

LABOUR CONTRACTS OF LIMITED DURATION: COSTS AND BENEFITS*

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OPENING REMARKS

Fixed-term employment is becoming an increasingly popular form of work, both in Poland and internationally. In our country, in the light of the EU-SILC survey (as declared by the stakeholders) in 2008, over 28% of employed worked in this way, virtually without any gender-related differences. However, other socio-demographic characteristics differentiated this population. Thus, fixed-term work concerned to an above-average extent the following groups: young people (up to 29 years), pensioners, with education no higher than lower secondary, students, unskilled physical workers, services sector workers and shop assistants, seasonal workers with a short (less than 3 years) period of work, those with experience of unemployment. Generally, we can see that weaker groups on the labour market prevail (Dzierzgowski, Kiersztyn, 2012).

From the formal and legal point of view, fixed-term employment may take various forms (Wratny, 2003). First of all, it can be employment based work under a temporary contract. However, from the perspective considered here, the

most important are contracts entered into for a fixed-term without a clear, immediate cause (such as trial period, the use of a specific task, covering for an absent employee), often even for a long period. Research shows that of key importance here is the ease with which employees can be made redundant, regardless of the end date of the contract. A similar effect is produced by temporary work provided by relevant employment agencies (Spytek-Bandurska, Szytko-Skoczny, 2008), as well as non-employment based work, i.e. civil-law contracts, such as a contract of mandate and contract for specific work. Self-employment may be an option here as well; i.e. formally a contract between two independent economic entities.

All these relationships serve to bypass the labour code and they allow the employer, in varying degrees, to be exempt from many obligations towards the person working for them (leave, working hours, notice, and social security contributions).

As we can see fixed-term employment clearly serves the interests of the employer and the employee may perceive it as discriminatory. However, since such employment occurs on a known scale, it must also bring wider benefits, which in turn probably are also accompanied by relevant costs, in different dimensions.

This duality of fixed-term employment is underlined by the fact that it is located in two different theoretical classification systems. On the one hand, fixed-term employment is one of the four dimensions of underemployment, i.e. "poor employ-

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ment”, with grossly low wages, part-time work (not at the request of the employee) and the problem of *overeducation*, i.e. work substantially below the qualifications offered by the individual (Frieske, 2012). On the other hand, fixed-term work is, in turn, one of the dimensions of labour market flexibility (as an expression of flexibility of employment), with flexibility of working time, wages and labour supply (Kwiatkowski, 2002). And the flexibility of the labour market is a positive feature, a way to strengthen the competitiveness of the economy of a country, and therefore also GDP growth and lower unemployment.

Hence this begs the question of where are the benefits of fixed-term employment that make legal forms with this feature of relationship between the work provider and work taker attractive and where are the costs forcing us to classify this phenomenon as underemployment. These issues will be the subject of analysis in this article.

When considering this issue, it should be noted that the costs and benefits of fixed-term work are targeted at two groups of labour market players – employers and workers pursuing their own interests and to the state responsible before the voters. And it is from these perspectives that an analysis on fixed-term work will be made.

BENEFITS OF FIXED-TERM EMPLOYMENT

When analyzing a group of employees from the perspective of the benefits of fixed-term employment, it may seem, in the light of the previous considerations, that it will be difficult to find those.

The only real benefit could be to gain employment, however uncertain its nature and which is not always accompanied by worker privileges or social insurance, but still employment. These jobs – we may presume – would not exist if the risks and costs of the employer in the case of a fully beneficial job exceeded the benefits for the employer. It is worth noting that finding any job has a different value for different groups of employees. It is the most important thing for the weakest, in low labour market segments, particularly vulnerable to unemployment. This is obvious from the statistics cited earlier, where we can see groups at which fixed-term work is targeted most often. Without a legal space that creates the possibility of such sub-standard (but still) employment, these people would be either left unemployed or end up in the grey market. Groups identified here are at the same time usually employees also in this market (Bednarski, et al., 2008). It is therefore not surprising that in the empirical study those employed for a fixed-term believed any work is better than no work (Bednarski, Frieske, 2012).

It is worth highlighting at this point the subjective judgement of one’s situation for at least some of the temporary employees. They see that they have failed to achieve stability in the existing economic environment, but they did not become marginalized. They try to respond flexibly to the challenges of the changing environment, despite the fact that the level of their faith in the transparency of applicable rules varies. Although they accumulate a number of negative characteristics, this is not a typical lower class, especially in the opinion of the younger generation. Their status fluctuates, and variation within the group is high – from unemployment to employment, from badly paid work to better paid, from no qualifications to diplomas. In the literature, this group has even gained a special name – *precariat* (Poławski, 2012).

In their subjective judgement, many of them do not see anything particularly wrong in their situation. On the contrary, this is seen as something obvious and normal. An unstable world is considered as a natural state, and the real losers are those unemployed or pushed into the grey market.

A key beneficiary of fixed-term work solutions are, however, the employers. We can even put forward a claim that it is the recent expansion of this type of employment that is an attempt of entrepreneurs to adapt to the new unstable conditions of running their business, related to the transition from Fordist to post-Fordist economy. Up to 1970s a mass production of standardized goods in Taylor’s model of work organisation, based on technological progress giving rise to constant

increase in labour productivity and embedded in oligopolistic market structures allowing to discount economies of scale, used to be what formed the predictable economic space. That is why the state played the role of a stabiliser, to protect domestic companies from competition outside (limited due to the then small number of countries with the appropriate production capabilities) and running a stabilizing Keynesian economic policy of influencing demand. At the same time, strong unions, though attentive to the interests of workers and their wages in particular, guaranteed the employer a transparency in the sphere of labour relations (Czorzasty, 2010).

However, the economy area thus functioning had started to shrink since the 1970s. A post-Fordist economy emerged, whose guiding feature was the instability of economic conditions, caused by globalisation, servicisation, expansion of the sector of small and medium-sized companies or the knowledge-based economy sector (Gardawski, 2010). Of course, this also produced important benefits in the form of increasing availability of attractive consumer goods made by using the latest technologies, but this rendered economic space substantially less transparent. In this situation, fixed-term work, from the perspective of the employer, means important benefits for them.

Empirical studies carried out among employers indicate the benefits for this group, gained in the conditions of the described unstable relationship with the employed (Bednarski, Frieske, 2012). Of course, what is at stake here is extended time, over that legally expected, of verifying the employee. It is a thing desired by employers, but not the most important one when using temporary employment. It has its temporal limits. A key cause of fixed-term employment is, however, something else – an attempt to shift the uncertainty risk to the worker: i.e. fluctuations of the economy, and therefore of the prices, demand, exchange rates, interest rates, wages, and other economic variables. In their heydays the management would like to maximize production, and therefore employment, but in recession they would like to be able to easily reduce it. This does not only concern economic fluctuations – employers try to adjust employment to contract periods or to EU grants obtained in the case of government offices. Of course, specific strategies by the management depend on many factors – the industry, size of entities, nature of results, but the essence of the employer’s goal remains the same. Empirical studies leave no doubts here.

Ease of termination of contracts is achieved in practice in two ways. The contract may end automatically or it can be easily terminated in case of longer fixed-term job contracts, because the period of notice shrinks to two weeks.

In addition to the aforementioned leading argument, there are other benefits to employers which are pointed at. And thus they gain, by being able to quickly and easily terminate contracts with employees, an additional discipline-enhancing factor. Fixed-term workers are, in the opinion of the managers, less demanding, more flexible and reliable in work. They are easier to control and more can be demanded of them.

In addition, contracts with an end date allow them to lower costs, especially in the case of non-employment based work. Depending on the form adopted (contract of mandate, contract for specific work, self employment) the employer may “gain” unpaid social security contributions (except for contracts of mandate), the cost of holidays, severance, training in health and safety and other benefits due in the case of employment based contracts. Respondents also pointed out that outsourcing certain tasks (by self-employment) or contracts for specific work entered into with costly specialists allowed them to carry out any infrequent tasks cheaper and those tasks that did not require hiring a full-time employee.

To sum up, significant benefits to the employer have been highlighted and it is the pressure of this group that has led to the spread of fixed-term work and creating an appropriate legal framework for this phenomenon. But this is the domain of the state.

By creating a suitable legal system, the state must therefore identify specific benefits to the public of such forms of employment. Generally, the basis for such a state policy, whose essence was labour market deregulation, and thus minimising the impact of the state mainly in the sphere of collec-

tive labour relations (Wiśniewski, 1999), was the highlighted failure of Keynesian macroeconomic policy. The collapse of economic growth and inflation, known jointly as stagflation, encouraged to change the model of economic policy to more liberal. From the perspective being of interest to us, this means reducing the protection of employment, and above all, an increased facility of layoffs for which – as shown by empirical studies – temporary employment contracts prove most successful. Regulations to facilitate using non-employment based contracts and outsourcing are also at play here.

Deregulation thus implemented corresponded to the theories in which rigid labour markets do not foster the growth of employment, because they prevent any rapid changes on the labour market in a manner proportionate to changes in the economic environment.

From the perspective of the state, responsible for economic policy, deregulation was to increase the role of the market mechanism and consequently lead to less unemployment and faster economic growth through more flexible economic processes in this area.

Generalization of fixed-term employment will be primarily the result of expectations of employers thus seeking to provide stability to their companies and cut costs and the acceptance for such action on the part of those creating economic law and economic policy, expecting, in this way, to boost the economy and bring a decline in unemployment. Employees will accept this state of things, as far as it will give them a chance of employment, however poor, but at least one that provides income.

COSTS OF FIXED-TERM EMPLOYMENT

The burden of costs of fixed-term employment falls mainly on the employees. This is in line with the arguments above, where employees expect a greater supply of jobs at the expense of taking over a substantial part of the economic risks. From the perspective of the labour market, this process means a deepening of segmentation processes, which is well described by dual labour market theories (Kryńska, 1996). According to those, there exists a core sector in the economy, corresponding to the general characteristics of the Ford's sector (oligopolistic firms with capital intensive methods of production, stable demand and protection of the country), and the waterside sectors with opposite characteristics. To these two sectors in turn correspond to separate labour markets – primary and secondary. In the primary market better jobs are offered – stable, well paid, with the prospect of promotion. The secondary one, respectively, offers worse paid jobs without any possibility of promotion and with large fluctuation.

The essence of the problem, however, is not the mere existence of dual labour markets, but their low permeability for employees. Transitioning from secondary to primary market is very difficult. Finding oneself at the beginning of one's career in the worse segment may largely determine the entire career of an individual. Finding a job in one or another segment is determined by, in addition to objective features (education, early career), the decisions of employers based e.g. on statistical discrimination. Worse still, work in the secondary sector affects the employee's biography. Lack of opportunities for promotion reduces the motivation for training and temporary contracts cause frequent changes of jobs. Of course, this determination here is not total, but the difficulty of advancement to the primary market is considerable.

Therefore the extension of the scope of fixed-term employment means, in fact, a larger scope of the secondary labour market, with all the consequences. Both quantitative and qualitative research based on EU-SILC data (Kiersztyn, 2012) indicate that in essence, fixed-term employment is accompanied by other symptoms characteristic of the secondary labour market. Claims were therefore confirmed that taking up such jobs largely sets the individual in the secondary labour market, or at least is not conducive to stability in the primary sector. Also it is combined with low salaries and is a reason, in unfavourable circumstances (such as low financial status of spouse) of ending up in the working poor group. Qualitative research shows,

however, that certain types of discrimination are at play here, for example, in access to loans, though contrary to the opinions presented in the literature, there is no hindered use of social benefits or training on a significant scale. However, this does not alter the fact that, in relation to the numerous groups of workers, though with the exception of some high-end professionals, fixed-term employment is a way to relatively sustained presence in the secondary labour market (Bednarski, 2012).

The problem highlighted can be seen from a different theoretical perspective, i.e. transitional labour markets (Zawadzki, 2005). In this perspective, the consequence of changes in the economy associated with the emergence of Post-Fordist development phase is a relatively frequent switch from full-time permanent employment to unemployment, searching for employment, training, collecting a pension, volunteerism, and possibly, again, fixed-term work, or eventually permanent work. Transitional labour markets are those phases between fully beneficial employment, which, however, will be a way to return to satisfactory employment. And again, as in the case of the perspectives related to labour market segmentation, the mere fact of the existence of transitional markets is not so much a problem as the declining probability of transition from those markets to fully beneficial employment. Fixed-term work creates a danger of permanent movement between low-quality temporary activities and unemployment.

The consequences of an unstable status of the fixed term employed are not only income-related. The literature points here in particular at two areas of potential discrimination. One is associated with the availability of mortgage loans, and consequently the real estate market, the second relates to the prospect of a pension.

On the first issue, Polish quantitative and qualitative empirical studies show that lack of stable employment is a barrier to access a loan, which is associated with uncertainty and lack of control over their own lives. Although from the perspective of quantitative research, the impact of fixed-term employment has proved to be limited here, because an important part here is played by income per capita in the family and the professional standing of the other members. This means, however, a dependence of people with an unstable job situation on the status and income of other family members (Teisseyre, 2012). The significance of the problem highlighted in the studies is also illustrated by the fact that especially large companies employing for a fixed-term have made efforts to reassure their employees seeking a mortgage by sending letters to banks explaining that such a contract does not mean imminent redundancy, but is a procedure to achieve a full-time job.

Analyses of legal status (Oczki, 2012) show that various forms of fixed-term work may mean a threat of poverty in an old age – due to the conditions of defined-contribution pension schemes existing in Poland. In this system, pension is highly dependent on the amount and period of paid contributions. And in the case of fixed-term employment there exists a high risk of interruption in work, which in turn causes lower replacement rates. At the same time, the actual pension contributions paid by employees for civil-law contracts and the self-employed are low and as a result do not provide a satisfactory level of pensions. Therefore the effects of fixed-term work may not only be relevant today, but extend far into the future.

As mentioned, the form of employment considered here is primarily beneficial for the employers. However, its abuse for short-term purposes can bring losses to entrepreneurs in the long term. We can see it, above all, from the perspective of the company resources theory (Tkaczyk, 2009), where in addition to physical, financial and organisational resources human resources are crucial, and so is the training and experience of employees. A company, hoping to be competitive, must ensure that these resources are original and unique, so that the product has these features too and is difficult to copy. However, we cannot build unique human resources without a guarantee to the employees of stable, well paid employment. Then it makes sense to invest in their special qualifications and incentive schemes will be effective. At the same time, the loss of such workers, recruiting their successors and their training is costly. Stability of employment thus has profound meaning.

This argument does not, however, apply to the entire team, but its core impacting the competitiveness of the company. This is clearly shown by models of a flexible company (Pocztowski, 2007). According to those, the employed can be divided into three groups. The first is highly skilled workers with adaptable qualifications, who are the core of company employment. They receive permanent contracts. The second are peripheral workers with common skills, readily available in the labour market. They are, in turn, employed under flexible forms, e.g. for a fixed term. The third group are the workers required in specific situations. Here, non-employment based contracts or contracts with the self-employed are entered into.

These theoretical concepts are confirmed by empirical research (Bednarski, 2012). Companies' management, and in particular the HR departments, declare a policy of employment also for employment contracts. Appropriate proportions should be kept here. There is awareness among employers that excessive fixed-term employment causes a variety of issues for the company.

Although conclusions regarding costs and benefits for employers and entrepreneurs of the functioning of liberal regulations, in the case of the area under consideration, are fairly well researched, both theoretically and empirically, in the case of the State such, relative at least, clarity does not exist. Previously described expected benefits in terms of economic growth and reducing unemployment have not been verified empirically in a conclusive manner (Borkowska, 2003; Wiśniewski, 1999; Kwiatkowski, 2002). However, while accepting the claim about the positive impact of flexible forms of employment on macroeconomic variables, we can see significant negative consequences associated with such economic policy of the state.

If we accept the idea presented in the literature that employees are the weaker party compared to the capital, which can take place in particular when labour markets are characterized by failures (e.g. monopsonistic position of the employer), then they should be subject to special legal protection (Bednarski, Wratny, 2010). Deregulation and flexibility in these markets can therefore lead to social conflict and costly tensions giving rise to strikes.

This means a reduction in the level of social capital, whose high levels are beneficial to economic growth. Confidence in social partners, accompanied by proper state arbitration, will lower the transaction costs of the functioning of the economic system (Balcerzak-Paradowska et al. eds., 2009).

In this situation, the State faces the need to seek solutions to preserve the necessary flexibility of the labour markets while maintaining a stable social situation. Such a solution seems to be a policy of flexicurity. It involves giving labour market entrepreneurs the right of easy hire and fire and to employ temporary workers and use temporary contracts. In exchange for agreeing to such solutions, employees would receive training and good information about vacancies from the state, as well as income security thanks to allowances and social guarantees schemes (Rutkowski, 2009; Kryńska eds., 2009)

The flexicurity model does, however, involve important issues. On the one hand, it requires high mutual trust on the part of social dialogue players. Employees in particular must believe that upon the approval of more flexible labour law, the State does not withdraw from its promises. Social capital in society is therefore necessary. A key problem, however, is that a policy of flexicurity is very expensive. Here, the state faces a financial issue related to budgetary balance. Thus a solution to the outlined dilemma becomes a barrier.

As we can see, fixed-term employment, as a form of labour market flexibility, also means substantial problems, even for those actors who gain important benefits.

SUMMARY

The problems outlined, in the practical dimension, boil down to seeking answers to the issue of the optimal level of regulation on the labour market, and therefore also regulations in respect of fixed-term employment.

When considering this issue, first and foremost consideration should be given to the fact that not only the market, but also the state is unreliable. It is not as if the State is independent from pressure groups, well informed and knows how to run optimising accounts. Regulatory expectations towards the state must be proportional to its quality. And the theory clearly defines the characteristics of good governance by listing: a democratic state under the rule of law, transparency, accountability, participation, social inclusion and effectiveness and efficiency (Wilkin, 2008).

However, even the best State governed according to the above rules is subject to the pressures of various interest groups, which in specific cases can turn into efficiently operating distribution coalitions (Olson, 1971) "chasing pensions", where their aim is a political pension obtained at the expense of other social groups, without increasing social welfare (Wilkin, 2005). Total resistance of the state to such pressure is not possible, which also holds true for the regulation of labour markets.

What is more, certain decisions of the state, even when taken in good faith, by their very nature impact on various social groups. A law hindering the fixed-term employment or imposing additional costs on civil-law contracts will remain neutral for employers and employees from the Fordist company sector or employees with a strong market position, forming the core of employment at their companies. However, it will be definitely bad for employers of smaller post-Fordist companies. It is hard to determine the effects of this for employees in these sectors. If the higher legal standard is followed by changes in economic reality, we will be able to view this as beneficial, and if the employed are pushed to the unemployed group or to the grey market, then we will not. This is determined by very specific conditions in local labour markets and product markets.

At the general level, we can therefore formulate two postulates for regulating fixed-term work. Firstly, the lobbying done by employers' organisations and trade unions should be treated with caution. Even more so because that those who will mainly incur the costs and perhaps gain some benefits (precarariat), do not usually create effective pressure groups. Secondly, legislative solutions must be tailor-made for specific audiences. Attempts at regulations targeted at all groups will cause more damage than it will bring benefits.

Obviously, solutions such as flexicurity would best serve the stability of employers and workers in precarious economic conditions. However, this means the need for sponsorship of this policy by the taxpayers, which does not usually cause satisfaction in voters or politicians as a result.

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