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TYPES OF EMPLOYMENT CONTRACTS IN POLAND

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Summary. The article deals with the current types of employment contracts regulated in the Polish Labour Code, i.e. employment contract for a trial period, employment contract for an indefinite period of time and employment contract for a definite period of time. Special attention has been paid to amendments to the Labour Code concerning these contracts, which have been in force since February 2016. The amendments have tried to respond to the most essential problems arising in the application of types of employment contracts and the need of implementation of European Union law standards. The paper also presents proposals of amendments referring to the current types of employment contracts offered in the new draft Labour Code. The amendments to the Labour Code and the new draft Labour Code prove that finding optimal concept of types of employment contracts is extremely difficult, because both conditions of social market economy and a protective function of labour law should be taken into account.

Keywords: employment contract for a trial period; employment contract for an indefinite period of time; employment contract for a definite period of time; termination of an employment contract; the new draft of Labour Code.

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Rodzaje umów o pracę w Polsce. W artukule poddano analizie rodzaje umów o pracę, które uregulowane zostały w obowiązującym Kodeksie pracy (umowy o pracę na okres próbny, umowy o pracę na czas nieokreślony oraz umowy o pracę na czas określony). Szczególną uwagę zwrócono na zmiany w Kodeksie pracy wprowadzone w lutym 2016 r. Zmiany te miały na celu rozwiązanie najistotniejszych problemów związanych z zawieraniem umów o pracę,a także potrzebą wdrożenia regulacji unijnych. W pracy przedstawiono także propozycje zmian odnoszące się do aktualnych rodzajów umów o pracę, zaproponowanych w nowym projekcie Kodeksu pracy. Nowelizacja Kodeksu pracy i opracowywany nowy projekt Kodeksu pracy dowodzą, że znalezienie optymalnej koncepcji rodzajów umów o pracę jest niezwykle trudne, ponieważ należy wziąć pod uwagę zarówno warunki społecznej gospodarki rynkowej, jak też ochronną funkcję prawa pracy.

Słowa kluczowe: umowa o pracę na okres próbny; umowa o pracę na czas nieokreślony; umowa o pracę na czas określony; wypowiedzenie umowy o pracę; nowy projekt Kodeksu pracy.

1. INTRODUCTORY REMARKS

Article 25 of the Labour Code contains a closed catalogue of types of employment contracts[3]. The content of this article has been amended as a result of the Act of 25 June, 2015 on the amendment to the Act – Labour Code and on amendment of some other acts, which entered into force in February 2016[4]. Previously it was possible to conclude an employment contract for an indefinite period of time, a definite period of time or the time of the completion of a specified task. If it was necessary to substitute an employee due to his/her justified absence from work, an employer could, for this purpose, employ another employee under an employment contract for a definite period of time comprising the absence. Each of these employment contracts could be preceded by an employment contract for a trial period. *De lege lata* the catalogue of employment contracts comprises only a contract of employment concluded for a trial period, an indefinite period, or a definite period. The amendment, trying to respond to the most important problems and the need of implementation of European Union law standards, has applied not only to the catalogue of employment contracts, but also to some extent to their legal regulation.

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[3] The Labour Code of 26.06.1974 (consolidated text – Journal of Laws 2018, item 917), hereinafter referred to as „L.C.".

[4] Journal of Laws, item 1220, hereinafter referred to as „the amendment".

2. EMPLOYMENT CONTRACT FOR A TRIAL PERIOD

Pursuant to Article 25 § 2 L.C. a contract of employment for a trial period shall be concluded to check the qualifications of an employee and the possibility of employing him/her to perform a certain type of work. As noted in the legal literature, this kind of employment contract cannot serve other purpuses but trial. It is argued that it is not possible to conclude such a contract if an employer does not intend or at least consider the further employment of the employee. In such a situation this kind of contract should be regarded as a contract of employment for a definite period[5]. Although the Labour Code indicates only the purpose mentioned above, it is noted that employment contract for a trial period serves vested interests of the employee as well. Thanks to it the employee can check the working conditions in an employing establishment[6].

The literature calls attention to the fact that because of the specific nature of the employment contract for a trial period it should be concluded only in the specific context[7]. Therefore the Labour Code indicates the restrictions on the duration of this contract and on its renewal.

A contract of employment for a trial period cannot exceed 3 months. In the legal doctrine, there is no consistency of views in the area of legal results of exceeding this period. All the views can be divided into two groups. On the one hand, the former of the views states that the whole contract should be treated as a contract of employment for a definite or indefinite period of time depending on the circumstances of a specific context[8]. However, the latter view, which seems to be more convincing, is that only the final term is invalid, therefore after 3 months it should be assessed what kind of contract is ruling[9]. Unfortunately, the amendment has not resolved this issue.

There are also some doubts whether the indicated period of 3 months is not too short, especially in case of work which is complicated or requires high

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[5] See A. Sobczyk, Umowa na okres próbny od 2016 r., Monitor Prawa Pracy 2016, No. 1, p. 25.

[6] See G. Goździewicz, T. Zieliński, Komentarz do art. 25 k.p. (in:) Kodeks pracy. Komentarz, ed. L. Florek, WKP 2017, LEX and M. Rylski, Umowa o pracę na okres próbny po nowelizacji kodeksu pracy, Państwo i Prawo 2017, No. 9, p. 64 and the Judgement of the Supreme Court of 16.12.2014, I PK 125/14, Lex 1622301.

[7] Ł. Pisarczyk (in:) System prawa pracy. Tom II. Indywidualne prawo pracy, ed. G. Goździewicz, Warszawa 2017, p. 322.

[8] K. Jaśkowski (in:) K. Jaśkowski, E. Maniewska, Komentarz aktualizowany do Kodeksu pracy, LEX/el. 2018.

[9] Ł. Pisarczyk (in:) System…, p. 324.

qualifications. That is the reason why it is postulated that the permissible period of trial should be prolonged to 6 months or even the whole year[10]. Alternatively, the prolongation of this contract is proposed if the social and economic purpose of the agreement has not been reached because of the justified absence of an employee[11]. Another proposal comes down to the introduction of an employment contract for an initial trial period. The aim of such a contract would be the adaptation of an employee to the working conditions in the particular position[12]. It seems that the view related to the social and economic purpose of the contract is the most persuasive.

When considering the renewal of an employment contract for a trial period with the same employee, it shall be stated that it is permitted in two situations: 1) repeatedly, if the employee is to be employed to perform a different type of work, 2) only once after the lapse of at least 3 years from the date of termination or expiration of the previous contract if the employee is to be employed to perform the same type of work. It is clear from the foregoing that the trial period is linked to the specific type of work[13]. It should be stressed that it is related to the work actually performed and not only to the work formally indicated in the contract[14]. What is more, it is worth emphasizing that this concept may cause many doubts in practice. As an example may be given the modification of an employee's obligations by 30% - is it a different type of work then[15]? One should agree with the statement that the renewal of a trial period is possible when there is a change of essential duties of an employee[16].

Taking into account that employment contract for a trial period is a kind of contract for a specific period the natural way of its termination is the expiry of the time period for which it has been concluded. Like any other employment contract, it can also be terminated by mutual agreement of the parties and upon a declaration of one of the parties without observing the termination notice period when specific requirements are met (Article 52, 53 and 55 L.C.). Such a contract may also be terminated with the following period of notice: 1) 3 business

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[10] Ł. Pisarczyk, Terminowe umowy o pracę – szansa czy zagrożenie?, Praca i Zabezpieczenie Społeczne 2006, No. 8, p. 3.

[11] In addition, it is emphasized that it should be the right of both sides of an employment relationship. For more on this topic, see M. Latos-Miłkowska, Ochrona interesu pracodawcy, Warszawa 2013, p. 109 – 110.

[12] K. Łapiński, Umowa o pracę na czas określony w polskim i unijnym prawie pracy, Warszawa 2011, p. 73.

[13] A. Sobczyk, Umowa…, p. 25.

[14] K. Jaśkowski (in:) K. Jaśkowski, E. Maniewska, Komentarz aktualizowany...

[15] M. Rylski, Umowa…, p. 68.

[16] Ł. Pisarczyk (in:) System…, p. 323.

days if the trial period does not exceed 2 weeks, 2) 1 week if the trial period is longer than 2 weeks and 3) 2 weeks if the trial period is 3 months.

When considering employment contract for a trial period, it is to be noted that an employer does not have to state the reason while terminating this employment contract by notice. Apart from that, the Labour Code does not provide for the consultation of the contract's termination with a trade union organization when an employee is its member[17]. It leads to the conclusion that employment contract for a trial period provides a weak stability of employment although some exceptions may be found. According to Article 177 § 3 L.C. an employment contract concluded for a trial period for longer than one month which would have been terminated after the third month of pregnancy[18], shall be extended until the day of birth. On the day of delivery the contract is terminated, but the former employee is entitled to maternity benefit. In the area of the Supreme Court jurisdiction it is also emphasized that termination of employment contract for a trial period immediately after its conclusion, without the possibility of performing work indicated in this contract, is an abuse of the right to terminate such contract because it is in contradiction with the social and economic purpose of this right and the principles of community life[19].

3. EMPLOYMENT CONTRACT FOR AN INDEFINITE PERIOD OF TIME

An employment contract for an indefinite period of time does not specify the term of the final duration of employment relationship. According to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP[20] employment contracts of an indefinite period of time are the general form of employment relationships and contribute to the quality of life of workers and improve performance[21]. Referring to the Polish labour law, it is worth noting that – similarly to other countries –

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[17] However, if an employee enjoys special protection (e.g. a trade union activist), there is a requirement to obtain the consent of a particular entity.

[18] Pursuant to the case law of the Supreme Court the term of expiration of the third month of pregnancy is calculated in equal measure lunar months (28 days). Compare the Judgement of the Supreme Court of 5.12.2002, I PK 33/02, OSNP 2004, No. 12, item 204.

[19] See the Judgement of the Supreme Court of 16.12.2014, I PK 125/14.

[20] *Official Journal L 175, 10/07/1999 P. 0043 – 0048,* hereinafter referred to as „directive 1999/70/EC".

[21] Compare item 6 of general considerations and preamble.

an employee enjoys the fullest protection of his/her rights under this kind of contract. This is, in particular, due to the fact that employment contract for an indefinite period of time links to the employer's obligation to give the reason justifying the notice. However, the Polish Labour Code does not include a catalogue of reasons permitting the notice. This is because of the fact that each case should be assessed independently. In the case law of the Supreme Court it is emphasized that giving notice is an ordinary way of termination of this type of contract. The given reason must be real, crucial and definite though[22]. In case of an employee's appeal the reason will be verified by a labour court.

It is noteworthy that the concept of the protection of an employee against termination by notice also involves consultation with a trade union organization. Pursuant to Article 38 L.C. the employer shall inform in writing the enterprise trade union organization representing the employee of any intention to terminate by notice a contract of employment concluded for an indefinite period and shall give the reason for termination of the contract. If the enterprise trade union organization decides that such a notice would be unjustified, it may present the employer with substantiated objections in writing within five days from receiving the information. Having considered the opinion of the trade union organization, or in absence of such an opinion received in due time, the employer shall make a decision on the notice.

The consultation mentioned above applies only to these employees who are the members of a trade union or whose rights a trade union has agreed to represent. However, the problem lies in the shrinking unionisation in Poland – it is estimated that currently, trade unions affiliate about 15% of employees and operate in about 5% of workplaces[23]. As a result, the consultation with a trade union organization plays a less significant role than the employer's obligation to give the reason justifying the notice (which refers to all employment contracts for an indefinite period of time without any exceptions).

Employment contract for an indefinite period of time can be – like other contracts – terminated by mutual agreement of the parties and upon a declaration of one of the parties without observing the termination notice period when specific requirements are fulfilled.

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[22] For more on this subject see, for example, L. Mitrus, Wypowiedzenie umowy o pracę z przyczyn dotyczących pracownika, Warszawa 2018 and A. Wypych – Żywicka, Zasadność wypowiedzenia umowy o pracę, Gdańsk 1996 and the case law mentioned there.

[23] J. Stelina, Zbiorowa reprezentacja pracowników w Polsce (in:) Problemy kodyfikacji prawa pracy. Wybrane zagadnienia zabezpieczenia społecznego, Gdańsk 2007, p. 97, footnote 41.

4. EMPLOYMENT CONTRACT FOR A DEFINITE PERIOD OF TIME[24]

This kind of employment contract is concluded for a definite period of time corresponding to the need and the actual periodic demand for work[25]. It involves establishing the term of completion of employment relationship by introducing a date or another certain, future event[26] (e.g. the end of parental leave or performance of specific work[27]).

Due to the abuse of fixed-term contracts, it was necessary to introduce a new preventive mechanism against this situation. This need was confirmed by the European Commission which initiated the proceedings against Poland relating to a conflict between the provisions of the Labour Code and the requirements of the directive 1999/70/EC. Another problem, referring to the length of the notice period, was exposed in the Judgement of the Court of Justice in case C-38/13, Małgorzata Nierodzik v Samodzielny Publiczny Psychiatryczny Zakład Opieki Zdrowotnej im. dr Stanisława Deresza w Choroszczy[28].

In accordance with the new content of Article 25^1 L.C., which has been in force since 22 February, 2016, the period of employment under an employment contract for a definite period, as well as the total period of employment on the basis of employment contracts for a definite period concluded between the same parties may not exceed 33 months, while the total number of such contracts shall be maximum three. The issue of duration of intervals between the

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[24] For more on this subject see: 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 and the literature mentioned there.

[25] Compare L. Florek, Umowa o pracę na czas określony, Praca i Zabezpieczenie Społeczne 2015, No. 12, p. 2.

[26] Compare J. Piątkowski, Aksjologiczne i normatywne podstawy prawa stosunku pracy, Toruń 2017, p. 296. For more on this subject, see, Ł. Pisarczyk, Nowy model zatrudnienia terminowego w prawie pracy? – część I, Monitor Prawa Pracy 2016, No. 4, p. 176 –177.

[27] It is worth noting that before the amendment the catalogue of employment contracts also included an employment contract for the time of the completion of a specified task. Nowadays its function is played by an employment contract for a definite period of time. For more on this subject, see, J. Piątkowski, Umowa o pracę na czas określony w Kodeksie pracy – nowa jakość czy powolny zmierzch tożsamości? (in:) Studia z Zakresu Prawa Pracy i Polityki Społecznej, ed. K. W. Baran, Kraków 2016, p. 13. In addition, pursuant to directive 1999/70/EC the term „fixed-term worker" means also, among others, a worker whose employment contract or relationship is determined by completing a specific task. Compare clause 3 of the directive 1999/70/EC.

[28] See the Judgement of the Court of Justice of 13.03.2014, C-38/13, http://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=C-38/13, hereinafter referred to as „Nierodzik case".

termination of the preceding and the establishment of the subsequent contract is of no significance any more and it is not important whether the employment contracts for a definite period of time are successive. Furthermore, the regulation concerning the problem of extending the term of performance of work is still in force. Pursuant to Article 25^1 L.C., if the parties resolve, while an employment contract for a definite period remains in force, to extend the term of performance of work such contract shall be regarded as a new employment contract for a definite period, concluded on the date following the date on which the termination of the original contract was to take place. If the period of employment is longer than 33 months or if the number of contracts is higher than three, an employee shall, starting from the day following the expiry of the period mentioned above, or from the day of conclusion of the fourth employment contract for a definite period, respectively, be deemed to be employed under an employment contract for an indefinite period. The limits mentioned above do not refer to employment contracts for a definite period entered into:

1) for the purposes of substituting an employee during his/her excused absence at work;
2) for the purposes of performing any work of casual or seasonal nature;
3) for the purposes of performing work during the term of office;
4) if the employer gives objective reasons attributable to the employer –where the conclusion of such a contract in all given cases addresses a real and temporary need and is necessary in that respect in the light of all the circumstances surrounding the conclusion of the contract.

The scope of the exceptions enumerated above may contribute to some doubts, because not all of them seem to be determined precisely enough (i.e. "objective reasons attributable to the employer"). Apart from that, the given conditions reflect the causal character of the contracts concluded in these situations. However, it is an open question whether an employment contract for a definite period of time within 33 months is also of a causal character. In the legal literature the prevailing opinion is that there is discretion of conclusion of this contract in this regard.

Generally, it may be noted that the amended provisions have not been in force long enough to assess them conclusively, but they seem to be more effective than the previous regulation. One may wonder whether provisions against abuse of contracts for a definite period of time would not be even more effective if the requirement of causality applied to all such contracts[29].

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[29] More on this topic, see, M. Skąpski, Ochronna funkcja prawa pracy w gospodarce rynkowej, Kraków 2006, p. 260 and next. Compare also A. Napiórkowska, B. Rutkowska, Umowa…, p. 62–65.

The amendment has also introduced some changes to the termination of an employment contract for a definite period of time with notice. Before the amendment the provisions stipulated that at the time of conclusion of an employment contract for a definite period longer than 6 months, the parties could provide for the early termination with a two-week period of notice. This right was extensively abused in practice[30], which was contrary to the stability of employment characteristic of fixed-term contracts. What is more, it was not a situation previously envisaged by the legislator[31].

In addition, as mentioned above, the Judgement of the Court of Justice in Nierodzik case drew attention to the problem of the duration of the period of notice. Before the amendment a two-week period of notice was fixed by legislator, regardless of the period of employment at specific workplace. According to the Judgement of Nierodzik case clause 4(1) of the Framework Agreement on fixed-term work must be interpreted as precluding a national rule, which provides that, for the termination of fixed-term contracts of more than six months, a fixed notice period of two weeks may be applied regardless of the length of employment at specific workplace, whereas the length of the notice period for contracts of indefinite duration is fixed in accordance with the length of employment at specific workplace and may vary from two weeks to three months, where those two categories of workers are in comparable situations.

In order to ensure the compliance of Polish regulations with directive 1999/70/EC the amendment has unified the length of notice of the contracts concluded for a definite and indefinite period of time. The notice period for both types of contracts is currently dependent on the period of employment at specific workplace and amounts to: 1) 2 weeks if an employee has been employed for less than 6 months, 2) 1 month if an employee has been employed for at least 6 months and 3) 3 months if an employee has been employed for at least 3 years.

Unfortunately, this change has coincided with the introduction of discretion of giving notice of an employment contract for definite period of time[32]. This solution is not compatible with the nature of this kind of contract and may cause

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[30] M. Rylski, Ochrona pracownika przed nadużywaniem terminowego zatrudnienia, Praca i Zabezpieczenie Społeczne 2014, No. 8, p. 2 and next.

[31] Compare the opinion of the Supreme Court relating to the government bill concerning the Act on the amendment to the Act – Labour Code and on amendment of some other acts, Warszawa 15.05.2015, BSA III-021-149/15, p. 4, hereinafter referred to as „the opinion of the Supreme Court".

[32] J. Stelina, Nowa koncepcja umowy o pracę na czas określony, Państwo i Prawo 2015, No. 11, p. 47 and K. Jaśkowski, Nowa umowa o pracę na czas określony, Praca i Zabezpieczenie Społeczne 2015, No. 11, p. 3.

some doubts because of the fact that fixed-term contracts are generally concluded for a short period of time of up to 33 months. Is there a need for the right of giving notice of such short contracts freely, without any restrictions then? Taking into account the nature of the contract for a definite period of time, it would be advisable to consider the regulation of possibility of giving notice by an employer only in few, specific cases enumerated by legislator.

Apart from the proposal mentioned above, it is worth noting that for some time now, a lively exchange of views of the labour law doctrine has concentrated on the possibility of the introduction of the employer's obligation to state justified reason while terminating an employment contract for a definite period of time with notice[33]. Nowadays this obligation is not in force, but considering clause 4(1) of the directive 1999/70/EC the problem may arise in the future.

Completing the foregoing considerations, it is worth emphasizing that – as indicated above – also this kind of contract may be terminated by mutual agreement of the parties and upon a declaration of one of the parties without observing the termination notice period when specific requirements are met.

5. THE PROPOSALS OF AMENDMENTS CONCERNING CURRENT TYPES OF EMPLOYMENT CONTRACTS IN THE NEW DRAFT LABOUR CODE[34]

In view of the problems that arise occasionally in the application of types of employment contracts, some of which have been raised in the foregoing considerations, various proposals aimed at finding optimal solutions are offered in this regard. In particular, attention should be paid to the draft Labour Code of March 2018 submitted by the Codification Commission of Labour Law[35]. Out

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[33] Compare on the one hand T. Liszcz, Dissenting opinion from the Judgement of the Constitutional Tribunal of 2.12.2008, P 48/07, Lex nr 465368 and B. Wagner, Umowa o pracę na czas określony jako podstawa zatrudnienia terminowego, Przegląd Sądowy 2009, No. 11 – 12, p. 11–12, on the other hand J. Piątkowski, Umowa…, p. 15 and L. Mitrus, Kilka uwag o rozwiązaniu za wypowiedzeniem umowy o pracę na czas określony (in:) Stosunki zatrudnienia w dwudziestoleciu społecznej gospodarki rynkowej. Księga pamiątkowa z okazji jubileuszu 40-lecia pracy naukowej Profesor Barbary Wagner, ed. A. Sobczyk, Warszawa 2010, p. 254.

[34] The draft Labour Code is available on the website 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/, hereinafter referred to as „the draft".

[35] The Regulation of the Council of Ministers of 9.08.2016 concerning the Codification Commission of Labour Law (Journals of Laws, item 1366).

of many different changes that have been proposed (i.e. new types of employment contracts, changes to the consultation in case of termination of employment contracts, introduction of the obligation to hear an employee before termination of employment contracts) some of them apply to the contracts analysed in this paper.

When it comes to employment contract for a trial period, the draft has clarified its purpose stating that this contract shall be concluded to check the qualifications of an employee and the possibility of employing him/her to perform a certain type of work and to check the working conditions by an employee as well. The length of trial period has been prolonged – generally up to 182 days and to 273 days, but only in respect of employees managing an employing establishment on employer's behalf, employees holding high management positions or employees in positions requiring some specific professional qualifications. The draft also indicates that preserving these time restrictions, employment contract for a trial period can be extended no more than 3 times. An employee who due to the reasons related to him/her and lasting at least 30 days did not perform the work, while the contract remains in force, can make a request to extend the duration of such a contract[36] regardless of the time restrictions mentioned above.

When it comes to employment contract for a definite period of time, the draft envisages the introduction of causality of its conclusion. The circumstances justifying conclusion of this contract are: 1) uncertainty of demand for work, 2) substitution of an employee during his/her excused absence at work, performing work during the term of office or objective reasons attributable to the employer – where the conclusion of such a contract in all these three cases addresses a real and temporary need and is necessary in that respect in the light of all the circumstances surrounding the conclusion of the contract and 3) exclusive interest of an employee. An employment contract for a definite period of time concluded in other circumstances shall be deemed as an employment contract for an indefinite period of time.

If the cause of the conclusion of a contract for a definite period of time is uncertainty of demand for work, the period of employment under this contract and the total period of employment on the basis of such contracts between the same parties may not exceed 540 days, i.e. 18 months, while the total number of such contracts shall be maximum three, unless a collective labour agreement states differently, whereas in this situation the total period of employment on the basis of such contracts may not exceed 1080 days, i.e. 3 years. The draft regulates results of exceeding time and quantitative restrictions in a similar way to present

[36] The prolongation may not exceed the time of an employee's absence.

provisions. If the period of employment is longer than 540 or 1080 days or if the number of contracts is higher than three, an employee shall, starting from the day following the expiry of the period mentioned above, or from the day of conclusion of the fourth employment contract for a definite period, respectively, be deemed to be employed under an employment contract for an indefinite period.

If a subsequent contract for a definite period of time is concluded in case of uncertainty of demand for work and such contract is entered into: 1) for the purposes of performing a different type of work due to the fact that further performance of the same kind of work is not possible any more, 2) after the lapse of at least 3 years from the date of termination or expiration of the previous employment contract if the employee is to be employed to perform the same type of work – the time and quantitative restrictions are counted again.

One of the new proposals regulated in the draft in respect of termination of employment contract for a definite period of time is introduction of an employer's obligation to justify the notice. The draft has taken into account the need for differentiation in relation to small employers, which is an extremely complex issue. It is worth noting that this subject has been actively disscussed for a long time in the legal doctrine, and different solutions have been proposed[37]. An employer can terminate an employment contract for an indefinite or a definite period of time without giving a justified reason when he/she employs no more than 10 employees. In such a case an employee has a right to compensation for termination of an employment contract, which amounts to remuneration for the period of one to three months dependent on the length of employment at a specific workplace.

Many changes have been proposed in the field of consultation. These proposals are very detailed and extensive what merits a negative assessment according to the opinion already presented in the legal literature[38]. Without going into further details, it should be mentioned that termination of a contract for a definite or an indefinite period of time by notice requires consultation or an employee's hearing by an employer employing more than 10 employees when the reasons of termination relate to an employee. The obligation of an employee's hearing does not apply to the following situations: 1) when the termination of a contract is caused by the reasons not related to an employee, 2) when an

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[37] Compare, in particular, Stosunki pracy u małych pracodawców, ed. G. Goździewicz, Warszawa 2013 and M. Łaga, Wielkość zatrudnienia jako kryterium dyferencjacji w prawie pracy, Warszawa 2016.

[38] Compare M. Gładoch, Wypowiadanie umów o pracę przez pracodawcę w projekcie Komisji Kodyfikacyjnej Prawa Pracy z lat 2016 – 2018. Refleksje krytyczne (in:) Ochronna funkcja prawa pracy. Wyzwania współczesnego rynku pracy, ed. A. Napiórkowska, B. Rutkowska, M. Rylski, Toruń 2018, p. 86 – 87.

employer employs no more than 10 employees. When it comes to an employer employing no more than 10 employees who has not stated the reason justifying the termination of employment contract for a definite or an indefinite period of time by notice, the provision concerning consultation shall not apply. However, consultation should take place under the terms of the draft when an employer has stated such a reason.

The model of types of employment contracts is still being actively disscussed in the legal doctrine. It is worth noting that soon after the amendment was presented the Codification Commission of Labour Law submitted the draft Labour Code containing new proposals concerning some of the problems mentioned in the paper. Finding optimal solutions in this regard is extremely difficult, because there is a need to balance the interests of both parties of employment contracts. The concept of types of employment contracts should, in particular, take into account conditions of social market economy and a protective function of labour law. This issue is of vital importance especially nowadays when workers are increasingly employed on the basis of civil contracts.

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