

Streszczenie pracy doktorskiej Mgr Agaty Miętek /j.angielski/ pt: „Freedom of contract and its limitations in shaping the content of an employment relationship”

The subject of the dissertation is the analysis of issues related to the freedom of contract of parties to an employment contract.

The basic framework of the current scope of the freedom of contract of parties to an employment contract to shape its content was created when the Labor Code was introduced, in different political, social and economic conditions. There have been fundamental changes since then creating a new background for discussions on the freedom of contract in employment law. Therefore, four main research questions were formulated. The first question pertains to determination of the legal nature of an employment contract and its connections with public and private law. The second question concerns determination of the normative basis for the principle of freedom of contract in individual employment law and its functioning mechanism. Next, a question was raised about the scope of the freedom of contract in respect of particular elements of the employment relationship. Finally, a fourth question was posed to determine whether the principle of freedom of contract should be recognized as a guiding principle of employment law. Despite research problems, a comprehensive analysis was also aimed at organizing the normative material related to this problem.

The analysis led to the following conclusions. Firstly, although it is not possible to generally classify employment law as exclusively private or public law, the same does not apply to the employment relationship, which is a contractual relationship (although it includes elements of public intervention). Secondly, the limitations of the freedom of contract in shaping the content of an employment relationship were partly determined differently than in civil law, although with the use of civil law mechanisms. The freedom of contract applies also in the area of so called employment protection. However, it is more limited in this area. Thirdly, although art. 353¹ of the Civil Code in connection with art. 300 of the Labour Code constitutes the legal basis for the freedom of contract of parties to an employment relationship to shape its content, the principle of freedom of contract in its civil meaning does not constitute a guiding principle in the area of shaping the content of an employment relationship where freedom has been granted in the scope which is necessary to effectively realize an employment relationship or does not jeopardize the equality of the parties and employee's dignity and where the public interference is present in the scope which is justified to protect the equality of the parties to an employment contract and employee's dignity.

The dissertation has been divided into four parts covering eight chapters. The first part (Chapters I and II) presents the historical process during which employment law was separated as an independent branch of law, the material scope of the concept of an employment relationship and the sources of shaping its content. The second part (Chapters III) presents the scope of the freedom of contract in contractual civil law relationships as well as the axiological and normative background justifying application of the principle of freedom of contract. The main content of dissertation is contained in third part (Chapters IV – VII), which provides a comprehensive analysis of the legal norms concerning the freedom of contract. The theoretical considerations contained in the first three parts of the work are used in the fourth part (Chapter VIII) to perform a practical analysis of particular elements of the content of an employment relationship. The dissertation ends with a synthetic summary.

In the dissertation, a historical and formal-dogmatic method of research was used. Their choice was justified by the purposes of the dissertation.