured persons and the beneficiaries, between the beneficiaries themselves and between the state and the beneficiaries. Due to the different specificity of sickness insurance and the risks covered thereby, it does not seem advisable to analyse all the above-mentioned levels in relation to this insurance. That is why this paper will deal with selected aspects of sickness insurance, such as:

• the personal scope of this insurance,
• the rules for the financing of contributions,
• the conditions to be met to acquire benefits or to continue their collection,


2 In particular K. Ślebzak, Zasada..., op. cit., pp. 538–551.


4 Marek Rymsza points out horizontal and vertical solidarity or solidarity understood as insurance solidarity, civil solidarity and generational solidarity – Cf. M. Rymsza, Solidarność w ubezpieczeniach społecznych [in:] Społeczne aspekty ubezpieczenia, ed. T. Szumlicz, Warszawa 2005, pp. 43, 46–47; it seems that this author treats the concepts of solidarity and solidarity as interchangeable.

5 K. Ślebzak, Zasada..., op. cit., p. 540.
• the possibility of receiving benefits after the lapse of the insurance coverage,
• contribution assessment basis.

With the use of the dogmatic method, I will try to find in the applicable legislation the elements that implement the principle of solidarity within the risk community or to identify solutions that infringe this principle. Additionally, due to the divergent material scope of sickness insurance, which covers various social risks (incapacity for work due to sickness and equivalent situations, reduced fitness for work, work interruptions due to parenthood and the need to provide care for a child or other sick member of the family6), and thus – benefits of different types, I will limit my analysis to the two most frequently received benefits from this insurance, i.e., sickness allowance and maternity allowance.7

Before moving on to matter-of-fact considerations, the term “solidarity” needs to be defined. Due to the limited scope of the study, it is not possible or necessary to analyse this concept in detail, in particular as it has been the subject of many studies, which should only be referred to here.8 From a linguistic point of view, solidarity is firstly a sense of community and co-responsibility resulting from the compatibility of views and aspirations, and secondly – the collective and individual responsibility of a given group of persons for the whole of a joint commitment.9 K. Ślebzak rightly assumes that from the point of view of research into the law, the second of the indicated meanings is of fundamental importance.10 It allows one to analyse the existing legal solutions in terms of assessing whether there is a specific form of collective responsibility for risks covered by the material scope of a given type of social insurance, and in the case of this study – sickness insurance, limited additionally only to sickness allowance and maternity allowance. It is worth emphasising, however, that in the legal language, especially in jurisprudence, this concept is given different meanings depending on the context.11

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7 Bearing in mind the sickness fund expenditure, the recognition of these two benefits as the most frequently claimed benefits is fully justified – see Zakład Ubezpieczeń Społecznych [Social Insurance Institution], Informacja o wybranych świadomościach pieniężnych. May 2018 r. [Information on Cash Benefits. Maj 2018], Warszawa 2018, pp. 5–11, http://www.zus.pl/documents/10182/167606/wst%C4%99%na+/05_2018/5db3a109-effa-b46c-c0b821af3503 (online access: 19.7.2018).
10 K. Ślebzak, Zasada…, op. cit., p. 540.
The personal scope of sickness insurance

In speaking of the personal scope of sickness insurance, one should have in mind the range of persons covered by this insurance. The solidarity between insured persons should, therefore, be discussed in the context of creating a social risk community. Social risk is understood as a threat (danger) of a random, future event, which is unfavourable (loss-making), uncertain as to the occurrence and independent of the will of the person (i.e., one that cannot be prevented). And restricting the risk to the insurance category (in this case social insurance), it can be defined as the threat of an event defined as loss or limitation of earning capacity, i.e., a future, uncertain, unfavourable event, independent of the will of the insured person, legally distinguished and actuarially computable. Thus, the risk community concerns persons who are exposed to a particular risk, which is the basis for the identification of this community. It is within this community that responsibility for the effects of the risk is spread on all insured persons. In other words, solidarity is related to the issues of individuals covered by the social security law. So we are talking about people who create a given risk community. As noted in the subject literature, to respect such a value as solidarity in social insurance, it is necessary to exclude or at least limit the freedom of the insured persons and the insurers.

Attainment of that objective is clearly visible in pension insurance, in particular in Art. 6 of the Social Insurance System Act, which defines the range of persons subject to mandatory pension insurance. In fact, compulsion is here connected with coercion and automatism, which means that the fact of undertaking any activity or finding oneself in a situation defined in a closed catalogue of insurance titles results in automatic accession to the risk community with all the related consequences. The only exceptions are the overlapping entitlements specified in Art. 9 of the Social Insurance System Act, when, if several insurance titles concur, the legislator allows the contribution to be paid for only one title. Essentially it could, however, be said that practically every gainful activity undertaken on the territory of the Republic of Poland is connected with the obligation to be subject to old-age and disability insurance (with the exception of contracts for specific work). Voluntary coverage by pension insurance is an exception and, apart from the regulation of the overlapping insurance titles, it is also possible pursuant to Art. 7 of the Social Insurance System Act. It applies to persons who do not meet the conditions for being covered

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14 K. Ślebzak, Zasada…, op. cit., p. 542.
15 J. Jończyk, op. cit., p. 40.
17 For the sake of simplicity, in the further discussion, I will refer only to old-age pension insurance, taking into account the fact that in the vast majority of cases, old-age pension insurance coverage is tantamount to being also covered by disability pension insurance (with the exception of Art. 6b of the Social Insurance System Act).
18 Cf.: K. Antonów [in:] Prawo..., op. cit., p. 663.
Solidarity in sickness insurance – selected issues

by this insurance on a compulsory basis, i.e., those who are not in gainful employment or in any other situation which, in accordance with the provisions of Art. 6-6b of the Social Insurance System Act, results in automatic coverage by this insurance.

The legal regulation is different in the case of sickness insurance, whose scope is specified in Art. 11 of the Social Insurance System Act. The personal scope of this insurance, and thus the range of persons forming the risk community is defined in a much narrower way than in the case of old-age pension insurance. The mere limitation of the personal scope of sickness insurance as compared to old-age pension insurance should not give rise to major concerns with regard to the risk of incapacity for work due to sickness. It is obvious that the community related to this risk should include persons who are gainfully employed and who, by reason of damage to health, may temporarily be unable to perform work, and, consequently, suffer material damage consisting in a loss of earnings for the period of this incapacity. Therefore, it is appropriate to create a risk community only out of persons gainfully employed, differently from old-age pension insurance, which also covers persons who are not engaged in gainful employment, but who play other socially important roles. In the case of so called non-profit-making insurance titles, there are undoubtedly no economic effects of the disease, because it does not result in the discontinuation of gainful activity, as is the case with profit-making titles. It is therefore appropriate that the risk community should cover only those persons who are at risk of a loss of earnings and that only those persons create a joint risk community in which all insured persons pay relatively low contributions in return for a guarantee that in the event of insurance risk for a given insured person, the contributions of other insured persons will finance his or her benefit. However, the risk here is not the disease itself, but its economic dimension associated with the inability to continue gainful activity at the time of sickness, which is in principle the basis for maintenance. The cost of covering the material need, resulting from the random event, should be spread over the population of persons who are similarly exposed to this risk.

However, Art. 11(1) of the Social Insurance System Act defines only three groups of individuals who are subject to compulsory sickness insurance. These persons join the risk community automatically and compulsorily upon undertaking activity which constitutes the insurance title. These are employees, members of agricultural production cooperatives and rural circles cooperatives as well as persons undergoing substitute military service. Currently, in practice, these are only the first two of the indicated groups of individuals, because pursuant to the provisions of the Act of 27 August 2009 on the amendment of the Act on the universal defence of the Republic of Poland and certain other Acts

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19 Cf. K. Ryś, Wybrane problemy ubezpieczenia społecznego z tytułu niezdolności do pracy z powodu choroby, “Ubezpieczenia Społeczne. Teoria i praktyka” 2017, No. 3, p. 78, who rightly concludes that the “disadvantage” of social risks should be considered through the ability to earn and accumulate means of subsistence.

20 Such insurance titles are defined as “not-profit-making titles” – K. Antonów [in:] Prawo..., op. cit., pp. 672–673; I disregard here the question as to whether, given the construction of social insurance, the correct solution is to cover a wide range of non-earners through old-age pension insurance.

(Journal of Laws of 2009, No. 161, item 1278), the obligation to do national service, and thus also the obligation to perform substitute military service, has been suspended as of 1 January 2010. It is therefore reasonable to conclude that currently only two groups of individuals compulsorily form the risk community in sickness insurance. Therefore, the basic feature of social insurance, allowing to implement the principle of solidarity, i.e., coercion, is realised only in relation to these groups. This is because these persons may not calculate and estimate their own individual risk and, if they consider that it is low, avoid paying a contribution and participating in creating a joint sickness insurance fund. However, it should be noted here that employees constitute the largest group of insured persons subject to sickness insurance, which clearly results from statistics published by the Social Insurance Institution.  

The sickness insurance risk community may also be joined on a voluntary basis by other persons, who have been enumerated in Art. 11(2) of the Social Insurance System Act: out-workers, so-called freelancers/contractors (i.e., persons performing work on the basis of an agency contract or a commission contract or another contract for the provision of services, which – according to the Civil Code – is covered by regulations on commission contracts), so-called entrepreneurs (i.e., persons conducting non-agricultural activities within the meaning of Art. 8[6] of the Social Insurance System Act), persons cooperating with freelancers/contractors and entrepreneurs (also with entrepreneurs who, pursuant to Art. 18[1] of the Act of 6 March 2018 - the Entrepreneurs’ Law are exempt from the compulsory coverage by the social insurance for a period of 6 months from the commencement of business activity), doctoral students receiving a doctoral scholarship, people performing gainful employment on the basis of referral to work during the period of a deprivation of liberty or temporary detention, as well as clergymen. An additional restriction is that the insurance title referred to in Art. 11(2) of the Social Insurance System Act, entitling to voluntary access to sickness insurance, must constitute the compulsory pension insurance title. In other words, it will not be possible to join this insurance if, for example, in the event of the overlapping insurance titles, an entrepreneur voluntarily joins the pension insurance in respect of non-agricultural activities under Art. 9(1) of the Social Insurance System Act, and thus will not be able to take advantage of sickness allowance in respect of business activity even in the event of the loss of the possibility to carry out both gainful activities due to sickness.


23 A person cooperating with those conducting non-agricultural business activities, with freelancers/contractors and with individuals, indicated in Art. 18(1) of the Act of 6 March 2018 – the Entrepreneurs’ Law, referred to in Art. 6(1)(4)-(5a), means a spouse, one’s own children, children of the other spouse and adopted children, parents, stepmother and stepfather and adopting persons, if they remain with them in a common household and cooperate in conducting this activity or in performing an agency contract or commission contract; this does not apply to persons with whom a contract of employment has been concluded for the purpose of vocational training.


The voluntary nature of access to the insurance means that each of the persons belonging to the above-mentioned groups independently decides whether he or she wants to participate in the risk community, first of all by assessing whether it is profitable in his/her individual case, *i.e.*, how high is the probability of the risk being materialised. It may happen that earners do not participate in the risk community at all, relying on their own individual precaution, and being aware that the benefits they may receive will not compensate for the lost earnings in any way. Therefore, the voluntary nature of sickness insurance leads to a situation where not all actual earners exposed to risk participate in the risk community. Frequent infringement of the principle of solidarity in this case concerns mainly wealthy, high-income entrepreneurs who do not voluntarily take up sickness insurance and do not co-finance the benefits of those who earn less. Asymmetry occurs here particularly when we take into account the fact that they are compulsorily subject to old-age pension insurance and will in future take advantage of pay-as-you-go pensions, which will also be financed by those who earn less, although within a separate risk community and a separate fund.

From the point of view of the principle of solidarity, it is also important that the solutions adopted by the Polish legislator allow one to join voluntary social insurance (including sickness insurance) at any time by submitting an appropriate application (Art. 14[1] of the Social Insurance System Act). This solution makes it possible to abuse insurance protection at the expense of the risk community by joining it at the last moment before the risk materialises, only to receive benefits from the sickness fund after the risk has materialised. This applies in particular to maternity allowance, because with regard to sickness allowance, the social risk that it protects remains a risk in the classical sense of the word, *i.e.*, it is a future, uncertain event with negative consequences – damage in the form of a loss of earnings. Therefore, planning for the materialisation of the risk of incapacity for work due to sickness should not, by definition, take place. An exception should be made for the situation of undergoing certain medical procedures financed under health insurance, which often takes place at the predetermined period due to the limited availability of benefits. However, in principle, incapacity for work due to sickness meets the social risk conditions, according to the definition of this term, because it is a future and uncertain event. Unfortunately, the author could not obtain the relevant statistical data, but according to the general experience of life it can be assumed that there are occasional cases of voluntary access to sickness insurance only for the purpose of obtaining sickness allowance in connection with the planned incapacity for work due to sickness.

It seems that the so-called waiting periods, which result from Art. 4(1) of the Benefits Act, are a fairly effective legal measure that protects the risk community in this respect. According to this provision, sickness allowance is, as a rule, granted only after 30 or 90 days of uninterrupted sickness insurance (in the case of compulsory and voluntary

insurance respectively). This legal instrument significantly limits the possibility of abusing the voluntary access to sickness insurance solely for the purpose of obtaining sickness allowance in connection with the planned incapacity for work due to sickness, although of course it does not exclude such abuses completely. It means that the introduction of waiting periods to protect the risk community implements the principle of solidarity, which in turn is not sufficiently protected by regulations that allow for voluntary access to sickness insurance at any time by persons gainfully employed on the basis of insurance titles that are not compulsory. From the point of view of the risk community and the implementation of the principle of solidarity, with reference to an incapacity for work due to sickness, all profit-making insurance titles should be covered by compulsory sickness insurance.

The situation is different in the case of maternity allowance, which is mainly due to the completely different nature of the social risk protected by this allowance. The main concern is whether in the case of maternity, there is still a “risk” understood as a “future and uncertain event.” In the current state of medicine, it is possible to precisely plan maternity or, more broadly, parenthood. Therefore, in many cases, the occurrence of this risk is not an uncertain, random event, but a certain and planned one, and in the situation of taking a child for upbringing and applying to the court for adoption (adoptive parents), uncertainty and randomness is completely excluded. 27 Thus, the voluntary nature of sickness insurance allows for non-compliance with the principle of solidarity and abuse of insurance protection (at the expense of a risk community), which occurs when entrepreneurs or principals join it shortly before the risk materialises (childbirth) to collect relatively high benefits for a long period (even one year in the case of the birth of one child). This practice, reprehensible from the solidarity point of view, has not only existed and exists (currently to a limited extent due to changes in the rules for assessing the allowance basis), but it was and is positively perceived by society, as if the insured persons did not realise that such benefits are paid from the fund created from contributions financed by them. This leads to the conclusion that with regard to the maternity allowance, the possibility of voluntary access to sickness insurance results in an even more glaring violation of the principle of solidarity than in the case of sickness allowance. This is unacceptable, especially since no waiting periods are required to acquire the right to this allowance, and such periods are intended to protect the risk community against this type of abuse. The fact that such actions, far from being based on the principle of solidarity, are generally approved, points to a high level of ignorance about social insurance and a lack of solidarity between the insured persons themselves.

At this point, one cannot help to mention an additional aspect of the personal scope of the sickness insurance in relation to maternity allowance. It is worth noting that this

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27 Although it should be noted here that while the allowance is granted in the case of accepting a child for upbringing and applying for adoption, however, due to the adoption procedures, the adoptive parents, after following appropriate procedures and waiting for a child, often do not know when they will receive a proposal to accept a child for upbringing or even how many children will be covered by the proposal, which makes it usually not possible to precisely plan the occurrence of a situation entitling them to maternity allowance.
allowance currently has other functions than it fulfilled in its original form. Due to the limited scope of the study, I refer to the text of Renata Babińska-Górecka, who discusses the evolution of functions of this allowance and draws attention to the fact that some of them have been completely disconnected from the main purpose of social insurance, i.e., to mitigate the effects of the loss of earning capacity (insurance risk materialisation). As a result, the risk community ceases to be a homogeneous community of insured persons, but it becomes an entity that takes over the tasks (in particular the burden of financing) traditionally assigned to the national community, which, however, operates according to completely different principles and values. Thus, doubts may be expressed as to the personal scope of a risk community in relation to parenthood, which is the same as in the case of sickness allowance (the risk of incapacity for work due to sickness), especially in the context of voluntary sickness insurance. Perhaps it would be reasonable to exclude from this insurance the maternity allowance, traditionally an element of sickness insurance, and to create regulations that would allow to finance benefits related to parenthood within the widest possible community, i.e., the national community.

The rules for financing the sickness insurance contribution

The principle of solidarity is also manifested in the fact that the financial burden of the insurance risk is spread among those who may be affected thereby, i.e., those who can feel the effects of its materialisation. In the event of an incapacity for work due to sickness, this risk applies not only to persons engaged in gainful employment, but also to employers. This relates to the employer’s risk, which in the labour law literature is referred to as “the employer’s personnel risk.” And the employer’s risk is qualified as one of the defining features of the employment relationship. The personnel risk is inter alia reflected in the need to tolerate as employees such persons whose employment is not beneficial to the employer (e.g., persons absent from work due to sickness – A.P.). In this situation, employers should also be jointly and severally involved in the community of sickness insurance risk, which, however, takes place to a very limited extent. Solidarity between the employers (contribution payers) and the insured persons is reflected in the fact that the former pay a part of the insurance contribution, which is the price of insurance cover, i.e., the price of taking over a given risk by the insurer. It is therefore a division of the contribution. Such a division does not occur in sickness insurance,

31 K. Ślebzak, Zasada…, op. cit., p. 541.
since pursuant to Art. 16(2) of the Social Insurance System Act, the sickness insurance contribution (to the amount of 2.45% of the contribution assessment basis) is fully financed from the insured person's funds. Therefore, the employer does not participate jointly and severally in the risk community by creating a sickness fund from which the benefits are financed.

However, we may talk about solidarity between contribution payers and insured persons with regard to insured employees. In this case, the labour law provides for a specific way of employer participation in the risk of any incapacity for work due to sickness – the employer is obliged to partially bear its costs by paying sick pay (Art. 92 of the Labour Code). Therefore, the employer bears a social risk related to the necessity to pay certain benefits to the employee for periods of work non-performance by the employee. Thus, although the employer does not participate in financing the contribution and creating the sickness fund, he/she undoubtedly participates in the risk of any incapacity for work of his/her employee and this participation has a measurable, financial dimension.

According to statistics provided by the Social Insurance Institution, sick pay paid by employers in 2018 amounted to over PLN 6.9 billion, while Social Insurance Institution (ZUS) expenses on sickness allowances in the same period amounted to PLN 11.5 billion. Therefore, one might say that the solidarity of contribution payers and insured persons was in this case exercised at an earlier stage, within the so-called primary protection, which in the German subject literature is referred to as a so-called internalising solution. However, this solution is characterised by solidarity within the sickness insurance risk community, because the period of receiving sick pay by the insured employee is included in the allowance period, which means that in a specific case the risk community does not bear the burden of financing the benefit for the insured employee during 182 (or exceptionally 270) days, but adequately less. Thus, the employer releases the risk community in this respect from the obligation to bear the burden of benefit related to the work incapacity of the insured person concerned. It should be, however, clearly stressed that the above solution applies only to employees and employers. In the case of other insured persons and contribution payers, there are no such solutions within the framework of primary protection, that would

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32 See also: K. Ślebzik, **Zasada…**, op. cit., p. 541.
33 B. Ćwiertniak, op. cit., p. 159.
34 See also: Ł. Pisarczyk, **Ryzyko pracodawcy**, Warszawa 2008, pp. 236–238; 246.
36 In this context, D. Dzienisiuk points to “forced” social solidarity between employers and employees – D. Dzienisiuk, **Prawo pracy a prawo ubezpieczeń społecznych**, Warszawa 2016, p. 315.
37 J. Jończyk, op. cit., p. 54.
relieve the risk community. In the event of an incapacity for work of the cooperating person, clergyman, member of an agricultural production cooperative or, above all, freelancer/contractor, the whole burden of financing the benefit immediately passes to the risk community, because the sickness allowance financed from the sickness fund is paid immediately. As a result, in the relationships between insured persons and contribution payers, we may speak about solidarity only in relation to insured employees. In relation to other insured persons, where contribution payers (employers) do not bear any costs of incapacity for work due to sickness, this aspect of solidarity does not exist de lege lata.

One may wonder whether this is a correct solution, because in practice it is one of the reasons for the mass employment based on civil law contracts instead of employment contracts – in this case, the employer bears lower costs if the risk of work incapacity due to sickness materialises for a given insured person. Bearing in mind the amounts spent by employers on sick pay, this aspect may be of considerable importance for the choice of the legal basis for employment. Perhaps, therefore, it would be reasonable to introduce legal solutions that would more fully implement the principle of solidarity in the relationship between the contribution payer and the insured person through the participation of all contribution payers, not just employers, in the risk community. While an obligation to pay other insured persons (not being employees) a benefit similar to sick pay (e.g., freelancers/contractors) seems doubtful, the participation of contribution payers of freelancers/contractors in financing sickness insurance contributions could be an appropriate solution, with a reduction in the number of civil law contracts as an additional positive side effect.

As regards maternity allowance, in the absence of an institution similar to sick pay, none of the contribution payers participates jointly and severally in the creation of the parenthood risk community, although it also applies to them (at least with regard to employers, because employees may take non-compulsory parental leaves during which they are absent from work). During this time, they may not engage in gainful employment constituting the title of the insurance from which the benefit is paid (subject to the possibility of using part-time parental leave – Art. 1821e of the Labour Code). As regards insured persons other than employees who are not entitled to compulsory maternity leave, and only to maternity allowance for a period equal to periods of leave related to parenthood resulting from the provisions of the Labour Code, the receipt of the maternity allowance does not prevent the continuation of gainful employment as an insurance title. Although this situation seems to be contrary to the core of the maternity allowance, de lege lata it is explicitly allowed by the legislator. Pursuant to Art. 9(1c) of the Social Insurance System Act, persons referred to in Art. 6(1)(2), (4)-(5a), (8) and (10) of the Social Insurance System Act (and, hence, inter alia, entrepreneurs and freelancers/contractors), at the same time meeting the conditions to be covered by compulsory pension insurance in respect of receiving maternity allowance or allowance to the amount of maternity allowance, are subject to compulsory pension insurance in respect of receiving the maternity allowance or allowance to the amount of maternity allowance. However, they may be covered voluntarily, at their request, by pension
insurance also from other titles, or some of them. Therefore, potentially, the entities employing them are less affected by the discussed risk.

The only question is whether, in this situation, one can speak about an actual materialisation of the risk, as described above, following on from Inetta Jędrasik-Jankowska, as “the risk of work interruption due to parenthood”. Persons who, after childbirth, continue their hitherto gainful employment, do not feel the economic effects of this event, and it is against these effects (and not against the birth of the child itself) that the maternity allowance is to protect. In this situation, the receipt of maternity allowance can be assessed as incompatible with the principle of solidarity between the insured persons themselves and between the insured persons and the beneficiaries.

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**Conditions to be met to acquire benefits or to continue their collection**

As indicated above, the possibility of planning the social risk materialisation, taking into account its definition, should not exist in relation to the risk of an incapacity for work due to sickness. The mentioned situation of undergoing specific medical treatment financed under health insurance should be considered as an exception. However, in principle, incapacity for work due to sickness meets the social risk conditions, according to the definition of this term, because it is a future and uncertain event. At the same time, the insured persons should not only take actions that prevent risk materialisation, but also actions that will not contribute to its longer duration. Only in this situation is it justified to rely on the risk community, thanks to the solidarity of which the fund has been created. Therefore, appropriate legal instruments are needed to protect the risk community against any reprehensible conduct on the part of the insured persons that has an impact on the risk or its duration (prolongment). 39

Thus, it can be assumed that the principle of solidarity is also implemented by those provisions that protect the risk community against any disloyal and solidarity-less conduct of members of the community consisting in inducing social risk or extending its duration. Such provisions therefore include Art. 14, Art. 15(1), Art. 16 and Art. 17(1)-(2) of the Benefits Act. The common purpose of each of the mentioned provisions is to protect the risk community against abuse, i.e., any conduct contrary to the principle of solidarity. Thus, pursuant to Art. 14 of the Benefits Act, an insured person who is an employee, excluded from work under the procedure specified in Art. 6(2)(1) of the Benefits Act due to the suspicion of being a carrier of infectious germs, is not entitled to the sickness allowance if he/she has not undertaken other work proposed by the employer, not forbidden for such persons, corresponding to his/her professional qualifications or which he/she can perform after some previous training. It is therefore considered that,

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39 I. Jędrasik-Jankowska, *op. cit.*, p. 239.
Art. 15(1) of the Benefits Act is even a more explicit example of protection of the risk community, because it deprives the insured person of the sickness allowance during a period of incapacity for work resulting from any intentional offence or petty offence committed by the insured person. It would be incompatible with the principle of solidarity for the risk community to cover the costs of benefits for a person who caused his/her own incapacity for work by his/her own criminal act. Similarly, the interest of the risk community is protected by Art. 16 of the Benefits Act, under which the insured person, whose incapacity for work was caused by alcohol abuse, is not entitled to sickness allowance for the period of the first 5 days of such incapacity. Alcohol abuse is undoubtedly a circumstance depending on the insured person, and it should be assessed as socially harmful. The protection of the risk community is not as absolute here as in the case of an incapacity caused by intentional offence or petty offence, because the right to the allowance is excluded only for the first 5 days. The gravity of both events (committing an offence and alcohol abuse) is, however, completely different from the point of view of social harmfulness, hence any sanction depriving a person who has become incapable of work due to alcohol abuse of a sickness allowance for the whole period of this incapacity would be too harsh. These solutions therefore essentially implement the principle of solidarity within the risk community, in this case solidarity between the insured persons and the beneficiaries.

More attention should be paid to the regulation of Art. 17(1) of the Benefits Act, which formulates two prerequisites for depriving the insured person of the right to sickness allowance. One of them is the use of sick leave in a manner inconsistent with its purpose. It applies to actions that extend the period of any incapacity for work, *i.e.*, the period in which the risk occurs. For obvious reasons, the risk community should bear the burden of the benefit only to the extent it is necessary, *i.e.*, for the period necessary to restore earning capacity (the cessation of the disease giving rise to incapacity for work). Thus, the conduct of the insured person, which is aimed at extending the period of receiving the allowance (the duration of the incapacity to work), is incompatible with the principle of solidarity and is an abuse against which the community should be protected.

The second prerequisite specified in Art. 17(1) of the Benefits Act is of a slightly different (and more questionable) nature. It pertains to the performance of gainful employment during the period of certified incapacity for work. The sickness allowance is intended to protect against the loss of income caused by the incapacity for work due to sickness. Thus, it is not the situation of sickness that is being protected, but its economic aspect, *i.e.*, the inability to earn a living. If the insured person, regarded as incapable of work due to sickness, performs gainful employment during the period of an incapacity for work, it means that the social (insurance) risk has not actually materialised, because the health condition allows him/her to perform work and, as a consequence, to earn
money. Since the insured person, although formally unable to work due to sickness, does not suffer any material damage due to this inability, there are no grounds for the risk community to bear the cost of the benefit. In other words, it is reprehensible and contrary to the principle of solidarity for an insured person to engage in gainful employment during the period of certified incapacity for work, for which the person concerned would like to receive sickness allowance. Hence, the legislator is right to protect the risk community against such abuses.

However, this issue is not so obvious and clear if the insured person has several sickness insurance entitlements (in practice – several employment contracts), which, after all, is not an uncommon phenomenon. In accordance with the established practice of pension authorities and case law, the insured person may not perform any gainful employment during the period of the certified incapacity for work. Thus, the Polish legal order does not allow for a separate assessment of an impact of a given disease on each of the performed jobs of work. Such a solution is in my opinion incompatible with the principle of solidarity, because, as a result, the insured person may not fulfil his/her, as one could say, remaining earning capacity, since in this way he/she deprives him/herself of both entitlements to sickness allowance. As a consequence, the risk community is burdened with the cost of this allowance taking into account the basis of assessment for each of the insurance titles. A more solidarity-based solution would be to allow the receipt of sickness allowance by the insured person only to the extent that his/her incapacity for work actually prevents him/her from performing gainful employment, while allowing work which entitles them to insurance and which can be performed by the insured person in his/her health condition. The risk community would then bear a lower cost of benefits. It seems, however, that this solution would require legislative intervention.

The aforementioned admissibility of performing gainful employment while receiving maternity allowance is interesting but at the same time raises doubts from the point of view of the solidarity principle. Such situation is possible because Art. 17(1) of the Benefits Act does not apply to this allowance at all. In contrast to employees who are obliged to take advantage of maternity leave, other insured persons may freely receive maternity allowance and at the same time continue their gainful activity entitling them to sickness insurance or perform other gainful activity (which is confirmed by Art. 9[1c]

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40 R. Babińska-Górecka, Wykonywanie pracy zarobkowej jako przesłanka utraty prawa do zasiłku chorobowego (uwagi na tle art. 17 ust. 1 ustawy chorobowej), "Z zagadnień zabezpieczenia społecznego" 2014, No. 6, p. 9.
41 Cf.: Ibid, p. 8 et seq.
43 It is worth noting that a different position in this regard is presented by I. Jędrasik-Jankowska (Cf. op. cit., p. 245), who indicates that the continuation of the second employment should not result in the loss of the right to sickness allowance if it is shown that the employee was only incapable of work, from which he abstained. I consider this position to be correct.
44 I. Jędrasik-Jankowska, op. cit., p. 223.
of the Social Insurance System Act referred to above). Employees may also take up other gainful activities during maternity leave (i.e., other than the one performed under an employment contract entitling them to insurance coverage and to allowance payment). Thus, as noted by R. Babińska-Górecka, exercising actual, personal care of a child is not de facto a condition for the acquisition of the right to maternity allowance and if it does not constitute a legal obstacle (maternity leave) or an actual obstacle to the performance of work, then it is possible to perform gainful employment and earn the hitherto income. However, this raises questions as to whether the sickness insurance risk community should bear the burden of financing the maternity allowance in such a case and to what extent such an obligation is compatible with the principle of solidarity. The possibility of combining the maternity allowance with gainful employment obviously does not correspond to the above-mentioned understanding of risk in social insurance. For the purposes of social insurance, however, an effect in the form of earning capacity is assessed.

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**Receipt of the benefit after the lapse of the sickness insurance coverage**

The Benefits Act provides for the possibility of receiving benefits in spite of a lapse in sickness insurance coverage. Art. 7 of the Benefits Act is of particular importance here. This provision makes it possible to obtain the right to sickness allowance by persons who have become incapable of work after the lapse in sickness insurance coverage if the incapacity lasted not fewer than 30 days and occurred within 14 days (exceptionally 3 months) from the lapse of this insurance coverage. In other words, it allows to obtain the right to benefit and receive it even for the entire maximum allowance period by persons who are no longer entitled to sickness insurance, i.e., who do not perform gainful employment. This regulation imposes on the risk community an obligation to finance benefits for persons who no longer belong to this community, and this in a situation where there is in fact no insurance risk – in this case, the disease does not cause an incapacity for work and does not constitute an obstacle to earning money, since the person does not conduct any gainful activity. In my opinion, this is an alien burden imposed on the risk community and, therefore, one breaking the principle of solidarity. Although it can be said that since the insured person created him/herself a risk community, it is reasonable to adopt solutions extending the period of insurance coverage, as is also the case, for example, in pension insurance as regards a pension in respect of incapacity for work. However, the risk protected by sickness

allowance is of a different, by definition, temporary nature. Moreover, in practice, this provision is frequently abused and persons losing their jobs prefer to receive sickness allowance, which is much higher than the unemployment benefit they could receive in connection with the unemployment — in a situation where their health condition does not in fact limit their earning capacity. Although there are mechanisms that eliminate such threats — i.e., substantive verification of the legitimacy of the issued certificate of an incapacity for work — but in practice it seems impossible to check all such cases in order to detect when the sickness allowance is paid on the basis of Art. 7 of the Benefits Act, in spite of a lack of incapacity for work due to sickness.

Similar doubts, though here to a lesser extent, may be formulated in relation to the possibility of receiving sickness allowance until the end of the allowance period, although the insurance entitlement has ceased to exist. The legal situation here is obviously different — the incapacity for work itself occurred during the insurance period, not after its termination. However, in practice, it is not uncommon that people try to obtain a medical certificate of an incapacity for work in the last days of the expiring notice period or before the termination of a fixed-term employment contract due to the lapse of time for which it was concluded, especially if the insured person does not have new employment to go to. From a financial point of view, sickness allowance is much more profitable than unemployment benefit, and this further encourages abuse. In this case, if the principle of solidarity is to be implemented more fairly, more importance should be attached to the efficient and quick verification of issued medical certificates, which would make it possible to better protect the risk community against such abuses. The complete abolition of the possibility to continue paying sickness allowance in the event of a loss of insurance entitlement would be a too far-reaching solution.

Similar concerns should be raised in relation to the regulation of Art. 30 of the Benefits Act, which allows one to obtain the right to a maternity allowance in spite of the absence of insurance entitlement. Although this Article provides for strictly defined, exceptional situations which allow one to acquire the right to this allowance and should be assessed positively in terms of other legally protected values (e.g., a child’s welfare or special protection of the family), but from the point of view of the risk community and

48 It should be noted here that the legislator is inconsistent in treatment of an incapacity for work as a prerequisite for acquiring and maintaining the status of an unemployed person. On the one hand, the incapacity certified by a medical decision excludes the possibility of registration as an unemployed person (Art. 2[1][2] of the Act of 20 April 2004 on employment promotion and labour market institutions, consolidated text Journal of Laws of 2017, item 1065, as amended), which could support the position that granting a sickness allowance after the lapse of the sickness insurance coverage is an expression of solidarity between the insured persons. On the other hand, however, after registering as an unemployed person the occurrence of an incapacity for work does not automatically result in the loss of unemployed status as such — this happens only when the unemployed person is incapable of work due to sickness or stay in a drug treatment institution for an uninterrupted period of 90 days (Art. 33[4][9] of the aforementioned Act). Thus, the legislator allows persons who have become incapacitated for work due to sickness to have the status of an unemployed person and to receive benefits provided for the unemployed persons during this period, if the incapacity occurred after acquiring the status of the unemployed person. Therefore, I believe that from the perspective of the principle of solidarity of the risk community, in the event of sickness after the lapse of the sickness insurance coverage, the cash benefit should not be financed from the sickness fund. It is because there is no social risk in this case, but a specific need that should be met using a fund other than the sickness fund.
social insurance, we have here again benefits for persons for whom risk materialisation has no negative consequences with regard to the earning capacity. In this respect, the question raised earlier becomes relevant: whether the solution providing for parental benefits financed not by sickness insurance, but within the national community would not be justified and more appropriate in the light of the principle of solidarity.

However, one should mention here a solution that in a way protects the community in the above-mentioned cases: this being the limitation of the basis for assessing the benefit, which may not be higher than 100% of the average wage/salary. This results from Art. 46 of the Benefits Act.

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**Contribution assessment basis**

Another aspect that demonstrates the solidarity of the risk community in sickness insurance is the uniform interest rate used to calculate the insurance contribution. The risk community itself is created from persons exposed to this risk so that by paying relatively low contributions, these persons may obtain a guarantee of protection (benefit) in the case of risk materialisation. However, members of the community have an unequal ability to bear this burden and are unequally vulnerable to risk and its consequences.

The solidarity principle is manifested in this case by the fact that all people, depending on their abilities, contribute to the creation of the risk community, by participating in that community for a longer or shorter period of time. Compensation is granted only to the member of the community who has suffered damage (i.e., in relation to whom the risk has materialised). It may happen that a given insured person will never use his/her insurance protection, because the risk will not materialise in his/her case. However, his/her contributions will be used to finance benefits paid to people who have not been so lucky and in relation to whom the risk has materialised. The sense of participation in such a joint and several risk community is based on the fact that its members do not know whether and when the risk will occur in their individual case, but because it is likely to occur, they agree to bear the costs of contributions, being aware that in the event of a risk they will be able to count on the solidarity of other members of the community. *De lege lata* the sickness insurance contribution is determined in the same way for all insured persons as 2.45% of the contribution assessment basis, which means that each insured person contributes to the creation of a sickness fund according to his/her


51 The Polish language does not distinguish between social insurance contributions and commercial insurance premiums [translator’s note: in both cases - “składka”], however, for example in German, the social insurance contribution is *Beitrag*, which literally means the contribution from the verb *beitragen* – to contribute. Such nomenclature emphasises the solidarity aspect of social insurance contributions. A similar linguistic distinction exists in English.
(earning) capabilities. The age of the insured person is immaterial, similarly as his/her health condition and any other factors that could reduce or increase the contribution if it were to be calculated individually. In other words, the same (percentage) contribution is paid by an elderly or ailing person, and by a young person who does not fall ill. In this case, therefore, one can speak of the solidarity between the insured persons. This is particularly visible in the case of insured persons being employees, for whom the contribution is each time assessed based on their income from the employment relationship (Art. 18[1] in conjunction with Art. 4[9] of the Social Insurance System Act) – the higher the earnings, the greater participation in creating the risk community (but also correspondingly the higher benefits in the event of social risk materialisation).

Doubts may be expressed in this respect in relation to a regulation under which some insured persons pay contributions to sickness insurance not on actual income, but on the declared amount, not lower than 60% of the average wage/salary (and exceptionally 30% of the minimum wage/salary). This concerns mainly entrepreneurs (and persons cooperating with them), if they have voluntarily joined sickness insurance at all.

In my opinion, this regulation does not implement the principle of solidarity. If entrepreneurs participate in the creation of a fund from which benefits are financed, we face a situation where, on the one hand, wealthy entrepreneurs pay contributions from relatively low amounts, often constituting a fraction of their actual monthly revenues or even income. In other words, they bear relatively imperceptible costs of insurance protection. On the other hand, we have small entrepreneurs, often self-employed, for whom the payment of contributions from the declared, minimum basis of assessment is a relatively high burden (sometimes more than 2.45% of actual income or even revenues). Of course, one can defend the thesis that the amount of the subsequent benefit depends on the amount of the declared basis for contribution assessment, so in the case of wealthy entrepreneurs the benefit will cover only to a small extent the actually lost earnings, and in the case of small entrepreneurs it may even exceed the amount of earnings lost. The question, however, is whether such a solution can be assessed as joint and several, especially when we take into account the aforementioned risk of abuse by entrepreneurs being subject to voluntary sickness insurance. In my opinion, taking into account the principle of solidarity, such a solution raises doubts.

However, certain elements of the solidarity principle can be seen in the regulation providing an upper limit for the basis for contributions assessment for persons insured voluntarily, which does not allow these persons to declare a very high contribution basis in a situation where risk is very likely to materialise, e.g., in a situation where medical treatment is planned many months in advance and results in an incapacity for work for several months. These persons could then pay a very high contribution (taking as a basis for its assessment an amount of tens of thousands of zlotys) before the planned date of risk occurrence, in order to obtain a high benefit. The cost of such a benefit would be imposed on the whole risk community, and therefore such conduct should be assessed as incompatible with the principle of solidarity and as an abuse of the insurance protection. Limitation of the maximum contribution basis (i.e., of any amount declared as this basis)
of up to 250% of the average wage/salary is intended to prevent such situations. As a result, the benefits dependent on the basis for the contribution assessment are also limited.

However, such a limitation does not exist in the case of employee insurance. The basis for the assessment both of the contribution and the benefit is the employee’s remuneration corresponding to his/her actual income after deducting contributions for pension and sickness insurance. These may even amount to several dozen or several hundred thousand zlotys per month. Here, too, one may have doubts about the proper implementation of the principle of solidarity in social insurance. On the one hand, these people pay high contributions and, therefore, their input to the risk community is high, but on the other hand, in the event of any subsequent receipt of benefits, the transfer is reverse to the intended one, i.e., from the lower to higher wage earners, whereas in social insurance, by definition, this transfer should be directed to the lower wage earners. Therefore, it would be joint and several to introduce specific limits on the basis of benefit assessment for the most wealthy, which would result in a joint and several, lower cost of the risk community in respect of benefits for these people. On the other hand, it would be joint and several to impose a burden of contributions on high income earners by removing the upper limit of the assessment basis in such a way that the contributions in respect of this insurance are paid from actual revenues (or possibly income). This would obviously also require the introduction of compulsory sickness insurance for all profit-making insurance titles. Such a combination of solutions would make it possible to better implement the principle of solidarity between the insured persons, but any limitation of the benefit assessment basis without limiting the contribution assessment basis may be incompatible with the provisions of ILO Convention No. 102 concerning minimum standards of social security.

A few words in conclusion

The above considerations raise several important issues from both a theoretical and practical point of view. The analysis of selected issues regarding sickness insurance in relation to sickness and maternity allowances have allowed to show that basically – as with any insurance institution – this type of insurance is constructed on the basis of the principle of solidarity. A closer analysis of the applicable legal solutions has also shown that in many aspects the principle of solidarity is not fully implemented or that some solutions even violate this principle. This mainly concerns the following: 1) provisions allowing for voluntary access to sickness insurance by some groups of insured persons (which enables individual risk calculation and allows for potential abuse of insurance protection by joining insurance shortly before the risk materialises), 2) lack of participation of principals in the risk of an incapacity for work on the part of persons employed under civil law contracts (which may be one of the reasons for the abuse of such contracts as a basis for employment, because employers are obliged to pay sick pay and thus participate in the protection of the risk of incapacity for work due to sickness),
3) the possibility of receiving maternity allowance during the performance of gainful employment (which again applies mainly to freelancers/contractors and entrepreneurs),
4) regulations forcing insured persons to abandon any gainful activity, even if the sickness does not result in their inability to perform all the jobs carried out by the insured person or
5) regulations allowing for the acquisition of the right to sickness allowance after the lapse of the sickness insurance coverage.

Of course, the limited scope of this study did not allow for a deeper analysis and evaluation of the violation of the principle of solidarity in sickness insurance from the standpoint of the possible attainment of other objectives (and if so, which) justifying such a violation. For this reason, this paper should be a contribution to further discussion on the essence and role of solidarity not only in sickness insurance, but also in other types of social insurance and in social insurance in general as a legal institution.

Ariel Przybyłowicz, Ph.D.
Department of Labour Law
Faculty of Law, Administration and Economics
University of Wrocław
ORCID: 0000-0003-4219-0984

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Solidarity in sickness insurance – selected issues

Solidarność w ubezpieczeniu chorobowym – wybrane zagadnienia

W niniejszym opracowaniu autor analizuje wybrane rozwiązania ubezpieczenia chorobowego pod kątem realizacji zasady solidarności, przy czym rozważania dotyczą zasiłków chorobowego i macierzyńskiego. Dogmatyczna analiza przepisów dotyczących zakresu podmiotowego ubezpieczenia chorobowego, zasad finansowania składek, warunków nabycia lub kontynuowania pobierania zasiłków chorobowego i macierzyńskiego, możliwości pobierania tych świadczeń po ustaniu tytułu ubezpieczenia oraz wysokości podstawy wymiaru składki prowadzi do wniosku, że zasadniczo ubezpieczenie chorobowe opiera się na zasadzie solidarności. Niektóre szczegółowe rozwiązania zasadę tę jednak naruszają, pozwalając na pewne nadużycia kosztem wspólnoty ryzyka czy na pobieranie świadczeń w sytuacji, w której nie występuje ryzyko socjalne.

Słowa kluczowe: zasiłek macierzyński, zasada solidarności, zasiłek chorobowy, ubezpieczenie chorobowe, solidarność
The role of solidarity in accident insurance

Within social insurance relating to accidents at work and occupational diseases the concept of solidarity plays a different role than in other branches of social insurance. The insurance contributions are financed exclusively by the employers, while the benefits are granted to insured persons or to members of their families. Therefore, the solidarity covers both groups. The advantage gained by the contribution payers is related to the restriction of their liability to those affected by accidents at work and occupational diseases. The solidarity should embrace all such affected persons, irrespective of the legal form of work performance. The legislative changes of 2018 regarding “persons performing gainful work” and “farmer’s helpers” (farm hands) support the demand to incorporate within social insurance relating to accidents at work and occupational diseases out-workers and those on specific task contracts.

Key words: accident at work, insurance, occupational disease, solidarity

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Methodology for examining the idea of solidarity

At least three approaches to solidarity in accident insurance are possible: axiological, historical legal and dogmatic legal.

The axiological approach would focus on developing, with the use of the adopted concept of solidarity, the ideal accident insurance model, with which the current regulation could be compared.

The historical legal approach would refer to civil rules of liability for the effects of accidents at work, which had existed before the detailed legislation on accidents at work was enacted. Their breakdown constituted the beginning of social insurance, which to this day is perceived as being on the participants' solidarity. And that is why in accident insurance these rules still need to be applied to employers' liability. This distinguishes accident insurance from other types of social insurance, where issues of guilt and liability play a negligible role (e.g., in sickness insurance this would open up the possibility of claiming any refund of sickness allowance or rehabilitation benefit from the perpetrator) or are completely disregarded (e.g., in pension insurance).

Finally, a dogmatic legal approach could support, by analysis of the current legal status, the recreation of relationships corresponding to the perception of solidarity, being recognised for convenience, in accordance with the conference materials, as an unequal participation in the creation of the fund and its use within the community, where there is no symmetry between the contribution and the realised benefit. This paper adopts the last approach. It seems that the recent legislative changes may be considered as an indicator of the legislator's axiological preferences when designing social insurance regulations, and thus also its attitude to solidarity and the range of individuals where it appears or should appear.

The word “solidarity” is not explicit, it has many connotation and aspects. In dictionary terms, it means “a sense of community and shared responsibility resulting from the consensus of opinions and aspirations” or “a collective and individual responsibility of a specific group of people for the whole of a joint undertaking” or “unanimity of conduct and aspirations, [...] mutual support.” The preamble to the Constitution of the Republic of Poland mentions “the obligation of solidarity with others” as a guideline when applying the Constitution, and in Art. 20, as the basis for

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1. This study builds on the theses of the paper presented at the XXVII academic conference of the Polish Social Insurance Association “Solidarity in social insurance” (Gniew, 13-14 September 2018).
2. R. Babińska-Górecka, a fragment of the description of the concept of the XXVII academic conference of the Polish Social Insurance Association “Solidarity in social insurance” (Gniew, 13-14 September 2018), unpublished information.
the state’s economic system. This approach emphasises obligations related to solidarity, but it should be noted that joint and several cooperation has certain purposes and results. As a rule, work is undertaken for a specific purpose,\(^5\) and the initiated projects cannot be detached from their results, in particular if such cooperation is included within the statutory framework. After all, the actions of the legislator (public authority) should be planned and targeted. Therefore, it seems that account should be taken of the goals and effects achieved through solidarity.

The term “solidarity” occurs 13 times in the Constitution and in ordinary laws, but not in social insurance laws,\(^6\) although the following Acts of Parliament are closely related to social insurance: the Act of 20 April 2004 on employment promotion and labour market institutions,\(^7\) and the Act of 27 August 2004 on health care benefits financed by public funds.\(^8\) Solidarity (joint and several responsibility) of debtors and creditors is one of the established institutions of civil law (Art. 366 \textit{et seq.} of the Civil Code), joint responsibility of the members of the Council of Ministers for the Council’s activity, established in Art. 157(1) of the Constitution is an institution of constitutional law.

Although social insurance laws do not use the word “solidarity”, the idea expressed by this term is of key importance to this area of law. It is understood in different ways, often in connection with the concept of risk community. These concepts together explain and justify an obligation to bear financial burdens imposed on an individual to ensure that, if the risk materialises, benefits can be obtained. As it has already been pointed out, the inequality of burdens and benefits is usually assumed. Some statements in the doctrine emphasise even more strongly, similarly as in the Constitution, solidarity on the side of obligations, ignoring their purpose – the benefits that result from them and the fact as to whether they are to apply to the entire community or merely to individuals.

For example, it is claimed that:

\[\ldots\] solidarity of the risk community is expressed in financing (through individual contributions) \[\ldots\]. In the context of the distribution of benefits, justice is more often mentioned than solidarity.\(^9\)

The solidarity \[\ldots\] is reflected in \[\ldots\] a mechanism of bearing burdens for the purpose of affording insurance protection, \[\ldots\] as in the case of compulsory insurance coverage, where the fact of paying contributions does not only result in the right to one’s own

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\(^{5}\) For example, according to Tadeusz Kotarbiński, “work is a whole series of actions (in a particular case – a range of actions) having the nature of overcoming difficulties to satisfy someone’s needs,” T. Kotarbiński, \textit{Traktat o dobrej robocie}, Wrocław-Warszawa-Kraków-Gdańsk-Łódź 1982, p. 89.

\(^{6}\) S. Lewandowski, “Solidarność” i “dobro wspólne” w polszczyźnie współczesnej i w polskim prawodawstwie. Analiza językowo-logiczna, materials from XXII Conference of the Faculty of Law and Administration, University of Warsaw, on “Solidarity and the common good as values in law,” 1-4 March 2019, Warszawa 2019, p. 58.

\(^{7}\) Consolidated text: Journal of Laws of 2018, item 1265, as amended.

\(^{8}\) Consolidated text: Journal of Laws of 2018, item 1510, as amended.

benefit, but also in the consent to finance benefits for other members of the community from part of the funds of each insured person.\textsuperscript{10}

And that is because:

Solidarity of the insured persons, also referred to as the solidarism of the insured persons, assumes establishment of communities exposed to similar random events (risk communities), in which the responsibility is spread among all insured persons.\textsuperscript{11}

Taking into account the characteristic features of social insurance as a technique for implementing social security, it is claimed that the establishment of systemic foundations for protection requires the existence of solidarity, adjusted by the principle of distributive justice, which is based on the idea of categorical equality.\textsuperscript{12}

And finally:

According to traditional approaches, social solidarity determines the shape and content of the insured persons’ obligations and lays down the rules for the creating and functioning of the insured persons’ community (percentage share, no quota, lack of individual risk estimation, the right to benefit for those in relation to whom the social risk has materialised). […] Therefore, we should consider whether it can still […] be acknowledged that the principle of proportionality of benefits to the labour input (or to the contribution) in social insurance is relative, because it is subordinated to the principles of social solidarity and income redistribution, and that the principle of reciprocity is not treated in social insurance absolutely as the equivalence of contributions and benefits.\textsuperscript{13}

Thus, looking at statements about solidarity in social insurance doctrine, one can raise many doubts with regard to accident insurance, in particular realising the nuances associated with various manifestations of solidarity in law, its relation to the concepts of justice, social justice, the common good, dialogue and cooperation of social partners, especially as part of the social market economy in the light of the compulsory nature of social insurance. This subject is most complex and extensive, so the following considerations are limited to a few strands that seem interesting and very topical. The main topics pertain to the determination as to whether solidarity really exists (or should exist) in social (accident) insurance only on the side of burdens and whether the role of the legislator is to recreate the community perceivable in a society affected by legal standards, or to create such a community according to assumptions adopted by the legislator, using insurance methods.

\textsuperscript{12} Ibid, p. 218.
\textsuperscript{13} R. Babińska-Górecka, \textit{op. cit.}
A community in which solidarity acts

If we refer solidarity in accident insurance to the concept of risk, different approaches are possible to outline the range of people belonging to the burden-bearing community and to develop the relationship between them. This affects the interpretation of legal provisions setting out the specific obligations and rights of the addressees of legal standards and the assessment of the manner in which the legislator regulates these matters.

In accident insurance we may speak of:

1) the community of insured persons and their families – using benefits, jointly interested in the appropriate determination of the qualifying conditions, the benefits amount and the manner of their provision;

2) the contribution payers’ community – using their civil liability insurance, with a contribution calculated according to the risks arising from this liability or according to the number of insured persons, which indirectly may (but does not have to) express the financial capacity of a given contribution payer;

3) the community of contribution payers and the insured persons – in which case the total burdens and benefits would be decisive;

4) the general social community – in this approach, objectives set for accident insurance go beyond social insurance, i.e., it is not only about securing the needs and reducing the number of benefits, but also about reducing the costs of the operation of individual organisations, efficient work, improvement of occupational safety and public security.

The financial situation of the accident fund is stable. Contributions paid exceed the value of paid benefits. Hence, solidarity in accident insurance may be considered regardless of the external factors (e.g., the state budget), although it seems that its structure may affect the environment (e.g., the competitiveness of individual enterprises, occupational safety and health, level of health care, etc.).

Accident insurance burden (contributions) is borne only by contribution payers. Benefits (advantages) accrue to the insured persons. Thanks to so called projects, some contribution payers may obtain certain resources (closely related to accident prevention, pursuing the objectives of accident insurance).

Thus, the solidarity in this type of insurance goes beyond the inequality of contributions and benefits, because contributions are only on one side. At the same time, based on these relationships, one may speak of a kind of community including contribution payers, insured persons and their families. This community is based on interdependent interests,

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15 Activities aimed to maintain earning capacity throughout the entire period of professional activity – Art. 37 et seq. of the Act of 30 October 2002 on social insurance in respect of accidents at work and occupational diseases; consolidated text: Journal of Laws of 2018, item 1376, as amended.
although in principle they occur at various stages of legal relationships within social insurance. Thus, it seems that solidarity in accident insurance should be considered jointly in relation to the burdens and benefits for contribution payers and the related benefits for the insured. It must also relate to benefits as a sense of establishing the social insurance system.

In speaking only of the solidarity of burdens and obliged entities, we would lose the focus on the main purpose of social insurance, i.e., to provide a means of subsistence for persons in certain life situations. Hence, we would have third-party insurance and not social insurance. For persons who receive accident insurance benefits, as a rule (except for insured persons paying contributions only for themselves), there is no relationship between the contribution and the benefit, unless account is taken of non-insurance work contribution in favour of contribution payers.

However, separate account should be taken of the narrower solidarity of contribution payers, as this group also has both burdens and advantages associated with the limited liability to employees (insured persons) or with obtaining benefits (persons engaged in non-agricultural activities). In terms of the burden imposed on them, there is also a diversity and asymmetry in costs and benefits. This community (of contribution payers) jointly creates a fund which, after the occurrence of a random event, is used by other persons (the insured), which limits the liability of the individual members of this community. Thus, solidarity on the debtors’ side is exemplary: they all jointly bear the financial burden of damages for some of them.

### Justification of solidarity

The purpose of the social insurance system is usually considered to be the provision of benefits that meet the needs or mitigate the effects of the loss or reduction of earnings incurred under certain situations as defined by law. Due to the fact that the costs of accident insurance are borne entirely by the contribution payers, who are often not natural persons, it should be assumed that the justification of solidarity in accident insurance cannot refer to altruistic reasons, but only to their own benefit obtained from a given form of insurance. Parties to these relations include not only humans who experience the same effects of random chance events, but also organisational units in relation to which one is not dealing with the provision of means of subsistence.

Contribution payers bear the consequences of events that usually affect other people (depending on the liability regime and except for the self-employed). The legislator imposes on them an obligation to pay a contribution, i.e., a liability (as a negative consequence of risk) for events with which otherwise they may be unconnected (e.g., due to force majeure). This brings the contribution closer to an additional non-equivalent public levy associated with labour costs. Such a contribution should be economically rational under the assessment of whether in this case an important public interest justifies interference with the constitutional freedom of economic activity.
Advantages achieved by contribution payers include: reduction of civil liability insurance costs through compulsory accident insurance, which due to compulsory participation provides all organisations with comparable costs and protection; greater willingness of the insured to take on risky employment; reduction of costs related to accidents at work and occupational diseases not covered by accident insurance (link with health insurance, method of calculating compensation for material and non-material damage), assistance in financing activities promoting OSH and motivating such activities (projects, method of determining the amount of accident insurance contribution).

Advantages achieved by the insured include certainty and a simplified procedure for obtaining relatively high benefits while maintaining the possibility of pursuing claims arising from employers’ liability outside social insurance.

The special approach to solidarity in accident insurance also has another side. The structure of accident insurance benefits to a very narrow extent takes into account discipline necessary in social insurance, which leads to the creation of community and solidarity. This discipline is usually manifested in the requirement of a sufficiently long period of insurance coverage before one acquires the right to benefits and in referring to the special role of the cause of the insured event and fault in its occurrence (lack or reduction of benefits for the insured person and their family, supplementary liability, admissibility of recourse). The ease of acquiring the right to benefits reduces the importance of input and time, which build community and solidarity in other types of insurance. This is indicated by abusive practices when registering for insurance purposes, which is often done at the same time as reporting an accident at work.

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**Personal scope of solidarity (risk community)**

**Changes in the scope of employee rights and insurance entitlements**

Concepts related to the understanding and scope of solidarity and its impact on the specification by the legislator of the risk community covered by compulsory accident insurance may and should translate into practical de lege ferenda conclusions, especially after taking into account the changes in the legal environment in which accident insurance functions. Two legislative changes were introduced in 2018, which, together and in the context of accidents at work, occupational diseases, risk community and solidarity within this community, lead to extensive and serious reflection on the basic assumptions of the structures adopted so far. The first relates to the scope of collective protection of rights and interests of persons performing work in various forms, including those under civil law; and the second relates to distinguishing, for the purposes of farmers’ social insurance, another legal form of work performance, which is the so-called harvest assistance contract performed by farmer’s helpers.
The Act of 5 July 2018 amending the Act on trade unions and some other acts\textsuperscript{16} entered into force on 1 January 2019. It introduced the concept of a person engaged in gainful work to the Act of 23 May 1991 on trade unions.\textsuperscript{17} This relates to an employee or person performing gainful work on a basis other than an employment relationship, if he or she does not employ other people for this type of work, irrespective of the basis of employment, and if his/her rights and interests related to the performance of work can be represented and defended by a trade union. At the same time, it was declared that the right to form and join trade unions was granted to persons engaged in gainful work.\textsuperscript{18}

Trade unions are organisations set up to represent and defend the rights, professional and social interests of “working people.”\textsuperscript{19}

The history of expanding the scope of employees’ and employers’ freedom of association to represent and protect their rights and interests, \textit{i.e.}, the right of coalition, is closely related to the understanding of the concept of “employee” in the Conventions of the International Labour Organisation (ILO). The amendment was aimed to implement the recommendations formulated by the ILO Committee on Freedom of Association, which concerned the freedom of association in trade unions\textsuperscript{20} and the judgement of the Constitutional Tribunal of 2 June 2015 (file No. K 1/13). It was claimed in the judgement that the scope of regulations regarding the admissibility of creating trade unions and joining them, provided for in Art. 2(1) of the Trade Unions Act, was too narrow in relation to the constitutional guarantees arising from Art. 59(1), in conjunction with Art. 12 of the Polish Constitution. When defining the group of individuals entitled to form trade unions and join them, the legislator used the criterion of form of employment. This criterion, however, was not provided for in the Constitution as an indicator of a group of individuals exercising the freedom of association in trade unions. In the opinion of the Tribunal, these individuals are characterised primarily by the fact of performing gainful work for someone’s benefit and having professional interests that can be protected by a trade union as a group. In this context, it is not important in what form and on what basis a given person performs gainful work. In addition, the Tribunal has considered that the restriction consisting in granting out-workers simply the right to join a trade union (in Art. 2[2] of the Act), but excluding the possibility of forming a union itself, is unjustified from the point of view of the intended function of such an organisation.\textsuperscript{21}

\begin{itemize}
\item \textsuperscript{16} Act of 5 July 2018 amending the Act on trade unions and some other acts, hereinafter referred to as: the Trade Union Act (Journal of Laws of 2018, item 1608).
\item \textsuperscript{17} Act of 23 May 1991 on trade unions (consolidated text: Journal of Laws of 2019, item 263).
\item \textsuperscript{18} \textit{Ibid}, Art. 2(1).
\item \textsuperscript{19} \textit{Ibid}, Art. 1(1).
\item \textsuperscript{21} In addition, on 13-16 May 2014, the Mission of the International Labour Organisation took place in Poland, at the invitation of the Ministry of Labour and Social Policy. It was recalled that all working persons in the broad sense of this word should have the right to organise, protect their right to organise and the right to a joint voice. Nevertheless, the Mission pointed out that the ILO supervisory bodies did not expect all rights contained in the Trade Union Act to be granted to self-employed persons and persons working under the civil law contracts.
\end{itemize}
Replication of this reasoning to accident insurance, its purpose and intrinsic solidarity, first of all raises questions about the scope of this solidarity towards persons performing work in various legal forms. If we assume that the purpose is to grant the necessary benefits to persons who have suffered as a result of an accident at work or an occupational disease, as a situation connected by nature with the exercise of gainful work, it is difficult to justify the exclusion of certain persons performing work from these rights simply because they perform it based on specified legal forms. The more so that the costs associated with these benefits are in any event borne by other entities, charged due to participation in business and legal transactions with employed persons' help – as those who perform the tasks of a given entity (in simplified terms – the contribution payer). Since, under civil law, these entities are responsible for persons employed as “persons entrusted with the performance of an act” (Art. 429, 430 and 474 of the Civil Code), then liability towards persons employed in connection with events that may occur in the working environment should also be included, and the postulate of establishing risk communities in social insurance from people exposed to the same risk should be considered. It seems that all working persons can be victims of accidents and become ill as a result of adverse factors of the working environment. This does not depend on the legal basis for performing the work. This is evidenced primarily by the fact that the self-employed persons, i.e., persons conducting non-agricultural business activities have been covered by the accident insurance.

**Out-workers**

Since the understanding of “employee” is to be broad for the purposes of the right of coalition, consideration should be given to the understanding of this term in other ILO Conventions and international instruments, in particular in the field of social security. In the light of the broad understanding of the term “employee,” confirmed by the ILO and the Constitutional Tribunal in Poland, one should first consider the position of persons engaged in out-work (so-called out-workers). In Poland, these persons are not subject to accident insurance, which results from Art. 12(2), in conjunction with Art. 6(2) of the Act of 13 October 1998 on the social insurance system. \(^{22}\) This corresponds to the old regulation adopted already in Art. 2(b) of ILO Convention No. 17 concerning workmen's compensation for accidents of 10 June 1925, and ratified by Poland. \(^{23}\) The ILO Conventions on occupational diseases do not exclude out-workers, but those injured as a result of occupational diseases or their family members were to be provided with compensation under the general principles of national legislation on compensation for accidents at work. Such provisions are contained in Convention No. 18 concerning workmen's compensation for occupational diseases of 10 June 1925, \(^{24}\) replaced by Convention No. 42 concerning workmen's compensation for occupational diseases (revised) of 4 June 1934. \(^{25}\)

\(^{22}\) Consolidated text: Journal of Laws of 2019, item 300, as amended.

\(^{23}\) Journal of Laws of 1937 No. 86, item 617.

\(^{24}\) See Journal of Laws of 1937 No. 86, item 619.

\(^{25}\) Ratification: Journal of Laws of 1949 No. 31, item 235.
ILO Convention No. 121 concerning benefits in the case of employment injury of 1964, and not ratified by the Republic of Poland, provides in Art. 4 that national legislation concerning employment injury benefits should protect all employees (including apprentices), in the public and private sectors, including co-operatives, and, in respect of the death of the breadwinner – prescribed categories of beneficiaries. However, any Member State of the ILO may make such exceptions as it deems necessary (paragraph 2) in respect of persons whose employment is of a casual nature and who are employed otherwise than for the purpose of the employer's trade or business (a), out-workers (b), members of the employer's family living in his house, in respect of their work for him (c).

It is worth noting that these older Conventions ratified by Poland required only compensation. Convention No. 121 provides only for periodic benefits, not compensation itself. Starting from Convention No. 102 concerning minimum standards of social security (not ratified by Poland in Part VI concerning accidents at work and occupational diseases), no compensation has been provided for, but only more favourable periodic benefits. They are to achieve the purposes previously set for compensation, i.e., to secure access to medical treatment, medicines and necessary medical supplies (e.g., prosthetic appliances) and to provide a permanent source of income. This is possible because, at the same time, access to medical care is assumed independently (Part I of Convention No. 102). Persons engaged in out-work in Poland are compulsorily covered by health insurance. However, changes in the structure and forms of social security should have a holistic impact on the perception of the role of compensation as such and its relation to accident insurance benefits, and thus indirectly also on the perception of solidarity under this insurance.

On the one hand, the above mentioned Conventions expressly allow the exclusion of out-workers from the scope of accident insurance, but on the other hand, by the very fact, they indicate that out-workers, as a rule, are employees within the meaning of those instruments. Since the similarities of the situation of out-workers and of other employees are noticed for the purposes of other Conventions, it is necessary to think again as to whether the considered exclusion from the scope of entitlements related to accidents at work and occupational diseases is not too outdated. Doubts can arise as to whether, after almost a hundred years since the adoption of the first Conventions, exclusion of out-workers from accident insurance has any sense, since this insurance covers freelancers/contractors irrespective of the place of work performance, and – above all – self-employed persons, and since it is generally assumed that out-workers should be covered by protection afforded to employees (see Art. 303[1] of the Labour Code).

Farmer's helpers

In 2018, the Act of 13 April 2018 amending the Act on farmers social insurance and certain other Acts (Journal of Laws of 2018 item 858) introduced another controversial regulation – concerning farmer’s helpers (farm hands). This construction also irresistibly

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The role of solidarity in accident insurance

Pursuant to Art. 6(2a) of the Act of 20 December 1990 on farmers social insurance, a farmer's helper (farm hand) is an adult with whom the farmer has concluded a harvest assistance contract, referred to in Art. 91a of the Act. Through this contract, this person undertakes to provide assistance for the harvest of agricultural products belonging to the sector referred to in Art. 1(2)(f), (i), and (n) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products, as well as other herbs and herbal plants, at a specific place on the farmer's farm and for a specified period and the farmer is obliged to pay the agreed remuneration for the assistance provided. Performance of these activities under the harvest assistance contract does not constitute employment within the meaning of the Labour Code.

The harvest assistance contract specifies the scope of operations performed on its basis by the farmer's helper (farm hand) and the date of commencement of the assistance, if it is different from the day of the contract (Art. 91a[3]). Before concluding the harvest assistance contract, the farmer's helper (farm hand) must declare the number of days in a given calendar year in which he/she provided help with the harvesting of hops, fruit, vegetables, tobacco, herbs and herbal plants based on the harvest assistance contracts concluded with other farmers (Art. 91b[2]). The total period of providing harvest assistance under harvest assistance contracts concluded by one farmer's helper (farm hand) may not exceed 180 days in a calendar year (Art. 91c[1] of the Act on farmers social insurance).

A new type of the named civil law contract has been introduced into the Act on farmers social insurance in order to allow the special provisions to specify for this group a separate scope of coverage for farmers social insurance and the benefits they are entitled to. Pursuant to Art. 7(1a), a farmer's helper (farm hand) is ipso jure covered by accident, sickness and maternity insurance, but only to the extent limited to the benefits specified in Art. 9(1), i.e., a flat-rate compensation in respect of permanent or long-term damage to health or death as a result of accidents at work in agriculture or agricultural occupational diseases. The flat-rate compensation is payable (Art. 10[1]) to an insured person who has suffered permanent or long-term damage to health as a result of an accident at work in agriculture or has developed an agricultural occupational disease and to the family members of an insured person who has died as a result of an accident at work in agriculture or from an agricultural occupational disease. In the case of a farmer's helper (farm hand), an accident at work in agriculture is considered to be a sudden event caused by

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27 Consolidated text: Journal of Laws of 2019, item 299, as amended.
28 Pursuant to Art. 91(2) of the Act on farmers social insurance, assistance in the harvesting of hops, fruit, vegetables, tobacco, herbs and herbal plants includes the following operations: 1) collecting hops, fruit, vegetables, tobacco, herbs or herbal plants; 2) removing unnecessary plant parts; 3) classification or sorting of harvested hops, fruit, vegetables, tobacco, herbs or herbal plants, or performing other operations aimed at preparing hops, fruit, vegetables, tobacco, herbs or herbal plants for transport, storage or sale or related to cultivating and improving crop quality.
an external cause that occurred while the farmer’s helper (farm hand) carried out operations specified in the harvest assistance contract referred to in Art. 91a (Art. 11[1a]). An agricultural occupational disease means a disease which arose in connection with work on a farm, if it is included in the list of occupational diseases laid down in the provisions issued under the Labour Code (Art. 12). The flat-rate compensation is calculated for the insured person in proportion to the permanent or long-term damage to health (expressed in percentage terms) and the flat-rate amount determined in accordance with the Act (Art. 13[1]).

The farmer’s helper (farm hand) must be registered for insurance purposes within 7 days of concluding the harvest assistance contract. The registration should not take place later than before the end of the period for which this contract was concluded (Art. 37[1a] of the Act on farmers social insurance).

It is important that the contributions for agricultural accident, sickness and maternity insurance, which corresponds to the universal accident insurance, are paid by the farmer. A monthly contribution is paid for each insured person (Art. 8[1]) to the same amount, and equal to the contribution for persons covered by agricultural accident, sickness and maternity insurance in its full scope. According to the explanatory statement of the draft law introducing this insurance title:

A farmer’s helper (farm hand) will be covered by this insurance only for a period of 120 days in a calendar year, and therefore the period of paying contributions for this insurance will be short, and the risk of accident proportionally higher than in the case of persons permanently working on the farm, at least because of the lack of experience in this field.\(^{29}\)

Therefore, the amount of the contribution will be equivalent to three times the amount determined “in the manner specified in Art. 8(3), with the same range of benefits under this insurance.”\(^{30}\) The amount of the monthly contribution for accident, sickness and maternity insurance for the farmer’s helper (farm hand) is therefore the same as for any person subject to this insurance and it constitutes the full amount of the insurance contribution, which is announced by the president of the Agricultural Social Insurance Fund in accordance with Art. 8(4) of the Act on farmers social insurance.

It is equally important that insurance coverage for farmer’s helpers (farm hands) is associated with the health insurance coverage. Pursuant to Art. 66(1)(1)(ba) of the Act of 27 August 2004 on health care benefits financed by public funds, the health insurance obligation applies to persons who meet the conditions to be covered by social insurance

\(^{29}\) Rządowy projekt ustawy o zmianie ustawy o ubezpieczeniu społecznym rolników oraz niektórych innych ustaw [The government draft amendment of the Act on farmers social insurance and certain other acts], Sejm Paper No. 2334 of 13 March 2018, p. 3.

\(^{30}\) As for a voluntarily insured farmer, household member or person who has allocated land for afforestation. Pursuant to Art. 7(3) of the Act on farmers social insurance, another farmer, household member or a person who has allocated land for afforestation, is covered by accident, sickness and maternity insurance at his or her request, only to the extent limited to the benefits specified in Art. 9(1) (i.e., as a farmer’s helper [farm hand]) if he/she is covered by other social insurance or has an established entitlement to pension or social insurance benefits.
or social insurance for farmers, who are farmer's helpers (farm hands) within the meaning of the provisions on farmers social insurance. However, health insurance does not cover a farmer's family members (see Art. 67[3] of the Act).

The reasons for adopting this special regulation are interesting. According to the explanatory statement to the draft Act:

An argument for the preparation of regulations regarding the harvest assistance contract is the widespread use of specific-work contracts in agriculture, which do not match the nature of the work of those employed at the harvest and do not give rise to the obligation to pay contributions. Adoption of flat-rate contributions will above all reduce labour costs and will significantly reduce the administrative obligations of farmers. The proposed Act meets the demands of the agricultural community regarding support for farmers at fruit and vegetable harvests, during which there is a significant accumulation of work.\(^{31}\)

To sum up, a very simple social insurance structure was created, limited to registration for insurance purposes, paying a flat-rate contribution and providing minimum benefits arising from international obligations. One of the first conventions adopted by the ILO – Convention No. 12 concerning workmen’s compensation in agriculture of 12 December 1921\(^ {32}\) – provides that each Member of the International Labour Organisation which ratifies this Convention undertakes to extend to all agricultural wage-earners its laws and regulations which provide for the compensation of workers for personal injury by accident arising out of or in the course of their employment. Already here doubts may arise as to the correctness of the applied solutions, since Convention No. 17 concerning workmen’s compensation for accidents of 10 June 1925 (ratified by Poland), adopted some time later, provides that compensation should, in principle, be paid in the form of a (sickness/disability) pension or social security allowance (Art. 5).

Thus, the Polish statutory regulation of the harvest assistance contract maintains only the old minimum ILO standard. It also supports the idea of recognising farmer’s helpers (farm hands) as “agricultural wage earners” thus respecting other employee rights in relation to them.

**Persons performing specific-work contracts**

Considerable attention has been paid above to the regulation concerning farmer’s helpers (farm hands), because it seems that through this regulation the legislator has set a certain minimum standard that should be equally respected in relation to persons performing gainful activities, especially by analogy to the aforementioned development of accident insurance (first insurance instruments, first conventions…). At the same time, the design used is extremely simple and in fact detached from the detailed conditions of work performance.

\(^{31}\) Rządowy projekt ustawy o zmianie ustawy o ubezpieczeniu..., op. cit., p. 2.

\(^{32}\) Journal of Laws of 1925 No. 54, item 380; ratification: Journal of Laws of the Polish state of 1924 No. 7, item 58.
And so we can move to the complicated and widely discussed problem of specific-work contracts. Since, according to the explanatory statement to the Act amending the Act on farmers social insurance, the introduced harvest assistance contract is to supersede the previous specific-work contract, it can probably be assumed that – in the opinion of the legislator – the work performed under both contracts has similar features (although they may “not match the nature of the work”) and that these contracts are alternative to each other. Thus, since harvest assistance contracts are covered by insurance providing accident benefits and, what is even more important, health insurance, why in the light of the full legal situation regarding the performance of gainful work, are persons performing “correctly” specific-work contracts not covered by social security at least in this scope?

If persons exposed to a similar risk are to be covered by solidarity, under accident insurance it should apply to all persons exposed to the effects of accidents related to gainful activity, including persons engaged in out-work, specific-work contracts, members of supervisory boards and management boards. The problem of persons performing specific-work contracts being the most noticeable from the social standpoint.

By analogy to the initial period of social insurance development in the nineteenth century, it can be postulated to initially cover this category of persons only by accident insurance (keeping in mind significant differences and special conditions, it is possible to refer to the limited insurance of farmer's helpers (farm hands) in agricultural insurance) and possibly health insurance. It is pointed out that the first ILO Conventions required only protection against work-related risks. If they introduced employer’s liability for accidents at work, they left unresolved the matter of choosing appropriate means to fulfil this liability.\(^\text{33}\) The above mentioned ILO Convention No. 12 concerning workmen’s compensation in agriculture and Convention No. 17 concerning workmen’s compensation for accident, indicate that laws and regulations on compensation for accidents at work should apply to workmen, employees and apprentices employed by any enterprise, undertaking or establishment of whatsoever nature, whether public or private (with the exception of out-workers). We would like to remind the reader that compensation should be paid in the form of a (sickness/disability) pension (periodic payment), not later than as from the fifth day after the accident and should involve the right to medical assistance. Also Convention No. 42 concerning workmen’s compensation for occupational diseases (revised) of 1934\(^\text{34}\) only generally provides that each Member of the International Labour Organisation which ratifies this Convention undertakes to provide that compensation shall be payable to workmen incapacitated by occupational diseases, or to their dependants, in accordance with the general principles of the national legislation relating to compensation for industrial accidents.

The narrow construct of an accident sustained “while performing operations directly aimed at carrying out the work” during the period of accident insurance designated for the performance of just these operations (e.g., during the period which must be indicated in the contract for specific work) and connected with the flat-rate contribution at the


\(^{34}\) Journal of Laws of 1949 No. 31, item 235; ratification: Journal of Laws of the Polish state of 1949 No. 31, item 236.
expense of the employer and with the health insurance, would allow initially for the elimination of many difficulties regarding the affiliation of persons performing a specific-work contract to the social security system (no link between the actual period of work performance and the remuneration, determination of remuneration for a given period, i.e., the basis for calculating the contribution and the insurance period, indicating the contributions payer, etc.). Based on the experience collected during the operation of such a solution, it would be possible to develop a concept of extending social security to persons performing specific-work contracts. 

The material scope of solidarity

As mentioned above, the financial situation of the accident fund is stable and the contributions paid exceed the value of paid benefits. Therefore, it would be expected that a rational legislator, by referring to insurance rules, would reduce the costs of protection by reducing the accident insurance contribution.

Meanwhile, from 1 January 2018, by means of the Act of 27 October 2017 amending the Act on social insurance in respect of accidents at work and occupational diseases, the provisions of the Accident Insurance Act concerning accident prevention have been expanded (chapter 5). “Projects” have been regulated and defined as investment or investment-advisory activities aimed at maintaining earning capacity throughout the entire period of professional activity, with the value determined by the contribution payer, carried out within a set time frame (Art. 2[4a]). Such projects may be co-financed from the Social Insurance Fund. They are selected through a competition announced by the president of the Social Insurance Institution (ZUS) (Art. 37a[1] of the Accident Insurance Act). The maximum amount of co-financing depends on the number of people for whom the contribution payer pays social insurance contributions as at the date of filing an application for project co-financing (Art. 37b[1]).

This is another solution that raises doubts from the point of view of the role of solidarity in accident insurance. It seems that the threshold of solidarity required from contribution payers has been exceeded. Their financial contribution, often coming from entities that are really committed to ensuring an appropriate level of occupational safety and health in workplaces, is intended to support only some – those who have the resources to prepare an appropriate application. Also from the point of view of the subsidiarity principle expressed in the preamble to the Constitution, this solution seems superfluous to existing measures, such as imposing OSH obligations on employing entities (Art. 304-3044 of the Labour Code) and varying the accident contribution rate for accident insurance depending on the level of risk for a given

36 Zakład Ubezpieczeń Społecznych [Social Insurance Institution], op. cit., p. 33.
contribution payer. Projects may be co-financed only to some contribution payers (determined irrespective of the insurance risk materialisation), and the obligation to finance accident insurance is imposed on all contribution payers employing persons covered by this type of insurance.

**The extent of solidarity**

The reconstruction also seems to be required for the justification of a higher level of benefits from accident insurance compared to insured persons granted benefits under other types of social insurance. These differences are taken into account in the ILO Conventions and applicable Polish legislation.

Meanwhile, the needs covered by social security do not differ depending on their causes, and the diversity is justified only by the concept of the liability of employers and other employing entities, as well as the contributions financed by them. In particular, in the context of constitutional principles of equality, subsidiarity and proportionality, constant assessment is needed to the extent to which it should be reflected in the social security system, which should take into account the needs of all beneficiaries.

Without referring to the concept of the compensatory role of benefits from accident insurance, it is not possible to explain why the benefits for victims are so privileged when compared to the benefits for other entitled persons, being in the same health or social situation but receiving benefits from a different type of insurance. From the point of view of a person incapacitated for work, interested in covering his/her needs, the issue of the cause of his/her health condition, especially in the long term, does not seem to be decisive. This applies especially not only to the academic example of persons injured as a result of one event, which may have a different legal qualification for individual participants, e.g., a traffic accident which is an accident at work for some participants or an equivalent accident, for others – an accident on the way to or from work, while for other participants it is only the cause of damage to health giving the right to benefits “from the general state of health.”

From this point of view, the need to separate accidents on the way to or from work, in particular in terms of the amount of benefits, is also particularly doubtful.

**Conclusions**

Accident insurance is characterised by significant differences in the definition and effects of solidarity compared to other types of social insurance, e.g., financing contributions only by contribution payers, modifying the burden not according to the better or worse

situation of the financing party, but according to the level of occupational hazards and their effects, and therefore in relation to insurance rather than solidarity rules. The adopted concept of solidarity is broad. It includes compensation obligations of contribution payers, but also benefits for entitled persons. Currently perceived problems arise from the way in which the scope of solidarity (felt or forced by legislation) translates into the defined boundaries of the risk community and coercion within it.

Reference to the role of solidarity in accident insurance is needed to properly shape the risk community for the purposes of this type of insurance. If the community based on solidarity and constructed by legal standards were to relate to exposure to equal risk and its effects, then accident insurance should be provided for every gainful activity, including for persons engaged in out-work and performing specific-work contracts, as well as for pupils and students performing commission contracts and service contracts, in particular at the concurrence of various social insurance titles, including the concurrence of activity and the right to maternity allowance.

And the juxtaposition of the principle of solidarity with the principle of subsidiarity is an argument against imposing subsequent obligations on accident insurance. In particular, care for occupational safety and health can be (efficiently and more cheaply in global terms) provided by employers without the participation of Social Insurance Institution and without public funds.

The development of social security – primarily as regards health care benefits financed from public funds and social security broadly understood, including pensions in respect of incapacity for work (disability/invalidity) or death of the breadwinner – results in a situation where the compensation from accident insurance currently has a different function than at the time of the adoption of the first legal instruments in this field, including ILO Conventions relating to accidents at work and occupational diseases, ones ratified by Poland. In this context, more detailed research on the amount of accident insurance benefits as compared to other social insurance benefits and overall obligations of employing entities (including those of a civil law nature) as payers financing accident insurance contributions seems promising.

Numerous problems and issues appear within the context of the role of solidarity in accident insurance. These can mainly be reduced to the question of whether the extent of the diversity of accident insurance is not too great compared to other types of insurance and social security benefit systems.

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Dorota Dzienisiuk, Assistant Professor
Faculty of Law and Administration,
University of Warsaw
ORCID: 0000-0002-0543-9114
SOURCES

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Rola solidarności w ubezpieczeniu wypadkowym

W ubezpieczeniu wypadkowym solidarność pełni inną rolę niż w pozostałych rodzajach ubezpieczenia. Składki są finansowane wyłącznie przez płatników składek, a świadczenia są udzielane ubezpieczonym lub członkom ich rodzin. Należy więc przyjąć, że solidarność obejmuje jednych i drugich, a korzyść osiągana przez płatników składek polega na ograniczeniu ich odpowiedzialności wobec poszkodowanych wskutek wypadków przy pracy i chorób zawodowych. Solidarność powinna obejmować wszystkich takich poszkodowanych, niezależnie od prawnej podstawy świadczenia pracy. Zmiany legislacyjne dokonane w 2018 r. wobec osób wykonujących pracę zarobkową i pomocników rolnika przemawiają za objęciem ubezpieczeniem wypadkowym osób wykonujących pracę nakładczą oraz umowę o dzieło.

Słowa kluczowe: wypadek przy pracy, ubezpieczenie, choroba zawodowa, solidarność
Farmers and their spouses cooperating with them, as well as those household members covered by farmers' social insurance constitute a homogeneous risk community. All these persons share a common feature, i.e., work on an agricultural holding, exposing them to similar random events (risks). This homogeneity is not affected by the fact that the farmers' social insurance covers also farmer entrepreneurs and farmers who simultaneously perform work under civil law contracts or have been appointed to supervisory boards, but it is undermined by the possibility of agricultural pension insurance cover, at their request, for farmers who have ceased agricultural activity or work in an agricultural holding on the basis of the right to social benefits, listed in the Act, in respect of the care of a disabled person.

Agricultural insurance covers almost the same types of risks as those covered by general insurance, however, due to the specific nature of the agricultural activity and the situation of those who perform it, the shape and scope of protection is sometimes significantly different (the study highlights these differences).

Agricultural insurance contributions are personal ones, determined in the same amount (accident and sickness insurance) or as a percentage (pension insurance), independent of the income earned on the agricultural holding. There is no relationship between the rate of the contribution paid and the amount of the benefit received under the discussed system.

Taking into account the participation of the insured persons within the risk community and their share in financing the benefits, it should be noted that the agricultural accident and sickness insurance, in its current form, is based on group solidarity due to its self-financing nature, while the pension insurance embodies the idea of nationwide solidarity, since a significant part of expenditure in this insurance is covered by the state budget. There are various reasons for adopted regulation (these being indicated in the study).

As a result of widespread criticism of the current level of state budget subsidies to the agricultural insurance system, proposals for solutions aimed at their reduction are put forward in the doctrine (which are discussed in more detail in the study). Hence, the discussion is needed on the scale of subsidies and their targeting, taking into account the objective conditions of Polish agriculture and the social situation of those conducting agricultural activity.

**Key words:** contribution, farmer, financing, risk community, solidarity

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Introduction

The function of social insurance is to protect persons affected by the consequences of certain random events (risks). The basic principle (idea) of social insurance is the social solidarity principle, which assumes that the burden of benefits is distributed among a wider group of persons covered by its scope, who are similarly exposed to a given random event (the risk community). Hence the notion is that of joint participation and the sharing of the costs of the protection system in the event of any specific social risk.1

In general terms, there is no symmetry between the contribution and the realised benefit in the risk community. It finds its expression in the fact that all insured persons, although to an uneven degree, participate in the creation of the fund from which the benefits are financed, but benefits are acquired only by those insured persons in relation to whom the social risk has materialised.2 ‘There is also no strict correlation (equivalence) between contributions and benefits in social insurance. The principle of benefits proportionality to the insured persons’ input in the form of a contribution is not absolute and is adjusted by the principle of social justice in favour of lower income earners.

If the fund used to cover the benefits comes only from payments from the insured persons, we are dealing with the concept of group solidarity. However, if state budget subsidies have a significant share in its creation, we are dealing with nationwide solidarity,3 i.e., solidarity of the taxpayer community towards beneficiaries.4

This study on solidarity in farmers’ social insurance will be devoted to an analysis of such issues as types of risks, the scope of the risk community, the contribution rate, the rules for benefits assessment and the financing methods. In the final remarks I will present proposed reforms of the social insurance system aimed at reducing state budget subsidies to the system and to strengthen the solidarity of insured farmers.

Risks in agricultural insurance

Risk is generally understood as a threat of a future event, which is uncertain, independent of human will and unfavourable to humans.5 As a result of subsequent amendments to the laws governing farmers’ social insurance, the insurance covers almost the same types of

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2 J. Jończyk, Prawo zabezpieczenia społecznego, Zakamycze 2006, p. 38 et seq.
3 See B. Wierzbowski, Ubezpieczenie społeczne rolników wyrazem solidaryzmu społecznego, “Ubezpieczenia w Rolnictwie” 2000, No. 4, p. 105.
5 J. Jończyk, Prawo..., op. cit., p. 12.
risks as those covered by the general insurance, although their shape, and thus the scope of protection, differs, sometimes significantly, from those protected under general insurance. The differences are justified mainly by the specific nature of agricultural activity and the situation of persons performing this activity. However, as noted in the doctrine, it is not individual risks that are the direct starting point for the construction of legal and organisational solutions in the discussed system, but the benefits due to insured farmers, which is reflected in the breakdown of this insurance into accident, sickness and maternity insurance (lump-sum and short-term benefits) and old-age and disability pension insurance (long-term benefits and funeral grant); family benefits currently constitute a separate type of benefit. In the opinion of Błażej Wierzbowski, if the benefits were directly grouped by type of risk, then e.g., benefits in respect of an accident at work in agriculture and agricultural occupational diseases would, as in other systems, be formed in a more favourable way than benefits in respect of an incapacity for work on the agricultural holding for general reasons.

Generally speaking, farmers’ social insurance provides protection against sickness, maternity, permanent or long-term incapacity for work on the agricultural holding, agricultural accidents at work and occupational diseases, reaching the retirement age and the loss of the breadwinner. As already mentioned, the scope of protection of individual risks, and thus the scope of the benefits granted, differs from the general system. And so, mentioning only the basic differences, incapacity for work in the agricultural holding due to sickness is subject to protection only if the incapacity lasts continuously for more than 30 days (this also applies to incapacity of an accidental nature); the long-term incapacity for work (over 182 days) still entitles the insured party to sickness allowance, and not to a separate rehabilitation benefit; the disability pension is payable only because of total incapacity for work of a permanent or long-term nature on a specific agricultural holding; although the retirement age entitlement to an agricultural old-age pension is the same as in the general system (60 years for women and 65 for men), however, from 1 January 2018, the possibility of early retirement has been eliminated; the incapacity for work due to an accident during agricultural work and agricultural occupational disease does not entitle one to more favourable benefits. Also the definition of an accident at work quite significantly differs from the definition of an employee accident at work, as it also covers injuries sustained while working in the household, as well as accidents “on the way” to work itself. This is due to the fact that on a family farm there is a close bond between the farm, understood as an economic organism, and the household, serving to satisfy the living and personal needs of the farmer and his/her family, and sometimes it is not possible to separate (without exposing oneself to the charge of artificiality) operations conducted within the professional sphere from activities in the farmer’s personal sphere.

6 Currently, these issues are governed by the Act of 20 December 1990 on social insurance for farmers (Journal of Laws of 2017, item 2336, as amended).
8 This is emphasised by B. Wierzbowski, *Specyfika rolnictwa jako przyczyna wyodrębnienia organizacyjnego ubezpieczenia społecznego rolników*, “Ubezpieczenia w Rolnictwie” 2016, No. 60, p. 67.
Separate remarks relate to the risk of maternity and care for a small child. The maternity allowance, earlier included in the benefits from accident, sickness and maternity insurance, from 1 January 2016 has been “transferred” to the pension insurance benefits, changing its form (see Art. 35a-36b), and above all the method for its financing (see Art. 18 in conjunction with Art. 78[1][1] and Art. 78[2][2a]-[3]). This benefit is presently financed from the pension fund, supplied with the resources of the contribution fund in the form of a deduction to the amount of 40% of the cost of these benefits, while the remaining expenses in this respect will be supplemented by a state budget subsidy.

**Risk community**

One of the characteristic features of social insurance is the homogeneous risk community; reflected in covering by the social insurance persons exposed to similar random events and other events equivalent to them, as well as to resulting situations based on the performance of professional activity providing a regular means of subsistence. In agricultural insurance, this community is composed of farmers, their spouses and household members. All these persons share a common feature, *i.e.*, their work on the agricultural holding, exposing them to similar random events (risks).

According to Art. 6(1) of the Act, a farmer means any natural adult person, residing in the territory of the Republic of Poland (it also refers to a situation when a farmer is a national of an EU Member State) and conducting in this territory, personally and on his/her own account, agricultural activity (within the meaning of Art. 6[3]) on the agricultural holding that remains in his/her possession (including one within a group [collective] of agricultural producers), as well as the person who has allocated the land of his/her farm for afforestation. Agricultural insurance also covers the special agricultural production branch within the meaning of the Act.

The conjunction of the prerequisites for residence and conducting personally agricultural activity indicates that this activity is carried out in the country on a permanent basis. The case-law emphasises that the necessary prerequisite for recognising that farmers are covered by social insurance is the actual conduct of agricultural activity with the mere possession of an agricultural holding alone being insufficient. The analysis of

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9 These changes were introduced by the Act of 24 July 2015 on the amendment of the Act on family benefits and certain other Acts (Journal of Laws of 2015, item 1217). Nevertheless, the Act did not change the name of this insurance branch, which should be considered improper. That is why I use in this study the term “accident and sickness insurance,” disregarding maternity insurance. Critical opinion on this regulation, see D. Puślecki, *Nowa konstrukcja zasiłku macierzyńskiego z ubezpieczenia społecznego rolników*, “Ubezpieczenia w Rolnictwie” 2015, No. 55–56, pp. 93–94, 100.


11 See the judgement of the Administrative Court in Tarnów of 3 July 2013, IV U 1374/12, LEX No. 1716074 and the judgement of the same court of 24 April 2013, IV U 62/13, LEX No. 1716167.
the case-law also shows that for running a farm it is usually necessary to perform physical work on this farm, although this requirement may sometimes be limited to undertaking managerial and managing activities. In this context, some doubts are raised by the covering through agricultural insurance of persons who have allocated the land of their farm for afforestation. These doubts result from the fact that, although such a person is still formally recognised as a farmer (Art. 6[1]), forestry has been excluded from agricultural activities (see Art. 6[3]), which is understandable since this person, having no agricultural holding, does not have the conditions to carry out such an activity. It should be noted, however, that this person may be insured only on request and only, as it seems, in the field of accident and sickness insurance.

In accordance with Art. 5 of the Act, regulations on insurance and benefits to which the farmer is entitled also apply to his/her spouse, unless she/he does not work on the farmer’s holding or in a household directly related to the agricultural holding. The content of this provision shows that work in each of these holdings is a title to cover the farmer’s spouse with agricultural insurance, which reflects the recognition of the fact that in small family farming operations, as already mentioned, it is not possible to precisely separate the activities closely related to work on an agricultural holding from those activities carried out in the household directly linked to that holding. The mere fact of being a farmer’s spouse is not, however, equivalent to conducting agricultural activity and only a spouse who contributes to the agricultural holding’s proper functioning may be considered to be working on it, i.e., performs such activities on that holding that enable for its proper functioning.

Pursuant to Art. 1(1) of the Act, farmers’ social insurance also covers household members working with the farmer, i.e., persons close to the farmer, residing with him/her in a common household or living on his/her agricultural holding or in its close vicinity and working permanently in this holding, without being bound by an employment relationship with the farmer (Art. 6[2]). The household member is not a farm owner and does not conduct professional agricultural activity on his/her own account, but only helps the farmer in carrying out such activity, i.e., performs the work indicated by the farmer running the farm within the scope of his/her business decisions. The work performed by the household member on the agricultural holding must be of a permanent nature, but it is not required to be his/her main source of subsistence. However, a person employed outside agriculture on a full-time basis is not a household member within the meaning of the Act, even if he/she lives on his/her parents’ farm and helps

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13 See the judgement of the Administrative Court in Tarnów of 24 April 2013, quoted in footnote 11 and other judgements referred to in its justification, as well as the judgement of the Administrative Court in Białystok of 18 May 1995, III AUa 126/95, OSA 1995/6/52.

14 See the judgement of the Administrative Court in Łódź of 17 January 2014, III AUa 517/1, LEX No. 1428151 and the judgement of the Voivodeship Administrative Court in Warsaw of 20 August 2014, VIII SA/Wa 183/14, LEX No. 1508622.
them run this farm.\(^{15}\) Hence, the notion of permanent work exists only when assistance for the farmer is provided to an extent significant for the functioning of the agricultural holding. Therefore, minor operations systematically carried out as a part of the division of duties in the family and other operations occasionally provided, do not constitute permanent work on the agricultural holding.\(^{16}\)

The homogeneity of the risk community in agricultural insurance is not undermined by the fact that the insurance covers also farmer entrepreneurs, \(i.e.,\) farmers (household members) who are at the same time engaged in a non-agricultural business activity (Art. 5a). At present (after subsequent amendments to the regulations) this option applies only to those farmers who undertake such an activity to a limited extent, as assessed by the tax criterion, \(i.e.,\) income tax derived from this activity for the previous year may not exceed the relatively low amount set down in the Act (in 2018 it was PLN 3,376). Income from this activity is therefore only a supplement to the main source of income for the farmer and his/her family, \(i.e.,\) to income from agricultural activity itself. It should be stressed that the discussed regulation applies to persons who are genuinely engaged in agricultural activity. Before starting a business, such a person had to be fully covered by agricultural insurance for a continuous period of at least 3 years, and his/her further coverage by the agricultural insurance depends on the continuation of agricultural activity or (in the case of household members) permanent work on the agricultural holding.

However, the described regulation is sometimes criticised. It is believed that the fear of exceeding the established income tax limit hinders the development of business activity and generating a higher income from this activity, and thus, as a consequence, prevents anyone from leaving permanently agricultural activity.\(^{17}\) It is also proposed, \textit{inter alia}, that the exceeded limit of tax on business operations should not result in the automatic cessation of agricultural insurance and the subsequent covering by general insurance, but in the imposition of an increased, additional contribution to the agricultural pension fund.\(^{18}\) Another suggestion is to move away from quota restrictions and allow only such activities that are associated with the processing of one’s own products, agritourism (agrotourism), rural services, \textit{etc.}\(^{19}\)

For similar reasons, the principle of homogeneity of the risk community is also not affected by allowing (from 2015) the possibility for the farmer (household member) to retain agricultural insurance in a situation where he/she simultaneously undertakes work on the basis of a mandate contract, agency contract or other contract for the provision of services, governed by the provisions on commissioning, or in the event of being appointed to a supervisory board (Art. 5b). However, further coverage by the agricultural insurance

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\(^{15}\) See the judgement of the Supreme Court of 21 April 1998, II UKN 3/98, LEX No. 1427356.

\(^{16}\) See the judgement of the Supreme Administrative Court of 19 February 2015, II OSK 1869/13, LEX No. 1771929.


\(^{18}\) \textit{Ibid}, p. 63.

Solidarity in farmers’ social insurance

insurance is possible under the condition that income from contracts should not exceed a monthly amount equal to the minimum wage. In the discussed case, the farmer is still subject to agricultural insurance, despite being covered by the general insurance under the aforementioned contracts, on the terms provided for in the Social Insurance System Act. Therefore, differently than in the case of conducting additional business activity, a farmer is here subject to “double” insurance (i.e., in Kasa Rolniczego Ubezpieczenia Społecznego [KRUS] and Zaklad Ubezpieczeń Społecznych [ZUS]), however, he/she may withdraw from agricultural insurance at any time. The discussed regulation allows the farmer to earn some extra money by performing civil law contracts or being appointed to the supervisory board without risking the loss (cessation) of agricultural insurance.

A different position should be, however, taken with regard to the recently introduced (as of 18 May 2018) solution allowing the so-called farmer’s helpers to be covered by agricultural insurance (Art. 1[1] in conjunction with Art. 91[a]-[f]). Pursuant to Art. 6(2a) of the Act, a farmer’s helper means an adult (a Polish citizen or a foreigner authorised to work in the territory of the Republic of Poland pursuant to Art. 87 of the Act on employment promotion and labour market institutions, or released from the obligation to have a work permit) with whom the farmer has concluded a harvest assistance contract, as referred to in Art. 91a of the Act. In accordance with the latter provision, the farmer’s helper undertakes in such a contract to provide assistance for the harvest of agricultural products listed in this provision (chiefly vegetables and fruit), at a specified place on the farmer’s holding and for a specified period, and the farmer undertakes to pay the agreed remuneration for the assistance provided. The total duration of any helper’s work based on harvest assistance contracts (including contracts concluded with other farmers) may not exceed 180 days in a given calendar year.

Under the Act, the farmer’s helper is subject (compulsorily) only to accident and sickness insurance, limited only to lump-sum accident compensation (Art. 7[1a]). The farmer’s helper is registered for the purpose of the said insurance by the farmer, who pays for him/her the contribution due. The Act does not provide for the possibility of paying only one third of the contribution due to the limitation of the scope of benefits – as in other similar cases.

The purpose of the discussed regulation was to provide social protection to persons helping the farmer seasonally during harvests on an agricultural holding, because so far such work has been performed mostly within the realm of the so-called black economy or under specific-work contracts, which have not provided any social insurance protection. However, the inclusion of these persons in the farmers’ risk community raises doubts (apart from other serious objections raised in relation to this regulation), because work on an agricultural holding is of an auxiliary and temporary nature, and the scope of social protection has been limited.

On the other hand, there are serious objections concerning the possibility of covering by pension insurance, upon request, persons who had been subject to agricultural insurance as a farmer or household member and then ceased their agricultural activity or work on an agricultural holding in connection with the acquisition of the right to a nursing benefit or a special care allowance or a carer’s allowance, based on separate provisions
(Art. 16[2][4] of the Act). In this case, the insurance covers the period of receiving the said benefit or allowance until the completion of the 25-year period of pension insurance necessary to acquire the right to an agricultural pension. The above regulation allows on the basis of the aforementioned insurance for inactive farmers to be covered who are deliberately giving up agricultural activities due to the need for the personal care of a disabled adult. A similar regulation is also included in Art. 16c of the Act, which allows to cover with pension insurance, upon request, a farmer or a household member who is not subject to farmers’ social insurance or a member of his/her family (who does not meet the conditions for being covered by this insurance) during the period of exercising personal care of a child for up to 3 years, though for not longer than until the child reaches 5 years of age, and in the case of a disabled child for up to 6 years, though for not longer than until the age of 18.

Similar solutions have also been adopted in general insurance, but they are critically assessed\(^\text{20}\) as undermining the dogma of a homogeneous risk community, noting in particular that factors generating social risk for persons economically inactive without any fault of their own, who receive social benefits, are different than those affecting the working population. In the case of the latter, the social risk is determined by the threat of a reduction in or the loss of earning capacity, resulting in a reduction in or lack of earnings (income), while such a situation does not occur in the case of previously mentioned persons who cease their professional activity, but are entitled to specific social (family) benefits.

To conclude this theme, it should be emphasised that the homogeneity of the risk community in agricultural insurance is also ensured by the rule that the personal scope of this insurance covers only farmers who are not subject to the social insurance obligation under the Social Insurance System Act due to the simultaneous performance of work covered by such obligation under this Act (priority of the general system). This rule is not infringed by the earlier mentioned cases of farmer entrepreneurs and farmers performing work on the basis of civil law contracts, because these solutions achieve purposes favourable both for the system (these persons pay an increased contribution) and for the farmers themselves (development of a small business, additional promotion of farmers’ professional activity), and this additional activity is of a limited size. It appears that the agricultural insurance system formed by the Act of 1990 provides insurance protection not to all farmers, but only to those for whom agricultural activity is a profession, being their only or basic occupation and exclusive or permanent (in the case of insurance upon request) source of income.

The homogeneity of the discussed system was also significantly strengthened by the adoption (from 2009) of the principle that a farmer born after 31 December 1948 may not have the periods of being subject to social insurance under the general system reckoned towards the periods of social insurance required to acquire the right to an agricultural old-age pension. This manifestation of the “sealing” of the system was also approved

\(^{20}\) This is the opinion of R. Babińska-Górecka; K. Stopka, *op. cit.*, pp. 203–205.
by the Constitutional Tribunal, which considered in its judgement of 13 December 2007 (SK 37/06) that the distinctness of insurance systems is sufficient to justify restrictions on the incorporation of insurance periods from one system to another.

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**Contributions in agricultural insurance**

Two separate contributions exist in the discussed system: to the contribution fund, which has legal personality and finances sickness allowances and accident benefits, and to the pension fund from which agricultural pensions and other benefits (e.g., funeral allowance, maternity allowance) are paid. The contribution in agricultural insurance is of a personal nature, set in the same amount for each insured person (i.e., the farmer, his/her spouse and household members), independent of the income earned on the agricultural holding. Only the rate of the pension insurance contribution partly depends on the area of the agricultural holding, calculated in conversion hectares, and thus indirectly on the potential productivity of this holding, which affects its income, as will be discussed below.

Contribution to the contribution fund is a variable contribution, determined on a quarterly basis in the plan of this fund by the Farmers’ Council, in the amount ensuring its financial self-sufficiency. For many years, this contribution was paid at the rate of PLN 42 per month for each insured person, regardless of the size of the agricultural holding. In the event of a deficit in the contribution fund, a bank loan may be taken, whose repayment is taken into account when determining the amount of the described contribution during its repayment period. One-third of the contribution is paid for the person insured upon request – another farmer or household member or a person who has allocated land for afforestation, covered by a limited scope of benefits (only lump-sum accident compensation).

The amount of contributions for farmers’ pension insurance is determined on the amount of the basic old-age pension, equivalent to the monthly amount of the lowest old-age pension in the general system. The basic monthly contribution for the pension insurance for each insured person equals 10% of the basic old-age pension. Farmers whose agricultural holdings cover an area of arable land above 50 conversion hectares pay, in addition to the basic contribution, an additional monthly contribution from 12% to 48% of the amount of the basic old-age pension, depending on the area of arable land, respectively, in the range from 50 to above 300 conversion hectares (Art. 17[4] of the Act). Currently, this contribution ranges from PLN 89 (for one insured person on an agricultural holding up to 50 ha) to PLN 514 (for one insured person on an agricultural holding over 300 ha). An additional contribution is not payable for household members

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21 As of 1 January 2017, however, this amount has been “frozen” and equals PLN 882.56 plus indexation pursuant to the provisions of the Pension Act.
working in such agricultural holdings. It is estimated that an additional contribution to pension insurance is paid by a small percentage of farm owners (about 2%). This is due to the fact that almost 80% of farmers paying contributions to KRUS are holders of farms with an area of up to 10 conversion hectares, while about 60% of those paying contributions to this insurance are users of farms up to 6 conversion hectares.\textsuperscript{22}

It was noted in the doctrine that the adopted criterion for differentiating pension contributions is inadequate to the actual incomes of agricultural holdings. This is because the area of land does not reflect the actual economic potential of these holdings, as different yields can be obtained from a similar area, which is affected, \textit{inter alia}, by the type of production, an individual farmer’s skills, the technical equipment of the holding, \textit{etc.}\textsuperscript{23} It is believed that the principle of differentiating the contribution depending on agricultural income, calculated on the basis of farm accounts, would be a more effective solution, taking into account all factors determining the real efficiency and profitability of agricultural holdings.\textsuperscript{24} In spite of these objections, one should share the opinion that this regulation has opened a new stage in social insurance for farmers aimed at making the contribution dependent on the profitability of the agricultural holding itself.\textsuperscript{25}

The contribution for the pension insurance for a farmer and a household member who is at the same time engaged in business activity under the rules provided for in Art. 5a of the Act, is twice the basic contribution. It should be added that the percentage of farmer entrepreneurs in the total number of persons insured in KRUS is small (in 2013 – 5.6%).\textsuperscript{26}

In general terms, pension insurance contributions cover about 10% of expenditure on pensions; the rest is supplemented by the state budget subsidy.\textsuperscript{27} This means that even considering that some farmers pay an additional pension contribution, the share borne by farmers in covering pension expenditure is still small.

It should be also noted that the pension insurance contribution (only at the basic rate) for farmers (household members) subject to compulsory pension insurance or to the pension insurance upon request, who take personal care of a small child (Art. 16a-16c of the Act), is financed from the state budget subsidies to the pension fund allocated for these contributions, provided that such persons are not subject to other social insurance. And the contribution for pension insurance for farmers

\textsuperscript{22} See W. Jagła, \textit{System rolniczy, jaki jest, jaki może być}, “Ubezpieczenia w Rolnictwie” 2010, No. 38, p. 98.
\textsuperscript{23} See T. Jedynak, \textit{Funkcjonowanie systemu zabezpieczenia społecznego rolników}, “Ubezpieczenia w Rolnictwie” 2015, No. 54, p. 66.
\textsuperscript{24} This is the opinion of A. Szymecka-Wesołowska, \textit{O potrzebie reformy systemu ubezpieczenia społecznego rolników – głos w dyskusji}, “Ubezpieczenia w Rolnictwie” 2008, No. 36, p. 100; similarly T. Jedynak, \textit{Funkcjonowanie…}, op. cit., p. 67.
\textsuperscript{25} This is the opinion of W. Jaskuła, \textit{Ubezpieczenie społeczne rolników po nowelizacji}, “Ubezpieczenia w Rolnictwie” 2009, No. 37, pp. 126, 128.
\textsuperscript{27} It should be, however, noted that the quoted figures differ. Cf. H. Pławucka, \textit{Obowiązek ubezpieczenia społecznego rolników [in:] Obowiązek ubezpieczenia społecznego, “Ubezpieczenia Społeczne. Teoria i praktyka” 2017, No. 3, p. 110, footnote 58.
Solidarity in farmers’ social insurance

or household members who have ceased their agricultural activity (or their work on an agricultural holding) in connection with the acquisition of the right to a nursing benefit, a special care allowance or carer’s allowance and applied for as covered by this insurance (Art. 16[2][4] of the Act) is paid by the head of the local commune, mayor or city president who pays these benefits.

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Benefits amount

The agricultural insurance system is characterised by the fact that the lump-sum, uniform contribution corresponds to the lump-sum benefits, which in principle are equal and low. This observation concerns both sickness and accident insurance benefits (e.g., a sickness allowance of PLN 10 for each day of incapacity for work), and to a large extent also pension benefits, which are slightly higher than the lowest old-age pension covered by the general system. It is estimated that the average agricultural old-age pension is almost twice lower than the average employee old-age pension.\(^{28}\) This is also the case with a farmer who pays an additional pension contribution as a result of holding a large area of arable land; as well as with farmer entrepreneurs paying a double contribution to this insurance; paying an increased contribution does not increase their pension. This means that the farmers concerned participate to a greater extent in financing the system, thus strengthening group solidarity and limiting the scope of nationwide solidarity. It is believed that without differentiating the contribution burden of system participants who are economically differentiated, it is not possible to better take account of the compensation function of the benefits granted.\(^{29}\)

As already mentioned, this system not only lacks any direct relationship between the level of contributions paid and the amount of income received from an agricultural holding, but also the relationship between the amount of benefits and the amount of contributions paid. Considering the above, the opinion was even expressed that the contribution in agricultural insurance is closer to the burden of a quasi-tax, compulsorily paid for the benefit of KRUS, than to a social insurance contribution as such, which is characterised by certain features, including reciprocity.\(^{30}\) The lack of relationship between the amount of the contribution paid and the amount of the benefit received concerns, as has already been mentioned, both branches of agricultural insurance, including benefits from pension insurance. Although the amount of the so-called contributory part of the pension depends on the contributory period, but not on the contribution amount. The discussed part of the benefit is calculated using the adopted measure: 1% of

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the amount of the basic old-age pension for each year of insurance, i.e., using the same parameter which forms the basis for assessing the contribution for pension insurance. However, its amount is relatively small, which results from the adopted legal construction assuming that the second part of the benefit, the so-called supplementary one, to be predominant. This part of the benefit equals 85-95% and depends on the number of years of insurance taken into account for determining the contributory part. If this number is less than 20, the supplementary part equals 95% of the basic pension, if it exceeds 20 years, it is reduced by 0.5% of the amount of the basic pension for each year above 20 years, whereas the supplementary part cannot be lower than 85% of the amount of the basic pension. The supplementary part completes the contributory part and the aggregated amount of both parts may not be lower than the amount of the basic old-age pension.

For the above reasons, a view was expressed (Wojciech Kobielski) that the contributory part of the pension is paid in full by farmers themselves, while the supplementary part is subsidised by the state. This approach is not precise because the rules for agricultural pensions assessment do not take into account the breakdown according to the financing source and are independent of the amount of contributions and the amount of state budget subsidies. The division into a contributory and supplementary part was introduced due to the later fate of the agricultural holding. A farmer who does not cease agricultural activity and does not dispose of the agricultural holding (by transferring it to his/her successor, sale or long-term lease) in connection with being awarded the pension, receives only the contributory part of the benefit, while the farmer who has ceased agricultural activity receives the full amount of the benefit (with some exceptions). Hence, the purpose of the discussed construction of pension benefits is still to execute non-insurance tasks.

Due to the lack of a relationship between the amount of contributions paid and the amount of the benefit received, it is believed that the insurance method does not apply in agricultural insurance, even in the case of accident and sickness insurance, where the cost of benefits is financed by the farmers themselves. Such a design of legal protection is closer to the ancillary (social protection) method. This view should be generally accepted, the sole proviso being that the principle of reciprocity of contributions and benefits has never been fully understood and applied in social insurance. This is because the benefit paid to the insured person does not constitute the equivalent of the contributions paid by him/her, since the equivalence is not of an individual but of a collective nature, i.e., the sum of the benefits paid out of the insurance fund is, as a rule, equal to the sum of

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31 This percentage is increased proportionally for farmers who in the period of 1983–1990 paid contributions higher than 120% of the amount of the basic old-age pension.
32 As rightly raised by M. Podstawka, op. cit., pp. 8–9.
33 This is the opinion of K. Antonów, Uwagi o sposobach finansowania niektórych świadczeń z zabezpieczenia społecznego [in:] Aksjologiczne podstawy prawa pracy i ubezpieczeń społecznych, ed. M. Skąpski, K. Ślebzak, Poznań 2014, pp. 264–265, 270. See also (p. 266, footnote 19) the judgement of the Supreme Court of 3 December 2004, II UK 59/04, referred to by the author, in which the Court concluded that the agricultural old-age pension system is of a social protection nature.
the contributions paid by the insured persons (the risk community). This is the case with benefits from agricultural accident and sickness insurance.

Financing of agricultural insurance

The Act differentiates the method of financing benefits depending on the type of risk covered by the insurance. By paying the contribution, farmers bear the full cost of expenses for sickness and accident insurance benefits. Thus, this insurance branch is based on the self-financing principle. Whereas, the benefits from the pension insurance are covered from farmers’ contributions only to a small extent; the main source of revenues of the pension fund being a supplementary subsidy from the state budget (Art. 78[2][3] of the Act). Pursuant to Art. 76(3) of the Act, the State guarantees the payment of benefits financed from the pension fund. It should be added that, at present, the State budget (special purpose) subsidy to the pension fund also covers contributions to the pension insurance for farmers and household members (and their family members) who provide personal care for a child (Art. 78[2][51] of the Act) and contributions for farmers’ health insurance (Art. 78[2][4]).

Therefore, it is believed that the social insurance for farmers (especially pension insurance) in its present form cannot be qualified as an insurance form of social security. This is because the insurance model assumes that the resources to finance benefits come from income earned from gainful employment (gainful activity). However, if the full cost of social protection is borne by taxpayers (a manifestation of social solidarity), and the benefits perform a social function (similar to social welfare benefits), this type of social security should be associated with an auxiliary method of legal protection. In effect, we are dealing with a mixed (contributory-budgetary) technique of financing benefits in farmers’ social insurance.

Taking into account the participation of the insured persons in the risk community and their contribution to its financing, it should be noted that, in its current form, accident and sickness insurance is based on group solidarity due to its self-financing nature, while the pension insurance implements the idea of nationwide (general social) solidarity, since a significant part of expenditure in this insurance is covered by the state budget. One should also share the opinion that the fact that the first of the mentioned branches of agricultural insurance is financed only from contributions allows the pressure of insured persons to increase the level of benefits from this insurance to stop; it

34 This is emphasized – in relation to pensions from the general system – by U. Kalina-Prasznic, Neoliberalny dogmatyzm a reformy społecznego ubezpieczenia emerytalnego [in:] Stare dogmaty i nowe wyzwania w prawie i ekonomii, ed. eadem, Warszawa 2013, p. 226.
35 See K. Antonów, op. cit., pp. 265–266.
37 As raised by B. Wierzbowski, Ubezpieczenia..., op. cit., p. 51.
also rationalises the management of accumulated funds. However, this also has, in my opinion, negative effects, as too low benefits (these comments relate in particular to sickness allowance) do not fulfil their intended function.

The fact that the agricultural pension insurance is based mainly on the nationwide rather than group solidarity is justified by various reasons.

Firstly – attention is drawn to the still unfavourable relationship between active farmers who pay contributions and beneficiaries, i.e., pensioners, although since 2001 a downward trend both in the number of insured farmers and of beneficiaries has been observed. The decreasing number of farmers paying contributions mainly results from the structural changes in agriculture (change of profession and transition to another insurance system). The relationship between contribution payers and beneficiaries is also changed due to farmers having the possibility of early retirement (by the end of 2017), the use of benefits (structural pensions) encouraging early cessation of agricultural activity, and the liberalisation of conditions for granting certain benefits, e.g., by the adoption of a favourable definition of incapacity for work entitling one to a disability pension, or the possibility of incorporation within the old-age pension period (in relation to persons born before 31 December 1948) of periods of insurance (or other periods), not being periods of work in agriculture.

It is also pointed out that, from the very beginning (i.e., from 1977), the agricultural insurance system was charged with the so-called old burden, i.e., the obligation to pay benefits to farmers who have been paying contributions for a very short period or have not paid them at all. The argument of so-called demographic compensation is also raised, i.e., the need to take into account the fact that agricultural families incur (or have incurred) the costs of upbringing and educating the young generation, which then migrates to the city and undertakes gainful employment outside agriculture. In this situation, it seems justified to compensate these costs by co-financing social insurance benefits for a generation which has associated all its professional life with agriculture.

Secondly – the small share of farmers in financing the pension benefits results from the adopted structure and amount of the pension insurance contribution. As mentioned above, the current contribution is still a personal contribution, parametrically linked to the amount of the basic pension and independent of the income received from the holding and, as a rule, of its economic potential. It is worth recalling that in previous laws (the Act of 1977), the contribution was assessed based on the estimated income from the farm or (the Act of 1982) the contribution amount was determined according to the number of agricultural holdings.


39 The data included in the so-called Green Paper: Zakład Ubezpieczeń Społecznych [Social Insurance Institution], Przegląd systemu emerytalnego. Bezpieczeństwo dzięki odpowiedzialności. Zielona księga, Warszawa 2016, show that the number of agricultural holdings dropped by 13.1% and the total number of persons covered by agricultural insurance dropped by 14% at the end of 2015, as compared to 2007.

40 See B. Wierzbowski, Ubezpieczanie..., op. cit., p. 108.

to the personal and area criterion, i.e., for each insured person and for the relevant conversion hectares.

Due to the diversified income situation of agricultural families, the burden of contributions is relatively high for those running small farms and relatively low for larger ones, while (as is commonly noted in the subject literature) the state budget equally subsidises both poor and wealthier farmers. This violates the basic principle of social insurance, i.e., solidarism, according to which, as has been already mentioned, insured persons with higher incomes bear the higher burden of insurance (through contributions) than those with lower incomes. In this context, it is proposed to subsidise a part of the contribution (subsidy for a farmer) and not the pension benefits. Such a solution was adopted, for example, in the German system, where farmers with the lowest incomes may apply for subsidies to contributions, which supports economically active farmers, and preventing any excessive burdens. Co-financing of the contribution could be associated with the requirement to meet certain conditions (e.g., as regards agricultural holding modernisation), because the current model of co-financing benefits does not favour structural changes in agriculture.

Thirdly – apart from the social function (provision of means of subsistence in the event of risk materialisation), the agricultural insurance system has performed, from the very beginning, many other tasks. The aim was to improve the area structure of agricultural holdings, and even – at some time – to achieve an increase in agricultural production. This was achieved (see the Acts of 1977 and 1982) by making the right to an old-age or disability pension dependent on the transfer of an agricultural holding to a successor or to the State and by making the right to, as well as the amount of these benefits, dependent on the value of the agricultural production sold to the State. It seems that the broad application of the social solidarity principle was associated with the expected positive impact of the farmers’ social insurance system on the agrarian structure. Hence, the high state budget subsidy was also determined by the need for the agricultural insurance system to perform the agricultural policy tasks. Therefore, the lack of noticeable changes in this area is, inter alia, one of the reasons for criticising the adopted method of financing agricultural pension benefits.

Another function performed by the system, in particular in the first years of the political transformation, was to mitigate the effects of job loss by so-called peasant-workers who did not acquire the status of unemployed and the subsequent right to unemployment.
benefit, if the area of the holding did not exceed 2 ha.\textsuperscript{48} At present, this system, by covering farmers who are small entrepreneurs, also performs the function of supporting the development of entrepreneurship and services in rural areas.

Fourthly – basing the agricultural insurance system solely on the principle of group solidarity would mean the exclusion from the system of a significant number of farmers running farms outside the family farm model who would not be able to bear the burden of the contribution. In the event of a social risk, these persons would have to take advantage of social assistance benefits, which would also involve budgetary expenditure, but would be difficult to accept from a political and psychological point of view.\textsuperscript{49}

Fifthly – the fact that agricultural insurance must be based on nationwide solidarity is also confirmed by the experience of other European countries, whose regulations also provide for State budget subsidies (inter alia to limit the increase in food prices), although on a much smaller scale than in Poland.\textsuperscript{50} In this context, it is worth recalling earlier regulations on farmers’ social insurance, which specified the percentage share of budget subsidies and, respectively, the share of farmers’ contributions in financing this system. And so, the Act of 1982 provided that expenditure on agricultural benefits should be covered in 1/3 by farmers’ contributions, and in 2/3 by the state budget. The share of contributions was reduced by the transitional Act of 24 February 1990, which provided that in 1990 expenditure from the Farmers’ Social Insurance Fund would be covered in 82.7% from the state budget subsidy, and in 17.3% from contributions paid by farmers themselves. The current Act initially provided that farmers would cover about 10% of expenditure on benefits from their contributions, and the rest would be covered by the state budget. However, this principle was later abandoned in favour of a supplementary subsidy, i.e., variable subsidy depending on the amount of income from contributions and the scale of expenditure.\textsuperscript{51}

It should be noted, however, that subsidies from the state budget are intended not only to cover pension benefits, but also to finance farmers’ health insurance contributions and pension insurance contributions for persons who provide personal care for a child. Besides, it should be noted that currently, also within the general social insurance system, about 30% of expenditure on benefits is covered from non-contributory sources, i.e., from a supplementary subsidy to the Social Insurance Fund and from interest-free (in practice non-returnable) loans from the state budget.\textsuperscript{52}

\textsuperscript{48} As emphasised inter alia by W. Jagła, \textit{System…}, op. cit., p. 98; B. Wierzbowski, \textit{Ubezpieczenie…}, op. cit., p. 112.
\textsuperscript{51} The data contained in the so-called Green Book (Zakład Ubezpieczeń Społecznych [Social Insurance Institution], \textit{Przegląd…}, op. cit., p. 168) show that in 2015 the subsidy for KRUS from the state budget was 5.3%, while the percentage share in the general supplementary subsidy to the pension fund to finance pensions (excluding pensions for a free transfer of an agricultural holding to the Treasury) was at the level of 82.6%.
\textsuperscript{52} See K. Bielawska, \textit{Rola pozaskładkowych źródeł w finansowaniu świadczeń z ubezpieczenia społecznego wypłatanych z Funduszu Ubezpieczeń Społecznych}, “Ubezpieczenia Społeczne. Teoria i praktyka” 2016, No. 2, p. 9 et seq. ZUS data (presented in the Green Paper) also show that in 2015 the expenditure coverage ratio with income from con-
In the doctrine, the problem of reforming the social insurance system has been raised on several occasions. The current level of state budget subsidies to the agricultural pension fund raises particular concerns, and so many proposals concern the introduction of solutions aimed at limiting these subsidies. Among them, attention should be drawn to the proposal of raising the limit of farm area generating the insurance obligation (at least to 2 conversion hectares); owners of smaller farms should take advantage of social assistance benefits if risk materialises. It is believed that the discussed system should cover only farmers running economically efficient farms, which provide the farmer and his/her family with sufficient means for subsistence. A similar proposal assumes that KRUS insurance should cover only those farmers who produce for the market and this production is the source of their livelihood. At present, pension benefits are also available to farmers who, due to the small area of land, do not produce for sale, and their farms satisfy only their own nutritional needs. It is worth noting that on such agricultural holdings, these benefits play an important role in the income of rural families and are sometimes higher than the income from agricultural activity. In many families, they play the role of unemployment benefit for farmers, mitigating the effects of agrarian unemployment in rural areas.

Another postulate is to create a possibility of paying (on a voluntary basis) an additional contribution by owners of large farms conducting agricultural activities of considerable size, which would result in their future right to a higher benefit. These persons may remain in the agricultural system, but should not be subsidised from the state budget to the same extent as other persons covered by farmers' social insurance.

However, first of all it is proposed to change the rules for assessing contributions for old-age and disability pension insurance for farmers, to ensure that they are calculated based on farm income or on the average gross wage/salary in the national economy or on the economic size of the holding (ESU), i.e., in proportion to the size of the holding, but taking into account not only the number of conversion hectares, but also the sum of all the production factors representing an ability to generate income.

In general terms, the proposals for the reform of the farmers’ social insurance system aim to limit the state budget subsidies to this system, but do not propose their abolition.

tributions was 71.9%, which means that in the remaining scope the expenditure on social insurance benefits had to be covered from non-contributory sources, i.e., primarily from the state budget.

53 I have presented most of these proposals earlier in the study Obowiązek…, op. cit., pp. 111–113.
54 See B. Wierzbowski, Ubezpieczenia…, op. cit., p. 51; idem, Ubezpieczenie…, op. cit., p. 112.
55 See, for example, W. Michna, op. cit., p. 87.
56 For instance B. Wierzbowski, Ubezpieczenie…, op. cit., p. 114.
57 For more on the advantages and disadvantages of each of these proposals, see W. Jagła, System…, op. cit., pp. 107–110. See also J. Neneman, M. Plich, M. Zagórski, Koncepcja reformy systemu ubezpieczeń społecznych rolników, Warszawa 2013, p. 16–17; T. Jedynak, Funkcjonowanie…, op. cit., pp. 66–67.
At present, given the significant diversity of agricultural holdings in Poland in terms of their area structure, economic potential and the actual income earned by farmers, the discussed insurance system is not able to provide adequate protection without budget support. It is therefore a matter of limiting national solidarity in favour of strengthening group solidarity, while changes in financing, implementing the principle of intra-group solidarity, should be introduced gradually.

58 See D. Puślecki, Jeszcze w sprawie ubezpieczeniowego charakteru rolniczego ubezpieczenia społecznego, “Ubezpieczenia w Rolnictwie” 2016, No. 60, p. 118.

Helena Pławucka, Ph.D.
retired Assistant Professor of the University of Wrocław
ORCID: 0000-0002-1665-8339

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Solidarność w ubezpieczeniu społecznym rolników

Rolnicy i pracujący z nimi małżonkowie oraz domownicy objęci ubezpieczeniem społecznym rolników stanowią jedną i taką samą wspólnotę ryzyka. Wszystkie te osoby łączą wspólna cecha, jaką jest praca w gospodarstwie rolnym, narażająca na podobne zdarzenia losowe (ryzyko). Jednorodności tej nie narusza objęcie jego zakresem rolników-przedsiębiorców oraz rolników wykonujących równocześnie pracę na podstawie umów cywilnoprawnych bądź powołanych do rad nadzorczych, natomiast podważa ją możliwość objęcia rolników emerytarnych ubezpieczeniem emerytalno-rentowym na wniosek rolników, którzy zaprzestali prowadzenia działalności rolniczej lub pracy w gospodarstwie rolnym w związku z nabyciem prawa do wymienionych w ustawie świadczeń socjalnych, z tytułu sprawowania opieki nad osobą niepełnosprawną.

Ubezpieczenie rolnicze obejmuje ochroną prawie takie same rodzaje ryzyk, jakie są chronione w ubezpieczeniu powszechnym, jednakże ze względu na specyfikę działalności rolniczej i sytuację osób wykonujących tę działalność ich kształt i zakres ochrony są nieraz istotnie odmienny (w opracowaniu zwrócono uwagę na te różnice).

Składka w ubezpieczeniu rolniczym ma charakter składki osobowej, ustalonej w jednakowej kwocie (ubezpieczenie wypadkowe i chorobowe) lub w procencie (ubezpieczenie emerytalno-rentowe), niezależnej bezpośrednio od dochodów osiąganych w gospodarstwie rolnym. W obecnym systemie brak jest związku między wysokością opłacanej składki a rozmiarem uzyskiwanego świadczenia.

Uwzględniając udział ubezpieczonych we wspólnocie ryzyka i stopień przyczynania się do finansowania świadczeń, należy stwierdzić, iż w obecnym kształcie rolnicze ubezpieczenia wypadkowe i chorobowe ze względu na samofinansujący się charakter tego ubezpieczenia jest oparte na solidarności grupowej, natomiast ubezpieczenie emerytalno-rentowe ze względu na fakt pokrywania znacznej części wydatków w tym ubezpieczeniu z budżetu państwa realizuje ideę solidarności ogólnonarodowej. Przyjęte unormowanie wynika z różnorodnych przyczyn (wskazanych w opracowaniu).

Wynikiem powszechnej krytyki aktualnego poziomu dopłat z budżetu do systemu ubezpieczenia rolniczego są zgłaszane w doktrynie propozycje wprowadzenia rozwiązań mających na celu ich ograniczenie (o czym szerszej w opracowaniu). Dyskusji wymaga więc skala dopłat i ich ukierunkowanie z uwzględnieniem obiektywnych uwarunkowań polskiego rolnictwa i sytuacji socjalnej osób prowadzących działalność rolniczą.

Słowa kluczowe: składka, rolnik, finansowanie, wspólnota ryzyka, solidarność
The problem of solidarity between persons insured in sickness insurance, and the reasons for ZUS verification of the amount of remuneration for work as the basis for contribution and benefit calculation

The study presents issues related to Social Insurance Institution (ZUS) control of the amount of sickness benefits in the Polish social insurance system. The purpose of verification undertaken by the social insurer is to prevent any unauthorised overstatement of the amount of benefits. The problem has been discussed within the perspective of the principle of solidarity, which is one of the basic values for social insurance. The most important issues concern the presentation of justification for ZUS control of the basis for calculating benefits. The study also includes the characteristics of the personal and material scope of sickness insurance, the catalogue of benefits and practices for overstating their amount. One of the conclusions is that fraudulent overstatement of benefits is contrary to the principle of social solidarity.

**Key words:** abuse, control of benefits, sickness insurance, Social Insurance Institution (ZUS), solidarity

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Introduction

Sickness is a condition that hampers the functioning of the body. In many cases, it is a reason for a temporary or permanent inability to perform work and earn a living. The problem of a lack of funds as a result of a temporary incapacity for work due to sickness was noted in the Middle Ages. The first institutions that protected working persons against this risk were the mutual aid funds in the mining industry. However, due to the development of industry in the eighteenth and nineteenth centuries, which resulted in an increase in the number of workers, mutual aid solutions were insufficient. A lack of adequate protection in the event of incapacity for work due to sickness has been perceived as a source of social tensions. It became necessary to introduce appropriate system solutions. Therefore, the first legal instrument adopted in 1883 in Germany was the act introducing universal sickness insurance. The establishment of the social insurance system in the Second Polish Republic also began with the issuing of regulations on sickness insurance in 1919.

The problem of temporary incapacity for work due to sickness is of great social importance. The appropriate catalogue of benefits available under sickness insurance replaces the remuneration for work in certain situations. However, there are situations where some insured persons want to receive benefits higher than those due. Such activities do not comply with the principle of solidarity, which is one of the axiological foundations of social insurance. The social insurer should therefore take actions to minimise the occurrence of such situations. They will include, inter alia, a check on the validity of the amount of remuneration, which is the basis for calculating benefits. In this context, however, the question arises about the relevant legal basis and the extent of any possible interference by the insurer.

The purpose of this paper is to present issues related to ZUS checks and inspections over the amount of remuneration for work as the basis for the calculation of contributions and benefits. The author will discuss this issue in the light of the solidarity principle. The study uses a method of analysing literature on the subject, legal acts in force on 1 August 2018, as well as court rulings and those of the Constitutional Tribunal.

Personal and material scope of sickness insurance

The first regulations on compulsory sickness insurance in Poland were issued less than 3 months after the regaining of independence. Their personal scope included persons employed under a service relationship or employment contract. In addition, it was possible to voluntarily join the insurance after meeting certain conditions. The insurance

1 Decree of 11 January 1919 on compulsory sickness insurance (Journal of Laws of the Polish State No. 9, item 122).
did not cover nominated government officials, while persons employed in companies in managerial positions whose earnings exceeded certain limits could be released from the insurance obligation at their own request.\(^2\)

In the 1930s, the systematisation of social insurance law began, which was mainly expressed in the adoption of the Consolidation Act and the establishment of the Social Insurance Institution.\(^3\) In the field of sickness insurance, the personal scope was limited. The following were excluded from compulsory protection: employees of local government unions, persons in active military service or foreigners employed in the representations of foreign states.\(^4\) An expansion of the group covered by compulsory sickness insurance took place after the Second World War. Insurance covered all employees and non-employee groups: barristers, craftsmen and persons cooperating with them, persons performing work on the basis of agency and commission contracts, farmers and the clergy.\(^5\)

As a result of the social insurance reform, after 1999, employees, members of agricultural production cooperatives and agricultural cooperative circles as well as persons undergoing military service were covered by the compulsory sickness insurance.\(^6\) It should be noted, however, that from 2010, after the suspension of the national service, no one is insured in respect of national military service. The following groups may also voluntarily join the insured: persons engaged in non-agricultural activities or persons cooperating with them, persons performing a commission contract or services contract, out-workers, persons providing work during the period of temporary detention awaiting trial or deprivation of liberty, persons on doctoral scholarship programmes, and the clergy.\(^7\) Other titles have been excluded from sickness insurance because they relate to persons who are not professionally active, and thus who are not at risk of losing their income in the event of temporary incapacity for work due to sickness.\(^8\)

Registration for the purpose of sickness insurance results in the obligation to calculate and pay the contribution in the amount of 2.45% of the contribution basis. It is deducted from the insured person's remuneration and transferred to the sickness fund, which is separately managed within the Social Insurance Fund. Contributions are transferred in monthly settlement periods together with settlement documents.\(^9\) In the situation of persons engaged in non-agricultural activities and persons cooperating with them as well as the clergy, failure to meet the deadline for paying the contribution results in

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3 The Act of 28 March 1933 on social insurance (Journal of Laws No. 51, item 396, hereinafter: the Consolidation Act), Regulation of the President of the Republic of Poland of 24 October 1934 amending the Act of 28 March 1933 on social insurance (Journal of Laws No. 95, item 855).

4 Arts 5 and 6 of the Consolidation Act.

5 A. Kaczmarek, op. cit., p. 35–36.


7 Art. 11(2) of the Social Insurance System Act.


a discontinuation of the current insurance.\textsuperscript{10} In justified cases, ZUS may, upon the insured person’s request, agree to the contribution being paid after the deadline has passed.

The material scope of sickness insurance relates primarily to the risk of a temporary incapacity for work due to sickness.\textsuperscript{11} It should be noted that the temporary nature of an obstacle in the performance of work means its transience, the possibility of quick cessation, not its duration.\textsuperscript{12} Materialisation of the risk of an incapacity for work is confirmed by an authorised health care practitioner by means of a relevant certificate.\textsuperscript{13} As a result, the insured person has the right to certain cash benefits and their absence from work is substantiated.

Under social insurance in respect of sickness, some situations are treated on a par with an incapacity for work due to sickness. These are the cases of inability to perform work:

- as a result of a decision issued by a competent authority or an authorised entity pursuant to the provisions on the prevention and combating of infections and infectious diseases in humans;
- due to stay at a stationary addiction treatment facility for the treatment of alcohol addiction or at a stationary healthcare facility for the treatment for addiction to stupefacients or psychotropic substances;
- as a result of undergoing necessary medical examinations provided for those aiming to become donors of cells, tissues and organs.\textsuperscript{14}

The scope of the sickness insurance risk also includes situations that are not related to the incapacity for work as a result of sickness or equivalent situations. The first in this respect is a break in work in connection with the birth of a child, which – according to the labour law – is called maternity leave. The insurance covers also the adoption of a child up to the age of 7, and in the case of a child for whom a decision has been issued to postpone compulsory school education, up to the age of 10, or the admission of a child for upbringing in a foster family.\textsuperscript{15}

Another extension of the scope of sickness risk is the need to care for a child or other sick family member. The Benefits Act indicates in this respect situations related to the provision of care for:

- a child up to the age of 8 in the event of unforeseen closure of the nursery or educational institution that the child attends, sickness of the nanny or through childbirth, sickness or stay at an in-patient health care facility of the spouse who provides everyday care for the child;
- a sick child up to the age of 14 years;

\textsuperscript{12} See I. Jędrasik-Jankowska, \textit{op. cit.}, p. 248.
\textsuperscript{13} Art. 53–60 of the Benefits Act.
\textsuperscript{14} Art. 6(2) of the Benefits Act.
\textsuperscript{15} Art. 29 of the Benefits Act.
- other sick family member (spouse, parents, parents-in-law, grandparents, grandchildren, siblings and children aged 14 or over) who reside in the same household during the period of care.\textsuperscript{16}

The reduced fitness for work is also protected under the sickness insurance. Regulations in this regard apply only to employees. This risk involves the reduction in the current remuneration during the period of vocational rehabilitation in order to adapt or train for a specific job.\textsuperscript{17}

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**Solidarity of persons covered by the sickness insurance**

The first European dictionary where the adjective *solidaire* was noted was a French dictionary of 1694 that referred to the legal meaning of the word.\textsuperscript{18} Socio-economic changes at the turn of the 19th century also brought an extended context to the definition of “solidarity.” From the legal application, the word came into common use as a political slogan, sociological theory, the religious idea of renewed *caritas*, as well as a social value and the principle governing some aspects of relations in the public sphere.\textsuperscript{19} Sociological research made a significant contribution to the development of the idea of solidarity.\textsuperscript{20}

The increase in the number of manual workers, which took place as a result of successive industrialisation, forced undertakings aimed at providing adequate living conditions in a situation where it was impossible to provide work and obtain remuneration. Excessive exploitation of workers as well as numerous accidents at work and cases of sickness, inhibited economic development. Solutions based on mutual aid and charity were inadequate in this respect. People came to believe that work should protect a person against various types of adverse random situations.

Activities aimed at creating a comprehensive workers’ protection system were initiated in Germany. Laws passed in 1881–1889 were aimed at introducing state-guaranteed benefits and meeting a wide range of needs associated with a loss of earning capacity. The solutions created were called social insurance: this term being applied for the first time.\textsuperscript{21} In subsequent years, social insurance developed in other countries. The main assumptions of the insurance method can be summarised as follows:

- security is provided by creating communities of people exposed to similar random events,

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\textsuperscript{16} Art. 32 of the Benefits Act.
\textsuperscript{17} Art. 23 of the Benefits Act.
\textsuperscript{20} In this regard, Auguste Comte should be, in particular, mentioned, who was the first to use solidarity in this context, and Émile Durkheim, who has developed the idea in the work *O podziale pracy społecznej*, Warszawa 2011, p. 65 et seq.
• the fund for the benefits is accumulated from contributions adjusted to the size of the risk,
• benefits are differentiated according to participation in the joint fund creation,
• the right to the benefit and its amount are guaranteed by law,
• insurance coverage is compulsory in order to counteract the lack of precaution of employees and the negligence of employers, as well as to reduce insurance costs,
• the right to the benefit is a subjective right, which means that the benefit is due after the insured event has been identified, if the conditions set out in the Act are met irrespective of the insured person’s financial status,
• social insurance is provided by special public institutions.  

These assumptions are based on the principle of solidarity. Its content refers to the adoption by the community, as a result of the existing interdependence, of certain burdens and obligations that lead to social equalisation within this community. This is expressed primarily through the joint creation of social funds to cover lost income and the cost of social risk, under the same rules for all. Implementation of this principle is possible through financing based on a contribution, the amount of which is not differentiated individually for each insured person, i.e., on the basis of individual risk. As a result of this approach, everyone creates a fund together, even when the situation of some community members does not indicate the need for resources to be used in the near future, while only those affected by social risk receive assistance. In the subject literature, this is referred to as horizontal solidarity.

Lack of contribution diversification based on individual risk does not mean the same amount of contribution for everyone. This is due to the fact that the contribution is expressed as a percentage of the remuneration, which means that higher wage earners pay higher contributions. Therefore, it is claimed that solidarity in social insurance must also serve, to some extent, the purpose of levelling out differences in income and the social situation of the insured persons (vertical solidarity). We are also talking about generational solidarity in social insurance, which is characteristic of old-age and disability pension insurance, and consists in financing current benefits from current contributions.

The solidarity of the insured persons in sickness insurance is expressed primarily through the risk community in the event of random events that result in an incapacity for work. Events resulting in the inability to carry out the work performed so far may result from the insured person’s sickness or an equivalent situation, maternity, the need to provide care for a child or

22 I. Jędrasik-Jankowska, op. cit., p. 27.
25 W. Szubert, op. cit., p. 15.
28 M. Rymsza, op. cit., p. 47.
other family member, or reduced fitness resulting in the need for rehabilitation and retraining. This relationship is mainly reflected in the transfer of the 2.45% contribution to the sickness fund, managed separately under the Social Insurance Fund. The resources accumulated in this way are the basis for financing benefits if a social risk materialises.

The risk community in sickness insurance covers a relatively narrow range of compulsory and voluntary titles. However, these titles cover almost 90% of those insured persons.\textsuperscript{29} It should be noted that the voluntary insurance available for some titles creates an opportunity to decide when to join or leave the community. In this way one can create more favourable insurance circumstances than in the case of a compulsorily insured person. Although the legislator has introduced a longer waiting period for persons insured voluntarily, this is still only 3 months and concerns sickness allowance. Thus, it can be claimed that the possibility of joining sickness insurance on a voluntary basis is a kind of derogation from the principle of solidarity due to the lack of the universal obligatory nature to pay contributions by members of the risk community.

\section*{Sickness insurance benefits and practices of overstating their amount}

The scope of sickness insurance benefits in the Polish system has changed. Initially, in addition to cash benefits, the sickness insurance also included medical assistance.\textsuperscript{30} In the 1950s, as a result of healthcare organisational reform, which incorporated healthcare into the state health care administration, the scope of benefits was reduced only to cash benefits in respect of an incapacity for work. The catalogue of benefits after the 1999 reform, specified in the Benefits Act, was defined as follows:

- sickness allowance – granted in respect of temporary incapacity for work due to sickness, isolation due to an infectious disease, treatment for addiction or undergoing necessary examinations for candidates for donors of cells, tissues and organs. The maximum period for its receipt is 182 days or 270 days if the incapacity is caused by tuberculosis or occurs during pregnancy;
- rehabilitation benefit – payable after cessation of the sickness allowance period, if the insured person is still incapable of work and there is a good prognosis as to restoration of their earning capacity as a result of further medical treatment or rehabilitation. Award of the benefit depends on the decision of the ZUS certifying doctor, and the maximum period for its receipt is 12 months;
- compensatory allowance – granted only to insured employees and aimed to supplement the remuneration reduced as a result of any vocational rehabilitation;

\footnotesize{29} As at 30 June 2018, 14.1 million persons were covered by sickness insurance, of which: 11.5 million were employees, 1.3 million were persons engaged in non-agricultural activities and persons cooperating with them, 0.4 million were freelancers/contractors, see: psz.zus.pl (31.8.2018).

• maternity allowance – payable in connection with childbirth or adoption of a child for upbringing. The period of its receipt is associated with maternity leave and leave of absence under the principles of maternity leave, additional maternity leave, paternity leave and parental leave defined in labour law;

• care allowance – granted due to the need to take care of a sick or healthy child or other family member in different situations. The maximum allowance periods are 60 days or 14 days depending on the person taken care of.11

ZUS and contribution payers, registering more than 20 persons for the purpose of sickness insurance, are authorised to establish the entitlements and pay out the benefits.12 As part of the proceedings related to benefits payment, the right to benefits is verified and the amount of benefits is calculated. A determination in this regard does not take the form of a decision but of factual findings.13 The insured person may challenge the findings established by the contribution payer. In such a situation, a decision is issued by the Social Insurance Institution.

The basis for benefits assessment is determined under separate rules for employees and insured non-employees. In the first case, as a rule, the assessment is based on the average monthly remuneration paid for the period of 12 calendar months preceding the month in which the incapacity for work occurred.14 When calculating the benefit assessment basis, wage components that are not reduced during the period of benefits receipt are not taken into account. On the other hand, as regards the benefits for insured non-employees, their average income for the period of 12 calendar months preceding the month in which the incapacity for work occurred serves as the assessment basis.15 The rules for determining the basis for allowances assessment are slightly different when the contribution was assessed based on the declared amount and the insurance lasted less than a year.16 The calculated benefits assessment basis is not recalculated if the break between successive cases of incapacity for work was not longer than three calendar months.17

In practice, attempts are being made to obtain benefits at an amount higher than that due.18 Examples of such conduct can be found, among others, in

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12 Art. 61 of the Benefits Act, which indicates that the number of insured persons is determined as at 30 November of the preceding calendar year.
13 T. Bińczycka-Majewska, Organizacja i funkcjonowanie ubezpieczeń społecznych [in:] Ubezpieczenie społeczne dawniej i dzisiaj. W 80-lecie uchwalenia ustawy o ubezpieczeniu społecznym, Wrocław 2013, p. 84.
15 Art. 48(1) of the Benefits Act; it should be noted, however, that in the case of insured persons for whom the assessment of the sickness insurance contribution is based on the declared amount, such amount is the basis for calculating the amount of benefits (and not actual income achieved e.g. as part of business activity).
17 Art. 43 of the Benefits Act.
18 In the context of sickness insurance benefits, in addition to the practices of overstating the amount of benefits, some other adverse phenomena are observed, such as an ostensible basis for applying for insurance to obtain benefits incompatible with the purpose of using sick leaves or to be granted such sick leave despite the lack of reasons. However, due to the limits set by the topic of this study, they are not examined here.
Based on the presented facts, it can be concluded that as regards persons with a relatively short employment period, the remuneration which is to be the basis for calculation is set at an excessive level, diverging from the normal practice of a given contribution payer. However, in the case of people who have several years of service, the wage/salary ceiling can be increased through a fictitious change of position to one with a higher remuneration or through lump-sum payments of abnormally high rewards. As a result of such actions a relatively high benefit is being paid. The mentioned methods of fraudulent activity are characterised by: the remuneration not adequate to the qualifications and type of work performed, a significant, and sometimes glaring disproportion in the amount of remuneration as compared to other persons employed by the entrepreneur, a lack of economic justification for such a level of remuneration.

The insured persons for whom the assessment of contributions is based on the declared amount, e.g., persons engaged in business activity, can also influence the benefits calculation basis. The motive for calculating contributions based on the maximum foreseen amount is the desire to obtain the maximum amount of benefits.

Control of the remuneration amount as the basis for calculating sickness insurance benefits

ZUS as a state organisational unit has the right to issue decisions in individual cases. The scope of decisions includes, specifically, issues related to registration for social insurance purposes and the course of insurance, determining the amount of contributions and their receipt, as well as establishing the entitlements to and assessment of social insurance benefits. The social insurer may also claim reimbursement of unduly received benefits. ZUS powers are also used in the context of care for funds entrusted by the insured persons and by the state budget. As settled in case law, the pension body has

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39 See the judgement of the Supreme Court of 1 June, I UK 253/16, LEX No. 2342187; the judgement of the Supreme Court of 19 May 2009, III UK 7/09, LEX No. 509047; the judgement of the Administrative Court in Gdańsk of 9 July 2014, III AUa 1814/13, LEX No. 1498872.
40 See the resolution of the Supreme Court of 21 April 2010, II PPO 1/10; the judgement of the Administrative Court of 18 May 2016, III AUa 1312/15; it should be noted that in accordance with the resolution of the Supreme Court, ZUS is not entitled to question the amount declared by a person engaged in business activity if it falls within the statutory limits.
41 It should be noted that the possibilities in this regard have been limited as a result of changes introduced by Art. 1(10) of the Act of 15 May 2015 on the amendment of the Act on cash social insurance benefits in respect of sickness and maternity and certain other acts (Journal of Laws of 2015, item 1066).
42 G. Szpor, System ubezpieczeń społecznych. Zagadnienia podstawowe, Warszawa 2016, p. 82.
43 Art. 84(2) of the Social Insurance System Act.
the right to examine and decide whether the contract being the basis for registration for social insurance purposes was actually conducted under the conditions specified therein and whether it was concluded for convenience or to circumvent legal provisions.\textsuperscript{44}

As a separate issue related to the establishment of the right to sickness insurance benefits, is the issue of ZUS’s power to assess only the amount of remuneration which is the basis for calculating benefits. In this case, it was also confirmed that in some cases the insurer is entitled to question the amount of remuneration which is the basis for calculating sickness insurance contributions.\textsuperscript{45} This applies to situations where the existence of an employment relationship does not raise doubts, but provisions on the amount of remuneration are contrary to law, to principles of social coexistence or are intended to circumvent the law. Such arrangements may not be covered by protection under the principle of the free formulation of contractual provisions. In addition, it should be noted that the parties to the contract are required not only to respect their own individual interests, but also the public interest.\textsuperscript{46}

Payment of remuneration under an employment relationship has specific effects in the field of social insurance. In this context, it should be borne in mind that these effects do not only apply to the employee and the employer concerned. As a result of the principle of solidarity, they also affect indirectly other insured persons. And it should be noted that this impact will assume the nature of various relationships between the insured persons themselves, the insured persons and the beneficiaries, the insured persons and the contribution payers, the beneficiaries themselves and the state and the beneficiaries.\textsuperscript{47} Therefore, setting abnormally high remuneration for work may be considered null and void, if the unjustified advantages from the social insurance system are deliberately obtained at the expense of other system participants.\textsuperscript{48} In addition, the maintenance-based nature of sickness insurance benefits and the principle of solidarity require that the remuneration should not be set above the fair wage limit, \textit{i.e.}, it should not grossly exceed the labour input.\textsuperscript{49}

ZUS’s power to control and the possibility of questioning the amount of remuneration are not widely accepted. In one of the presented opposing positions, the absence of a substantive and formal basis for such an action was raised.\textsuperscript{50} References to the public interest were not considered sufficient, since such an approach could lead to interference by the social insurer in other areas, \textit{e.g.}, too low earnings in the context of contributions

\textsuperscript{44} See \textit{inter alia} the judgement of the Supreme Court of 22 November 2012, I UK 246/12; the judgement of the Supreme Court of 13 July 2005, I UK 296/04; the judgement of the Administrative Court in Katowice of 27 November 2012, III AUa 230/12.

\textsuperscript{45} See the resolution of the Supreme Court of 27 April 2005, II PPO 2/05, OSNP 2005/21/338.

\textsuperscript{46} See the judgement of the Administrative Court in Kraków of 16 October 2013, III AUa 294/13, LEX 1388831.


\textsuperscript{48} See the judgement of the Supreme Court of 9 August 2005, III UK 89/05, LEX 182780.

\textsuperscript{49} See the resolution of the Supreme Court of 27 April 2005, II PPO 2/05, OSNP 2005/21/338.

\textsuperscript{50} Cf.: D.E. Lach, \textit{Glosa do uchwały SN z dnia 27 kwietnia 2005 r. [Commentary to the Supreme Court’s resolution of 27 April 2005] II UZP 2/05, OSNP 2005/21/338, “Gdańskie Studia Prawnicze – Przegląd Orzecznictwa” 2006.}
for pension insurance. It was also alleged that the establishment of the remuneration by the social insurer was somewhat arbitrary. As regards the decisions on the assessment basis for contributions and benefits, it was also considered unauthorised to refer to the rules of social insurance law, which result from axiological principles and not the legislation in force.\(^5\) In the context of the solidarity principle it was also pointed out that it is not possible to determine on its basis the amount of remuneration, due to the fact that currently social insurance covers a much broader group than just employees.\(^5\)

The legal basis for the verification of the amount of remuneration by ZUS in the context of sickness insurance benefits was also assessed in terms of constitutionality. The doubts underlying the referral of the case to the Constitutional Tribunal concerned, *inter alia*, the lack of legal instructions for verifying the amount of the insurance contributions assessment basis.\(^5\) The use of fairness criteria or rules of social coexistence was considered insufficient in this respect. This action was assessed as a manifestation of legal uncertainty and unpredictability. Besides, it was also pointed out that ZUS was unable to change the basis for assessing the contributions for insured persons who declare the amount of such basis.\(^5\)

The Polish Constitutional Tribunal has ruled that the Social Insurance System Act\(^5\) allows the social insurer to set a different level of the basis for assessing sickness insurance contributions than the one resulting from the employment contract.\(^5\) Such actions, taken to prevent fraud in obtaining excessive benefits under false pretences, do not violate constitutional standards. The insured persons, sometimes in consultation with the contribution payer, undertake various actions to obtain undue benefits from sickness insurance under false pretences or to overstate the amount of benefits due. Therefore, the following can be considered as arguments for recognising ZUS’s power to control and potentially change the basis for assessing the contribution, and thus the amount of the benefit from sickness insurance:\(^5\)

- the social insurance relationship is public, and that is why ZUS represents the legal interest of the state, which aims to prevent various attempts to obtain undue or excessive benefits under false pretences;
- verification of the equivalence of the contractual remuneration may not be carried out at the stage of contribution collection, because all necessary data can only be determined during explanatory proceedings or inspection with the participation of the contribution payer and the insured person;

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\(^5\) Cf.: Order of the District Court in Częstochowa of 12 November 2014, IV U 515/14 C.

\(^5\) See the resolution of the Supreme Court of 21 April 2010, II PPO 1/05, OSNP 2005/21/10.

\(^5\) Art. 83(1)(3) in conjunction with Art. 41(12) and (13), Art. 68(1)(c) and Art. 86(2)(2) of the Social Insurance System Act.

\(^5\) The judgement of the Constitutional Tribunal of 29 November 2017, P 9/15.

\(^5\) Based on the judgement of the Constitutional Tribunal of 29 November 2017, P 9/15.
• the remuneration received by the employee is not determined by ZUS in an arbitrary manner but in the course of explanatory proceedings or inspection, as a result of which an administrative decision is issued on the basis of the evidence collected. It should be noted that such actions are an exception and are taken when there is a risk of unlawful undertakings aimed to maximise sickness insurance benefits;
• the correctness of decisions issued by ZUS is subject to verification by courts, where no findings are automatically accepted. In many cases, the position that the high remuneration resulting from the employment contract is “not fair” and is intended solely to obtain higher allowances, has not been shared by the courts themselves;
• it is not possible to specify in law the rules for determining the remuneration to be received by a specific employee (except for the regulation of the minimum wage/salary). The labour law provisions regarding fair remuneration and adequacy of remuneration to the type of work, qualifications, quantity and quality should be considered as sufficient in this respect;
• employees and those who declare the basis for assessment of social insurance contributions are entities without a relevant characteristic. So, the interference of the social insurer in the employees' basis for assessment does not violate any principle of equality.

Assessment of the legitimacy of checking the amount of remuneration as the basis for calculating sickness insurance benefits and development trends

The existence of control mechanisms within specific systems always provides a basis for considerations on their legitimacy and validity. The situation is not different in the case of the control of the base amount for sickness benefits assessment in the context of preventing their unauthorised overstatement. It should be categorically stated that ZUS has appropriate legal grounds to undertake proceedings aimed at determining the proper amount of benefits financed by the sickness fund.

When considering the legitimacy of actions in this area, it should be first mentioned that ZUS is the administrator of funds entrusted by individual insured persons. Accepting insurance contributions under individual types of insurance obliges the social insurer to provide adequate protection for the entrusted funds. On the one hand, this
protection should include the implementation of appropriate mechanisms within the institution, which will prevent misappropriation of resources or their unreasonable spending. On the other hand, an appropriate system is needed to verify applications filed by the insured persons.

Uncritical acceptance of every claim for sickness insurance benefits, even in the case of obvious indications of the ostensibility of an insurance title or overstatement of the requested amount, would result in a loss of confidence in the insurer. If such proceedings took place in insurances offered by commercial companies, it would lead to losses or even to the collapse of the insurer. In the case of social insurance, the burden of financing undue benefits would be borne by society, as state budget subsidies are transferred for the payment of benefits.

Generally speaking, striving to obtain the benefit in spite of a lack of eligibility can be described as abuse. One cannot agree with the thesis that the social insurer lacks substantive and formal grounds for verifying the amount of benefits paid. As proved in previous parts of the study, such foundations exist and are not contrary to the constitutional order. Claiming that interference in the amount of the basis for benefit assessment could lead to interference in other areas, such as too low earnings, seems too simplistic in the context of pension contributions. ZUS implements laws adopted by the legislative authority and may act only within this framework. However, it must react to pathological situations or situations demonstrating criminal features. Failure to act would be contrary to the public interest and the principle of solidarity.

It is also not possible to accept allegations that in the course of proceedings conducted by the insurer, the basis for the benefit is in some measure arbitrarily determined. The proceedings end with a decision. As part of the legal and factual justification of such a decision, the insurer presents their motives for determining the assessment basis. Besides, any decision may be appealed against in court. Being aware of potential judicial review, the insurer provides adequate reasoning for its decisions. It should also be noted that as a result of losing a court case, ZUS must bear certain costs, on the one hand related to its image, while on the other hand quite concrete fiscal ones, in the form of the costs for legal representation.

Nevertheless, it is reasonable to consider supplementing the social insurance legislation. First of all, a prohibition on exercising one’s right in a manner contrary to its socio-economic purpose or to the principles of social coexistence could be introduced to social insurance legislation, similar to the regulations existing in the Civil Code and the Labour Code. As a result, the basis for actions taken by the social insurer to prevent abuse would be unambiguous. Legal regulations could also indicate that the Polish social insurance system is based on the principle of solidarity. The principle of solidarity is invoked in many court rulings in the context of counteracting situations where one can speak of the abuse of subjective rights at the expense of other participants’ rights. Hence,

the introduction of appropriate provisions would allow one to avoid the need to refer to social insurance principles arising from their axiological foundations.

Besides, provision should be made for demotivating future fraud attempts. A possible solution could be the maximum limit of sickness insurance benefits. The amendment should be also made to the provision indicating that the benefits assessment basis should not be recalculated if 3 calendar months have not passed. The current structure may encourage attempts at obtaining benefits calculated according to a higher, more favourable assessment basis.

The amendment of legal regulations should not be made too late after the identification of phenomena indicating the use of legislation in a way that is harmful to the social insurance system. In 2010, the Supreme Court pointed out that ZUS had no right to question the assessment basis for contributions of persons engaged in business activity if its amount did not exceed the amount resulting from the legal provisions. A dynamic increase in the number of persons who, after an insurance period of no more than 4 months, received sickness insurance benefits calculated from the assessment basis exceeding PLN 6,000, was observed in the years 2011–2013. Regulations concerning the method of determining the basis for benefits assessment for persons engaged in business activity have been amended since 2016.

The prohibition of verifying the amount of contributions of persons insured in respect of business activity, in the context of determining the right to sickness insurance benefits, requires a reference to subsequent rulings of the Supreme Court. The Supreme Court pointed out in its rulings that the resolution of 2010 could not constitute a basis for the categorical formulation of such prohibition. It does not apply if business activity is commenced and the main intention to register and conduct it is to indicate immediately a high basis for assessing contributions with the intention of obtaining high benefits, although the income obtained is much lower than the insurance contributions and only for this reason are the operating costs significantly higher than the revenues obtained. In this situation, ZUS has the right to control the title itself and, as a consequence, also the basis for contributions assessment in the event of initial registration for social insurance and any unjustified disproportion between revenues and the reported basis of contributions assessment.

Counteracting adverse phenomena also requires measures aimed at properly assessing the risk of fraud. The social insurer cannot treat everyone who claims a benefit as a potentially dishonest person. It should properly use its resources where the probability of

60 Art. 43 of the Benefits Act.

61 The explanatory statement to the draft Act of 15 May on the amendment of the Act on cash benefits from social insurance in the event of sickness and maternity and certain other acts, print 2832; according to the data provided in the explanatory statement, in 2011, in 1670 cases benefits were paid from sickness insurance lasting up to 120 days and calculated from the contribution assessment basis exceeding PLN 6,000, in 2012 there were 4,150 such cases, and in 2013 – 8,826 cases.

62 See the judgement of the Supreme Court of 5 September 2018, I UK 208/17; the judgement of the Supreme Court of 17 October 2018, II UK 301/17; the judgement of the Supreme Court of 17 October 2018, II UK 302/17; the judgement of the Supreme Court of 30 October 2018, I UK 277/17.
payment of undue benefit is high enough and the effect will be significant. It is justified to carry out data analysis for this purpose. As part of ZUS activities, there are significant possibilities to create analysis models for data recorded on accounts of insured persons and contribution payers.\textsuperscript{63}

**Conclusion**

Solidarity is associated with brotherhood, community, unity and harmony. In social insurance, the principle of solidarity is underpinning the creation of a fund to pay benefits to people who need them. In practice, however, it happens that insured persons undertake to overstate the amount of benefits. Such cases should be negatively assessed in terms of sickness fund functioning, because they increase its operating costs. Such actions are unfair to other participants of the insurance system due to the deliberate taking of unjustified advantages at others’ expense. This is contrary to the principle of social solidarity. Therefore, it is necessary to take appropriate actions to minimise the possibility of such situations.

In this context, it is understandable that ZUS undertakes check and inspection activities concerning the amount of the contribution assessment basis, which is the basis for assessing benefits. Failure to react would encourage other insured persons in this type of practice. This would result in the intensification of adverse phenomena. The economic consequences of such a situation would affect all citizens, because the deficit in the fund’s resources is covered by state budget subsidies, \textit{i.e.} by taxes paid by the Polish population as a whole.

The law empowers ZUS to take actions to prevent fraudulent practices in benefits overstatement. Checking the legitimacy of the amount of the benefit assessment basis is justified, first of all due to the public nature of the insurance relationship. The insurer’s conduct in verifying at the time how the benefit calculated is not contrary to constitutional standards. In the context of solidarity, one can conclude that this approach is in its favour. Minimised are situations that could weaken the operation of this principle as a result of obviously contradictory cases. It cannot be considered that an individual interest in the form of maximising benefits based on the fictitious overstatement of the calculation basis will have a neutral effect on other insured persons. The payment of such a benefit will be at their expense. Failure to act will weaken the insured persons’ confidence in the entire insurance system.

However, the ongoing discussions show that it would be reasonable to consider possible amendments to the social insurance law. For example, legal regulations do not directly


The problem of solidarity between persons insured in sickness insurance, and the reasons for ZUS...
indicate that the Polish social insurance system is based on the principle of solidarity. Whereas such reference can be found in health insurance regulations.

Consideration should also be given to the introduction to the social insurance legislation of a prohibition in exercising one’s right in a manner contrary to its socio-economic purpose or to the principles of social coexistence. This would clearly determine ZUS’s competence for checking whether there are any abuses in obtaining benefits, but also its powers in the context of optimising the calculation of insurance contributions. Besides, it is necessary to introduce provisions that will discourage actions taken to the detriment of social insurance funds. With reference to the subject of this study, following the solutions functioning in France, Germany or Ireland, a limit on the amount of the benefit paid could be introduced, irrespective of the basis for calculation.

The pace of change is an important aspect of counteracting adverse phenomena. Swift response to emerging pathologies allows one to minimise losses in this respect. Therefore, legal changes in the context of social insurance should be introduced as quickly as possible.

Szymon Kasprowski
Wrocław University of Economics
ORCID: 0000-0002-4146-195X

**SOURCES**

The problem of solidarity between persons insured in sickness insurance, and the reasons for ZUS...

Problem solidarności między ubezpieczonymi w ubezpieczeniu chorobowym a uzasadnienie kontroli przez ZUS wysokości wynagrodzenia za pracę jako podstawy wymiaru składki i świadczenia

Opracowanie przedstawia zagadnienia związane z prowadzoną przez Zakład Ubezpieczeń Społecznych (ZUS) kontrolą wysokości świadczeń z ubezpieczenia chorobowego w polskim systemie ubezpieczeń społecznych. Celem podejmowanej przez ubezpieczyciela społecznego weryfikacji jest przeciwdziałanie nieuprawnionemu zawyżaniu kwoty świadczeń. Rozpatrywanie problemu zostało przedstawione w perspektywie zasady solidarności, która jest jedną z podstawowych wartości dla ubezpieczeń społecznych. Najważniejsze kwestie dotyczą przedstawienia uzasadnienia dla podejmowania przez ZUS kontroli wysokości podstawy naliczenia świadczeń. Zawarto również charakterystykę zakresu podmiotowego oraz przedmiotowego ubezpieczenia chorobowego, katalogu świadczeń i praktyk zawyżania ich wysokości. Jednym z wniosków jest stwierdzenie, że nieuczciwe zawyżanie świadczeń stoi w sprzeczności z zasadą solidarności społecznej.

Słowa kluczowe: nadużycia, kontrola wysokości zasiłków, ubezpieczenie chorobowe, Zakład Ubezpieczeń Społecznych (ZUS), solidarność
Celebration of the centenary of the existence of the International Labour Organization. Summary of the conference organised by ZUS, Warsaw 15th May 2019
Introduction

On 13 May 2019, a conference to mark the occasion of the 100th anniversary of the International Labour Organisation (ILO) was held at the Social Insurance Institution (ZUS). The conference was organised by the International Cooperation Department of ZUS in cooperation with the Institute of Social Policy of the University of Warsaw. The International Labour Organisation was established by the Treaty of Versailles on 28 June 1919, during the peace conference in Paris. It was established as an autonomous organisation affiliated with the League of Nations. After the Second World War, it was affiliated with the United Nations. The headquarters of the ILO is located in Geneva. Currently, it has 187 Member States from around the world.

ILO establishment was a response to the attempt to rebuild, after the First World War, the world order, one that was to be based on international organisations. The League of Nations, an organisation established also in 1919 in Paris, was bestowed with the task of ensuring peace amongst nations, while the objective of the ILO was to ensure the internal peace of its the Member States, something recognised as a condition for ensuring international peace. The preamble to the ILO Constitution declares that “universal and lasting peace can be established only if it is based upon social justice.”

The objective of the International Labour Organisation was defined as the improvement in the working conditions of employees, social protection of employees and fight against unemployment through evolution and social dialogue, and not – as proclaimed by the then communists – through revolution. Wojciech Andrusiewicz, a spokesman for the Social Insurance Institution, emphasised that even though 100 years have elapsed, problems with maintaining labour law are still remain relevant. This situation is influenced by many factors – technology, social, political and environmental issues.

The conference was opened by Prof. Gertruda Uścińska, Ph.D., the president of the Social Insurance Institution, Prof. Jacek Męcina, Ph.D., a conference initiator and director of the Institute of Social Policy at the University of Warsaw and Ph.D. Marek Madej, a deputy director of the Institute of International Relations.

The role of the ILO in building social policy standards was presented by Prof. Gertruda Uścińska

Prof. G. Uścińska stressed the importance of cooperation of ZUS, as a state organisational unit, with the outside world on the basis of legislation in the field of labour law. Even though 100 years have passed since the establishment of this organisation, ILO achievements in the field of safeguarding labour standards are still valid and are an important signpost in the implementation of social policy in the modern world.

The emerging, new forms of employment differ from employment in the standard understanding. These are, for example, jobs performed through digital platforms, commissioned by various clients. It is worth mentioning that the new forms of employment may involve an
international aspect and the client’s country may be different than the contractor’s country. This can create a rather complicated legal situation in determining the role in social insurance. This situation is even more difficult due to the fact that issues related to work performance with the use of digital platforms in different countries are not regulated in the same way.

ILO normative achievements are divided into three stages: the interwar period, characterised by the development of insurance protection, the period after World War II until 1952, when the general concept of social security was created, and the period from 1952 to the present day.

Until the end of the Second World War, ILO standards were already based on the concept of social security, but their personal scope covered only certain categories of employees, not the entire society. After the Second World War, ILO standards were drawn up under the influence of the social security concept developed in the Beveridge Report of 1942 and the Philadelphia Declaration of 1944, and this is the second statutory document of this organisation, after the ILO Constitution. After the Second World War, there was a dynamic development in social security. An important and decisive document of the International Labour Organisation was Convention No. 102 concerning minimum standards of social security of 1952. It came into force in 1955.

This Convention consolidated in one instrument the catalogue of social risks, social insurance and benefits for insured persons and their families. These were very impressive requirements at the time. The minimum replacement rate had to be 40 to 50%, in the case of an old-age pension – not less than 40%. These values are extremely difficult to implement and are still not fulfilled in many countries, including Poland.

Social security, thanks to ILO activities in this field, has become one of the human rights in fundamental international instruments – in the Universal Declaration of Human Rights of 1948, in the Covenant of Economic, Social and Cultural Rights of 1966.

As Prof. G. Uścińska mentioned, the International Labour Organisation is closely cooperating with the European Union and the accumulated legislation of both parties, including EU Regulation 883/2004, is mutually implemented. Solutions included in ILO conventions, such as compulsory insurance, systems financed by employers and insured persons, as well as the participation of public authorities in financing, may be found in many national social insurance systems. Conventions determine a catalogue of benefits that should be provided in the event of insurance risk. Current work and discussions focus on income security, e.g., Recommendation No. 202 concerning national floors for social protection.

The role of the International Labour Organisation in the United Nations system within the context of international relations was presented by Ph.D. Irena Popiuk-Rysińska of the University of Warsaw

The International Labour Organisation and the League of Nations were created at the same time in 1919 under the auspices of the Treaty of Versailles. These organisations were closely interrelated and were the symbols of a new international order. The ILO
was granted the status of an association that guaranteed its full independence. It was never dependent on the League of Nations or any other organisation or state. After the Second World War, in 1946, it became an organisation affiliated with the United Nations as a specialised agency.

The state delegations were composed of four representatives of various social groups: two government representatives as well as one employer representative and one representing employees. None of these groups was dominant. The voting procedures also did not bring advantage to any of these groups, thus forcing them to dialogue and, consequently, to agreement.

ILO representatives are very actively involved in UN work, and so ILO plays an important role in the UN system. The ILO accumulated legislation includes 189 conventions and 205 recommendations.

The main ILO functions within the United Nations system are:
- promoting and disseminating employees’ rights on a global scale,
- providing input into the content of the UN social and economic development strategy,
- influencing the operating strategies and programmes of other specialised organisations of the United Nations system,
- participation in the implementation of programmes of assistance for states or management of such programmes, including the primary responsibility for promoting sustained, balanced and inclusive growth, full and productive employment and decent work for all people,
- sharing research, information and statistics, among others, on employee issues or the labour market.

Prof. I. Popiuk-Rysińska concluded her presentation with the words of the Secretary-General of the United Nations, Ban Ki-moon from 2014: “economic growth, on its own, is not sufficient. We must do more to empower individuals through decent work, support people through social protection and ensure the voices of the poor and marginalised are heard.”

The ILO vision regarding the future of labour was presented by Prof. Jacek Męcina of the University of Warsaw

From the very beginning of ILO existence, its objective was to resolve workers’ issues by enforcing the improvement of labour standards and occupational safety in the Member States. According to Daniel Kaufmann, an economist and OECD expert, without this resolution, Europe would not have reached the current level of economic and social development.

The ILO has participated in overcoming many international economic crises that affect working conditions. This was done by opening up to other international organisations, cooperation with governments, social partners and trade union organisations. Thanks to this cooperation, involvement in political and systemic issues as well as raising awareness of the need for social security, ILO recommendations have inspired many
countries in the world, especially in Europe. The continued practice of tripartism is the strength and great asset of the ILO.

Is the ILO still needed? We witness many challenges in the world. They include still high unemployment, especially among young people, a large share of people employed in the so-called grey economy, huge poverty among the employed and problems of equality in the labour market. The main challenges in Poland include measures to help young people find a job.

Work automation, according to the ILO report, is a newly emerging challenge, but also a threat to the labour market stability. More than 50% of occupations will be exposed to this threat. In the case of Poland, 56% of jobs are at risk of automation. The ILO proposal is to use new technologies and work automation in a way to support decent work and to ensure that this phenomenon does not only involve employment reduction, but instead, to build standards that support people in the work process.

Occupations that are at the greatest risk of reduction include telemarketers, brokers, accountants, auditors, *i.e.*, the jobs where digital technologies and artificial intelligence can substitute human work. On the other hand, a growing role will be played by occupations related to personal services, such as therapists, social workers, addiction specialists, mental health specialists or instructors and service technicians.

In connection with the dynamically changing labour market, the ILO recommends that countries invest in human capital, *i.e.*, in lifelong learning, supporting people through transitions, strengthening social protection, as well as ensuring gender equality in remuneration and promoting partnership in the family. The ILO has developed recommendations regarding investments in decent work, *i.e.*, transforming economies to promote decent and sustainable work. There is a new approach to business responsibility in building a human-centred economic model.

The ILO has also developed recommendations for the institutions of work regarding the establishment of universal labour guarantees, which are closely related to the development of infrastructure supporting employees in the changing world of work and which should be a response to the emergence of atypical forms of employment. A general dilemma arises whether a further and stronger expansion of labour law is possible in this situation. How to define in the labour law such new phenomena as uberisation, to maintain the minimum standards of protection irrespective of the basis of performing work. This dilemma was raised in institutional recommendations.

**Discussion**

After the speeches, conference participants had an opportunity to take part in the discussion. Prof. Tadeusz Szumlicz, Ph.D., of the Warsaw School of Economics, expressed his concern about the low level of public awareness of the existence of the ILO and of knowledge about this organisation. He referred to conversations with his students who,
when asked what “ILO” reminded them of, had major problems with providing an answer. This situation may result from the fact that in international issues there is too large a focus on the European Union, with the ILO being left aside in social attention. Then he referred to the principle of tripartism. He expressed concern about its actual implementation in Poland.

Barbara Surdykowska of Niezależny Samorządny Związek Zawodowy (NSZZ) “Solidarność” pointed out to the actually observed decline in the dynamics of creating new Conventions and Recommendations. Stagnation in ratification concerns especially fundamental declarations, which have not been ratified by the US, China and India, i.e., three very important global economies. She also asked about the need for, and the possibility of, ratifying ILO Conventions by the European Union, as was the case in 2010 with the UN Convention on the Rights of Persons with Disabilities.

Magdalena Wysocka-Madej of the Ministry of the Family, Labour and Social Policy referred to Barbara Surdykowska’s speech and explained that the ILO focuses on strengthening the supervisory system and on the revision of Conventions and Recommendations, not on the creation of new ones. ILO plans to revise its Conventions and to extend their personal scope. She also referred to the replacement of human work by robots. In her opinion, it can bring positive effects, especially on positions perceived as unattractive, monotonous or not decent or performed in conditions dangerous for people.

Prof. I. Popiuk-Rysińska confirmed that the ILO already had many Conventions and Recommendations in its accumulated legislation. Currently, there was no need to create new ones. However, she highlighted the problem of ratifying the existing instruments. She expressed doubts on the accession of the European Union to ILO Conventions. Each EU Member State has the right to do so without having to involve the entire European Union. And she expressed her appreciation for the ILO supervisory system.

Prof. G. Uścińska and Prof. J. Męcina thanked everyone for the active and varied discussion.

Panel of experts and social partners

In the second part of the conference, its participants had an opportunity to take part in the panel of experts and social partners. The panel was led by Prof. J. Męcina. The panel was attended by B. Surdykowska, Robert Lisicki and Monika Fedorczuk of the Lewiatan Confederation of Private Employers.

B. Surdykowska referred to the need to prepare for technological changes that will strongly affect the labour market in Poland. The threat of work automation is very large and is also the subject of many research works. The progress of work automation is favoured by its very low cost with simultaneous replacement of humans. Then, she

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1 Polish Labour Union – editor’s note.
referred to the small use of public funds, including Labour Fund resources, to finance lifelong learning for employees at risk of the loss of employment due to work automation.

She referred to the need to ratify the existing Conventions in order to maintain the role of the International Labour Organisation. In her opinion, a strong ILO is important for the balance between work and capital in the global dimension.

Prof. J. Męcina referred to the need to improve the co-management of the Labour Fund and the Guaranteed Employee Benefits Fund by social partners. He claimed that in order to actually strengthen tripartism, the participation of social partners in co-management should be increased, as it is in many other countries, especially in the “old” EU-15 countries. This would contribute to restore industry dialogue. In addition, these funds could support technological change in the labour market and, at the same time, the lifelong learning of employees threatened with change. Employers’ attitudes towards the lifelong learning of their employees are crucial for these changes. Progress should foster the quality of work.

As strongly emphasised by Barbara Sajkiewicz of the Institute of Labour and Social Studies, we are not dealing with an upcoming technological change in the labour market, for the change is already here. Automatic cash registers are only trifles – a part of programming is already done not by people but by software. In many areas, work performed by robots is still unprofitable due to costs. However, it is only a matter of time before robots replace human work at call centres. Are we able to anticipate developments? How to prepare an employee for the changing labour market? Work experience alone does not determine the employee’s value any more. A young person, despite their lack of professional experience, may have a set of competences that correspond exactly to the needs of the labour market, far better than in the case of an employee with rich experience. In the opinion of many experts, each position eliminated by automation creates another three positions. The only question is whether the redundant employee will find a job on one of these new three positions. To help such an employee, he or she should be supported in lifelong learning or in changing their professional qualifications. Therefore, Lewiatan proposes to create financing under the Labour Fund, which would support lifelong learning and changes in professional qualifications.

B. Surdykowska, a representative of NSZZ “Solidarność”, emphasised the importance of determining the appropriate social insurance for various types of contracts, including commission contracts and specific-work contracts for artistic environments or for the universities. Current solutions allow cultural and educational institutions to reduce administrative costs. However, in the longer term they will result in lower benefits for insured persons. She expressed her concern about flexicurity and labour protection. In her opinion, institutions of work and the government should prepare solutions supporting employees who in times of restructuring may remain professionally inactive for a long time due to the need to retrain and acquire new skills. In addition, the government should adopt solutions that would relieve employers and employees of the primary responsibility for lifelong learning. It should be emphasised that when thinking about the cost of lifelong learning we believe that it is mainly the cost of the course or the training, and we forget about the costs related to the break in work, for example due to
study leave. Unfortunately, employers very often stop at the mere financing of studies or courses and do not allow their employees to participate in further training. It could be suggested to create conditions allowing the employee to take advantage of the training leave without imposing an unreasonable burden on the employer.

Prof. J. Męcina raised the subject of the failure of the education system to keep up with labour market needs. In this situation, the mismatch between the education system and the labour market must be remedied by lifelong learning.

M. Fedorczuk from the Lewiatan Confederation referred to the list of deficit professions drawn up by the Ministry of National Education in 2019 with the forecast for the next 5 years (Announcement of the Minister of National Education of 22 March 2019 concerning the forecast of employee demand in school-taught vocational occupations on national and provincial labour markets, Monitor Polski, item 276). According to the speaker, the list focuses more on the current demand on the labour market than on the future. The education programme reacts too slowly to changes in the labour market. The university must have an offer tailored to both current and projected labour market needs.

Ph.D. Dorota Głogosz, an adviser to the president of the Social Insurance Institution, remarked that the usefulness of this list and such information is limited. We should focus on improving university reaction to long-term labour market changes. The second challenge should be raising public awareness and knowledge about social insurance. Its lack is a major threat to flexicurity when making professional decisions, especially by young people. And referring to the ILO, she stated that by setting social security standards, this organisation facilitates the organisation of national legislation.

Prof. G. Uścińska considered that to achieve the high level of legislation it is necessary to make the best use of the International Labour Organisation’s accumulated legislation. She also referred to the current situation in the Polish social insurance system and to the challenges facing us in the longer term.

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**Closing of the conference**

Prof. G. Uścińska closed the conference. She thanked Prof. J. Męcina for help in its preparation, and all the experts, panellists and participants for coming and their active participation. An exchange of ideas and experiences is very valuable and always leads to the development of good solutions. She also referred to an initiative to prepare a publication on the occasion of the 100th anniversary of the ILO, and encouraged all participants and experts in ILO activities to actively contribute to its development.

*Anna Pątek*
*International Cooperation Department*
*Social Insurance Institution (ZUS)*
*ORCID: 0000-0002-3353-483X*
Conference on “Awareness of risk and the risk of ignorance. How to teach about social insurance?”, Cracow 4-5 April 2019
Introduction

Research indicates that almost 40% of working Poles do not think at all about their retirement future. Among those who consider this subject, most do it after reaching the age of 50. This limited interest in additional forms of saving for old age is caused (apart from insufficient funds for this purpose), among others, by a lack of awareness and knowledge about the amount of any future old-age pension and about the pension system itself, as well as a lack of knowledge about the long-term saving rules in force.¹ Only 7% of respondents have an adequate knowledge of the social insurance system. Even more worryingly, almost half of the respondents are not interested in social insurance issues. In the light of these data, the question of how to efficiently communicate knowledge about social insurance is consequently still valid.² Response to this issue was sought by the participants of the academic conference entitled “Awareness of risk and the risk of ignorance. How to teach about social insurance?”, which was held on 4-5 April 2019 at the Pedagogical University of Kraków. The subject of this event was an interdisciplinary approach to educating people on the essence of the social risks within the teaching process. The conference was attended by, among others, academics, teachers involved in various forms of insurance education, and Social Insurance Institution (ZUS) coordinators for social communication and education. The conference was organised by the Social Insurance Institution and the Pedagogical University of Kraków, with the Centre for Education Development as a partner.

Opening of the conference

The following spoke during the opening session of the conference: Prof. Gertruda Uścińska, president of the Social Insurance Institution; Prof. Kazimierz Karolczak, rector of the Pedagogical University of Kraków; Zbigniew Starzec, vice-governor of the Małopolskie voivodeship; Jadwiga Mariola Szczypiń, director of the Centre for Education Development; Anna Siejda, director of the office of the Minister of Investment and Development; Prof. Łukasz Sroka from the Pedagogical University of Kraków; Ph.D. Marcin Kopeć, director of the Social Insurance Institution Branch in Kraków.

Elżbieta Rafalska, Minister of Family, Labour and Social Policy, emphasised in the letter sent that ZUS has been carrying out extensive educational and information activities aimed at raising insurance awareness as well as at explaining the essence and necessity of social insurance. In this school year, more than 1,400 schools and over 34,000 students

² Quantitative survey carried out by the Institute of Public Affairs and Millward Brown at the turn of July and August 2016, see Wiedza i postawy wobec ubezpieczeń społecznych. Raport z badań, Warszawa 2016.
took advantage of “Classes with ZUS,” organised under the patronage of the Minister of Family, Labour and Social Policy.

And Witold Kozłowski, the marshal of the Małopolskie voivodship, in his letter addressed to the conference participants, expressed his appreciation to all persons and institutions involved in the conference preparation and course. He hoped that this year’s detailed programme would meet participant expectation.

The opening paper entitled “Social insurance – the state, society, the individual. The role and meaning” was given by Prof. G. Uścińska. She pointed to the need to recognise the legal, economic and social context of social insurance. We can define social insurance through the prism of the method and the principles of social security. Prof. G. Uścińska stressed that social insurance systems are organised around a catalogue of social risks. There are specific social risks (e.g., the risk of sickness, impending old age, accidents at work, disability). They justify the introduction of social insurance systems. Therefore, we must think about organisational and financial measures that would provide a guarantee of material security when a given person is at such risk. The catalogue of social insurance benefits varies from country to country but with a number of similarities. The essence of an organised social insurance system is to ensure material security.

Barbara Owsiak, deputy director of ZUS President Office and Prof. Ł. Sroka presented a summary of last year’s educational conference (first edition). Evaluation surveys show that 96% of participants in the event rated it as good or very good. The desired forms of knowledge transfer indicated were workshops, discussions and lectures. The use of modern technologies, including augmented reality, in raising awareness about life risks, was highly popular. As suggested by conference participants, insurance education includes such forms as: Oxford-style debates organised at universities, educational games, cooperation with influencers, and comic magazines on social insurance. It is planned to increase ZUS’s presence within social media.

Panel I: Awareness of risk in social insurance

The first panel entitled “Awareness of risk in social insurance,” led by Agnieszka Smoder and Ph.D. Robert Marczak from the Social Insurance Institution, aimed to answer the following questions: how to effectively disseminate knowledge about social insurance and how to examine risk awareness in this insurance.

Prof. Bożydar Kaczmarek from the University of Economics and Innovation in Lublin drew attention to the fact that our brain operates in a selective manner. When speaking about social insurance we must use the language of advantages. We prefer direct gratification rather than a postponed form, e.g., resulting from saving for future retirement. Avoiding thinking about retirement (even in older age) is associated with a denial mechanism. Negative stereotypes affect attitudes. There is a big mismatch between knowledge and attitudes. Attitudes depend on emotions, examples (parents, informal
information). Messages should be simple, evoking positive emotions, using modern methods of knowledge transfer. ZUS’s image can be improved through actions for the benefit of others – for example through activities aimed at activating seniors.

As emphasised by Ph.D. Radosław Zyzik from the Ignatianum Academy, we can educate in the field of knowledge, skills (e.g., teaching how to assess information, budgeting, planning), we can influence behaviours (risk aversion). Education is the first step towards changing the public’s attitude to finance. Social standards are an important determinant of our behaviour (e.g., in our society there is a social standard associated with avoiding savings, reflected in the popular belief that saving is not something useful). Financial and insurance education can be carried out in the form of school lessons, on-the-job training, e-learning programmes and face-to-face programmes. Social media can also be used for this purpose (encouraging debate among young people). The following research areas dedicated to insurance education may be proposed: examining the effectiveness of messages based on loss, seeking effective methods for the visualisation of the consequences of financial decisions, recognising the effectiveness of storytelling (experimental study).

Ph.D. Małgorzata Solarz, from the Wrocław University of Economics said that financial awareness consists of knowledge, skills and attitudes. As shown by the research from 2018-2019, presented by Ph.D. M. Solarz, in educational activities one should pay special attention to raising public knowledge on such issues as the sub-account, inheritance, the principle of social solidarity, indexation and capitalisation, the minimum old-age pension. The pension awareness rate among respondents was 61.7%. Gender does not differentiate the level of awareness in this respect, however, as regards age – the older generation, the lower the pension awareness. The profile of a statistical Pole with the lowest pension awareness is as follows: he is a man, aged 50+, with primary or basic education, with an income of PLN 2,000-3,000 net, a resident of a large city with over 500,000 inhabitants. Storytelling is an effective method to help eliminate stereotypes about social insurance. Employers can organise training on social insurance with the participation of an external educator. People who are not interested in insurance, including the elderly, may be reached through thematic stands during outdoor picnics and through their local parishes. According to the panellist, regular research in the field of social insurance will allow one to check whether the applied tools are effective, i.e., whether they give rise to insurance knowledge. We should examine precaution, attitudes and behaviours.

Ph.D. Piotr Majewski from the Higher Banking School in Toruń stated that insurance education should be considered in the context of economic and financial education. Gaps in knowledge about social insurance result from our society being insufficiently economically and legally educated. An important issue for young people is to answer the question: how to manage personal finances. In the opinion of Ph.D. P. Majewski, when disseminating knowledge about social insurance, we should pay attention to the completely changed information system. The key issue is to answer the question where to look for data and how to use reliable sources. Selection of the messaging form is also very important (e.g., interactive forms, practical classes allowing one to make economic decisions, educational games). Economic education can start already in kindergarten. Knowledge about insurance
is a tool that can be used for malevolent purposes. We should fight with the social consent for deception in the field of insurance and with its acceptance of dishonest forms of behaviour. In the opinion of the panelist, further research on social insurance should be devoted to the qualitative analysis of social attitudes towards social insurance.

Urszula Szulc of the Warsaw Institute of Banking Foundation noted that the form of providing content related to insurance should be tailored to the addressee. Preferred forms of transferring financial knowledge include direct meetings, lessons and lectures. The cooperation between many organisations and institutions, including local government units (e.g., in the form of partnership), allows one to increase the effects of educational activities and their range. Reliable information, a fact-based message, is an instrument for overcoming prejudice against social insurance. It is important to analyse educational projects related to insurance issues in terms of their efficiency.

Panel II: Infobrokering in the service of the social insurance

The second panel, led by Prof. Ł. Sroka, was focused on infobrokering in the service of social insurance. Experts discussed whether infobrokering could be used to disseminate knowledge about social insurance, and whether citizens should have their own infobroker. Issues related to an evaluation of the quality of an infobroker’s work, while the future of infobrokering services were also tackled, with examples of the use of infobrokering being presented.

Prof. Ł. Sroka, referring to the results of ARC research, noted that as many as 68% of Poles aged 18-24 did not think about retirement, because they considered this topic as being too removed. And more than 57% of respondents were of the opinion that they were too young to deal with this topic. Career counsellors at school should be enlisted for cooperation in insurance education, and school libraries should become centres of up-to-date information, including information on insurance. Another challenge is the use of subjects that are not thematically related to social insurance for this type of education (e.g., IT).

Prof. Wiesław Babik of the Jagiellonian University presented the phenomenon of infobrokering in the light of information ecology (a ZUS case study). Brokering is a phenomenon of commercial intermediation in the world of information, which consists in performing such operations on information as: collecting, obtaining information, appraisal, valuation, analysis, providing information on request. In the world of information we have to deal with the fragmentation of knowledge, consumerism, competitiveness, uncertainty, deregulation. We are characterised by temporariness, the need to immediately satisfy curiosity. We tend to marginalise certain types of information and to exaggerate others, we experience an information overload. Information ecology is needed to move in a knowledge-based, information-based society. The information ecology emphasises the
influence of information on individuals, but also human influence on information. The information ecology assumes taking care of the quality of information, preventing the dissemination of low-quality messages, their erasure, and organising access to them. Practical actions related to information ecology include: raising information awareness, combating objectification through information, education and balancing development. In the educational process, it is important to recognise that the human brain has limited capacity, that we need information competences and we must be responsible for the information we create and accept. Different sources of information should be confronted with each other.

Grażyna Kurowska, head of the Department of Social and Civic Competences Development of the Centre for Education Development, admitted that teachers and experts in teaching wonder about the skills that should be developed to be successful in the current world, how teachers should prepare to develop the skills and attitudes of young people to meet the demands of a dynamically changing world. According to the projections of the World Economic Forum of 2018, 30% of the skills that would be desired in 2019 in most jobs are not included in key competences. According to the Gumtree report, almost half of Poles are of the opinion that in 10 years they will still work in their professions and perform tasks similar to those currently performed. However, the rapidly evolving market is causing the disappearance of some professions and the emergence of others. At present, more attention should be given to digital competences which allow effective use of ICT technologies, assessment of the reliability of information and its skilful use. In addition, emphasis should be placed on the development of social intelligence, the development of comprehensive knowledge resulting from the combination of many competences, learning flexibility, openness to change, the preparation of leaders. In the ranking of future competences prepared by the World Economic Forum, we can find such competences as: complex problem solving, critical thinking, creativity, people management, coordinating with others, emotional intelligence, judgement and decision making, service orientation, negotiation, cognitive flexibility, which assumes the ability to combine different concepts, ideas and data. As many as 62% of Polish employers notice competency deficiencies with potential employees in the area of analytical skills and logical thinking. And more than a half of employers complain about employees lack the ability to translate theory into practice, lack problem-solving skills and the ability to data search and conduct analysis.

Ph.D. Sabina Cisek of the Jagiellonian University acknowledged that there are many sources of information on social insurance, but there are information barriers. These constraints are not related to problems with access to information, but to the competencies and motivations of individuals. Information sources should be perceived through the prism of the information acquisition process. This process starts with problem identification and its translation into information needs. The next stage involves the identification of and obtaining access to adequate sources of information. It is also important to extract content from the information sources. In both cases, one needs to evaluate and select the sources and content from the sources, and to understand the information. The final stage involves the use of information to solve the problem, to make decisions. A knowledge of information source typologies favours the efficient acquisition of information. The
quality of content is determined by the quality of the source, consistency with the user's needs, as well as the efficiency of the information acquisition process. Source materials on insurance can be categorised according to the information recipient, user (insured persons, employers, decision makers, analysts, researchers, academics). These sources can also be differentiated according to the information holder, provider (sources are more or less reliable). We can distinguish here official, formal sources (Polish, EU) and unofficial sources (academic, guidebooks, created by libraries and research institutes, developed by enthusiasts). Other possible classifications use the criterion of the information carrier, their contents. In the context of the above considerations the infobroker may play an educational role – may educate in the field of information acquisition strategies (what are the sources, how to select information, how to manage and use the selected information). The infobroker may also acquire information on request.

Ph.D. Dorota Rak of the Jagiellonian University acknowledged that the information broker is a profession of providing services through searching, analysing and sharing information on request. When considering competences, we may refer to the motifs and personality traits that affect competences, to self-image, social roles and skills. An insurance broker may not be an information broker because he/she does not sell information services and has no role-specific education. However, he/she may be a specialist in information. We may distinguish between digital, information and media competences – for they cannot be considered separately. There are six stages of developing information competences and related actions undertaken by information users: defining the task, selecting a strategy, locating information and verifying sources, using information, carrying out a synthesis and evaluation. An important issue is to visualise information, e.g., in the form of infographics, mind maps.

Panel III: Social risk in culture

The last discussion panel, moderated by Ph.D. Jacek Dziekan from ZUS, was devoted to the cultural context of social insurance. Speakers tried to answer the question: how does contemporary culture present contents related to life risks. The analysis covered ways of presenting contents related to social insurance in various cultural messages (the arts, creators, recipients, message structure). The discussion was preceded by a presentation by Mateusz Pawłowicz of the Social Insurance Institution entitled: “The cruel dragon who steals everything it sees – a false tale of social insurance in mass culture.” In the opinion of M. Pawłowicz, mass culture can be considered as an element of social engineering, which intentionally affects attitudes according to certain assumptions. M. Pawłowicz presented fragments of films, music, poems and memes devoted to social insurance. Popular culture messages on social insurance are a peculiar social commentary, a source of often negative information and stereotypes about the Social Insurance Institution. As an example of building a positive message about ZUS and social insurance, the speaker
presented a short video prepared by ZUS employees. He noted that the young generation
does not think strategically (they lack long-term perspective) in the context of planning
their future retirement: they are focused on the values that are currently highly appreci-
ated, such as creativity, efficiency, mobility. For the young generation, it is important to
seize the day, to achieve a substitute for security.

Prof. Piotr Celiński of the Maria Curie-Skłodowska University in Lublin emphasised
that mass culture has become the subject of symbolic negotiations – with various narratives
being contrasted with each other. The power of the media is based on the attractiveness of
their communication, which allows them to win us over to a certain lifestyle and values.
Issues related to social insurance and the Social Insurance Institution are present in mass
culture. A negative portrayal of ZUS is duplicated in a non-reflective manner, because the
experience of many people coming into direct contact with ZUS employees is a positive one.
Young people capture the artificiality of the message, are careful about messages paid for
by third parties, aimed to encourage specific attitudes. We are living in information noise
and we have to deal with dispersed knowledge. A reliable source of information for young
people is not authority traditionally understood (due to rich experience, performed func-
tion), but it can be a colleague, a locally recognisable person who has done extraordinary
things that he or she can boast about to others. Due to constant changes of job and place
of residence, the young generation leads a life far removed from stabilisation and predict-
ability, while at the same time is looking for the foundations of security. Young people’s
experience includes risk, they function in a risk society. Local initiatives inspire confidence
and are reliable on a micro scale. Electronic media can support such activities. We are able
to decentralise our thinking about what risk is. Social media offer a potential to be used in
the field of social insurance. ZUS can be a partner in social media, which will make people
aware of specific social problems and will resolve a part of them. ZUS activities may consist
in offering educators, community activists and NGO representatives an opportunity to
take advantage of effective solutions. In this context, ZUS may organise debates on risk,
social security, providing solutions for implementation at the local level.

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Presentation of new textbooks for “Classes with ZUS” and a presentation by
a representative of the Centre for Education Development on career counselling

After the end of the panel sessions, a new edition of teaching materials for “Classes with
ZUS” was presented. B. Owsiak discussed the substantive changes and the changes in
graphic layout in the new edition of teaching materials. The changes take into account
teachers’ suggestions. Among others, new infographics, exercises have been included, part
of the materials less popular among users have been dropped. An additional lesson will be introduced for schools with an economic profile. During the pilot evaluation, both teachers and students (over 200 students) highly evaluated the new edition of materials for “Classes with ZUS.”

Małgorzata Meissner, a methodologist cooperating in the development of a new edition of teaching materials for “Classes with ZUS,” admitted that due to curriculum extension, the social insurance and ZUS content had been expanded as a result of cooperation with the Ministry of National Education. This applies, among others to post-elementary, technical, specialist and post-secondary schools. M. Meissner also presented the definition of key competences. Key competences are a dynamic combination of knowledge, skills and attitudes. Current materials for “Classes with ZUS” enable the development of competences in the field of understanding and creating information, as well as multilingualism, mathematical, digital, personal and social competences, learning skills and equally in the field of entrepreneurship. At the end of her speech, M. Meissner presented a quiz that tests knowledge on social insurance in an attractive way.

Then, the floor was taken by Bogdan Kruszakin, a teacher and consultant from the Centre for Education Development, who presented the possible use of scenarios for the “Classes with ZUS” in career counselling. Career counselling is carried out during pre-school education classes, compulsory educational activities in the field of general education or training in the profession; in classes related to the choice of the education path and occupation conducted as part of psychological and pedagogical assistance, during form periods. As part of career counselling envisaged is, among other things cooperation with employers, with schools providing vocational training, psychological and pedagogical counselling centres, teacher training centres, and labour market institutions. Career counselling is provided by teachers, career counsellors, educators, teachers of vocational subjects, pedagogues and psychologists. According to the speaker, the first career counselling classes should take place as early as in primary school.

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**Workshops with experts**

During the second day of the conference, moderated workshops took place with experts: Paweł Jaroszek, vice-president of the Social Insurance Institution; Dariusz Noszczak, deputy director of the Pension Benefits Department at ZUS headquarters; Agnieszka Ślężak, deputy director of the Allowances Department at ZUS headquarters. Meetings with experts concerned reliefs and preferential contributions during business activity, sickness, maternity and care allowances as well as old-age pensions. Workshop moderators were: Anna Szaniawska, regional ZUS spokesman in Kraków and Ph.D. J. Dziekan.

During the first workshop session, P. Jaroszek presented the facilities resulting from the programme “Relief for start-ups,” which enables entrepreneurs entering the market to take advantage of preferential terms. He also presented data on revenues from contributions
after the introduction of “e-Składka” (e- Contribution). In 2018, the number of payments to the individual contribution account was 30.4 million, and the amount of payments to this account was PLN 257.2 billion. The number of notifications on payment settlement was at the level of 927.3 thou. In 2017, payers made over 270,000 errors when making payments. In the first quarter of 2019, only 107 errors were noted. P. Jaroszek pointed out that this was undoubtedly one of the most significant achievements of the “e-Składka” project. As part of this project, a new rule has been introduced: at the end of each year, payers are informed about any overpayment or arrears in contribution payments. ZUS offers payment of outstanding contributions in instalments. In addition, counsellors for reliefs and remission have been appointed. They are available at ZUS branches. Payers may ask to defer the contribution payment date. The number of applications for debt spreading into instalments is growing from year to year: in 2018 more than 70,000 requests were submitted.

During the second workshop session on pensions, D. Noszczak acknowledged that any answer to the question as to whether the payment of contributions and the insurance coverage affects the right to an old-age pension and the subsequent amount of the benefit depends to a large extent on the pension system to which we are assigned – the old or new. One may theoretically be covered by insurance even for a very short period of time, but this is connected with the symbolic amount of the pension. In the new pension system, there is no guarantee that the benefit will be increased to the minimum level, if the person concerned has not completed the required employment period (20 years for women and 25 years for men). In general, women's pensions are lower than those granted to men, which is associated with a shorter period of professional activity for women, breaks in insurance and lower earnings. The initial capital has been calculated for a considerable number of Poles. The speaker encouraged all persons who do not have such calculations to become interested in this issue. Specific documents are needed to confirm the contributory and non-contributory periods, as well as the amount of remuneration. Sometimes it is difficult to get the required documents, therefore one should not postpone these calculations to the last moment. At present, early retirement is available, among others, to persons employed in special conditions or in a special capacity, and who have not reached the statutory retirement age. In general, the pensions of persons running their own business are lower than the pensions of others. Both in the new and in the old system, it is possible to apply for a recalculation of the pension to be paid.

During the third part of the workshop, A. Ślązak presented selected provisions regarding sickness, maternity and care allowances. She described the conditions to be met to receive various types of benefits and the beneficiaries. She emphasised that care allowance is generally used in special situations. Legal provisions in this respect do not specify in detail the diseases or situations in which this benefit may be granted. Accidents at work give the employee special preferences for the granting of sickness allowance and rehabilitation benefit. This is connected with a higher percentage rate of the allowance (100% of employee’s remuneration received during the period preceding sickness). The employer assesses whether we are dealing with an accident at work, which is connected
with preferential rules for determining the allowance. The entrepreneur is subject to accident insurance, which is compulsory. In this case, ZUS assesses the situation in terms of it being an accident at work. The percentage rate of the allowance in this case is 100% of the assessment basis. The entrepreneur may not have any arrears with ZUS. As regards parental benefits – when a woman is employed in two jobs, she is entitled to two amounts maternity benefits. It is possible that a woman works for one employer and decides to take parental leave or its part with the other employer (parental leave is not obligatory).

During the final workshop session, conference participants could play the educational game “ZUS Specialist.” This part of the conference was introduced by Agnieszka Karczewska-Gzik of the Centre for Education Development and Barbara Muc, a coordinator for social communication and education of the ZUS Branch in Chorzów, an author of the game.

The two-day meeting was summed up by P. Jaroszek, ZUS deputy president, Prof. Ł. Sroka of the Pedagogical University and Ph.D. M. Kopeć, director of the Social Insurance Institution Branch in Kraków. During the conference, the invited experts could be asked questions via the sli.do application.

It is to be hoped that the conference will contribute to the implementation and continuation of effective measures increasing social awareness of insurance issues. The solutions proposed during this meeting are certainly an important step in this direction.

Agnieszka Smoder
Social Insurance Institution (ZUS)
ORCID: 0000-0002-9947-872X

SOURCES

## Wstęp

### ARTYKUŁY

<table>
<thead>
<tr>
<th>Strona</th>
<th>Tytuł</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Zakres solidarności wspólnoty ryzyka – <strong>Kamil Antonów</strong></td>
</tr>
<tr>
<td>17</td>
<td>Solidarność społeczna w ubezpieczeniu emerytalnym – <strong>Urszula Kalina-Prasznic</strong></td>
</tr>
<tr>
<td>29</td>
<td>Solidarne ponoszenie kosztu świadczeń emerytalnych (zasada solidarności ubezpieczeniowej) – <strong>Radosław Pacud</strong></td>
</tr>
<tr>
<td>47</td>
<td>Solidarność w ubezpieczeniu chorobowym – wybrane zagadnienia – <strong>Ariel Przybyłowicz</strong></td>
</tr>
<tr>
<td>69</td>
<td>Rola solidarności w ubezpieczeniu wypadkowym – <strong>Dorota Dzienisiuk</strong></td>
</tr>
<tr>
<td>89</td>
<td>Solidarność w ubezpieczeniu społecznym rolników – <strong>Helena Pławucka</strong></td>
</tr>
<tr>
<td>109</td>
<td>Problem solidarności między ubezpieczonymi w ubezpieczeniu chorobowym a uzasadnienie kontroli przez ZUS wysokości wynagrodzenia za pracę jako podstawy wymiaru składki i świadczenia – <strong>Szymon Kasprowski</strong></td>
</tr>
</tbody>
</table>

### SPRAWOZDANIA, INFORMACJE, KOMUNIKATY

<table>
<thead>
<tr>
<th>Strona</th>
<th>Tytuł</th>
</tr>
</thead>
<tbody>
<tr>
<td>127</td>
<td>Obchody stulecia istnienia Międzynarodowej Organizacji Pracy. Podsumowanie konferencji zorganizowanej przez ZUS, Warszawa 15 maja 2019 r. – <strong>Anna Pątek</strong></td>
</tr>
<tr>
<td>135</td>
<td>Konferencja pn. „Świadomość ryzyka a ryzyko nieświadomości. Jak uczyć o ubezpieczeniach społecznych?”, Kraków 4–5 kwietnia 2019 r. – <strong>Agnieszka Smoder</strong></td>
</tr>
</tbody>
</table>

Projekt graficzny: Positive Studio – Mariusz Borowski

Skład i druk: Poligrafia ZUS w Warszawie

Nakład 2000 egz.

Zam. nr 2293/19
1 Introduction

**ARTICLES**

3  The scope of risk community solidarity  
*Kamil Antonów*

17  Social solidarity in pension insurance  
*Urszula Kalina-Prasznic*

29  Cost of pensions to be borne in solidarity (principle of social insurance solidarity)  
*Radosław Pacud*

47  Solidarity in sickness insurance - selected issues  
*Ariel Przybyłowicz*

69  The role of solidarity in accident insurance  
*Dorota Dzienisiuk*

89  Solidarity in farmers' social insurance  
*Helena Pławucka*

109 The problem of solidarity between persons insured in sickness insurance, and the reasons for ZUS verification of the amount of remuneration for work as the basis for contribution and benefit calculation  
*Szymon Kasprowski*

**REPORTS, INFORMATION, COMMUNIqUES**

127 Celebration of the centenary of the existence of the International Labour Organization. Summary of the conference organised by ZUS, Warsaw 15th May 2019  
*Anna Pątek*

135 Conference on “Awareness of risk and the risk of ignorance. How to teach about social insurance?”, Cracow 4-5 April 2019  
*Agnieszka Smodér*