

When a fixed-term employment does not expire

Act I of 2012 on the Labour Code (“Labour Code”) has changed the former rules in several respects including the issue of fixed-term employment relationship. However, the original rules and related amendments have also become source of a number of misunderstandings and legal disputes. Notably, such situation occurs when the parties establish fixed-term employment relationship on several occasions successively without being aware of their limits and consequences. Also, a situation can easily occur when the employer wishes to stipulate a probationary period for either the original or the new relationship, too. Finally, there are instances where the employment relationship continues upon expiry of the fixed term but the parties forget to translate it into a legal form. We are finding the answers to these questions as follows.

The parties have no free choice in these matters

Timeliness is the first condition in case of a fixed-term employment relationship. Unless otherwise provided in the contract of employment, the employment is established for an indefinite duration (Subsection 45(2) of the Labour Code). Therefore, where employment is for a fixed term, the parties shall specifically provide in the contract of employment whether it is made until a specific calendar day or a specified date of expiry (e.g., until an employee on maternity leave returns). The **duration** of a fixed-term employment **may not exceed five years**, including the term of a new fixed-term employment established within six months of the expiry of the extended and the previous fixed-term employment contract. And the parties may not depart from this rule under Subsection 213(a) of the Labour Code by mutual consent (agreement, contract of employment, collective agreement etc.). On the other hand, the shortest duration of the fixed term is not specified in the Labour Code but must exceed the probationary period if stipulated (Court Decision No BH2007.388.).

Another essential rule is that a fixed-term employment can only be **extended** or **established repeatedly** within six months of the expiry of a fixed-term employment contract if the employer has a legitimate interest in doing so (seasonal work, workload increased on a temporary basis: e.g., examination of asylum claims). In addition, the agreement may not be aimed at impairing the legitimate interest of the employees. The latter conditions are to be generally interpreted as taken together. For example, the court did not accept the argument of the employer as being lawful invoking that fixed-term employment established repeatedly are made with the aim of getting a better insight



into the work performance of the employees as the former employment was also established for this purpose (Court Decision No BH2007.388). It also clearly appears in practice that accumulation (repeatedly requiring) probationary periods cannot be regarded as lawful either (MK6.). On the other hand, the extension of a fixed-term relationship is not subject to limitation and thus it has not been determined either as to how many times an employment relationship can be established successively.

Conversion into a contract of indefinite duration and its legal implications

Unlike the former Labour Code, the Labour Code in force contains no provision as to what consequences it entails when an employee continues to work with the knowledge of the employer after the term has expired. There are two ways to resolve this situation. On the one hand, the employer is required to settle, namely to terminate the invalid legal relationship with immediate effect under Subsection 29(1) of the Labour Code. On the other hand, it can also be invoked that an oral agreement was made between the parties for a legal relationship of an indefinite duration, as the lack of written form does not hinder the establishment of an employment relationship. Notably, pursuant to Section 44 of the Labour Code, the invalidity of the contract of employment can only be invoked by the employer due to lack of written form, within thirty days of the day when the employee takes up duty (please also see Court Decision No BH1997.152.).

However, it can also give rise to a problem when the employee complains about the expiry of the extended term, being unlawful as s/he sees it, rather than criticising his/her irregular status of continuing to work with the knowledge of the employer (or, in fact, on the contrary: s/he no longer works). Notably, in this case the employment relationship has expired as early as upon expiry of the fixed term, as a general rule. In such instance, the court will examine whether the employer initially had a legitimate interest at all, and whether the legitimate interests of the employee have been impaired or not. And if the employer does not succeed in providing evidence for either matter, then the repeated requirement of the fixed term will be regarded as invalid and thus the provisions laid down in Subsection 29(3) of the Labour Code shall apply. Accordingly, the invalid requirement must be replaced by the rule applicable to employment relationship; in other words, the employment will be converted into a contract of indefinite duration. This means, where appropriate, that the procedure of the employer must be assessed in accordance with the rules pertaining to unlawful termination of employment relationship.



In its judgement no BH2016.286., the Curia ruled that by not giving work to the employee upon expiry of the fixed-term employment unlawfully extended, the employer expresses its intention not to maintain the employment relationship in the future. On the other hand, the employment relationship could be lawfully terminated in such a situation only by regular notice or common consent. If the employment is not terminated this way, the procedure of the employer must be regarded as unlawful who consequently will be held liable to pay damages.