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Current Perspectives Concerning the Autonomy of Will while Concluding a Fixed-Term Employment Law Relationship

Abstract: The present text focuses on selected issues with regards to the private law principle of the autonomy of will and its manifestations within the area of labor law. More precisely, its limitations are analysed in the event of concluding an employment law relationship for a fixed term. The major restriction in the given context is seen in the requirement of one of the contracting parties to be procedurally active (while performing the respective juridical act) so that the anticipated legal consequences could be achieved. Firstly, the following paragraphs briefly deal with the general position of Czech labor law within the national regulation, in order to introduce the relevant legal context. Secondly, the main scope of the text represents limited analysis of a current fixed-term employment law relationship regulation from both the national (Czech) and supranational (EU) perspectives. Most importantly, the respective provisions arising out of applicable laws on the domestic level (the Czech Labor Code) have been confronted with those existing on the EU level (Directive 99/70/EC). Therefore, the desirable accordance of the former with the latter could be proven. As far as no less significant practical aspects are concerned, the final part points out actual challenges related to presupposed legal conversion of a fixed-term employment law relationship (based on the concluded employment contract) into an indefinite one. In the light of recent case law which will be mentioned, the conditions as prescribed in the Czech Labor Code are not interpreted unanimously, which naturally affects its application in practice in a more negative manner.
Keywords: autonomy of will principle, Czech Labor Code, Directive 99/70/EC, employment law relationships, EU labor law, fixed-term employment law relationship

Introduction

The main aim of this text is to provide general remarks concerning the matter of the principle of the autonomy of will and its manifestations while commencing an employment law relationship for a fixed term. More specifically, the limitations thereof are analysed within the stated context. It has to be particularly noted, though, that the qualitative level, as far as the outlined principle is concerned, shall be understood for the purposes of the article presented here as focusing merely on the requirement for a proactive attitude by one of the respective contracting parties when the legally binding criteria determining conversion of a fixed-term employment contract into an indefinite one have not been satisfied. The contribution tries to cover selected problems arising out of general clauses, whether national, supranational (in the sense of EU regulation), or even transnational (international) labor law, from both the theoretical as well as the practical point of view, as will be demonstrated further on.

As far as the scope of this paper, *ratione temporis* and *ratione loci*, is concerned, it operates, on one side, solely with the respective currently effective legal regulation in the Czech Republic. Nevertheless, it proves natural, on the other hand, not to omit the relevant EU framework, here in the form of the Directive on Fixed-Term Work[1], mostly as the binding basis for national legal orders. In this light it appears without doubt that the aforementioned restrictions on the autonomy of will apparently reflect the foremost of the basic principles[2] of employment law relationships which are expressly stipulated in the Czech Labor Code[3], namely the special statutory protection of the employee's position.

Turning to the applied methodology, the content is put forward as follows: Firstly, it seems inevitable to briefly point out the particular position of the branch of labor law within Czech jurisdiction, in order to introduce the relevant national legal framework properly. The major analysis then follows, while building the very core of the text, having taken the EU law's direct influence on the Czech national regulation into consideration. Conversely, therefore, the accordance of respective domestic norms with the ones adopted on the EU level shall be expressed. Finally, recent related caselaw conclusions have been included, so that the coherent practical

1 Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed--term work concluded by ETUC, UNICE and CEEP (O.J. EC L 175, 10.07.1999, p. 43), hereafter referred to as Directive on Fixed-Term Work or Directive.

2 For details on the notion of "principle" and its relationship (or distinctions, respectively) to the correlating notion of "rule" as well as its common characteristic features, compare e.g. J. Bengoetxea, General Legal Principles Navigating Space and Time, (in:) U. Bernitz, X. Groussot, F. Schulyok (eds.), General Principles of EU Law and European Private Law, Alphen ann den Rijn 2013, pp. 48–50.

3 Act No. 262/2006 Coll., Labor Code, as amended (hereafter referred to as Labor Code or LC).

aspects of the issue in question could be covered. As will be exemplified in the final subsection, contradictory decisions of the highest national courts negatively make the analysis more complex, while leading to ambiguity of regulation and, relatedly, significant legal uncertainty.

1. Labor Law within the Czech Legal Order

To begin by outlining the position of the branch of labor law in the Czech legal framework, it has been constantly supposed to belong to the sphere of private law. Notwithstanding this fact, strong relations towards public law and acts thereof can be felt simultaneously. Within the context discussed, it proves pertinent that general descriptive characteristics concerning the field of Czech labor law can be formulated as "a civil law discipline with a considerable number of public law elements"[4]. Its significant history of being part of private law is notable[5]. In spite of major connections with civil law, the fundamental legal source represents the effective Labor Code. Yet it appears necessary to highlight the fact that this act itself shall not be deemed as a particular sole codification in a narrower sense.

It is, naturally, possible to imagine the occurrence of questions which are, together with their appropriate solution, not contained therein, and hence the Labor Code may not be applied based on such a legal gap. Subsequently, in full conformity with the current principle of subsidiarity of the Civil Code[6] in employment law relationships[7], the respective issues shall be governed thereby, as stated in Section 4 LC, consistently in accordance with the basic principles of employment law relationships whose formulations are to be found in Section 1a(1) LC.

For the purposes of this text, the specific two parts of the Labor Code constitute a significant national legal framework. General provisions, as contained in Part One, consist of four chapters, of which the first (putting the remaining ones aside here) regulates the subject of the act in question as well as defining employment relationships. In this place, the crucial nature of the already-mentioned basic principles of employment law relationships are described. More precisely, the fundamentality of the noticeably most-favoured principle covers a special statutory protection of the employee's position according to Section 1a(1)(a) LC. It is, namely,

4 V. Štangová, Pracovní právo – zvláštní část práva soukromého, (in:) J. Dvořák, A. Macková (eds.), Pocta Aleně Winterové k 80. narozeninám, Prague 2018, p. 442. Quotation translated by the author of this text.

5 V. Križan, Visegrád countries and their legal system, (in:) V. Križan et al., Implementation and Enforcement of EU Labour Law in the Visegrad Countries, Olomouc 2014, p. 16.

6 Act No. 89/2012 Coll., Civil Code, as amended.

7 For details on the mutual connection of the mentioned branches of law and their legal evolution, compareg J. Pichrt, Relationship between Labour Law and Civil Law, (in:) J. Pichrt, M. Štefko, Labour Law in the Czech Republic, 3rded., Alphen aan den Rijn 2018, paragraphs no. 42–49.

included *inter alia* among the principles expressing the values that protect public order, as prescribed by Section 1a(2) LC.

Part Two of the Labor Code provides for particular norms with regard to an employment law relationship. The fundamental framework concerning the issue subject to analysis within this text is composed of Chapter II, and in particular Section 39 LC. As far as unavoidably relating to basic academic distinctions is concerned, a fixed-term employment law relationship is deemed a component of the group of "typified atypical works," together with part-time work and temporary agency work[8]. Furthermore, it can still be noted that the regulation on employment law relationships for a fixed term brings its own provisions for their ending in Section 65 LC. Nonetheless, both the outlined complex problematics of other non-standard works as well as of termination of an employment law relationship, whether fixed--term or even open-ended, go beyond the scope of this contribution.

From the general point of view within discourse in the field of labor law, having taken the foregoing into consideration, it is possible to formulate the main purpose of employment rules. This shall be considered in counterbalancing the manifest inequality through preferential treatment of the weaker party, represented by the employee[9]. On the basis of the statement provided, such an approach mirrors legal enshrinement of dichotomous, albeit complementary, elementary functions of employment law relationships, and, accordingly, of labor law as a whole and as a particular branch of law. Unsurprisingly, these are arguably notoriously distinguished as protective and organizational functions.

2. Fixed-Term Employment Law Relationship de lege lata

As already stated above, the core of this text focuses on a fixed-term employment law relationship, as regulated in the contemporary legal state. The following paragraphs thus try to provide practical evidence of restrictions of the aforementioned tendentiously prevailing principle of the autonomy of will of contracting parties through enacted measures. In the light of the described legal framework adopted on the EU level, it seems advantageous to concentrate on the indisputably necessary conformity of the national regulation therewith.

In order to briefly cover the relevant theoretical background, it seems useful to emphasize the fundamental value of a fixed-term employment contract, as recognized among sophisticated members of the academic community dealing with

8 N. Countouris, The Changing Law of the Employment Relationship: Comparative Analysis in the European Context, London and New York 2016, p. 89.

9 P. Hůrka, Section 1, (in:) P. Hůrka, N. Randlová, Labour Code. Commentary, Prague 2011, pp. 3–4.

labor law and connected issues[10]. In the presented context, differentiating the position of such employment contracts, as follows in the paragraph below, could be suggested, noting the fact that the attitudes discussed will behave literally as two inextricable sides of one coin.

Firstly, it is therefore possible to mention the position in legislation of employment contracts for a fixed term, which tends to appear rather negative. These are regarded as non-standard, irregular, flexible, atypical, precarious[11], or inferior contracts, in comparison with normatively, and mostly preferred, standard[12], or traditional, open-ended – meaning indefinite – employment contracts in the context analysed. Such an approach could be supported by creation of a regulation bringing legal justification for the suppression of the practical use of fixed-term employment contracts, in connection with other atypical forms of employment contract. Secondly, on the other hand, the opposing, thus apparently rather positive, perception is felt to prevail in practice, since, in general, an employment contract for a fixed term effectively works as a legal instrument for enabling an increase in flexibility and employment opportunities in society.

2.1. Applicable Law of the European Union (EU)

On the supranational level, the most relevant legal scope has been created by adopting the Directive on Fixed-Term Work[13]. Therefore, the framework agreement on fixed-term work, concluded by named cross-industry organizations on March 18, 1999 and annexed to the Directive, could become incorporated as a legally binding secondary source of law. Its declared purpose, with special regard to the above--indicated limitations of the autonomy of will, based on Clause 1(b), is to "establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships." This obligation is specified with enacted measures to prevent abuse, as expressly stipulated in Clause 5. In the light of related case law, such provision, although not "unconditional and sufficiently precise," is

10 H. Nakakubo, T. Araki, Introduction, (in:) R. Blanpain et al. (eds.), Regulation of Fixed-Term Employment Contracts. A Comparative Overview, Alphen aan den Rijn 2010, p. xxii.

11 Compare e.g. J. Komendová, Základy pracovního práva EU, Prague 2016, p. 167.

12 Additionally, the concept of a "standard employment law relationship" and its current process of development has recently come under the scrutiny of experts focusing academically on labor law, who in the stated context talk about "life/death/resurrection of the standard employment relationship." See A. Bogg, C. Costello, A.C.L. Davies, Editors' Introduction, (in:) A. Bogg, C. Costello and A.C.L. Davies (eds.), Research Handbook on EU Labour Law, Cheltenham and Northampton 2016, pp. 7–8.

13 Nonetheless, it would be inaccurate to suppose that the Directive covers the only applicable legal source. On whether substantial hard-law or subsequent soft-law instruments, summarized in recent studies, compare e.g. N. Kountouris, EU law and the regulation of "atypical" work, (in:) A. Bogg, C. Costello, A.C.L. Davies (eds.), Research Handbook…, *op. cit.*, pp. 246–247.

enough so that individuals would be able to rely on it before a national court, unlike Clause 4(1) Directive covering the principle of non-discrimination[14].

In accordance with letters (a)–(c) of Clause 5(1) Directive, the EU Member States are required to meet at least one of the following provisions, whilst taking account of the individual needs of either specific sectors or categories of workers. These rest in presenting objective reasons which would justify the renewal of fixed--term employment contracts[15], in stating the maximally admissible total duration of successive fixed-term employment contracts, and last but not least, in determining the number of possible renewals of those contracts. Furthermore, objective reasons will clearly affect the respective addressees in the non-discriminatory manner outlined. Relevant recent case law affirms that the discussed regulation precludes such national legislation, which would fail to provide compensation for termination of a contract of employment differently, if a permanent worker (employed under a temporary replacement contract) is comparable to a temporary one (employed under a contract of indefinite duration). This subsequently creates the basis for the conclusion that "the mere fact that the worker has carried out his work on the basis of a temporary replacement contract cannot constitute an objective ground justifying the failure to grant such compensation to that worker"[16].

In direct connection with the basic formulated prerequisites, on the basis of Clause 5(2) Directive, respective national legislations shall further identify under which particular conditions the employment relationship for a fixed term is regarded as successive, and when it shall be subsequently deemed as an employment contract for an indefinite period of time. As far as the latter is concerned, the highly relevant and closely related case law expressly excludes the possible inapplicability of adopted protective rules (intended to penalize the misuse of successive fixed-term contracts by the automatic transformation of the fixed-term contract into a contract of indefinite duration) to a selected sector with "no other effective measure in the domestic legal

14 Judgment of CJEU of 15 April 2008 on the case of Impact v. Minister for Agriculture and Food and Others, C268/06, point 80.

15 The concept of such objective reasons is interpreted as justifiable solely by occurrence of "specific factors relating in particular to the activity in question and the conditions under which it is carried out." In this sense, neither "a general provision of statute or secondary legislation of a Member State"(for details, see Judgment of CJEU of 4 July 2006 on the case of Konstantinos Adeneler and Others v. ELOG, C212/04, point 75) nor "a collective agreement concluded between the staff union representatives and the relevant employer" (for details, see Judgment of CJEU of 13 September 2007 on the case of Yolanda Del Cerro Alonso v. Osakidetza-Servicio Vasco de Salud, C307/05, point 59) are seen as adequate.

16 Judgment of CJEU of 14 September 2016 on the case of Ana de Diego Porras v. Ministerio de Defensa, C596/14, point 52.

system penalising abuses identified" therein[17]. In the mentioned case from Italy, the sector covered the activities of operatic and orchestral organizations.

2.2. Applicable Law in the Czech Republic and its Conformity with EU Law

As far as the compliance of national labor law provisions with EU law is concerned, it has been *expressis verbis* anticipated by the legislator through Section 1(c) LC. Its wording confirms that the Labor Code contains the transposition of applicable regulations adopted on the EU level. In order to unveil all potential traps, as well as to exclude any doubts, it proves essential in the admitted context of this text to focus on a deeper analysis of Section 39 LC. Primarily, it encompasses dealing with the general legislative approach to the issue in question, while interpreting defined principles of subsidiarity and exceptionality. Thereafter, it is suggested that two substantial and obligatory required criteria be differentiated, formulated as temporality and speciality (exclusivity). Moreover, it seems inevitable, on the basis of the information provided, to formulate key consequences with a great practical impact, which would demonstrate incompatibility with presented standards.

From the general point of view, concluding the employment contract for a fixed term is seen as a subsidiary measure. From a general perspective, this apparently implies the immanent tendency to restrict the autonomy of will being applied to contracting parties who are likely to be about to conclude an employment contract for a limited period of time, even in those situations, irrespective of the reason in question, when such a form of obligation might prove more advantageous for both of them. In this sense, it is very clear to insist on preferring an indefinite (open-ended) employment law relationship instead[18]. Relating to the approach of the overall subsidiarity of a fixed-term employment relationship, the importance of its exceptionality has to be emphasize subsequently. This means, in particular, that special conditions of the analysed legal concept, especially connected to its temporality (as will be further discussed below), cannot subsume all legal relationships in the field of labor law, or, more precisely, of employment law. Its scope *ratione materiae* is hence restricted, as expressed by Section 39(6) LC, for temporary agency work[19]. For employment contracts establishing an employment law relationship for a fixed term made between an employment agency and an employee to perform work for another employer, special governing rules are to be applied.

17 Judgment of CJEU of 25 October 2018 on the case of Martina Sciotto v. Fondazione Teatro dell'Opera di Roma, C331/17, point 72.

18 Section 39(1) LC: "An employment law relationship shall exist for an indefinite term unless its specific term has been explicitly agreed."

19 Meaning employment by an agency, in the sense of Sections 307a-309 LC.

Turning to the focus on the special obligatory requirements of fixed-term employment law relationships, Section 39(2) LC provides two essential limitations on temporality. Firstly, the longest legally approved duration of such contracts, establishing the employment law relationship in question, between the same contracting parties (i.e. both the employer and the employee are identical) is three years. Secondly, yet not less importantly, it is allowed to repeat such a relationship only twice as a maximum, while the same applies to any extension of the original fixed-term employment law contract.

In other words, the total length of a fixed-term employment law relationship shall not exceed nine consecutive years from the date of commencement of the very first employment law relationship for a fixed term, provided it was concluded between the same contracting parties. The one and only general exception (notwithstanding the special ones related to particular legal provisions and stated objective reasons, as will be demonstrated later on) is formulated in Section 39(2)*in fine* LC. It fully enables those contracting parties to agree on another fixed-term employment law relationship (meaning a duration of another nine years in total again), in cases where a time gap occurred, counting a period of at least three years from the date of the end of the previous fixed-term employment law relationship.

As far as the already-mentioned concept of speciality (exclusivity) is concerned, it should be perceived rather as a sole principle than two separate ones. As a matter of fact, despite depending upon the respective governing provision, both of them still determine particular criteria containing exceptions from the above-introduced general conditions applicable for agreementofa fixed-term employment law relationship. The notion of "speciality based on special legal regulations" can be distinguished in Section 39(3) LC. It says, similarly to what has been noted with regards to particular rules on temporary agency work, that binding contents of Section 39(2) LC "shall not affect the procedure under special legal regulations when it is expected that the employment law relationship may only last for a fixed period." Such areas might be illustrated by the employment of foreigners[20]or pedagogical workers[21], disposing *lex specialis* rules on their concluded fixed-term employment law relationships.

On the other hand, Section 39(4) LC sets forth the notion of "speciality (exclusivity) based upon specified objective grounds on the employer's side." These are stipulated as "serious operational reasons" or "reasons consisting in the special nature of the work" and are simultaneously presumed to possibly make it "unreasonable to require an employer to propose establishing an employment law relationship for an indefinite term." Nevertheless, allowance to act against the presented principle

20 See Section 92(2) of the Act No. 435/2004 Coll., on Employment, as amended.

21 See Section 23a of the Act No. 563/2004 Coll., on Pedagogical Workers and on Amendments to Some Further Acts, as amended.

of temporality as contained in Section 39(2) LC occurs, if only two subsequent conditions are fulfilled. Firstly, any alternative procedure shall be appropriate (proportionate) to named reasons. Secondly, in total four substantial necessities, specifying the material[22], personal[23], as well as the temporal[24] scope of such a process, are required to be set out by written agreement with the respective trade union. In the event of the absence of any trade union being active at the employer, such an agreement might be substituted by an essentially identical internal regulation, issued by the employer.

To conclude this subsection: on the basis of the analysis provided it seems clear that provisions on a fixed-term employment law relationship correspond to measures preventing its abuse, as stipulated in Clause 5(1)(a)-(c) as well as Clause 5(2)(a) Directive. The remaining requirement of Clause 5(2)(b) Directive with regards to conversion into an indefinite employment law relationship will be discussed in the following part. Yet it has to be additionally noted that the adopted formulation of objective reasons, through the applied abstract (or relatively indeterminate) hypothesis, might practically tend to lead to a far more extensive purview here of than originally intended. In this light, it thus seems recommendable, in full accordance with the aforementioned case law, to consider amending respective provision by defining such reasons more clearly and specifically.

3. Practical Consequences – Under What Conditions a Fixed-Term Employment Law Relationship Shall Be Deemed to Be of Indefinite Duration

Fundamental evidence of the outlined principle, enacting a special statutory protection of the employee's position significantly manifesting in practice, inclines to be in the event of the failure to meet the described prerequisites which are compulsorily required. In other words, Section 39(5) LC formulates the consequences provided that the stated principles (which have been formulated solely for the purposes of this paper) of both speciality (exclusivity), as regulated by Section 39(3) LC or by Section 39(4) respectively, and temporality, in accordance with Section 39(2) LC, have not been satisfied.

Contrary to those respective provisions, the procedure establishes a basis for legal transformation (conversion) of a fixed-term employment law relationship into

22 Section 39(4)(a)-(b) LC: "a detailed specification of such reasons, as well as "the rules of the alternative procedure followed by the employer in contracting and repeating employment law relationships for a fixed term."

23 Section 39(4)(c) LC: "the group of the employer's employees to whom the different procedure shall apply."

24 Section 39(4)(d) LC: "the period for which such agreement is made."

an open-ended one. So that the employment law relationship in question shall be deemed as concluded for an indefinite term, the employee is obliged to notify his or her employer in writing prior to expiry of the agreed term, that he or she insists on being further employed. Furthermore, as Section 39(5) *in fine* LC provides, "both the employer and the employee may apply to the court for determination as to whether the preconditions set out in [Section 39(2)–(4) LC] above have been fulfilled, not later than within two months of the date when the employment law relationship was to end by expiry of the agreed term."

Therefore, based on the explicit wording of the norm, it seems *prima facie* quite unambiguous that two essential features to be met determine the possibility of activating the aforementioned fixed-term employment law relationship conversion. Namely, this procedure shall not be possible if the employee's notification in writing, together with filing the claim at the court during the prescribed period of time, does not occur. The approach interpreting this issue in such a manner has been constantly confirmed by the consolidated case law of the Supreme Court of the Czech Republic related thereto. As can be briefly summarized, it rules that legal conversion is impossible without a proactive approach, irrespective of whether applied by the employee or by the employer in the form of claiming non-compliance with binding conditions set out for the commencement of an employment law relationship for a fixed term (or its compliance, respectively)[25]. As a result, in such cases the employment law relationship shall always be terminated on the agreed day of expiration of the term.

Conversely, the Constitutional Court of the Czech Republic suddenly expressed its own and completely reversed point of view. It stressed, *inter alia*, that an interpretation which conform constitutionally shall prevail while dealing with this matter of fact[26]. The statement particularly rests on suspending the regulated criterion of the necessity to apply to the respective court within the presumed period of two months, even though it has been enshrined into the discussed provision. For it is inevitable to recognize, in the words of the subsequent opinion of the Constitutional Court, that employment law relationships are unequal in the position of both their contracting parties, meaning the employer acts as *pars potentior*[27]. Based on this fact, it is possible, or even obligatory as here, to turn away from the explicit text of a legal norm if needed by various particular components, e.g. one of the principles with the basis in a constitutionally conforming legal order as a valuable whole.

Notwithstanding the aspect that all opinions reached by the Constitutional Court shall be binding, thus reflected in and followed by general caselaw practice,

25 Judgment of the Supreme Court of 7 April 2010, file no. 21 C do 5008/2008.
26 Ruling of the Constitutional Court of 8 December 2015, file no. II. ÚS 3323/14.
27 Ruling of the Constitutional Court of 31 August 2016, file no. III. ÚS 2703/15.

the Supreme Court decided to insist on its original approach regarding this issue. The anticipated decision fully accepts the previous approach of the Supreme Court, putting it straightforwardly that in the event of a failure to file before the respective court (be it by the employer or the employee),with a claim that the conditions for concluding a fixed-term employment contract had not been met, or, respectively, in case such a procedural action has not been submitted in time, the employment law relationship shall end as soon as the agreed period of time therein expires[28]. It is therefore strongly advisable for the rational legislator to consider submitting amendments to the respective provision which would eliminate the currently extremely undesirable state of legal uncertainty. In general, it seems unsustainable to preserve the impossibility of being aware of whether or not one is obliged to file the presented claim presupposed in Section 39(5) LC, as contradictory findings have not yet been made uniform.

Unfortunately, even the most recent Constitutional Court case law does not bring a new, clear light, desirably able to provide the removal of the ongoing failure to fulfil legitimate expectations of both contracting parties properly. It surprisingly reckons the aforementioned opinion-based discrepancy, in interpretation of the respective provision, to be of no procedural importance while deciding whether or not a particular fundamental right of the party in question was affected[29].In the words of the cited resolution, such incompatibility apparently could not have any effective influence on meritorious decision-making in the presented case. To express it in other words, the necessity that has been reached, that the constantly emphasized principle *in favorem negotii*[30] prevails, shall not be felt as infringing any fundamental rights of the claimant in the case mentioned. As a result, the approach of the Supreme Court, as presented above, has thus apparently been indirectly approved by the Constitutional Court as conforming constitutionally, albeit expressly merely under this particular procedural situation.

Conclusion

This text tries to deal with the issue of concluding an employment law relationship for a fixed term together with its consequences arising out of the application thereof in practice. The selected problematic was subject to research in the light of the national (Czech) as well as the supranational (EU) legal framework. The essential principle of autonomy of will, also considerably influencing employment law

28 Judgment of the Supreme Court of 26 June 2017, file no. 21 C do 1211/2017.

29 Resolution of the Constitutional Court of 30 September 2019, file no. III. ÚS 2923/17.

30 The obvious preference for validity rather than the voidance (invalidity) of a particular legal act. The named principle has been expressly mirrored in Section 574 of the Act No. 89/2012 Coll., Civil Code, as amended: "Juridical acts are preferably to be considered valid rather than invalid."

relationships, is qualitatively restricted in the context discussed in order to provide particular protection for an employee, generally perceived as the weaker contracting party within the field of labor law. From this point of view, the apparent suppression of the autonomy of will for both contracting parties is considered to be present in their obligation to strictly follow the enacted rule on conditions intended for desired legal consequences. From the employee's side, these are especially related to *ex lege* substitution of a fixed-term employment contract with an open-ended one due to non-conformity with currently effective law caused solely by the employer.

Based on the analysis contained here, it appears possible to finally conclude that the relevant Czech regulation on a fixed-term employment law relationship is in accordance with respective norms adopted on the EU level. Nonetheless, some problematic aspects have been observed, whose appropriate correction *de lege ferenda* seems to be highly recommended. Firstly, the enacted objective reasons justifying the renewal of the fixed-term employment relationship (contract) incline through their very abstract formulation to potentially far more extensive interpretation than originally defined. Secondly, the presumed conversion into an indefinite employment law relationship following the fulfilment of prescribed criteria currently seems to be improperly affected by disunity arising from relevant court decisions, with insufficient tendency to hope for a reversal.

In order to remove the abovementioned undesirable legal uncertainty arising out of contradictory approaches contained in the cited court decisions, the rational Czech legislator is herewith advised to consider confirming his evident original intention. To be more specific, the wording of the analysed regulation, Section 39(5) LC, itself implies the necessity of a proactive action in the form of filing a claim to the respective court as a separate criterion (besides the one requiring the employee to notify the employer about insisting on being further employed) for realization of the legal conversion of a fixed-term employment law relationship into one of an indefinite duration. The purpose would be achieved if the provision were amended, adding that in case of failure to comply with accomplishing such a procedural act, the legal presumption (fiction) of an open-ended employment contract will be impossible.

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