

Beata Rutkowska

Uniwersytet Mikołaja Kopernika, Toruń

beatarut@umk.pl

ORCID: <https://orcid.org/0000-0002-1920-8261>

Notice to terminate a fixed-term contract of employment

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1. Introductory remarks

In June 2015, the Labour Code was amended¹. Among the amended provisions were those regulating the aspects of fixed-term contracts of employment. Justifying the need for changes in this regard, the legislator indicated in the justification to the draft amendment² that as a rule, employees should be hired on the basis of permanent employment contracts, as it has been indicated by judicial practice of the Supreme Court³, as well as the Framework Agreement on fixed-term work, concluded by the Union of Industrial and Employers' Confederations of Europe (UNICE), the European Centre of Employers and Enterprises providing Public Services (CEEP) and the European Trade Union Confederation (ETUC), implemented

¹ The Act of 25 June 2015 amending the Act – Labour Code and certain other acts (Journal of Laws item 1220), hereinafter referred to as “the amendment”. It came into force on 22 February 2016.

² Government bill of 10 April 2015 amending the Act – Labour Code and certain other acts (Sejm document no. 3321).

³ The justification to the draft amendment quoted the ruling of the Supreme Court of 25 October 2007, II PK 49/07, Lex no. 464877 and the resolution of the Supreme Court of 16 April 1998, III ZP 52/97, OSNP 1998, no.19, item 558.

by Council Directive 99/70/EC of 28 June 1999⁴. Undoubtedly, in order to make employment on the basis of permanent contracts a rule, it is necessary to restrict unjustified conclusion of fixed-term contracts. Therefore, one of the objectives of the Agreement referred to above is to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts (or relationships)⁵. The solutions applicable in Poland so far have turned out to be insufficient enough for the European Commission to pursue infringement proceedings due to non-compliance of the Labour Code provisions with requirements of Directive 99/70. The legislator referred to this fact in the justification to the draft amendment as one of the reasons for introduction of changes in this regard.

According to the amended Article 25¹ of the Labour Code, the period of employment on the basis of a fixed-term contract, as well as the overall period of employment on the basis of fixed-term contracts concluded between the same parties of the employment relationship must not exceed 33 months, and the total number of such contracts must not exceed 3, as otherwise it is considered that the employee, from the date following expiry of the period of 33 months or from the date of conclusion of the fourth fixed-term contract, respectively, has been employed on the basis of a permanent contract⁶. The above is not applicable to fixed-term contracts listed in Article 25¹ § 4 of the Labour Code, if their conclusion is aimed at satisfying real periodic demand and is necessary in this regard in the light of all circumstances of conclusion of the contract.

To make permanent employment contracts the standard, widely applied basis for employment, important are not only the limitations in conclusion of fixed-term contracts, provided for in Article 25¹ of

⁴ OJ EC L No. 175, p. 43. See clause 6 and 8 of general provisions of the Framework Agreement, constituting an appendix to Directive 99/70.

⁵ Clause 1 letter b of the Framework Agreement, constituting an appendix to Directive 99/70.

⁶ At the same time, according to another provision still in force, arrangement between the parties during the term of a fixed-term contract of a longer period of employment on the basis of this contract is considered to be equivalent to

the Labour Code. An important role is also played by other provisions concerning fixed-term contracts of this kind. They should be consistent with the exceptional character of this fixed-term contract, assigned to it by legislation that limits acceptability of conclusion of such contracts. One may question whether this is the case, for instance, in the case of provisions that regulate giving a notice of termination of a fixed-term contract, which have also been changed by the amendment of June 2015.

2. Notice of termination of a fixed-term contract prior to and after the amendment

A fixed-term employment contract is a term agreement, which means that the natural mode of its termination is expiry of the time period, for which it was concluded⁷. Sometimes, however, it can also be terminated earlier. The employer and the employee may reach agreement to terminate the contract. There is also a possibility of terminating a fixed-term contract without a notice period (Articles 52 and 53 and 55 of the Labour Code). On the other hand, the possibility of giving a notice of termination for this type of contract is controversial.

In the interwar period, a fixed-term contract either could not be terminated or could be terminated solely by the employee, only if the employer changed or the contract was concluded for the remaining period of life of one of the parties to the employment relationship or for a period longer than 3 years⁸. On the other hand, the Labour Code passed in June 1974 assumed that when concluding

conclusion, from the date following the planned date of termination, of a new fixed-term contract.

⁷ For more information on the topic, see e.g. B. Wagner, *Terminowe umowy o pracę*, Warszawa 1980, p. 90 and the following and K. Łapiński, *Umowa o pracę na czas określony w polskim i unijnym prawie pracy*, Warszawa 2011, p. 109 and the following.

⁸ A. Ludera-Ruszel, *Ocena nowej regulacji umowy o pracę na czas określony – pozytywny kierunek zmian czy utrzymanie status quo?*, "Praca i Zabezpieczenie Społeczne" 2016, no. 2, p. 27.

a fixed-term contract for more than 6 months, the parties could provide for early termination of such contract with a two-week notice (Article 33)⁹.

In the initial period after introduction of the Labour Code, the issue of termination of fixed-term contracts did not give rise to significant practical problems. The situation changed after year 1989, when employers started to enter into more fixed-term contracts containing a termination clause in order to secure for themselves the possibility of easy termination of the employment relationship. The regulation, which was to apply in exceptional cases, became in practice a rule, used for purposes that “were not only unintended, but also unforeseen at the time of its establishment”¹⁰.

As a result of socio-economic changes caused by restructuring of economy, it was considered necessary to introduce the possibility of termination of a fixed-term contract in the case of bankruptcy or liquidation of the employing establishment (Article 41¹ § 2 of the Labour Code)¹¹ or collective redundancies (first Article 5 Section 5 of the Act of December 1989 on specific rules regarding the termination of employment relationships for reasons attributable to the employing establishment and on amendment of certain legal acts¹², and later Article 5 Section 7 of the presently binding Act of

⁹ The aim of this provision was to “protect the employee against the necessity of remaining in an employment relationship concluded for a longer period of time while certain circumstances have emerged that justify its early termination”, provided that in order to protect equality of the parties, the right to terminate a contract concluded for more than 6 months, containing a termination clause, was also granted to the employer. Such was the opinion of the Supreme Court on the government bill on amendment of the Labour Code and certain other acts, BSA III-021-149/15, p. 4, hereinafter referred to as the “opinion of the Supreme Court”.

¹⁰ Ibidem.

¹¹ See Article 1 Clause 14 of the Act of 7 April 1989 on amendment of the Labour Code and amendment of certain legal acts (Journal of Laws no. 20, item 107).

¹² The Act of 28 December 1989 on specific rules regarding the termination of employment relationships for reasons attributable to the employing establishment and on amendment of certain legal acts (consolidated text – Journal of Laws of 2002 no. 112, item 980 as amended).

March 2003 on specific rules regarding the termination of employment relationships for reasons beyond the employees' control¹³).

The amendment of June 2015 repealed Articles 33 and 41¹ § 2 of the Labour Code and Article 5 Section 7 of the Act on collective redundancies. This was a result of simultaneous amendment of Article 32 § 1 of the Labour Code, linking the possibility of giving a termination notice with all types of employment contracts.

In a way, the amendment sanctioned the practice of universal application of Article 33 of the Labour Code¹⁴, referred to above, and provided for the possibility of giving a notice of termination of fixed-term contracts concluded for 6 months or less. The question of the reasons for these changes remains open. Lack of any explanation on the issue in the amendment justification seems all the more surprising as the option of giving a termination notice for a fixed-term contract has some far-reaching legal consequences.

In the first place, it should be underlined that the solution under concern is not entirely consistent with the nature of a fixed-term contract. In principle, such contract should ensure stable employment within the time frame defined by its parties. In fact, as a result of amendments to the Labour Code of June 2015, fixed-term contracts have almost completely ceased to warrant stability of employment. Destabilization of this type of contract goes so far that in literature it has even been compared to a trial period contract¹⁵, underlining that its function or concept has changed due to the amendment¹⁶.

¹³ The Act of 13 March 2003 on specific rules regarding the termination of employment relationships for reasons beyond the employees' control (consolidated text – Journal of Laws of 2016, item 1474 as amended), hereinafter as the “act on collective redundancies”.

¹⁴ See L. Mitrus, *Projekt nowelizacji Kodeksu pracy dotyczący umów terminowych*, “Monitor Prawa Pracy” 2015, no. 6, p. 289.

¹⁵ See e.g. J. Stelina, *Nowa koncepcja umowy o pracę na czas określony*, “Państwo i Prawo” 2015, no. 11, p. 41 and the following.

¹⁶ See e.g. L. Florek, *Umowa o pracę na czas określony*, “Praca i Zabezpieczenie Społeczne” 2015, no. 12, p. 5 and J. Stelina, *Nowa koncepcja*, as quoted above.

Granting in the Labour Code the right to give a notice of termination of a fixed-term contract both to the employer and the employee may seem questionable also due to interference with autonomy of intent of the parties and violation of the principle of *pacta sunt servanda*¹⁷. Obviously, treating the early termination notice as an ordinary mode of termination of a fixed-term contract limits to a certain extent the importance of its term established by the parties¹⁸.

Particularly worth underlining is the fact that provision of a legal possibility of giving a notice of termination of a fixed-term contract is not consistent with direction of changes made with regard to acceptability of entering into contracts of this type. Since the term of a fixed-term contract should not, in principle, exceed 33 months, one may ask whether the legislator does not assume such contracts being entered into in situations justified by periodic demand for labour, which should also determine the term of the contract, and its early termination should be acceptable only under particular circumstances¹⁹.

Inclusion in the Labour Code of the possibility of free termination of a fixed-term contract is not consistent with the direction of changes introduced with regard to acceptability of contracts of this kind, among other things, as it encourages employers to hire employees on the basis of such contracts. Even before amendment

¹⁷ See e.g. the opinion of the Supreme Court, p. 3 and the following, J. Stelina, *Nowa koncepcja*, p. 46–47 and Ł. Pisarczyk, *Nowy model zatrudnienia terminowego w prawie pracy? – part 2*, “Monitor Prawa Pracy” 2016, no. 5, p. 234.

¹⁸ In literature on the subject, it has been noted quite rightly that due to the possibility of free termination of a fixed-term contract by each of the parties, it would be closer to the real legal nature of the contract to refer to it as “an employment contract with reservation of its maximum term”. See K. Jaśkowski, *Nowa umowa o pracę na czas określony*, “Praca i Zabezpieczenie Społeczne” 2015, no. 11, p. 3.

¹⁹ Meanwhile, *de lege lata* the employer may give a notice of termination of a fixed-term contract even if the only reason for termination of the contract is prevention of its transformation into a permanent contract. Cf. more broadly J. Piątkowski, *Umowa o pracę na czas określony w kodeksie pracy – nową jakością czy powolny zmierzch tożsamości?*, “Studia z Zakresu Prawa Pracy i Polityki Społecznej” 2016, p. 13.

of the Labour Code of June 2015, interpretations of the labour law indicated that popularity of fixed-term contracts was due to easiness of their termination²⁰. *De lege lata*, it is even easier to terminate a contract of this kind²¹. Therefore, it cannot be excluded that fixed-term contracts will remain an attractive way of hiring employees, selected not only in the case of periodic demand for labour²².

3. In search for solutions *de lege ferenda*

In the light of negative effects of changes introduced with regard to acceptability of giving a notice of termination of a fixed-term employment contract, it seems legitimate to consider other, more optimum solutions in this regard.

Considering in the first place the possibility of restoring the legal environment that existed before the amendment, it is worth noting that the Labour Law Codification Committee, which operated in years 2002–2006, proposed in the draft of the Labour Code of April 2008 to maintain the provision existing at the time, which allowed the parties to a fixed-term contract concluded for the term longer than 6 months to agree upon the option of its early termination upon a two-week notice²³. Arguments supporting this solution include the fact that it is consistent with the specific nature of

²⁰ See e.g. M. Skąpski, *Ochronna funkcja prawa pracy w gospodarce rynkowej*, Zakamycze 2006, p. 259 and the following and M. Latos-Miłkowska, *Ochrona interesu pracodawcy*, Warszawa 2013, p. 102–103.

²¹ At present, it is of no importance whether it has been concluded for more than 6 months and whether it provides for acceptability of its early termination.

²² It is even more probable due to the fact that although limitation of employment on the basis of (a) fixed-term contract(s) to 33 months may suggest that such contracts are to be concluded in the case of periodic demand for labour, there is no visible association in this regard made in the legal provisions in force. On the other hand, such association has been expressed directly in Article 25¹ § 4 of the Labour Code, providing for exceptions from the limitation of the term and number of fixed-term contracts.

²³ Labour Law Codification Committee, *Kodeks pracy. Zbiorowy kodeks pracy*, Projekt, Katowice 2010, p. 34.

a fixed-term contract and allows the parties to secure themselves against circumstances that were not foreseen upon conclusion of the contract, which is particularly important in the case of long-term employment. The problem is, however, that, as it has been shown in practice, the possibility of inclusion of the termination clause in the contract would be used not only in justified cases, but – most probably – on a general basis. The employers would once again turn the exception into a rule, applied in the manner inconsistent with its intended objective.

Certain doubts also arise from the proposal of inclusion of the fixed-term contract termination clause in collective bargaining agreements. It has been noted that the trade union(s) is (are) on a stronger negotiation position in comparison with individual employees, which seems to suggest that the agreement would be a more proper act to include the clause on termination of a fixed-term contract than the employment contract itself. It has also been recognized that application of the solution indicated would make it possible to adapt employment on the basis of fixed-term contracts to the specific nature of activity of a given employer – and not only in terms of the contract termination option²⁴. On the other hand, the small number of collective bargaining agreements and employees subject to such agreements leads to concern that even if the possibility of termination of a fixed-term contract is included in such agreements, the scope of reference of this solution would nevertheless be limited.

In addition, claims have been made to make acceptance of giving a notice of termination of a fixed-term contract dependable upon provision of a cause that justifies such legal action. Implementation of this claim would mean in practice that the number of cases of early termination of fixed-term contracts would be reduced, and it seems that the degree of such reduction would differ depending on the act serving as a source for the obligation to justify the legal action.

²⁴ Cf. Ł. Pisarczyk, *Prawna regulacja zatrudnienia terminowego a swoboda umów*, in: *Terminowe umowy o pracę. Aktualne problemy zatrudnienia*, ed. M. Mędrala, Warszawa 2017, p. 58.

In the draft of the Labour Code of April 2008, it has been proposed that the act is the employment contract itself²⁵. However, there is the concern that the employer could take advantage of their dominant position in establishing the conditions of the employment contract and make conclusion of the contract dependent on inclusion of the early termination clause and a provision on no obligation to justify such legal action²⁶.

Certain reservations could also be made with regard to effective limitation of cases of giving a notice of termination of fixed-term contracts through a clear acceptance of placement of the requirement to justify this legal action in the collective bargaining agreement. Comparison of the bargaining position of the trade union(s) participating in negotiations on a collective bargaining agreement and the position of an individual to-be employee, negotiating the employment contract with their future employer, indicates that the probability of including the obligation to justify the termination notice for a fixed-term contract is greater in the case of collective agreements in comparison with individual contracts; nevertheless, the problem of small number of collective bargaining agreements in force and employees subject to such agreements still exists. Should the solution under concern realistically result in reduction of the number of cases of fixed-term contract termination, it would be necessary to make such agreements more popular. So far, in practice, there has been lack of interest in placing the requirement to justify the cause for termination of fixed-term contracts in the collective bargaining agreements²⁷.

²⁵ See Articles 82 and 89 § 1 of the draft, in: Labour Law Codification Committee, *Kodeks pracy*, p. 33–34.

²⁶ Similarly, E. Wronikowska, *Terminowe umowy o pracę a ochrona trwałości stosunku pracy*, in: *Ochrona trwałości stosunku pracy w społecznej gospodarce rynkowej*, ed. G. Goździewicz, Warszawa 2010, p. 195.

²⁷ A. Dral, *Umowa o pracę na czas określony oraz problem przyczynowości jej wypowiedzenia – stan obecny oraz tendencje zmian*, in: *Przemiany prawa pracy. Od kodyfikacji do współczesności. Księga Jubileuszowa dedykowana Profesor Teresie Liszcz*, "Studia Iuridica Lublinensia" Vol. XXIV. 3, ed. A. Kosut, W. Perdeus, Lublin 2015, p. 153.

Mixed views have also been expressed with regard to the postulate of the act (the Labour Code) being the source for the obligation of the employer to specify the cause for giving a termination notice for fixed-term contracts. Such proposal has been put forward e.g. in the draft Labour Code of March 2018, developed by the Labour Law Codification Committee, operating in years 2016–2018²⁸. When considering this proposal, it should be noted in the first place that in December 2008, the Constitutional Tribunal stated that Article 30 § 4 of the Labour Code, to the extent, in which it disregards the obligation of the employer to specify the cause for giving a termination notice for a fixed-term contract of employment, is not inconsistent with Articles 2 and 32 of the Constitution of the Republic of Poland²⁹. While clarifying its stance, the Constitutional Tribunal stated there was no basis for assuming that “the differentiation introduced, on the basis of the employment term criterion, is not rationally justified and is not made according to a criterion that would be relevant according to Article 32 of the Constitution”. At the same time, the Tribunal stated it was not possible to achieve the same standard of protection in the case of fixed-term and permanent contracts, as it would be contradictory to the objective of differentiation between these contracts by the legislator, at the same time making the labour law system more rigid. It is worth noting that also in the opinion of some of the scholars, standardization of protection against termination would “undermine the sense of existence of various types of employment contracts”³⁰, „lead to the conclusion that the reasons to maintain

²⁸ See Article 94 § 4 of the draft Labour Code. However, compare the provisions of Articles 95 and 96 of the draft. The draft is available on the Web page of the Ministry of Family, Labour and Social Policy: <https://www.mpips.gov.pl/bip/teksty-projektu-kodeksu-pracy-i-projektu-kodeksu-zbiorowego-prawa-pracy-opracowane-przez-komisje-kodyfikacyjna-prawa-pracy/> (access: 15.07.2018).

²⁹ The Judgement of the Constitutional Tribunal of 2 December 2008, P 48/07, Lex no. 465368.

³⁰ L. Mitrus, *Kilka uwag o rozwiązywaniu za wypowiedzeniem umowy o pracę na czas określony*, in: *Stosunki zatrudnienia w dwudziestolecie społecznej gospodarki rynkowej. Księga pamiątkowa z okazji jubileuszu 40-lecia pracy naukowej Profesora Barbary Wagner*, ed. A. Sobczyk, Warszawa 2010, p. 254.

a strict catalogue of contracts start to cease – or even have ceased to exist”³¹, and even “would result in [...] stripping fixed-term contracts of their legal identity”³².

Introduction of obligation of the employer to specify the cause justifying a notice of termination of a fixed-term contract would undoubtedly make such contract similar in this regard to a permanent contract. Nevertheless, other aspects are of significance as well – most of all, whether sufficient cause exists for free termination of a fixed-term contract, while a permanent contract can be terminated when it is justified. In the opinion of the Constitutional Tribunal, the term of employment is, indeed, such case. This view, however, is not fully convincing, particularly if one takes into account the flaws of the option of free termination of a fixed-term contract, listed above, most of all, inconsistency of this solution with the nature of the contract under concern³³, as well as segmentation of the labour market based on differentiation of protection against contract termination. Weaker protection of fixed-term contracts is not justified, either, by the necessity to make the labour law flexible, although this type of contract is treated as one of the flexibility components and the Constitutional Tribunal has mentioned in the judgement of December 2008 that making it equivalent in terms of protection to permanent contracts would make the labour law system more rigid. Nevertheless, “it seems that a fixed-term contract has become a very flexible form of employment, to some extent against its nature”³⁴.

Due to lack of a convincing justification for weaker protection against termination of fixed-term contracts and stronger protection in this regard being applicable to permanent contracts, a problem appears of compliance of the solution being analysed with Directive

³¹ M. Gersdorf, *O przyczynowości zawarcia i rozwiązania umowy na czas określony*, in: *Stosunki zatrudnienia*, p. 225.

³² J. Piątkowski, *Umowa*, p. 15.

³³ See also dissenting opinion to the ruling of the Supreme Court of 2 December 2008, P 48/07, provided by T. Liszcz.

³⁴ Ł. Pisarczyk, in: *System prawa pracy. Volume II. Indywidualne prawo pracy. Część ogólna*, ed. G. Goździewicz, Warszawa 2017, p. 346.

99/70, mentioned above. The objective of the Framework Agreement on fixed-term work, implemented by the Directive, is also to improve the conditions of fixed-term employment by warranting compliance with the non-discrimination principle³⁵. Fixed-term workers should not be treated worse than comparable permanent workers only due to the fact of being employed for a fixed term, unless such different treatment is justified by objective reasons (clause 4 section 1 of the framework agreement). One could ask whether lack of the obligation to justify termination of a fixed-term contract is consistent with the non-discrimination principle expressed in the quoted clause of the framework agreement³⁶. This issue will probably have to be solved by the Court of Justice of the European Union. So far, it has questioned on the basis of the clause quoted the difference in the terms of notices of termination for fixed-term and permanent employment contracts, when employees hired on the basis of such contracts are facing comparable circumstances (ruling of 13 March 2014 in the case of Nierodzik C-38/13). It should be emphasized that under the influence of the ruling quoted above, the amendment of June 2015 made the notice term for fixed-term contracts equal to that applicable to permanent contracts.

An even more far-reaching solution than introduction of the obligation to justify the fixed-term contract termination notice would be to eliminate in general the possibility of termination of such contracts through the legal action, referred to above³⁷. This would result in the most significant limitation of flexibility of employment

³⁵ Clause 1 letter a of the Framework Agreement, constituting an appendix to Directive 99/70.

³⁶ This problem has been raised, among others, by the Supreme Court (opinion of the Supreme Court, p. 6) and Ł. Pisarczyk, *Nowy model*, p. 236. On the other hand, L. Mitrus is of opinion that there is no reason to believe that the principle of equal treatment of employees has been violated (*Kilka uwag*, p. 254–256).

³⁷ See opinion of the Supreme Court, p. 5–6, J. Piątkowski, *Umowa*, p. 17 and A. Napiórkowska, B. Rutkowska, *Umowa o pracę na czas określony a ochronna funkcja prawa pracy*, in: *Ochronna funkcja prawa pracy. Wyzwania współczesnego rynku pracy*, ed. A. Napiórkowska, B. Rutkowska, M. Rylski, Toruń 2018, p. 72–73.

on the basis of such contract, at the same time, however, being the closest to its nature³⁸.

Obviously, elimination of the option to terminate a fixed-term contract could not be unconditional³⁹. Under the current socio-economic conditions, it is not possible to apply the principle of *pacta sunt servanda* in its extreme form, that is, without any exceptions whatsoever. In fact, in practice (particularly in the case of long-term contracts), it sometimes happens that further performance of periodic work ceases to be objectively needed or possible, even though the term of the contract has not expired, and the employer or the employee has expressed no intent to enter into a termination agreement, and none of the circumstances listed in Articles 52, 53 or 55 of the Labour Code are applicable. Under such exceptional circumstances, a notice of termination of the fixed-term contract should be acceptable. When specifying the catalogue of such cases, it would be necessary to consider the circumstances on the part of both the employer and the employee⁴⁰.

As for the employer, it is worth noting that since 1989, every fixed-term contract could be subject to a notice of termination in the case of bankruptcy or liquidation of the employer (until 1996 – employing establishment) or dismissal on the basis of the act on collective redundancies. Literature on the subject rightly recognizes the circumstances listed as offering a valid justification for giving a notice of termination of a fixed-term contract⁴¹. One could ask whether these exhaust all situations that have not been provided for in Articles 52 and 53 of the Labour Code that could force the employer to terminate the contract early.

³⁸ As it has been rightly noted by the Supreme Court in its opinion to the draft amendment, "Entering into a fixed-term contract of employment should be considered to be an objective reason, which justifies limitation or even exclusion of the right to early termination of such contract by a notice given by the employer or the employee". As in the opinion of the Supreme Court, p. 5–6.

³⁹ A. Napiórkowska, B. Rutkowska, *Umowa*, p. 72–73.

⁴⁰ Ibidem.

⁴¹ See e.g. A. Dral, *Powszechna ochrona trwałości stosunku pracy. Tendencje zmian*, Warszawa 2009, p. 353–354 and L. Mitrus, *Kilka uwag*, p. 249–250.

Giving a notice of termination of a fixed-term contract should also be acceptable in the case of extraordinary circumstances concerning the employee. It seems that exhaustive indication of all such circumstances in the legal provisions would be very difficult, if at all possible. Therefore, it is not possible to exclude the necessity to apply the proper general clause, such as “a particularly important reason concerning the employee”. In the case of application of such legislative technique, a significant role would be played by the jurisprudence, which, through a more or less restrictive approach to recognition of particularly important reasons concerning the employee in individual cases would determine the scope of departures from non-acceptability of giving a notice of termination of a fixed-term contract.

Through a general exclusion of the possibility of giving a notice of termination, linked to exceptional acceptance of such legal action in the cases indicated in legal provisions, a fixed-term contract would become more stable than a permanent contract. As a result, this solution may seem controversial⁴². On the other hand, however, “based solely on logic and legal historic knowledge, one should assume that durability of a fixed-term employment relationship should be protected more strongly than that of a permanent relationship”⁴³.

4. Final remarks

Due to the fact that inclusion in the Labour Code of the possibility of early termination of a fixed-term contract is inconsistent with the nature of such contract, modifies its function and limits autonomy of intent of the parties, at the same time infringing the principle

⁴² Cf. e.g. M. Gersdorf, *O przyczynowości*, p. 225 and A. Dral, *Umowa*, p. 155.

⁴³ B. Wagner, *Umowa o pracę na czas określony jako podstawa zatrudnienia terminowego*, “Przegląd Sądowy” 2009, no. 11–12, p. 11. Moreover, “Agreeing with the thesis of a different nature [...] of fixed-term and permanent contracts, it is in the case of the former that a visible justification exists for their protection against early termination, unless extraordinary circumstances exist” (Ł. Pisarczyk, in: *System*, p. 345–346).

of *pacta sunt servanda* and encouraging employers to hire on the basis of contracts of this type, which is not entirely consistent with the new solutions aimed at limiting the scope of such contracts, a change is recommended in this regard.

The labour law doctrine usually favours the option of the fixed-term contract termination notice, and various solutions have been proposed. It seems, however, that particularly worth noting is the proposal to depart from the option of giving a notice of termination of a fixed-term contract, combining it with introduction of certain exceptions. Such solution would be the most consistent with the nature of a fixed-term contract, taking into account the need to allow for a notice of termination of such contract under special conditions, justified by the interest of the employer or the employee, and it would be consistent with limitations in conclusion of contracts of this type.

STRESZCZENIE

Wypowiedzenie umowy o pracę na czas określony

Artykuł dotyczy wypowiedzenia umowy o pracę na czas określony po nowelizacji kodeksu pracy z czerwca 2015 r. Jak wynika z przeprowadzonych rozważań, przyjęcie swobody wypowiedzenia umowy na czas określony z mocy prawa ma wiele mankamentów, wobec czego wskazane jest dokonanie w tym przedmiocie zmiany. Nauka prawa pracy opowiada się z reguły za wypowiedalnością umowy o pracę na czas określony i zgłasza w tym zakresie różne propozycje co do szczegółowych rozwiązań. Wydaje się jednak, że na szczególną uwagę zasługuje postulat generalnego wykluczenia możliwości wypowiedzenia umowy na czas określony w powiązaniu z wyjątkowym dopuszczeniem dokonania tej czynności w przypadkach wskazanych w przepisach prawnych. Takie rozwiązanie najpełniej odpowiadałoby naturze umowy na czas określony, uwzględniałoby potrzebę przyjęcia dopuszczalności wypowiedzenia tego rodzaju umowy w szczególnych sytuacjach uzasadnionych interesem pracodawcy lub pracownika, a także pozostawałoby w zgodzie z ograniczeniami w zawieraniu tej umowy.

Słowa kluczowe: umowa o pracę na czas określony; wypowiedzenie umowy o pracę; przyjęcie w kodeksie pracy dopuszczalności swobodnego wypowiedzenia umowy o pracę na czas określony

SUMMARY

Notice to terminate a fixed-term contract of employment

The article deals with notice of termination of a fixed-term contract after the amendment to the Labour Code of June 2015. Considerations included in the article lead to the conclusion that the option of free termination of a fixed-term contract has many flaws. Therefore, a change is recommended in this regard. The labour law doctrine usually favours the option of the fixed-term contract termination notice, and various solutions have been proposed. It seems, however, that particularly worth noting is the proposal of a general exclusion of the possibility of giving a notice of termination of a fixed-term contract, linked to exceptional acceptance of such legal action in the cases indicated in legal provisions. Such solution would be the most consistent with the nature of a fixed-term contract, taking into account the need to allow for a notice of termination of such contract under special conditions, justified by the interest of the employer or the employee, and it would be consistent with limitations in conclusion of contracts of this type.

Keywords: a fixed-term contract of employment; notice to terminate a contract of employment; inclusion in the Labour Code of the possibility of free termination of a fixed-term contract

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