

PROCUFAIR COUNTRY REPORT

POLAND

**Promoting Decent Work Through Public
Procurement in Cleaning & Private Security
Services**

Co-financed by the European Commission

Authors:

Jan Czarzasty (Warsaw School of Economics (SGH))

Katarzyna Duda (OPZZ)



Co-funded by
the European Union

For citation purposes, the publication should be referenced as:

Czarzasty, J. Duda, K. (2023): Promoting Decent Work Through Public Procurement in Cleaning and Private Security Services - The Case of Poland (PROCURFAIR country report). Report for the European Commission, University of Warsaw. Available at: <https://www.uni-europa.org/procurfair/>

The information contained in this publication represents only the authors' view and does not necessarily reflect the official position of the European Commission.

Table of Contents

Introduction	1
PART ONE: Protective gaps and Challenges in the cleaning and security services industry and the potential role of BDW	3
1. Firms and employment structures	3
2. Industrial relations + most important protective gaps and challenges.....	5
PART TWO: Policy developments relevant for BDW	10
Legal environment and debate	10
PART THREE: Case studies	16
Introduction.....	16
<i>CASE STUDY PL-1</i> . Board of municipal housing resources in the city of Poznań.....	17
<i>CASE STUDY PL-2</i> . University Hospital in Kraków	24
<i>CASE STUDY PL-3</i> . Clinical Provincial Hospital No. 2 in Rzeszów	28
<i>CASE STUDY PL-4</i> . The District Court in Mielec	30
List of interviews	32
References	34

Introduction

PROCURFAIR Project – Research questions and design

This report is the Polish contribution to the EU funded research project entitled “Promoting decent work through public procurement in cleaning and private security services” (Procurfair).¹ The project aims to explore how public authorities and social partners have engaged in novel practices to ‘buying decent work’, i.e. to ensure decent working conditions within public procured services across distinct industrial relations and welfare regimes such as Denmark, UK, France, Germany, Italy, and Poland. Through in-depth case studies in each of the six countries, the project examines innovative or experimental solutions of public procurement practices to secure and promote decent work in cleaning and private security services – within the new regulatory context set by the EU Procurement Directives, and despite adverse economic conditions following the COVID-19 pandemic.

To guide the case studies and the national data collection the following topics were addressed in all country reports:

- (1) **Protective gaps and goals:** What are the most important protective gaps for employees under public contracts that are not sufficiently addressed by established forms of work regulation and that would therefore benefit from ‘organisational and institutional experimentation’ in public procurement practices? Which of these gaps do public purchasers and social actors target with their strategic experimentation on social responsible public procurement?
- (2) **Strategies:** Which tools and resources do actors mobilise for this purpose; to what extent do they seek to build alliances (between peer organisations; between representatives of employers, employees, customers, public purchasers and other types of organisations involved in social responsible public procurement (e.g. control agencies, inspectorates)?
- (3) **Learning processes:** What kind of conflicts and obstacles arise in the process and how do actors cope with them?
- (4) **Institutional constraints and support:** What role do regulative and budgetary constraints play? To what extent and how has the new EU procurement regime stimulated new experiments? To what extent does subnational, national and European legislation and jurisdiction inhibit a stabilization of experiments or force actors to adjust their strategies?

¹ The project was funded by the European Commission – DG for Employment and Social Affairs (Call ‘Improving expertise in the field of industrial relations’, Grant VS/2021/0211) and managed by Mark Bergfeld at UNI Europa’s Property Services office which covers the services sectors of industrial cleaning and private security. The scientific coordination of the project was assumed by Karen Jaehrling at the University of Duisburg-Essen’s Institute for Works, Skills and Training (IAQ), Germany.

For a more detailed account of the research design and methodology, key concepts and findings from the cross-national analysis see the comparative report (Jaehrling 2023).

The comparative report, as well as all 6 country reports of the PROCURFAIR project are available at: <https://www.uni-europa.org/procurfair/>.

(5) **Overall lessons:** What are the lessons for trade unions, employers, local authorities and governments in how to more effectively use public procurement for securing decent work?

To address these research questions, this report draws on a total of 14 interviews with trade unions, employers associations, industry experts, policy-makers, municipalities and procurement managers as well as workers and findings from a national workshop with key stakeholders (see a list of interviews in Annex 1). The data material has been triangulated with desk research of relevant policy documents, collective agreements, statutory labour and public procurement laws as well as minutes from local municipal and parliamentary debates.

Structure of the report

The report is divided into three parts:

- **Part ONE aims to identify the most important protective gaps** for workers within the two industries under study, with a view to assert where ‘buying decent work’ (in the following: BDW) practices could make a difference and compensate for gaps in protection that are left by labour law, collective bargaining and other efforts to secure decent work.
- **PART TWO gives an overview on the recent legislative and administrative infrastructure for BDW practices:** How does it support or, on the contrary inhibit measures targeting decent work in public contracts? This includes an analysis of the most important changes in the legislative framework that were implemented after the revision of the European Procurement Directives in 2014. It also looks at the development of soft law and other efforts to professionalise public procurement, with a view to foster the uptake of socially responsible public procurement, and deals with the wider political and societal debates with regard to the most important current challenges and conflicts around the issue of BDW and public procurement and outsourced public services more in general.
- While the first two sections thus deal with the general framework in which the ‘experimentation’ of public authorities with BDW practices takes place, **Part THREE is devoted to the experimentation itself, based on the case studies.**

PART ONE: Protective gaps and Challenges in the cleaning and security services industry and the potential role of BDW

1. Firms and employment structures

Over the past 30 years Poland has been moving steadily towards a service-economy model, which is reflected by the growing share of services in the national employment structure as compared with industry and agriculture.

The two sectors in focus can be demarcated by reference to the Polish Classification of Activities (PKD), which principally mirrors NACE. For the sake of the report we assume that “cleaning” embraces sections 8121 (general cleaning of buildings), 8122 (other building and industrial cleaning activities) and 8129 (other cleaning activities). “Security services” are represented by the section 8010 (private security activities).

In terms of employment structure, there were 106,549 persons employed in the security services (0.7% of all employed), while in cleaning services 94,216 persons were employed (0.63% of all employed) as of the end of 2021. It should be noted, however that those figures do not include persons working as freelancers (civil law contracts) and self-employed. When it comes to structure of employment in terms of company size, vast majority of entities active in both sectors are micro-enterprises (below 10 staff). In security services, the smallest companies make up for 85% of all, while in cleaning services micro-firms constitute 97% of all.

According to Eurostat, both sectors under scrutiny grew considerably between 2010 and 2020 in terms of the number of companies – by nearly 50% in both – and turnover, which almost doubled in private security activities and more than doubled in cleaning activities. When adjusted for cumulative inflation in that period (approximately 17.5% for the eurozone), that growth is slightly lower at 62% and 80%, respectively. As for wages and salaries, the nominal growth rate for private security services was 75%, while for cleaning services 90%, which means 49% and 62%, respectively. On the other hand, employment levels, both in terms of headcount and FTE remained virtually unchanged.

Table 1. Key characteristics of the sectors in focus

NACE_R2 (Labels)	Private security activities (NACE 80.1)			Cleaning activities (NACE 81.2)		
	2010	2020	2010-20	2010	2020	2010-20
Enterprises – number	1.692	2.524	+49%	13.843	20.666	+49%

Turnover or gross premiums written - million euro	1.139,8	2.170,8	+90%	1.380,2	2.929,6	+112%
Wages and Salaries - million euro	641,1	1.121,5	+75%	457,0	868,8	+90%
Employees – number	84.064	94.151	+12%	77.406	92.018	+19%
Employees in full time equivalent units – number	-	86.296	-	-	79.067	-

Source: Eurostat

(https://ec.europa.eu/eurostat/databrowser/view/SBS_NA_1A_SE_R2__custom_6824427/default/table?lang=en)

Juxtaposing the low dynamics of employment to robust growth in sales and noticeable increase in wages, it seems that **both sectors have expanded economically by the means of a serious upswing in labour productivity.** In order to determine whether the productivity growth was a result of labour intensification, expansion of precarious (also unregistered) work or a progress in automation would require employing additional sources. While the former two factors were indeed observed in the early 2010s both in the broad (labour market in general) and narrow (sectoral labour markets in focus) context (e.g. Karolak 2020, Duda 2017), the latter seems to be a relatively new phenomenon associated with accelerating inflation, dynamic growth of statutory minimum wage, as well as growing labour shortages all seen in the late 2010s and early 2020s. As indicated in one of the interviews (with a national-level employer organization), automation and digitalization (mechanical equipment used in cleaning or remote electronic security systems replacing human labour) have been recent responses of service providers to the challenges of rising labour costs combined with shrinking budgets the customers are able to allocate to cover that type of expenses (e.g. housing communities renegotiating their contracts with security providers and switching to unmanned arrangements). While their impact is still quite marginal, the scale of their usage will certainly grow in the near future.

Table 2. Active entities in the sectors in focus according to the National Business Register (REGON) by size class as of 31 Dec. 2022

	Total	0-9	10-49	50-249	250=>
Private security activities (8010)	5001	4238	479	189	95
(%)	100.0	84.7	9.6	3.8	1.9
General cleaning of buildings (8121)	16213	15716	391	82	24
Other building and industrial cleaning activities (8122)	8004	7733	218	40	13
Other cleaning activities (8129)	4656	4481	139	31	5
Total (8020)	28873	27930	748	153	42
(%)	100.0	96.7	2.6	0.5	0.15

Source: National Statistics of Poland (GUS)

Both sectors are dominated by microenterprises, with the shares of almost 85% in private security activities and close to 97% in cleaning activities combined. No breakdown by size class in employment statistics released by GUS is available. However, based on research on working conditions in the Polish labour market (e.g. Bednarski 2020), it could be assumed that microenterprises – which are often omitted in public statistical data reported on various aspects of work, labour and employment, most importantly on wages – form an enclave of substandard/precarious working and pay conditions.

2. Industrial relations + most important protective gaps and challenges

As far as wages are concerned, the picture is distorted by the fact that the national statistics data published are not broken down to the level of class (level 4). As a result, only data aggregated at upper levels of classification can be provided. The latest data available reflect the situation as of the end of 2020. For the division 80 (Security and investigation activities), the average gross monthly wages amounted to PLN 2973,05 (roughly EUR 650). For the division 81 (Services to buildings and landscape activities) the average gross monthly wages amounted to PLN 3169,52 (equivalent of EUR 690, approximately) for the same reference period. Those can be supplemented by the data from ongoing pay web surveys which provide insight in a more specific way. In early 2023 for a position of a cleaner (in the commercial, non-domestic segment) median pay amounts to PLN 3690 (some EUR 790), while for a security service worker median pay is reportedly PLN 3650 (about EUR 780) (wynagrodzenia.pl). In general, in both sectors workers are disadvantaged in terms of remuneration. Considering the national statistics data cited above, **workers in security services earned 57% of what the national average pay was in 2020 (PLN 5226 or EUR 1135), while workers in cleaning services remained in a slightly better position at 61%.**

Security services sector provides a peculiar case in the context of employment and social security issues mostly due to the fact that **security workers are often sought for by employers only in case of having certified partial or serious degree of medical disability, which entitles the employer to receive state subsidies from the State Fund for Rehabilitation of Disabled People (Państwowy Fundusz Rehabilitacji Osób Niepełnosprawnych, PFRON). Furthermore, security workers are often recruited among pensioners.** Those two factors contribute to a resilient precarisation of work in the private security services. Speaking of the former, demand for workers with disabilities is limited outside the subsidized labour sub-market, while in case of the latter, pensioners, despite continuing to work, are entitled to concurrently collect their public retirement benefits, so for such persons the pay remains only an additional source of income.

Continuous improvements in the work and pay conditions for the two groups of workers in focus have been observed since about 2014, mostly due to the introduction of minimum hourly wages (in 2017) and substantial annual increases in the national minimum wage (between 2015 and 2023 it nearly doubled – when converted to EUR – from approximately 410 EUR to some 770 EUR), which translated into wage raises all across the labour market (see Czarzasty 2023, forthcoming). Nevertheless, the workers of the two groups in focus still should be regarded vulnerable not only because of their low pay levels but also by the fact that microfirms constitute a majority of companies operating. Less so for the security workers but in the cleaning services nearly 29 thousand companies employ below 10

workers, according to the National Business Register (REGON). Even if (and this is purely hypothetical) each would have only one person on the payroll, it would translate into a massive chunk in the employment structure of the entire sector (given the combined employment volume of little over 90 thousand). Moreover, no reliable data is available on the scale of bogus self-employment or other precarious forms of employment. The only relevant frame of reference that can be used are the general assessments by the national statistics on the number of persons not employed on the basis of labour contract but only civil law contracts (free-lancing) whose number amounted to some 0.9 million as of the end of 2021. Even though the number of persons in such precarious position in the labour market has fallen down considerably since 2019 (from the level of 1.2 million), considering the high pace of economic deactivation of women (which is often linked to the expansion of social benefits in the form direct money transfers since 2016), the figure allows to assume that dualisation of the labour market is still present.

Collective bargaining plays very little role in both sectors. This should not be seen as anomaly, given the general collapse of collective bargaining in Poland, manifested not only by the low coverage and a very low number of new collective agreements concluded but also by the content of collective agreements, which usually just reprise the letter of law (see: Czarzasty 2019). Furthermore, collective bargaining in whatever limited form is retained, remains confined to company level (single-employer agreements), so that no chances for any sector-level form of bargaining can be seen. In the security sector, there are two agreements in force:

- (1) Company-level collective agreement for employees in Konsalnet Ochrona (concluded c.a. 2007) between the company and two trade unions: Intercompany Union Organisation of Independent Self-Governing Trade Union Solidarność of Security, Catering and Cleaning Workers and All-Poland Trade Union of Security Employees (OZZPO);
- (2) Company-level collective agreement for employees in Impel Security (Grupa Impel) (concluded in 2001) between the company and two trade unions: Trade Union of Impel Group Employees (autonomous company trade union) Intercompany Union Organisation of Independent Self-Governing Trade Union Solidarność of Security, Catering and Cleaning Workers.

One of the national-level representative employer organisation, the Federation of Polish Entrepreneurs (FPP) endorsed an initiative of cleaning services certification by the German TÜV Rheinland and the Polish partner, the Genesis Public Relations company. In short the initiative, called the “Guarantee of cleanliness and hygiene” aims at setting standards in cleaning services that would not only pertain to technical dimension of services delivered but also cover socio-economic aspects of the service provision process²². In particular, the assessment process involves scrutinizing the labour law observance by the company applying for the certificate (worth 30 out of 180 points total). While screening an application from the labour law observance angle, the certifying body would consider supporting employment on the basis of Labour Code as a “critical condition”. In quantitative terms it means that:

- a. the level of employment not based on Labour Code should not exceed 30% of total employment,

²² Interview with the Chair of the Federation of Polish Entrepreneurs (FPP).

- b. the level of subcontracting of a service should not exceed 20% of the volume of services per calendar year.

Table 3. Protective gaps and challenges and the *potential* role of BDW

Core questions	Setting Standards	Extending Standards	Enforcing standards
1) most important protective gaps	Only letter of law, no collective agreement provisions	Extension of standards generally voluntaristic	Insufficient enforcement of standards
2) Policies and efforts to diminish these gaps (apart from. public procurement)	Minimum hourly rate for persons employed on civil law contracts (came to force on 1 January 2017). ³	Covering persons employed on the basis of civil law contracts by social insurance (as of 1 January 2016) Introduction of a minimum rate per hour for work performed on the basis of civil law contracts (as of 1 January 2017)	Subsidized employment for employees with disabilities
3) Potential role of BDW to diminish the gaps?	Social clauses and voluntary schemes (e.g. by certification)	General extension of standards	“Guarantee of cleanliness and hygiene” initiative by TÜV Rheinland and Genesis PR

* In 2023 the minimum wages (both monthly pay and hourly rate) were raised twice due to high inflation (CPI) levels, the first such situation since the adoption of the Minimum Wage Act in 2002.

A very interesting feature of the sectoral labour markets in both cases is the fact that there is a considerably high share of employees with certified disabilities employed therein. According to Polish law, having a disabled person on the payroll (employed under a proper labour contract) allows the employer to seek subsidies to wages and social security contributions. The support is channeled through a special scheme called the State Fund for Rehabilitation of Disabled People (Państwowy Fundusz Rehabilitacji Osób Niepełnosprawnych, PFRON). PFRON’s budget is mainly made up of mandatory monthly contributions by employers who hire at least 25 full-time employees, but the share of disabled persons in their employment volume is lower than 6%. **Among the leading recipients**

³ The rates have been changed as follows:

1 Jan. 2017 13,00 PLN gross/9,49 PLN net

1 Jan. 2018 13,70 PLN gross/9,74 PLN net

1 Jan. 2019 14,70 PLN gross/9,99 PLN net

1 Jan. 2020 17,00 PLN gross/12,34 PLN net

1 Jan. 2021 18,30 PLN gross/13,37 PLN net

1 Jan. 2022 19,70 PLN gross/17,00 PLN net

1 Jan. 2023 22,80 PLN gross/20,00 PLN net 1 Jul. 2023 23,50 PLN gross/21,00 PLN net*

of the subsidies by PFRON have been the two sectors in focus. The data on the number of employers receiving from PFRON broken down by sectors was last released by the institution in 2016 with employees with subsidized wages listed under “investigation and security” services heading amounting to roughly 70 thousand of total 254 thousand employees for whom the employers were receiving such support (28%), while under “cleaning and maintenance of building and green areas”, the figure was about 33 thousand (13%) (PFRON 2016)⁴. According to the most recent public data available, released by national statistics, at the end of 2021 total of 198 thousand entities employing 10 people or more had 337.0 thousand people with disabilities on the payroll, of whom investigation and security activities constituted almost 19% and service activities related to the maintenance of order in buildings and management of green spaces slightly above 8% (Central Statistical Office, 2022).

⁴ Despite our requests for newer data made to PFRON, we received no relevant information.

PART TWO: Policy developments relevant for BDW

Legal environment and debate

The most important act regulating public procurement in Poland is the Public Procurement Law (PPL), which entered into force in January 1, 2021. The PPL is not applied to the contract below the value of 30 000 EURO (PLN 130 000). Principles of awarding public contracts are: the principle of fair competition, the principle of equality, the principle of impartiality and objectivity, the principle of effectiveness, the principle of open proceedings, the principle of transparency, the principle of writing and conducting the procedure in Polish.

The public procurement system in Poland is decentralised. There are approximately 14,000 contracting authorities, such as the government and its subordinate bodies: this group includes almost all central administration bodies; local government units and their subordinate bodies as well as associations of those bodies. This group accounts for almost 2/3 of all contracting authorities. **In 2021, 129,662 public contracts were awarded. The value of public contracts awarded in 2021 amounted to PLN 184.6 billion (PLN 183.5 billion in 2020), which accounted for approximately 7.04% of the gross domestic product (GDP) in 2021** (Report of the President of the Public Procurement Office 2021). The further part of the study presents information on expenditures allocated to decent employment conditions in public tenders in recent years.

Polish central government body competent for matters concerning public contracts is the President of the Public Procurement Office, which is assisted in his work by the Public Procurement Office (PPO). Currently, the Office consists of seven departments:

- Legal Department
- Public Procurement Control Department
- European Union and International Cooperation Department
- Information, Education and System Analyses Department
- Appeals Bureau
- Organisational and Financial Bureau
- Independent Position for Internal Audit.

It is important to mention about two most important changes to the public procurement law in Poland from last decade, related to decent employment conditions, which were introduced in 2014 and in 2016. The provision, which was in force from October 19, 2014, until July 28, 2016, was a strong social instrument public procurement through which the contracting authority could influence the basis of employment of the contractor's employees. It read as follows: "The contracting authority may oblige contractors or subcontractors to employ persons performing activities during the performance of a contract for works or services under an employment contract if this is justified by the subject or nature of the contract activities". The regulation was introduced to the Polish law, indicating that it is also requested by the European legislator. The recipe was in spirit Directives of the European Parliament and of the Council of February 26, 2014, the implementation date of which expired on April 18, 2016.

The regulation aimed at limiting competition with low costs services, mainly labor costs, e.g., through illegal employment or employment for civil law contract. The current legal status favored entrepreneurs looking for cheaper solutions. Employment based on a contract of employment is, after all, much more expensive than based on civil law contracts, thus entrepreneurs those who respect the rights of employees bear higher costs. **For this reason, the public procurement system is based primarily on the criterion of the lowest price and does not deliver the contracting authority with sufficient resources to consider the degree of respect for employees' rights, led to awarding unreliable employers.** Similarly, according to the authors of the amendment provided in 2014, public expenditure should support law-abiding market participants and their employees.

The opinions of awarding entities on the above provision were mostly critical. They pointed out that the optional structure of the quoted provision is not encouraging and unconvincing, because if something can be done, it means that there is no need and that it is indifferent to the state, the more so as the legislator does not impose sanctions in cases where an optional provision is made will not apply. An employee of the voivodeship office commented this emphatically: read the provision that "may" is "must not". I will discuss the barriers in the application of pro-employment provisions in the public procurement law in more detail in a moment (Duda 2017: 43).

The clear indication of the above-mentioned right in the Polish public procurement law in 2014 should be assessed as progressive in comparison to the uncertain legal status in force before, but not fully satisfactory, as it was only about the possibility of application. Considering the concerns of officials responsible for organizing tenders in public institutions and social pressure to introduce the obligation to require employment based on employment contracts, an amendment was introduced. According to it, the contracting authority is obliged to require contractors or subcontractors to employ persons performing activities during the performance of a contract for construction works or services based on an employment contract, if this is justified by the subject or nature of the contract activities.

The PPO runs annual analysis of the degree to which social and environmental aspects are considered in procurement based on a specific random sample of contract notices placed in national publisher - Public Procurement Bulletin and published in the Journal of the European Union. Based on the Reports of the President of the Public Procurement Office from 2016-2021, we can see the scale of application of pro-employment provisions in the period when the clause was not yet required (in 2016) and in the period when it was an obligatory provision.

The number of public contracts in which in the description of the subject of the contract referred to employment under a contract of employment amounted to:

- 4 371 in 20165,
- 22 139 in 20176,
- 25 884 in 20187,

5 *Annual Report of the President of the Public Procurement Office for 2016.*

6 *Annual Report of the President of the Public Procurement Office for 2017.*

7 *Annual Report of the President of the Public Procurement Office for 2018.*

- 25 333 in 2019⁸,
- 26 035 in 2020⁹,
- **29 561 in 2021¹⁰**

Value of public contracts in which in the description of the subject of the contract referred to employment under an employment contract amounted to:

- PLN 4,494,061,232.69 in 2016,
- PLN 39,482,659,887.90 in 2017,
- PLN 61,693,017,931.56 in 2018,
- PLN 57 191 315 222.85 in 2019,
- PLN 67 292 100 853.12 in 2020,
- **PLN 69 668 499 235.87 in 2021** (ibidem).

The above data clearly shows that in the period when the application of the pro-employment clause by contracting authorities was not a requirement, but only a possibility, public institutions used it much less frequently than it is now. **Currently, public institutions spend tens of billions of zlotys more (over 60 billion more in 2021) on pro-employment public contracts than in the period when the pro-employment provision was only optional.**

Fears felt by faculty staff over the years public procurement, organizing the procedures, boils down to the fact that every careless, ill-considered step may have negative consequences, for example, an appeal, violation of public finance discipline or e.g., the need to cancel the procedure (Duda 2017: 44). Three main barriers to the application of pro-employee provisions in the public procurement law have been the same for years, but at different periods they occurred to a different intensity in relation to pro-employment provisions in the PPL.

The main argument against the application of the pro-employment clause in the period when it was optional was that the institutions tried to reduce costs through public procurement, so the use of criteria other than price evaluation criteria or pro-employment clauses seemed unreasonable - it would cause raising prices consumed time and money - so it would be against the goal orders. The most serious barrier related to the regulation was the expected increase in cost services after its application, which in turn could have resulted in the allegation of mismanagement on the part of the public spending control authorities.

It was related to the concept of the cheap state. It is believed that the election slogan "cheap state" brought the victory for Law and Justice in the parliamentary elections in 2005. Right-wing soon after the victorious elections the government established an inter-ministerial team that was to develop a list of units by the end of the year public administration, intended for liquidation or merger. After the Civic

8 Annual Report of the President of the Public Procurement Office for 2019.

9 Annual Report of the President of the Public Procurement Office for 2020.

10 Annual Report of the President of the Public Procurement Office for 2021.

Platform took power in 2007, policy continued predecessors, with this newly victorious group already arguing for the fulfilment of the slogan of "cheap state".

It was only in 2016, when the public procurement law required contracting authorities to impose on contractors the obligation to employ employees based on employment contracts in certain situations, that officials' fear of the accusation of mismanagement was largely reduced.

According to the awarding entities, pro-employment provisions in public procurement are difficult to enforce from the contractor. For years they have been asking themselves questions: "Who is to control this? How to punish when the facts do not match commitment? Should you withdraw from the contract then? "Without the awarding entities granting themselves appropriate control powers and without setting sanctions for years, it is difficult to proper performance of contractors with pro-employment requirements as a result of various company activities. Due to the lack of knowledge about the possibility of controlling contractors or the lack of sufficient human resources, the contracting authorities of public services before 2016 were not inclined to apply pro-employment provisions (Duda 2017: 43-44).

The use of provisions that allow for the inclusion of social issues in procurement or obligatory provisions require an interdisciplinary approach, specialist knowledge in the field of the PPL has been insufficient for years. Correct application of the provisions of the Procurement Law most of the public dealing with social issues in public procurement requires reference to the content of other Polish legal acts, in the field of employment promotion, social employment as well as professional and social integration disabled people, as well as the law in the field of personal data protection. Due to the fear of violating the provisions of the above-mentioned legal acts, public service contractors before 2016 were not inclined to apply pro-employment provisions.

In 2012, the most famous campaign against civil law contracts was launched in Poland so far. It was guided by the slogan "Stop junk contracts" and the image of Sisyphus, who became a symbol of a person employed based on a civil law relationship - a precariat. From October 16 to November 30, 2012, NSZZ "Solidarity", a trade union, conducted a large-scale information campaign on civil law contracts. The media were used for this purpose (e.g., cinema, television and billboards), educational meetings were organized throughout Poland on the deficits related to employment under civil law contracts (Social Campaigns of the Year 2012). Undoubtedly, the merit of this campaign was the involvement of the media in taking up this issue. At least 118 press articles were published on the initiative), in which the term "junk contracts" was adopted to describe civil law contracts (Social Campaigns of the Year 2012). The intention to give this basis of employment unequivocally negative associations brought results, and the issue of equating civil law contracts with junk contracts later appeared in the media for good. Strategies of acting in the discursive field and attempts to influence the public debate on civil law contracts did not have an immediate effect in the legal field but began to bear fruit years later.

The campaign has been submitted for participation in the competition entitled Social Campaigns of the Year 2012 (ibidem). Although it was not awarded in the competition, the competition itself also contributed to popularizing the concept of junk contracts. In the five years since its launch, the campaign has translated into significant changes to the law governing such contracts.

The first result of the action, which improved the situation of people employed under civil law contracts, was their coverage by social insurance as of January 1, 2016. Later, further steps were taken to limit civil law contracts: first, adoption of the obligatory pro-employment clause in public

procurement, and adoption of a minimum rate per hour of work based on civil law contracts¹¹. These two policies: 1) social security and 2) minimum hourly rate are covering all employed persons under civil law contracts. Only obligatory pro-employment clause in public procurement improved working conditions under public contracts.

The National Revision Union of Social Cooperatives also joined the activities promoting decent employment conditions for employees employed through outsourcing. This organization sent petitions to the marshals of all voivodeships asking when they would order their subordinate units to apply social clauses. A report was prepared based on the responses. The petition concerned the employment of marginalized groups and employment based on an employment contract. These requirements concerned the purchase of services. A minority of institutions responded positively, including Marshal's Office of the Mazowieckie Voivodeship (Interview National Revision Union / WRZOS, June 2022)".

There is no doubt that the introduction of a mandatory pro-employment clause in public tenders was motivated by the intention to limit illegally concluded junk contracts where the state is responsible for financing services provided by private entities. The intentions of the legislator, indicated in the explanatory memorandum to the draft act on the minimum hourly rate, were twofold: "to achieve a positive change in the labour market by introducing protection for people receiving the lowest level of remuneration and preventing the abuse of civil law contracts" (Background note to the draft act amending the act on the minimum wage and some other legal acts passed on 22 July 2016: 1). **Over the past decade, the public debate in Poland has been focused on the need for changes in public procurement law, to oblige public institutions to require companies to employ workers on stable employment contracts. However, the promotion of collective bargaining has never been a key topic and demand in this debate.** From October 19, 2016, every contracting authority has been obliged to require contractors or subcontractors to employ persons performing activities in the duration of a contract based on an employment contract if justified by the activity. From that moment on, popular opinion in the public debate has been; that the public procurement law is reformed in such a way that it promotes good employment conditions and employees' needs are met. There have been only a few initiatives to put pressure on the state to promote collective bargaining in public procurement, but they have not entered the mainstream debate on promoting decent working conditions in public procurement.

In 2019, The All-Poland Alliance of Trade Unions, which is one of the largest nationwide umbrella confederations of trade unions in Poland was requested to the PPO to provide information on the number of public tenders in which public institutions rewarded those contractors who signed collective agreements with trade unions. Public institutions had no legal obligation to promote such solutions, but the law did not prohibit them, and they were allowed.

The President of PPO response to the OPZZ's requests was that he did not have general data. The Office does not collect such information and contracting authorities are not obliged to provide it to the President of the PPO. But at the request of OPZZ, the PPO analysed public procurement notices that were published on the Public Procurement Bulletin and the Official Journal of the European Union in 2019. It turned out that none of the advertisements published contained the provisions and requirements regarding collective bargaining agreements. There is no reason to assume that the

¹¹ The minimum hourly rate for an hour of work under civil law contracts came into force on 1 January 2017 and amounted to PLN 13 gross per hour of work.

situation has improved in recent years. There have been no legal changes that promote companies with signed collective agreements in public tenders (The All-Poland Alliance of Trade Unions, November 2022).

In 2021, the National Inter-Enterprise Trade Union of Support Personnel in Health Care System was registered. First, it includes people working in hospital wards and having contact with hospitalized patients, such as orderlies, paramedics, kitchen assistants, medical registrars, medical secretaries, cleaners, and non-medical ambulance drivers.

One of the key postulates of the union is the direct employment of non-medical staff by hospitals, including cleaners. The trade union emphasized that during the pandemic the cleaning staff was as important as the medical staff to ensure the epidemiological safety of the hospital. The hospital cleaning process is specific and cannot be compared to cleaning residential, office or industrial spaces. Therefore, it is necessary over it increased supervision, which is best guaranteed by the state itself through direct employment employees providing cleaning services. The results achieved by hospitals in terms of these services are significant, they are elements of properly conducted treatment and convalescence, and they have direct impact on the likelihood of complications and length of hospital stay (the National Inter-Enterprise Trade Union of Support Personnel in Health Care System, April 2022).

According to the chairman of the union Krystian Krasowski the negative result of outsourcing is the high turnover of people employed by external companies. Frequent changes of employee's result, among others, from the fact that a cleaning person in a hospital can be delegated at any time to clean, for example, a market hall or vice versa. According to him, cooperation with outsourcing companies can also be a source of conflicts regarding wages. This is because there are hospitals that there are hospitals that employ cleaning staff responsible for cleaning only certain areas of the hospital, and additionally contract external cleaning companies to clean other areas of the hospital. Both of these employees do exactly the same work, but usually those employed by outsourcing companies receive lower salaries. **The union is running a kind of campaign to raise awareness of the negative consequences of outsourcing for employees and patients** (the National Inter-Enterprise Trade Union of Support Personnel in Health Care System, April 2022).

PART THREE: Case studies

Introduction

There are 17 ministries in the current government, which has been in power in Poland since 2019. From the analysis of tenders conducted by the ministries for security and cleaning services in the period from 2019 to 2022, none of them applied solutions that could be a good practice worth promoting. **Good practice in the Ministry of Family and Social Policy could be expected, but even that did not apply requirements for higher labor standards than required by law.** Good practices worth promoting were also not applied by such institutions as the Chancellery of the Prime Minister and the Chancellery of the President.

The Ministry of Family and Social Policy was established on October 7, 2020, by transforming the existing Ministry of Family, Labour and Social Policy by excluding organizational units servicing the government administration department – labour. The following year, the labor department was returned to the Ministry of Family and Social Policy, but its former name, which included labour, was not restored. Taking into account the lack of response to the request for an interview with a representative of the Ministry, as well as the lack of any public information on the subject of activities in the field of socially responsible public procurement, it can be concluded that the promotion of high employment standards through public procurement is not of interest to the Ministry.

The good practices described below have been identified in public institutions do not subordinate to central institutions, which shows that local government units have greater merit in this field.

CASE STUDY PL-1. Board of municipal housing resources in the city of Poznań

Context

The Board of Municipal Housing Resources in the city of Poznań (BMHR) is located in Wielkopolskie Voivodeship, in the capital of the province. The institution is a municipal company responsible for the housing resources of the municipality, as well as premises and facilities used for other purposes, which the municipality either owns or co-owns. The management of municipal housing resources is limited in scope to performance of ownership functions, and it does not extend to sales of municipal premises.

Brief description + key objectives

The institution contracts external companies to provide security for the buildings they manage. The tender that is good practise started in 2021 and set to conclude in 2024. **The intended objective is rewarding employees (security guards) with a wage higher than the minimum wage.** The other main goal is to protect workers and to ensure that they are paid regularly. Detailed requirements included in the tender:

- (1) **wage higher than the minimum wage.** When selecting the best offer, the city of Poznań used the following offer evaluation criteria:
- (2) **gross offer price – the lower the price, the more points awarded** (the maximum number of points was 70) and
- (3) **the gross monthly wage of a security guard** - the higher the monthly wage, the more points awarded (the maximum number of points was 30).

11 companies submitted bids in the tender. Two of them were excluded from participation in the tender procedure due to the extremely low price offered for the services provided, which did not guarantee proper performance of the service. The possibility of excluding offers with extremely low prices for services was introduced into Polish law because of scandals such as the one in 2011, when a Chinese company building Polish roads before Euro 2012 gave up on further construction of the A2 motorway between Warsaw and Łódź. The company was unable to fulfill the order at the abnormally low price declared earlier. Each contractor could receive 30 points after meeting the second criterion. In this case all nine bidders declared to pay security guards in 2022 a monthly wage more of at least PLN 3, 300 that guaranteed all of them the maximum number of points – 30 points. In 2021, the minimum gross salary was PLN 2,800. Unfortunately for security workers, it is standard for external companies to pay the minimum wage for full-time work. Only some security guards are paid higher than the minimum wage - those who have special responsibilities, such as protecting convoys of various types of property - money, valuable items, but also people, e.g. in banks, prisons, etc. In the discussed good practice, security guards were responsible for protection of facilities that did not require extraordinary responsibility, e.g. headquarters of cultural institutions. It should be emphasized that only by promoting higher than minimum wages in the tender, security guards could receive higher wages. Knowing Polish practice in this area, if it were not for these provisions, they would only earn the minimum wage. **Of course, PLN 3,300, which was higher than the minimum wage, is not a very large increase in wages, but it is a practice unheard of in any other public**

institution and certainly - although not as high as expected - appreciated by security guards.

Evaluation of offers regarding the second criterion was made according to the following rules:

The rate of the monthly gross salary (PLN and EUR)	Number of points
2800– 2899,99 / 607-628	0
2900– 2999,99 / 629-649	6
3000– 3099,99 / 650-671	12
3100– 3199,99 / 672-693	18
3200– 3299,99 / 694-714	24
3300 and more / 715 and more	30

At the same time only one bidder could receive 70 points for the first criterion, i.e. the lowest-price criterion. However, the other companies were awarded a similar number of points (69,16; 67,87; 64,80).

As we can see, the second criterion (more than the minimum wage) had some impact. If the company that offered the lowest price and obtained 70 points in the first criterion had only obtained 25 points in the second criterion, it would not have been awarded the tender.

Information about submitted offers and awarded points.

Bidder	Points awarded in first criterion	Points awarded in the second criterion	Total points awarded
1	70	30	100
2	69,16	30	99,16
3	67,87	30	97,87
4	64,80	30	94,80
5	57,48	30	87,48
6	56,38	30	86,38
7	55,05	30	85,05
8	51	30	81
9	50,82	30	80,82

It should be added that the municipal company that contracted out the service decided to supervise the regular remuneration payment by the employees of the external company. To each VAT invoice / bill issued monthly, the contractor should attach a statement confirming that persons performing the services contracted are employed by the contractor based on employment contract and the contractor is not in arrears on their behalf with the payment of the due remuneration for the previous month. Since 2016 the public procurement law required contracting authorities to impose on contractors the obligation to employ employees based on employment contracts in certain situations. In effect the employment stability was guaranteed. **Employees under employment contracts have the right to unpaid leave, which was not applicable to civil law contracts, and the notice period for their contracts is longer than under civil law contracts.**

However, the new law didn't require additional duties that provide more employment stability such as statement confirming that persons performing the services contracted are employed by the contractor based on employment contract and the contractor is not in arrears on their behalf with the payment of the due remuneration for the previous month.

Good practice for company control by the contracting authority

During the performance of the public contract, the BMHR reserved the right to check anytime whether all conditions are met by the company.

The BMHR is entitled to:

- (1) requesting statements and documents regarding confirmation of compliance with the above requirement and assessing them,
- (2) requesting clarifications in case of doubts regarding the confirmation of compliance with the above requirements,
- (3) carrying out on-site inspections.

Moreover, at each call of the BMHR, the company is required to submit the evidence indicated below to confirm that the requirements regarding the conditions of employment of security guards are met:

- (1) statement of the contractor or subcontractor on employment under the contract for the work of persons performing activities.
- (2) a copy of the employment contract/contracts of persons performing the work in progress ordering the activities to which the above applies declaration of the contractor or subcontractor
- (3) a certificate from the relevant Social Insurance Institution (ZUS) branch confirming the payment by the contractor or subcontractor of social and health insurance contributions for employment based on employment contracts audits against the company regarding its compliance with the requirement to employ persons performing the activities indicated above on the basis of an employment contract (i.e. physical protection services), including employment for monthly remuneration gross, not lower than the remuneration indicated by the contractor in the tender form.

Situation before the experimentation

Before 2021, all security staff were employed by an external company selected in a public tender. Since 2016 the public procurement law required contracting authorities to impose on contractors the obligation to employ employees based on employment contracts in certain situations, so security staff were employed based on employment contract. They were earning the minimum gross salary.

Origins of the experimentation

The idea of the experimentation was not inspired by the activities of other institutions but was an original idea conceived by BMHR itself. The idea resulted from the institution's negative experience with a company that previously provided security services. This company violated the labor rights of the security guards it hired, which drew much criticism of it and the company commissioning the services.

Before the new 'good practice' tender started, the company that performed the services for the board of municipal housing resources violated employee rights by not regularly paying wages and not hiring their staff based on employment contracts as the law required. As a result, the BMHR terminated the contract with the company. Furthermore, about 20 employees filed lawsuits against the company. BMHR received criticism by the local media for inadequate control of work and employment conditions, as well as contracting a company that would not hesitate to breach the law.

In June 2017, as a result of a tender, the company selected the contractor who offered the lowest rate for protecting the buildings. This contractor, in turn, hired subcontractors to cooperate in the implementation of the service - fictitious companies registered for citizens of Ukraine, Belarus and Vietnam, which did not have any assets and ran virtual offices. Employees were cheated every month of work, e.g., were not paid remuneration for overtime, and for the last two months of providing services - October and November 2018 - they did not receive any remuneration at all.

BMHR terminated the contract with the contractor in extraordinary mode in December 2017. About 20 employees filed lawsuits against the company, and in their cases 27 final judgments were made before the courts, ordering the payment of receivables in the total amount of PLN 235,000. zloty. These companies owed individuals up to several thousand zlotys (the highest claims exceeded PLN 25,000). Recovery of the adjudicated salaries turned out to be problematic because bailiffs, despite final court judgments, reported that they were unable to recover the amounts due. As a result of publicizing this situation, BMHR was criticized by the local media for improper control of the working conditions of security guards, as well as for cooperation with a company that did not hesitate to break the law. OZZ "Inicjatywa Pracownicza" organized numerous pickets in Poznań as part of solidarity with cheated employees.

Actors involved

"Workers' Initiative" is a trade union operating throughout the country. Legally registered August 23, 2004, operating since 2002. In its ideological declaration, it defines itself as a "grassroots, self-governing trade union" and refers to the principles of self-governance, cooperatives, federalism, and direct democracy. The union was established as an alternative to the largest centralized trade unions in Poland. "Do you associate trade unions only with large, bureaucratic headquarters and "employee

activists" who make deals with employers and political elites? It doesn't have to be like this! "Workers' Initiative" is a trade union that was established to create a different model of trade union activity"¹².

"Workers' Initiative" has been helping outsourced employees whose rights have been violated by external companies for years, while putting pressure on public institutions to refrain from outsourcing. The "Workers' Initiative" (Inicjatywa Pracownicza) trade union operated outside of the institution. The "Workers Initiative" has been helping outsourced employees whose rights were violated by external companies for number of years, while also pressuring public institutions to refrain from outsourcing.

The trade union organized numerous actions criticizing the institution for insufficient care for the conditions of employment of external company employees:

- (1) In February 2020, the trade union organized a solidarity protest in front of the district court in Poznań, where hearings were held in cases of cheated security guards. The trade union issued and released the following statement to the media:

"For the sixteenth month, porters guarding facilities managed by the Board of Municipal Housing Resources in the city of Poznań are waiting for their overdue salaries. About 20 people are deceived. They were not paid by the company that in autumn 2018 provided the service of physical protection of municipal buildings on behalf of institution. Due to the violation of employee rights, the institution terminated the contract with her.

"Workers' Initiative" notified both the National Labor Inspectorate and the Public Prosecutor's Office. The Labor Inspectorate stated that it was helpless in this case, as the employer deliberately avoided inspections, and referred the case to the Prosecutor's Office.

Competence disputes continued in the Prosecutor's Office until May 2019 (whether the case is to be investigated in Warsaw or in Poznań). Then, the two witnesses indicated in the notification of the crime and a representative of "Workers' Initiative" were questioned. After which the Prosecutor's Office ceased further action until November 2019. In November, three victims (with the support of "Workers' Initiative") filed a complaint with the court against the Prosecutor's Office's tardiness, demanding compensation from it. The first hearing will take place on February 11 this year.

The Workers' Initiative believes that it is significant that the state is unable to enforce due wages and allows public money to be misappropriated, which was supposed to go to porters and portresses. The previous time, a similar situation took place in relation to the cleaners of the University of A. Mickiewicz and Poznań courts. Then it also turned out that state authorities (including courts) spread and washed their hands"¹³.

- (2) In May 2021, the trade union organized a protest with the participation of deceived security guards in front of BMHR headquarters. The announcement of the protest explained: "We are calling on the institution to pay back wages! We accuse the institution of supporting exploitation, lack of control over public funds and the implementation of property protection orders, especially in terms of compliance with labor law standards, obtaining unauthorized material benefits and ignoring the social harmfulness of outsourcing!"

12 Webpage of the trade union OZZ „Inicjatywa Pracownicza”: <https://www.ozip.pl/>
t

- (3) In July 2021, the trade union organized a protest in front of the town hall entitled "Jaškowiak! Enough slave labor in Poznań!". "Workers' Initiative" appealed to the Mayor of the City of Poznań, Jacek Jaškowiak, the entire City Council, the City Council and all councilors to influence the Board of Municipal Housing Resources in the city of Poznań.

The announcement of the protest explained:

"We accuse the Board of Municipal Housing Resources in the city of Poznań of:

First, during the entire procedure, the Management Board did not carry out any inspection of the company that won the tender for several months. He had not checked its credibility before. This led to a situation where the provisions of contracts concluded with the Board of Municipal Housing Resources in the city of Poznań, concerning the obligation to employ only based on an employment contract, were grossly violated. Ultimately, the institution terminated the contract with the company in November 2018 only after the abuses were revealed by the Inicjatywa Pracownicza trade union.

Secondly, we accuse the Board of Municipal Housing Resources in the city of Poznań of signing a contract with a company that offered a price for the property protection service clearly indicating that its profitability is possible only as a result of the exploitation of porters and porters and gross violation of labor law. In fact, this exploitation benefited economically not only the contractor with whom the contract for the protection of municipal facilities was signed, but also the institution as a commercial law company, and indirectly the city to which it belongs in one hundred percent.

Thirdly, we accuse the institution of the fact that when the violation of labor rights of porters came to light and it was also known that they had lost their salaries, the management of the Board of Municipal Housing Resources in the city of Poznań "washed their hands" and refused to help the victims. For example, no effort was made to ensure that the injured persons could keep their jobs. Many of them were quickly released by subsequent security companies.

We demand:

For the Board of Municipal Housing Resources in the city of Poznań to pay compensation to the victims in the equivalent of their overdue salaries and reimburse the costs of legal representation.

That the city should abandon outsourcing as a form of ordering services and employing employees. This system proves again and again that it is pathological and leads to violations of applicable labor law.

We believe that the city, as the owner (and especially the management of Poznań on its behalf), is responsible for what happens in the institution - not only how public property is managed and public money is spent, but also how people are treated.

You must not shirk this responsibility for the open injustice and abuse of which the porters were victims"¹⁴.

After all these protests, the board of municipal housing resources in the city of Poznań the institution launched social dialogue with the union with a view of ensuring better protection of workers' rights of people employed by external

¹⁴ Webpage of the trade union OZZ „Inicjatywa Pracownicza”: <https://www.ozzip.pl/>

companies in the future. In June 2021, a meeting was organized with the participation of representatives of the trade union, as well as employees deceived by the company that was selected in a tender in 2018. During this meeting, the invited guests were consulted on the provisions of the tender, which will help avoid violations of employee rights in the future.

Obstacles, constraints, conflict and learning processes

BMHR found it impossible to formulate the expectation of employing security guards directly. It was argued that for this purpose the company would have to launch a monitoring centre, obtain a license, and employ and then maintain an intervention group to inspect several properties. This is because the law imposes such requirements on every public and private institution. In the opinion of BMHR, the costs associated with the organization of this undertaking would be inadequate to the purpose. Such requirements mean that BMHR, in order to secure the service of buildings, continues to organize tenders for security, using companies that have the appropriate organizational and technical capabilities to provide this type of service.

Numerous non-governmental organizations have their headquarters in the protected buildings. BMHR justified that the significantly increased cost of organizing security due to the need to organize monitoring and intervention infrastructure would have to be borne by these tenants, which in turn could result in resignation from renting these buildings.

The board of municipal housing resources in the city of Poznań refused to quit outsourcing of services but made a promise to better protect employees of external companies providing services to the city.

Outcomes + (expected) impact on work

The security guards were paid PLN 3,300 per month, which is PLN 500 above the minimum wage.

Resources

List of interviews

Date	Organisation + details
05/22	Interview with the representative of the “Workers Initiative” trade union in Poznań, local level.
05/22	Interview with the lawyer of the “Workers Initiative” trade union In Poznań, local level
05/22	Interviews with security guards which workers’ rights were violated before the experimentation.
09/22	Interview with the Director of Public Procurement Department in the board of municipal housing resources in the city of Poznań, local level.

CASE STUDY PL-2. University Hospital in Kraków

Context

University Hospital in Kraków is located in Malopolskie Voivodeship, in the capital of the province. It is the didactic and scientific base of the Collegium Medicum of the Jagiellonian University. The hospital is a leading research and teaching center. It is playing a role in the education of doctors and nurses. The conditions in the hospital are conducive to the development of scientific activity, which is expressed in numerous publications and the awarding of academic degrees.

The hospital is the largest and most modern medical complex in Poland and one of the most innovative in Europe.

Brief description + key objectives

The University Hospital in Kraków resigned from outsourcing cleaning services in September 2016. The fundamental reason for this decision was the increase in the prices of services provided by an external company, which took place in 2016. On September 19, 2017, the hospital announced a tender for granting and servicing a loan in the amount of PLN 15,000,000.00. The decision resulted from the hospital's debt and the implementation of the repair program. The main objective of the recovery plan was to maximize revenues and rationalize costs. Cost rationalization was implemented, among others, by resigning from outsourcing.

In 2016, it was noticed that outsourcing was no longer profitable because external companies increased the prices of services. It turned out that the cost of cleaning by external companies in 2016 would be several dozen percent higher than in the previous year. It has been calculated that due to the increases in the following year, about PLN 3 million more would be spent on cleaning services and that within 3 years the hospital would spend about PLN 10 million more on cleaning than if the institution was cleaned by its own employees.

Alternative solutions were sought, and a business plan was prepared.

Situation before experimentation

Before September 2016, all hospital cleaning staff were employed by an external company selected in a public tender. The cleaners employed by an external company were divided into two groups.

Most of them were employed on the basis of precarious civil law contracts. Employees employed under civil law contracts were not guaranteed a minimum hourly rate. At that time, the minimum wage was only applicable to employment contracts.

Employment contracts were usually signed by the company with a minority of employees who had a certificate of disability. As a result, employing people with disabilities, the company received subsidies from the state fund.

Origins of the experimentation

Outsourcing of non-medical services was used in public hospitals in the context of the difficult financial situation of these institutions. Therefore, in the announced public tenders, concern for the conditions of employing employees of external companies was rare. When choosing an offer, the criterion of a low price of services was even forced on the companies by low employment standards. **State institutions therefore agreed that in external companies the wage conditions of employees would be radically worse than in the case of employment by a hospital.**

The rationale for using outsourcing in Polish hospitals was mainly economic. These decisions resulted from the costly modernization of its own cleaning equipment. In addition, outsourcing cleaning services to an external company was very convenient for hospital managers. It made it possible to focus solely on the professionalization of medical activity. When commissioning services such as cleaning, laundry, nutrition, technical service, etc., hospital directors performed only control functions (Duda 2018: 7-9).

After years of mass transfer of non-medical services to outsourcing companies many hospital directors began to consider entrusting such activities as cleaning, running a kitchen, laundry, or facility security to their own employees. The main reason for this was the increase in the prices of such services. Some directors stated that the service provided was not of a satisfactory quality. Others were looking for an idea for the development of unused rooms. The costs of outsourcing increased significantly, so the institutions had to look for new solutions. It should be said that the improvement of working conditions was not the main and only motivation for resigning from outsourcing. As a result of the entry into force of the Act on the minimum hourly rate for people employed on civil law contracts on January 1, 2017, numerous public institutions that decided to outsource cleaning services years ago decided to resign from cooperation with external companies. The minimum rate per hour of work based on civil law contracts has become almost identical to the minimum rate applicable to employment contracts (amounted to PLN 13 gross per hour of work). As a result of the amendment, outsourcing services ceased to be profitable for them. In some cases, the costs of providing services by external companies have increased by up to several dozen percent. Outsourcing has therefore lost its justification, because the same funds that the company must spend on salaries from 2017 would also have to be paid by the institution itself.

The resignation from the outsourcing of cleaning services was part of a wider process of resignation from outsourcing by the hospital also resigned from building security, patient nutrition, and renovation works.

In terms of technical support, e.g., renovation works, outsourcing costs in 2015 amounted to PLN 1,900,000. zloty. Meanwhile, the new cost estimate, presented for the next year, amounted to PLN 2,700,000. for the same services.

The hospital began to analyze the employment of technical service professionals and the level of their workload. It turned out that the hospital employs a team of electricians and outsourced some services in this area to an external company. It was similar with painters or construction technicians - the hospital employed its own workers, but some renovation services were ordered outside. It was therefore decided to abandon outsourcing of these services altogether. The hospital management justified this by their (renewed) trust in the potential of their own employees. The hospital trained them, organized their work differently, assigned new responsibilities so that they were able to do what the external company did.

Actors involved

There were no actors (trade unions or cleaning staff representatives) consulted or otherwise involved. This was own initiative taken by management.

Obstacles, constraints, conflict and learning processes

The biggest challenge related to the return to direct employment of employees was the need to buy the necessary cleaning equipment, uniforms for employees, machines, organize cloakrooms and warehouses for storing machines.

Outcomes + (expected) impact on work

It has been estimated by the hospital units responsible for management and hiring department that the hospital will need to hire 300 new employees. Employment conditions improved as they were hired on stable employment contracts.

The experiment concerning these services was evaluated positively by the management. The advantage is, above all, that when a failure occurs, it is repaired immediately. Previously, when using third-party services, repair times were often far away.

The institution has also partially resigned from outsourcing services in the field of patient nutrition in the wards.

The hospital employed a lot of dietitians, and at the same time an external company was paid for delivering meals to patients' rooms. Instead of resigning from the services of some dietitians, they were entrusted with this task. This experiment was also evaluated positively by the management.

After hiring employees, purchasing the necessary equipment it turned out that the costs of cleaning services are at a level like that before the increase in prices of services by external companies.

Some of the effects of resignation from the outsourcing of cleaning staff services were assessed negatively by the cleaning staff. Attention was drawn primarily to the lack of detailed regulations regarding the scope of duties of cleaners. The lack of these regulations means that one person sometimes does the work that should be done by two people. This means that the hospital has led to an overload of cleaning staff. As one of the cleaners said:

"The hospital employs us on better contracts than an external company, we now have employment contracts that guarantee us, for example, unpaid leave. It used to be that a contract of mandate did not include vacation leave, or it lasted a "long" few days. However, not everything is as rosy as we thought it would be. We were given additional tasks, such as serving meals to patients on the wards, which had previously been handled by other people in cooperation with an external company delivering meals. I believe that we have a lot of responsibilities, and because of new ones, we cannot always manage to do everything while working. Sometimes I am tired, and the new work schedules look nice, but only on paper, because they have nothing to do with reality - there are very often changes in schedules and overtime work."

Resources

List of interviews

Date	Organisation + details
05/23	Interviews with the representative of the Nurses Trade Union of University Hospital in Kraków.
05/23	Interviews with two cleaners of University Hospital in Kraków.

CASE STUDY PL-3. Clinical Provincial Hospital No. 2 in Rzeszów

Context

Clinical Provincial Hospital No. 2 in Rzeszów is located in Podkarpackie Voivodeship, in the capital of the province. It is one of the largest healthcare facilities in the region, was the first to receive several quality certificates that prove competence in the provision of medical services.

Brief description + key objectives

The Provincial Clinical Hospital No. 2 in Rzeszów resigned from the outsourcing of cleaning services in 2017. The main reason for this decision was the increase in the prices of services provided by an external company, which took place in 2017,

Situation before experimentation

Before 2017, all hospital cleaning staff were employed by an external company selected in a public tender. The cleaners employed by an external company were divided into two groups.

Most of them were employed on the basis of precarious civil law contracts. Employees employed under civil law contracts were not guaranteed a minimum hourly rate. At that time, the minimum wage was only applicable to employment contracts.

Employment contracts were usually signed by the company with a minority of employees who had a certificate of disability. As a result of employing people with disabilities, the company received subsidies from the state fund.

Origins of the experimentation

The authors of the report requested access to public information including all analytical materials that were prepared by the hospital in order to decide whether to resign from outsourcing cleaning to an external company or to commission cleaning to its own employees. In response to the request, the hospital replied that the hospital did not have a written analysis or analytical materials regarding the employment policy of cleaners.

Justyna Lis, deputy director of the hospital, explained that after calculations, it turned out that by cleaning the hospital on its own, it would save a minimum of PLN 2.5 million per year. **According to the director “an additional advantage will be that the hospital will have a greater influence on what means are used to maintain cleanliness and hygiene, what staff will be employed, how it will be trained, and above all, supervision over the hygiene of the facility will increase.** For the indebted hospital in Rzeszów, for which 2016 ended with a loss of approx. PLN 50 million, savings of PLN 2.5 million were significant”¹⁵

15 Website of the medical portal entitled Health Market:
<https://www.rynekzdrowia.pl/Finanse-i-zarzadzanie/Outsourcing-uslug-niemedycznych-w-szpitalach-Czyzby-w-odwrocie,175154,1.html>

Actors involved

There were no additional actors involved.

Obstacles, constraints, conflict and learning processes

For the institution, giving up outsourcing was a major organizational challenge. The head of the nurses' union pointed out that the hospital had to carry out an inventory of equipment needs in each ward, in each clinic - literally in each organizational unit. Resignation from outsourcing required investments primarily in equipment, including vacuum cleaners, scrubbers and polishers. Moreover, it was necessary to make a schedule assigning specific people to each room. It required the involvement of many people and a lot of time.

Outcomes + (expected) impact on work

In total, about 200 employees were employed. The director of the hospital pointed to the fact that for many employees this meant stability of employment. Until 2017, working in an external company, many of them were moved from place to place, according to the current needs of the company, which offered its services in many places.

However, as director Lis admitted, staff costs in the facility increased, because of jubilee awards, severance pay paid to those retiring, bonuses, and additional money related to the Company Social Fund¹⁶.

However, in general, the savings on VAT and the margin imposed by an external company on its services were considerable for the hospital (Serwisoz, 2017).

Some of the effects of resignation from the outsourcing of cleaning staff services were assessed negatively by the cleaning staff. Attention was drawn primarily to the lack of detailed regulations regarding the scope of duties of cleaners. The lack of these regulations means that one person sometimes does the work that should be done by two people. This means that the hospital has led to an overload of cleaning staff.

Resources

List of interviews

Date	Organisation + details
05/23	Interviews with the representative of the Nurses Trade Union of Clinical Provincial Hospital No. 2 in Rzeszów.
05/23	Interviews with three cleaners of Clinical Provincial Hospital No. 2 in Rzeszów.

16 Website of the medical portal entitled Health Market:
<https://www.rynekzdrowia.pl/Finanse-i-zarzadzanie/Outsourcing-uslug-niemedycznych-w-szpitalach-Czyby-w-odwrocie,175154,1.html>

CASE STUDY PL-4. The District Court in Mielec

The District Court in Mielec is located in Podkarpackie Voivodeship, in the seat of Mielec County. It is one of the 318 district courts in Poland. In the hierarchy of the Polish judiciary, district courts play the role of the lowest instance of the judiciary. The institution contracts external companies to provide security services for the court. The tender that is a good practise started in 2017 and set to conclude in 2017 was entitled "Providing protection services for persons, buildings and property of the District Court in Mielec."

The main expected output was to protect employees and ensure that they will be employed on the basis of an employment contract regulated by the Labour Code. Detailed requirements included in the tender:

- the District Court in Mielec obliged contractors or subcontractors to employ security staff working in the Court based on employment contract if this was justified by the subject or nature of the contract activities,
- in cases of detected non-compliance, the District Court in Mielec might immediately inform about it the National Labour Inspectorate (NLI) and request an inspection¹⁷.

The National Labor Inspectorate is an authority established to execute supervision and inspection of the labour law observance. NLI may conduct inspections about compliance with the ban on concluding civil law contracts in circumstances indicating the existence of an employment relationship. These inspections have been one of the NLI's priority tasks for many years. They concern a very important problem of Polish labor market, including outsourcing of security services: signing civil law contracts with employees instead of employment contracts.

On October 6, 2016, Małgorzata Streciwilk, president of the Public Procurement Office, applied to Roman Giedrojć, Chief Labor Inspector, for inspection of entrepreneurs performing public procurement. As a result, in 2017 and 2018, the National Labor Inspectorate performed an additional inspection task aimed at eliminating, using the tools available to labor inspectors, cases of concluding civil law contracts under conditions appropriate to an employment relationship by contractors and subcontractors performing public procurement. **The task performed in those years by the institution was not continued later. It would be good for the National Labour Inspectorate to carry out regular inspections of selected entrepreneurs performing public contracts every year.**

It is worth quoting the statement of the All-Poland Alliance of Trade Unions on the problem of using civil law contracts instead of employment contracts.

"In the context of the challenges of the labor market, OPZZ will demand, as before, further limitation of the scale of employment on civil law contracts when there are conditions for

¹⁷ The District Court's in Mielec where documents (contract notice, among others) relating to the tender entitled "Providing protection services for persons, buildings and property of the District Court in Mielec" are available. <https://www.mielec.sr.gov.pl/content/f-251-2513-617-swadczenie-uslugi-ochrony-fizycznej-osob-budynkow-i-mienia-sadu-rejonowego>

employment under a contract of employment. We do not agree to the so-called fictitious self-employment, hence the limitations of its scale tasks for the coming years.”¹⁸.

As the lawyer of the All-Poland Alliance of Trade Unions notes,

“The problem of too frequent use of civil law contracts in Poland is a very complex problem. This is influenced by both legal provisions regarding civil contracts and employment contracts, as well as the mentality of employees and employers, as well as regulations regarding labor inspection. Therefore, greater involvement of the labor inspection in combating civil law contracts is certainly needed. However, this will not change the source of the problem, which is the mentality of Polish employers who treat employees as cheap labor that should be saved at every step. I am not saying that civil law contracts should be banned, but the law should specify more precisely when they cannot be concluded, so that the average employee knows when his rights are being violated”. (the All-Poland Alliance of Trade Unions, September 2023).

18 Program of the All-Poland Alliance of Trade Unions for the years 2022-2027, Warsaw 2022, p.5.

List of interviews

Date	Organisation + details
04/22	Interview with the President of the National Inter-Enterprise Trade Union of Support Personnel in Health Care System.
05/22	Interview with the representative of the "Workers Initiative" trade union in Poznań.
05/22	Interview with the lawyer of the "Workers Initiative" trade union In Poznań.
05/22	Interviews with security guards in Poznań.
06/22	Interview conducted with the President of the National Revision Union of Social Cooperatives and the largest federation of non-governmental organizations WRZOS.
09/22	Interview with the Director of Public Procurement Department in the board of municipal housing resources in the city of Poznań.
09/22	Interview with the President of the NSZZ "Solidarity" Employees of Security, Catering and Cleaning Companies.
10/22	Interview with the Chair of the national-level representative employer organization, the Federation of Polish Entrepreneurs (Federacja Przedsiębiorców Polskich, FPP)
11/22	Information conducted with the public procurement specialist of OPZZ.
05/23	Interviews with the representative of the Nurses Trade Union of University Hospital in Kraków.
05/23	Interviews with the cleaners of University Hospital in Kraków.
05/23	Interviews with the representative of the Nurses Trade Union of Clinical Provincial Hospital No. 2 in Rzeszów.
05/23	Interviews with the cleaners of Clinical Provincial Hospital No. 2 in Rzeszów.
09/23	Interview with the lawyer of the All-Poland Alliance of Trade Unions.

List of all the people and institutions we were unable to interview

Person/ institution	Explanation
<p>Specialist in socially responsible public procurement or any representative of the institution/ Public Procurement Office.</p>	<p>We have sent a letter to the Public Procurement Office asking for an interview on good practices in public procurement. In response to our request, we received a negative response. This was justified by the lack of an employee in the institution who specializes in this subject and would be able to provide us with an answer. We were informed that a year ago an employee specializing in this subject was employed in the institution, but he no longer works in it and so far, no employee has taken over these duties.</p> <p>So far, the PPO's activity in the field of promoting good practices in public procurement is insufficient. This is evidenced by the low scale of application by public institutions of pro-employment provisions other than those required by the Public Procurement Act.</p> <p>Interesting fact: since the reform of the public procurement law in 2016, the Public Procurement Office has put emphasis on promoting socially responsible public procurement related to environmental protection, the so-called green public procurement, recognizing that the 2016 reform provides employees of external companies with sufficient protection.</p> <p>The solution used by ZKZL in Poznań in 2021 is a practice worth promoting by PPO, which, moreover, together with trade unions, could prepare a wider catalog of examples of pro-labor public procurement and disseminate them among public institutions.</p> <p>We approached a former public procurement expert for the national-level employer organization (interestingly, previously involved with trade unions in the same role). Despite initial positive reaction, while asked for an interview, the person eventually declined to speak to us.</p> <p>We approached an expert for national-level municipal association. Despite initial positive reaction, while asked for an interview, the person eventually declined to speak to us.</p>
<p>Specialist in socially responsible public procurement or any representative of the institution/ Ministry</p>	<p>We have sent a letter to the Ministry of Family and Social Policy asking for an interview on good practices in public procurement. We have not received a response to our request.</p>

of Family and Social Policy.	
Management of the University Hospital in Kraków.	We have not received a response to our request.
Clinical Provincial Hospital No. 2 in Rzeszów	We have received a response to our request that people responsible for implementation the process are not employed anymore.
Specialist in the public procurement department/ Ministry of Public Finance.	We have sent a letter to the Ministry of Public Finance asking for an interview on good practices in public procurement. We have not received a response to our request.

References

Annual Report of the President of the Public Procurement Office for 2016.

Annual Report of the President of the Public Procurement Office for 2017.

Annual Report of the President of the Public Procurement Office for 2018.

Annual Report of the President of the Public Procurement Office for 2019.

Annual Report of the President of the Public Procurement Office for 2020.

Annual Report of the President of the Public Procurement Office for 2021.

Background note to the draft act amending the act on the minimum wage and some other legal acts passed on 22 July 2016, 1 (in Polish).

Bednarski, M. (2020). Społeczne uwarunkowania funkcjonowania szarej strefy w sektorze mikroprzedsiębiorstw i małych przedsiębiorstw z perspektywy lokalnej. Wnioski z badań empirycznych. *Social Policy Issues*, 44, 87-100.

Central Statistical Office (2022), Disabled persons in 2021, available at:

https://stat.gov.pl/download/gfx/portalinformacyjny/pl/defaultaktualnosci/5487/26/3/1/osoby_niepełnosprawne_w_2021_r.pdf (in Polish)

Central Statistical Office (2023), Structural changes of groups of the national entities in the REGON register, 2022, available at:

https://stat.gov.pl/download/gfx/portalinformacyjny/pl/defaultaktualnosci/5504/1/27/1/zmiany_strukturalne_grup_podmiotow_gospodarki_narodowej_w_rejestrze_regon_2022.pdf (in Polish)

Czarzasty, J. (2019). Collective bargaining in Poland: a near-death experience, in: Müller, T., Vandaele, K., & Waddington, J., Collective bargaining in Europe: towards an endgame. Volume II, Brussels: European Trade Union Institute, 465-481.

Czarzasty, J. (2023, forthcoming). Minimum wage and wage moderation mechanisms in Poland following the adoption of the Directive on adequate minimum wages in the EU, Rivista Giuridica del Lavoro

Duda K. (2017), Outsourcing security and cleaning services in public institutions. The impact of the lowest price dictate on workers' employment terms offered by private entities.

Duda, K. (2018), Outsourcing of non-medical services in public hospitals, Wrocław.

Jaehrling, Karen (2023): Buying Decent Work - Public Procurement Strategies for the Improvement of Working Conditions in the European Service Sector. Comparative report of PROCURFAIR - Promoting Decent Work through Public Procurement in in Cleaning and Private Security Services project

Karolak, M. (2020). Społeczno-ekonomiczne konteksty prekaryzacji pracy młodych w Polsce, in: Mrozowicki, A., Czarzasty, J. (eds.) Oswajanie niepewności. Studia społeczno-ekonomiczne nad młodymi pracownikami sprekaryzowanymi. Warszawa: SCHOLAR, 49-72.

Social Campaigns of the Year 2012 (2012):

http://konkurs.kampaniespoleczne.pl/kk_kampanie.php?edycja=2012&kk_id=440&kk_kat=1&action=szczegoly

PFRON (2016), Employees with disabilities reported to the Register of Employed Persons with Disabilities (EZON) by type of employer and selected sections of the Polish Classification of Activities (PKD) for the 08/2016 reporting period, available at: <https://www.pfron.org.pl/o-funduszu/dane-statystyczne-i-inf/dane-dotyczace-dofinans/dane-za-2016-rok/dofinansowanie-do-wynag/ezo/pracownicy-niepelnosprawni-zgloszeni-do-ewidencji-zatrudnionych-osob-niepelnosprawnych-ezon-w-podziale-na-typ-pracodawcy-i-wybrane-sekcje-pkd-za-okres-sprawozdawczy-08-2016/> (in Polish).

Program of the All-Poland Alliance of Trade Unions for the years 2022-2027, Warsaw 2022, p.5.

Serwisoz.pl (2017), Odwrót od outsourcingu usług – case study, available at:

<https://serwisoz.pl/obowiazki-i-odpowiedzialnosc-menedzera/odwrot-od-outsourcingu-uslug-case-study-3517.html> (in Polish).

The District Court's in Mielec website where documents (contract notice, among others) relating to the tender entitled “Providing protection services for persons, buildings and property of the District Court in Mielec” are available:

<https://www.mielec.sr.gov.pl/content/f-251-2513-617-swadczenie-uslugi-ochrony-fizycznej-osob-budynkow-i-mienia-sadu-rejonowego>

Website of the medical portal entitled Health Market:

<https://www.rynekzdrowia.pl/Finanse-i-zarzadzanie/Outsourcing-uslug-niemedycznych-w-szpitalach-Czyzby-w-odwrocie,175154,1.html>

Webpage of the trade union OZZ „Inicjatywa Pracownicza”: <https://www.ozzip.pl/>

All links last checked on 30 September 2023.