Employment & Benefits - Poland

Contractual shortening of notice period possible for employees

Contributed by **Sołtysiński Kawecki & Szlęzak**

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Introduction

In its judgment of March 26 2014,(1) the Supreme Court ruled that notice periods may be shortened, but only when the notice is served by the employee and the shorter notice period is more favourable to that employee than the statutory one. The judgment outlines the Supreme Court's position on the autonomy of will of parties to employment contracts in respect of the length of notice periods. However, it is still not possible to shorten the notice period in case of termination by an employer.

Facts

The employee was employed from February 1 2007 until August 31 2012. The first employment contract was for a fixed term; upon its expiry, the parties concluded an open-ended contract, which was replaced by new open-ended contracts several times. Each consecutive open-ended contract included a clause under which the contract could be terminated with one month's notice. On July 27 2012 the employee terminated the contract with notice. Upon receiving the notice, the employer informed the employee that, pursuant to legal provisions, he was bound by a three-month notice period.

The employee brought an action against the employer before the labour court and requested confirmation that the one-month notice period should apply. At first instance, the court ruled that although the statutory notice period applicable to the employee (given his length of his service) was three months, the parties to the contract were entitled to shorten this period and thus a one-month notice period should apply. The second-instance court reversed the judgment, dismissed the claim and stated that although it was possible to lengthen the statutory notice period, this could not be shortened. Pursuant to the second-instance court, the notice period could be shortened only after it had been served by either the employee or the employer and the parties to the contract had subsequently agreed to accelerate the effective termination date. The employee appealed to the Supreme Court.

Decision

The Supreme Court stated that it is possible to shorten the notice period (if the employee serves the notice) if it is more favourable to the employee than the statutory notice period.

Pursuant to Article 36(1) of the Labour Code, termination notice periods for open-ended employment contracts depend on the length of employment as follows:

- two weeks for less than six months of employment,
- one month for at least six months of employment; and
- three months for at least three years of employment.

The Labour Code explicitly allows for these statutory periods to be shortened if the contract is terminated by the employer due to bankruptcy or liquidation or for other operational reasons. If this is the case, the three-month notice period can be shortened to one month, but the employee is entitled to compensation equal to the remuneration for the remaining part of the initial notice period.

Any other modifications of statutory notice periods should be preceded by establishing the legal nature of Article 36(1). It should be verified whether this provision is:

- imperative and thus cannot be contractually changed;
- semi-imperative, which means that it is binding only in one direction – that is, the parties to the contract can change it provided that these changes are more favourable to the employee; or

- dispositive, and thus can be changed freely by either party.

The court ruled that the respective provision was of a semi-imperative nature. The validity of such clause should be assessed according to the principle set out in Article 18 whereby the provisions of employment contracts and other acts on the basis of which an employment relationship is established may not be less favourable to an employee than the respective provisions of law. Any contractual stipulations that are less favourable to an employee than the provisions of law are invalid and the appropriate provisions of law will apply instead. This assessment should be based on objective criteria (eg, the rate of unemployment in a given market) and should take into account the employee's situation at the time of the contract's conclusion and not at the time that the termination notice is served.

However, according to the court, it is still not possible to shorten the notice period in case of termination by an employer. Such stipulation will always be less favourable to the employee than the respective legal provisions. If a stipulation concerning the shortening of the notice period is introduced for both parties, it may be found null and void with respect to notice served by the employer and enforceable with respect to that served by the employee.

Comment

The judgment outlines the Supreme Court's position on the autonomy of will of the parties to an employment contract concerning the length of the notice period. Over more than 40 years, the Supreme Court's position has changed in this respect and the scope of autonomy of will of the parties to employment contracts has been gradually increased.

At the very beginning, the court's position was that the provisions concerning notice periods were mandatory and could not be changed either in contracts or in collective bargaining agreements.

In the 1990s the court reconsidered its position and stated that the provision in question was of a semi-imperative nature and thus it was possible to change the notice period, provided that it was favourable to the employee. It held that the provisions introducing longer notice periods for employees will generally be more favourable to employees than the respective statutory provisions. In subsequent cases, the court permitted the lengthening of notice periods, irrespective of whether the longer period applied only to the employee or to both parties.

Finally, in the case at hand, the court ruled that the statutory notice periods can not only be extended but also shortened, provided that this benefits the employee.

In Polish market practice, the parties to an employment contract occasionally decide to extend the notice period, especially in contracts with key employees. As a consequence of this judgment, some employers and employees – especially those employees with stronger bargaining power – may decide to shorten the notice period, but this is unlikely to become a wide-spread practice.

Endnotes

(1) II PK 175/13

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