International Labour Organization

Non-standard forms of employment in selected countries in Central and Eastern Europe

A critical glance into regulation and implementation

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Aleksandar Ristovski

Introduction

The evolution of non-standard forms of work in North Macedonia can be analysed through the development of North Macedonia's labour legislation. In this regard, the labour legislation of North Macedonia is marked by two periods: the period from the adoption of the first Law on Labour Relations of 1993[1] until the adoption of the second Law on Labour Relations of 2005,[2] and the period from the adoption of the second Law on Labour Relations of 2005 until today.[3]

The Law on Labour Relations of 1993, in the entire period of its validity, envisaged three non-standard forms of work. The first two could be classified as "temporary employment" and such forms were an *employment relationship of a definite duration* (fixed-term employment contracts) and *seasonal work*. A third non-standard form was an *employment contract for work at home*. The manner in which this small number of non-standard forms of work was regulated in the first phase of the development of the Macedonian labour legislation was rather restrictive, and employers did not have much flexibility to use them.

The adoption of the Law on Labour Relations of 2005 (which is still in force, despite numerous amendments – hereinafter, LLR), came about because of the realization of two basic goals: the harmonization of North Macedonia's labour legislation with the EU *Acquis Communautaire* and the continuation and deepening of a trend to loosen employment relationships – particularly in relation to flexibility in firing and hiring. To achieve the first goal, North Macedonia's labour legislation (which not only includes the Law on Labour Relations but also other acts on labour law as well) so far has transposed more than 20 European Union Directives, including Directive 1999/70/EC on fixed-term work, Directive 97/81/EC on

1 Law on Labour Relations (Закон за работните односи) (Сл.весник на Република Македонија, бр.80/93).

2 Law on Labour Relations (Закон за работните односи) (Сл.весник на Република Македонија, бр.62/05).

3 At the time of writing, a third phase in the development of North Macedonian labour legislation has already begun. This involves the adoption of new law(s) in the field of labour relations. Unlike the previously used nomotechnical approach, where the regulation of labour law was built upon one general and fundamental law (the Law on Labour Relations) that became a codifying act of North Macedonian labour law because it systematized both individual and collective labour law issues, the "new" approach of the initiator (a working group composed of representatives of the Ministry of Labour and Social Policy and the Social Partners) for the adoption of the new law(s) radically abandoned the previously established nomotechnical practice. In 2018, two new laws were drafted, the first of which, the draft Law on Labour Relations, aims at regulating individual labour relations and the second of which, the draft Law on Trade Unions, Employers' Associations and Collective Bargaining, aims at regulating collective labour relations. The author of this chapter advocates in favour of a holistic approach in the regulation of labour law, against the division of issues falling within the scope of individual and collective labour law in separate legislation.

part-time work and Directive 2008/104/EC on temporary agency work.[4] The achievement of the second goal of increasing flexibilization initially meant drastic reductions of employees' rights in the field of legal protection against dismissal.[5] In parallel with the firing flexibility, the labour legislation has also started a process of gradual flexibilization of existing non-standard forms of work. Starting from the ILO typology for classification of non-standard forms of employment,[6] the following forms can be found in the current labour legislation of North Macedonia: in the group of temporary employment (fixed-term employment contracts and seasonal work); in the group of part-time and on-call work (part-time employment contracts, additional work, multiple part-time employment contracts) and in the group of multi-party employment relationship (temporary agency employment contracts). In addition to the aforementioned non-standard forms of work, Macedonian labour legislation regulates the following forms: home working employment contracts, employment contracts for domestic workers and employment contracts for managerial persons (managerial contracts). However, the existing "list" of non-standard forms of work in North Macedonia has room for extension and further regulation. Above all, there is the need to regulate "casual work" as this can contribute to reducing informal employment in the country.[7]

We argue that a future Law on Labour Relations should address non-standard forms of work that are classified in the fourth group according to ILO typology, encompassing non-standard forms of work that are outside an employment relationship. Hence, the law should be oriented primarily towards addressing employment misclassification and combating "disguised employment relationships". In practice, disguised employment is present both in the private and public sectors. Workers who are in disguised employment relationships also form part of informal employment. Problematically, this form of work has not yet been properly recognized by the main stakeholders involved in North Macedonian labour regulation (e.g. policymakers, social partners, labour inspectors, judges in labour disputes, among others), while the labour legislation still fails to provide for an adequate protection for workers in disguised employment relationships.

4 Stojan Trajanov, *Legal Commentary of the Law on Labour Relations* (Skopje, 2016), 379–380; Todor Kalamatiev and Aleksandar Ristovski, "Implementation of the European Social Model in the Labour Legislation of Republic of Macedonia", *Collection of Papers*, No. 68 (2014), 118.

5 The reduction of the legal protection against dismissal can be identified by the weakening of the following rights of employees: **the right to a minimum notice period** in the event of a dismissal on the initiative of the employer [in comparison with LLR of 1993 (basic text), which stipulated that the minimum duration of the notice period shall be *at least thirty days up to six months* (article 121), the current LLR of 2005 (consolidated text) provides for a minimum duration of the notice period of *at least one up to two months*, taking into consideration the number of dismissed employees (article 88)]; **the amount of severance pay in the event of termination by dismissal due to business reasons** [in comparison with LLR of 1993 (basic text), which provided for severance pay of *at least one up to twelve salaries* taking into consideration the employee's period of service (article 130), the current LLR of 2005 (consolidated text) provides for severance pay in the amount of *at least one up to seven salaries* taking into account the employee's period of service (article 97)]; **the period provided for information and consultation of workers' representatives in the event of collective redundancies** [in comparison with LLR of 1993 (basic text), which imposed an obligation on the part of the employer to inform and consult workers' representatives *up to six months* before the termination of the employment contract (article 127), the current LLR of 2005 (consolidated text) provides for a period of *at least one month* before the commencement of collective redundancies (article 95)].

6 ILO, *Non-standard Employment around the World: Understanding Challenges, Shaping Prospects* (Geneva: ILO, 2016), xxii.

7 In the North Macedonian legal system, "temporary and occasional work" (i.e. contracts for temporary and occasional provision of services to legal and natural persons) can be considered equivalent to "casual work". These contracts are regulated formally by the Law on Personal Income Tax (Сл.весник на Р.М, бр. 241 од 26.12.2018) and are addressed solely in the context of tax law, not labour law. In terms of their legal nature, contracts for temporary and occasional provision of services to legal and natural persons are not treated as employment contracts.

Fixed-term contracts

In theory, an employment relationship of an indefinite duration (договор за вработување на неопределено време) is usually treated as a "rule", while an employment relationship of a definite duration (i.e. fixed-term employment – договор за вработување на определено време) is an "exception" to the established rule.[8] Arguably, this principle should apply both in legislation and in practice. First of all, the LLR provides that the employment contract must be concluded for a period of time which is not defined in advance (employment for an indefinite period of time).[9] However, an employment contract also may be concluded for a period of time defined in advance (fixed-term employment).[10] An employment contract whose duration is not determined therein "shall be considered an employment contract for an indefinite period of time".[11] Consequently, the legislature introduced an irrefutable presumption which excludes the possibility of proving that a fixed-term employment relationship has been established if the particular employment contract does not stipulate a provision determining the period for which the contract was concluded. Fixed-term employment contracts are also fairly common in practice. According to the statistical data of 2019 (second quarter), 16.7 per cent of the total number of employees in North Macedonia worked under employment contracts of a temporary duration.[12] However, the overall picture of the role and significance of fixed-term contracts, their position vis-à-vis contracts of indefinite duration (open-ended contracts) and the level of protection of fixed-term employees should not be based solely on the initial premises on which labour legislation and statistical data are founded.

Admissibility of fixed-term contracts (existence or non-existence of objective justification)

The dilemma of "existence" or "non-existence" of objective justification (reasons) for establishing a fixed-term employment relationship can be addressed by means of a short chronological analysis of North Macedonia's labour legislation from the period of the country's independence to date.

The LLR of 1993 (until the amendments of 2003) exhaustively enumerated the admissible "cases" for establishing a fixed-term employment relationship: seasonal work; increased volume of work; replacement of an absent worker; work on a project. [13] Compared to the basic text of the LLR of 1993, its amendments of 2003 and the basic text of the LLR of 2005 introduced a more general and flexible formulation for the determination of the objective reasons for concluding fixed-term employment contracts. The amendments of 2003 stipulated that the fixed-term employment relationship may be established for performing activities which by their nature are of a definite period, with or without interruption, for up to three years.[14] The basic text of the LLR of 2005 retained the same legal formulation for the determination of the objective reasons for commencement of fixed-term employment relationship, but it increased the

8 Todor Kalamatiev, *Employment Relationship of a Definite Duration in the Law on Labour Relations of the Republic of Macedonia,* (Skopje: Liber Amicorum – Proceedings in Honour of Professor Vasil Grivcev, Ss. Cyril and Methodius University, Iustinianus Primus Faculty of Law in Skopje, 2002), 307.

9 Law on Labour Relations, article 14(1).

10 Law on Labour Relations, article 14(2).

11 Law on Labour Relations, article 14(3).

12 *Source:* Eurostat, "Temporary Amployees As a Percentage of the Total Number of Employees, by Sex and Age", 6 January 2020. https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=lfsq_etpga&lang=en.

13 See Law on Labour Relations of 1993, article 23.

14 See Law on Amending and Supplementing the LLR (Службен Весник на Република Македонија, бр.25 од 08.04.2003), article 2.

maximum limitation *up to four years*. Nevertheless, the Law on Amendments and Modifications of the LLR of 2008 repealed the phrase "performing activities which by their nature are of a definite period of time" from the basic text of the Law.[15] By doing so, **it practically abolished the existence of an "objective justification" (reason)** as a precondition to conclude a fixed-term employment contract.[16] Thus, the current labour legislation does not require the existence of an "objective justification" to conclude the initial or subsequent (successive) fixed-term contracts. Therefore, it turns out that employers have full freedom to employ fixed-term employees regardless of the fact that the work position or the work for which they are employed is of an open-ended and permanent nature. This practice is not explicitly forbidden by the Law, but it does not appear to be in conformity with the principal position taken in the LLR that fixed-term employment is merely a "possibility" or an "exception" from the "rule" that employment relationships are established for an indefinite duration.

Taking into consideration the general guidelines stipulated in the ILO Termination of Employment Recommendation, 1982 (No. 166), the EU Directive 1999/70/EC on fixed-term work, as well as the principal position taken in the LLR, we consider that North Macedonian labour legislation should *de lege ferenda* make the conclusion of fixed-term employment contracts conditional on the existence of an objective reason, i.e. justified ground (tasks that are of a temporary nature). The only case in which the legislation explicitly refers to the existence of an objective justification for concluding a fixed-term contract is the case "*replacement of a temporarily absent employee*".[17] However, in light of the very fact that the LLR in none of its provisions requires an objective justification to validly conclude a fixed-term contract, we consider that the failure to stipulate a reason (i.e. such as the replacement of a temporarily absent employee) does not actually make a contract null or result in the transformation of the fixed-term contract into employment contract of an indefinite duration.

Although a fixed-term contract does not require an objective reason for its conclusion, the contract nevertheless must specify the term of its duration. The term may be fixed by calendar or by satisfying a certain condition (i.e. by the completion of certain task and by the occurrence of a certain event).[18] *The fixing of the term by calendar* involves designating the date of expiry of the contract (e.g. "the contract expires on 10 June 2019") or indicating the time for which the contract has been concluded (e.g. "the contract has been concluded for the total period of three months from the date of its conclusion"). Apart from the calendar method, fixed-term contracts may expire with the *completion of certain task* (e.g. work on a project).[19] Finally, a fixed-term contract may also terminate by *the occurrence of certain event* (for example, the

15 Law on Amending and Supplementing the LLR (Службен Весник на Република Македонија, бр.106 од 27.08.2008), article 4.

16 The abolition of objective reasons for concluding fixed-term contracts in the national labour legislation should be viewed with special caution. Such caution primarily stems from the need to harmonize North Macedonian labour legislation with international labour standards, such as the ILO Termination of Employment Recommendation, 2006 (No. 166), which refers to limiting recourse to fixed-term contracts to tasks of a temporary nature (see Part I, 3(1)). Similar to the ILO Recommendation, the EU Directive 99/70/EC on fixed-term work emphasises the need for a balanced use of fixed-term contracts. The principal position of Directive 99/70/EC is that "employment contracts of an indefinite duration are the general form of employment relationships and contribute to the quality of life of the workers concerned and improve performance" (see General Considerations, 6). Directive 99/70/EC also stipulates that the protection of workers from abuses of their employment relationship can be provided by introducing objective reasons in the use of fixed-term employment contracts (see General Considerations, 7). Arguably, however, the Directive should not be interpreted as introducing a mandatory requirement for establishing objective reasons for the parties' entry into the first fixed-term employment contract (see Mia Rönnmar, "Labour Policy on Fixed-Term Labour Contracts in Sweden", in *Regulation of Fixed-Term Employment Contracts – A Comparative Overview*, ed. Hiroya Nakakubo and Takashi Araki, 164 (Kluwer Law International, 2010)). In this regard, it can be considered that the Directive leaves a so-called "regulatory limbo" in allocating the initial period of employment (see Deirdre McCann, *Regulating Flexible Work* (Oxford: Oxford University Press, 2008), 132).

17 See Law on Labour Relations, article 46(2).

18 See Law on Labour Relations, article 5(1) point 3 and article 64.

19 Law on Labour Relations, articles 5(1) and 64.

return to work of a temporarily absent worker).[20] In such a case, the validity of the employment contract will expire at the occurrence of the resolutive condition (e.g. the return to work of the temporarily absent employee) which determines the date of termination of the employment relationship.[21] In practice, there are also cases in which the temporarily absent employee becomes permanently absent (for example, due to dismissal, permanent incapacity for work, death and so on). Thus, a dilemma arises as to whether the permanent absence of an employee can be treated as a fulfilment of the condition, i.e. occurrence of an event that will result with an *ipso iure termination* of the fixed-term contract concluded by a replacement employee. The LLR neither resolves this dilemma nor does it envisage any instructive provision to resolve it. In practice, it shall be considered that the fixed-term contract of a replacement employee is terminated because "the purpose of the contract" (i.e. the replacement of a "temporarily" absent employee) has been met or, at least, the legal status of the contract will depend on the intention of the employer to offer the employee a new contract of employment of definite (fixed-term) or indefinite (open-ended) duration.[22]

Legal mechanism for the protection of employees against abuses in their employment through the conclusion of successive fixed-term contracts

North Macedonian labour legislation applies one of the three measures of protection against abuses of fixed-term employment relationships which are foreseen in the EU Directive 1999/70/EC on fixed-term work. This is the measure on the "limitation of the maximum total duration of the successive fixed-term employment contracts".[23] Argumentum a contrario, labour legislation does not envisage the remaining two measures of protection against abuses of fixed-term employment relationships: the determination of objective reasons justifying the renewal of the fixed-term employment contracts and the limitation of the number of renewals of such contracts.[24] This means that an employer may conclude one or multiple successive contracts with the same employee and that contract renewal is not conditioned on the existence of an objective reason as long as the limitation of the maximum duration of the fixed-term employment relationship determined by law is respected. According to the LLR, the employment contract may be concluded for a definite period of time of up to five years for carrying out the same activities, with or without interruptions.[25]

The limitation of the duration of the fixed-term employment relationship of up to five years refers to the performance of the **"same"** activities. However, the law lacks a provision which closely defines the term "performance of the same activities". In practice, "same activities" may encompass activities belonging to the same group or category of job positions that are prescribed normally by collective agreement or an employer's act (i.e. Act on Job Systematization). Ultimately, an employment contract is the most direct legal source which is supposed to contain a clause that regulates the key aspects in terms of the type of work that is carried out and the activities performed by workers. Frequently, there are cases in which – just before the expiration of the maximum period which limits the duration of the fixed-term employment relationship – employers enter into a new fixed-term employment contract with employees,

20 See: Todor Kalamatiev and Aleksandar Ristovski, *Fixed-term Work and Part-time Work – Non-standard Forms of Work in the Labour Legislation of the Republic of Macedonia* (Skopje: Business Law, Year XVII, Ho.34, 2016), 662.

21 See Kamcevska, *Employment Relationships – Commencement, Deployment and Termination* (Skopje: Сигнум, 1997), 190.

22 See Aleksandar Ristovski, *Home Working Employment Contract and Other Alternative Forms of Employment and Flexible Forms of Work* (Skopje: Business Law, Year XII, No. 25, 2011), 114.

23 See Council Directive 1999/70/EC on fixed-term work (*Official Journal* L 175, 10/07/1999 P. 0043 – 0048), clause 5 (1) b.

24 *Ibid.*, clause 5 (1) a and c.

25 Law on Labour Relations, article 46(1).

employing them to perform "other" activities that are nominally but not essentially different from the activities that specified in their previously concluded employment contracts.[26] In this way, employers are able to avoid legal consequences resulting from expiration of the maximum period of limitation of fixed-term employment contracts – i.e. the transformation of the fixed-term employment relationship into an indefinite employment relationship.[27] Hence, it arguably would be preferable if the maximum period of limitation of fixed-term employment contracts referred to *"any"* activities performed by a particular employee *with the same employer*, not only for the performance of the "same" activities.

Apart from the dilemma over the "type of activities" that fixed-term employees are supposed to perform, the LLR of North Macedonia has created another problem regarding the continuity of work performance. This concerns the need to have a consistent interpretation of the legislative phrase **"work with or without interruption"** which should be analysed in terms of the maximum period of five years for the limitation of fixed-term work. In fact, the current LLR does not contain any legal provision to determine the time gap between the expiration of a previous contract and the conclusion of a new fixed-term employment contract.[28] Such an approach might imply a certain level of job security for fixed-term employees. The job security aspect for employees relates to the fact that the LLR does permit the existence of discontinuity, i.e. interruptions between successive fixed-term employment contracts. But this approach may be too rigid and constraining for employers who, even after the expiry of a period of several years in which there is both a *de facto* and a *de jure* interruption between the successive contracts of employment for the performance of "same" activities, must respect the maximum limit of fixed-term work of up to five years if they have no intention to transform the employment relationship of the particular employee into an indefinite employment relationship.

Conditions for the transformation of a fixed-term employment relationship into an employment relationship of an indefinite duration

"The fixed-term employment relationship **shall be transformed** into an employment relationship of an indefinite period, provided that the employee continues to work after the expiry of the maximum period for the limitation of the employment contract, under the conditions and in the manner defined by law."[29] With this provision, the legislature introduced an irrefutable legal presumption, according to which, if the employee continues to carry out the work tasks with the employer, even one day after the expiration of the maximum term determined by law (i.e. five years), the employment relationship will be considered to be transformed from fixed-term to open-ended. The transformation into an employment relationship of an indefinite period does not depend on the adoption of any act (decision, notice) by the employer. For its occurrence, it is irrelevant whether the employer knew that the absolute term which limits the duration of the fixed-term employment relationship has expired or not. Yet, should an employer refuse to transform the employment relationship of the employee indefinitely, an employee can initiate a procedure for protection of their rights. However, the procedure for the protection of employees' rights in cases of the transformation of an employment contract is not explicitly regulated by North Macedonian labour

26 Aleksandar Ristovski, *Binary Model of Employment Relationships and Non-standard Forms of Work* (Skopje: Doctoral Dissertation, 2015), 327.

27 See Law on Labour Relations, article 46(3).

28 In comparison, the amendments and modifications on the Law on Labour Relations of 2003 stipulated that an interruption of work amounting to less than 30 working days shall not be taken into consideration when calculating the total period of fixed-term employment whose maximum duration is three years. See Law on Amending and Supplementing the LLR of 1993, article 2(1).

29 See Law on Labour Relations, article 46(3).

legislation. In practice, an employee initially submits a request for the transformation of the employment relationship to their employer, and, if their employer refuses to accept such a request or fails to act on it, the employee may exercise their rights by filing a declaratory lawsuit against the employer before the competent court.[30] If, however, an employer does not intend to transform the fixed-term into an indefinite employment relationship, they may terminate the fixed-term employment contract. It is a special (*ex lege*) termination of the employment contract that occurs when the term for which the contract was concluded expires – which is different from the termination by "dismissal", i.e. the unilateral termination of a concluded fixed-term contract.[31] When the fixed-term employment contract is terminated *ex lege*, an employer is not obliged to state any valid reasons for its termination, regardless of whether the duration of the fixed-term contract was one month or four years, eleven months and 29 days. In such cases, the LLR does not condition the termination of the fixed-term employment contract on the adoption of a separate formal notice by an employer to end an employment relationship. However, in practice, it is considered desirable for an employer to inform the employee (usually in writing) beforehand about the fulfilment of the condition that the term of an employment relationship has expired.[32] North Macedonian labour legislation does not contain any provision on the possibility of either an employer or employee cancelling the fixed-term employment contract and the legal consequences of such a dismissal for the duration of the contract (i.e. early termination of the fixed-term employment contract). Under such circumstances, the standard rights and obligations applicable to the cancellation of employment contracts of indefinite duration usually apply, including, *inter alia*, the existence of a justified ground for dismissal and compliance with the procedure prior to the cancellation of the contract (i.e. the notice period).[33]

There is an exception to the legal presumption of the transformation of the employment relationship referring to *employment contracts for carrying out seasonal work*, which, despite the fact that their total duration may include multiple successive contracts, they cannot be transformed into contracts of employment of an indefinite period.[34] Additionally, the LLR stipulates another circumstance which is treated as an "exception" to the general rule of transformation of employment relationships after the expiry of the cumulative period of five years. In this case, the transformation may occur "if the employee works for more than two years at a position which has become vacant due to retirement or other grounds and for which funds are provided, if the employer determines that there is a permanent need for the employee, under the conditions and in the manner determined by law".[35]

The conclusion of a *fixed-term contract for the replacement of a temporarily absent employee* could also be analysed in the context of "exceptions" from the rule on the maximum duration of fixed-term contracts and the transformation of the employment relationship. The LLR fails to adequately regulate an exceptionally important issue which opens unnecessary dilemmas in practice: for instance, the question whether or not fixed-term contracts concluded for the replacement of a temporarily absent employee are transformed into open-ended contracts after the expiry of the maximum term of five years. In order to resolve this dilemma, the prevailing stance followed in practice is that the duration of such fixed-term

30 The request for the transformation of the employment relationship is not a procedural action explicitly provided for by the Law on Labour Relations. Yet, the case law attributes importance to this action in the capacity of a prior action before filing a lawsuit for the transformation of the employment relationship into an indefinite one. See in the following cases: Court of Appeal of Štip, РОЖ 1135/11 from 12 September 2011; Basic Court in Tetovo, РО бр.87/13 from 13 June 2013и РО бр. 136/13 from 20 September 2013.

31 See Law on Labour Relations, article 64.

32 Dimko Milenkov and Teofil Tomanovikj, *Handbook on Employment Rights and Obligations* (Skopje: Агенција „Академик", 1995), p. 205.

33 See Todor Kalamatiev and Aleksandar Ristovski, "Atypical Employment Relationships: The Position in the Republic of North Macedonia", in *Restatement of Labour Law in Europ: Vol II*, eds. Berna Waas and Guus Heerma van Voos (Oxford: Hart Publishing, 2019), p. 286.

34 See Law on Labour Relations, article 46(3).

35 See Law on Labour Relations, article 46(4).

contracts may be shorter or longer than five years, but, in any case, it must not be longer than the completion of the absence (i.e. the return to work of a temporarily absent employee).[36]

We conclude this section by referring to another "regulatory gap" which creates great legal uncertainty in practice and therefore requires an appropriate statutory intervention. This gap occurs in cases where a fixed-term contract was concluded for a period shorter than five years, and an employee continued to perform their tasks with the same employer even after the expiration of the contract without concluding a new (successive) contract and the employer has not deregistered (signed out) them from compulsory social insurance.[37] In practice, these cases put employees in an extremely uncertain and precarious position. On the one hand, the employee is formally reported on the system of compulsory social insurance; on the other hand, however, the employee does not have a clear view of the actual duration of their "new" employment contract because there is neither a new signed contract nor an "annex" for the extension of the duration of the previously signed fixed-term contract. Employers often abuse this existing "grey zone" by unilaterally terminating this "*de facto* employment relationship" and signing fixed-term employees out of compulsory social insurance, as these employees do not have proper legal grounds for legal protection against termination of their employment contracts.

In the absence of an explicit legal provision that fills this specific "legal void", interpretations in theory and case law vary. For instance, it has been argued that the contracting parties concluded a "new" (successive) contract of employment, the nature and duration of which shall depend on their will,[38] or that that the employment relationship should simply be transformed into an indefinite employment relationship.[39] On the other hand, the Supreme Court of the Republic of North Macedonia, in its 2015 decision, seems to be legitimizing the "silent" extension of the expired fixed-term contract, without any resulting legal consequence in relation to the duration of the employment relationship.[40] It follows from the Court's decision that the only way of transforming the fixed-term employment relationship into one of an indefinite duration is to fulfil the statutory requirement of exceeding the maximum period of five years. *Argumentum a contrario*, if the duration of the fixed-term employment relationship is less than five years, and if, after the expiry of the initial fixed-term contract, there is no successive fixed-term contract in which the term is fixed, a legal consequence of such a factual situation (i.e. a *de facto* employment relationship) cannot be the transformation of the employment relationship into an employment relationship of an indefinite period. This indicates that legal changes are, indeed, necessary in order to fill the existing regulatory gaps.

A *de lege ferenda* solution could be to add a new provision in the LLR, stating that "if the employee continues to work with the employer after the expiry of their fixed-term employment contract and without

36 Vojo Belovski and Osman Kadriu, *Legal Commentary on the Law of Labour Relations* (2011), p. 129.

37 At the request of the business community of North Macedonia, since 2012, the Employment Agency of North Macedonia, along with the Health Insurance and the Pension and Disability Insurance Fund, introduced a simpler procedure for registration/deregistration of employees whose fixed-term employment contracts for the performance of the same activities are extended without an interruption in the employment relationship. With the modified procedure, the prior practice of deregistration of employees from the Employment Agency due to the expiry of their contracts and their re-registration on the same day at the same employer has been abandoned. In fact, the first submitted application in the compulsory social insurance arising from the initial fixed-term employment contract at the employer is valid as long as the cumulative employment relationship lasts, and it includes all the consecutive contracts of employment until the expiry of the maximum statutory limit of fixed-term employment. The consecutive employment contracts with no interruption in between are usually concluded in the form of new contracts or in an annex to the existing contract.

38 Kalamatiev and Ristovski, *Fixed-term Work and Part-time Work* (2016), p. 661.

39 See *Bulletin of the Case Law of the Supreme Court of the Republic of Macedonia 2016–2017* (Skopje, 2018), p. 40.

40 In the present case, the plaintiff (i.e. employee) continued to perform the same activities for the defendant (i.e. employer) after the expiry of the initial fixed-term contract (concluded for a period of three months) without concluding a new contract of employment or without being informed in any way about the duration of her "factual employment relationship". The total length of service of the employee (including the initial fixed-term contract) was 3 years, 5 months and 15 days, before the employer terminated the employment relationship by notice of dismissal. See Judgment of the Supreme Court of the Republic of North Macedonia, Рев.3, бр.95/2014 од 23 January 2015.

signing a new or extended fixed-term contract, it shall be considered that the employee has entered into an indefinite employment relationship". In other words, a legal consequence of the non-extension of a fixed-term contract, provided that an employee continued to "*de facto*" work with their employer, should be the "*ex lege*" transformation of the employee's employment contract into employment contract of an indefinite duration.

Disguised employment relationships

The systematization and classification of contractual relationships in the event of and in connection with labour (договорни односи по повод и во врска со трудот) in North Macedonia is influenced strongly by the so-called "binary" system.[41] On one side of this system are the "employment relationships" (работни односи) based on an "employment contract" (договор за вработување) and regulated by the LLR. On the other side, are the "remaining" contractual relationships based on "contracts for services" (договори за дело) or other personal work contracts which derive from general contract law and are regulated primarily by the Law on Obligations.[42] Despite the fact that the North Macedonian legal system seemingly distinguishes the scope of application of labour legislation from the scope of application of general contract law, in reality, the situation is very different. This is evidenced by the significant presence and spread of so-called "disguised employment relationships" (i.e. bogus self-employment, sham contracts and so forth) that put workers in a vulnerable and precarious position, impeding their access to labour law protections and social security rights.

In North Macedonia, disguised employment can be defined as deliberate and manipulative classification of an employment relationship as an "other" contractual relationship in the event of and in connection with labour, in order to avoid or reduce the costs of employers that would arise from the proper application of regulations, primarily in the field of labour law and social security law.[43] In practice, contracting parties conclude various designated or undesignated contracts, which only by their title, legal classification or content (that usually does not reflect the genuine relationship between the parties) constitute civil law contracts, i.e. contracts which are not treated as employment contracts. Part of such contracts is subject to regulation under classic civil law legislation (e.g. contracts for services, copyright contracts and so on); another part is subject to regulation of labour legislation or other legislative acts (e.g. the so-called "special contracts", volunteer contracts, contracts for temporary and occasional work and so on). These contracts are often concluded as civil law contracts contrary to their purpose and in situations where there are clear factors pointing to the existence of an employment relationship.

In order to define the term "employment relationship/employment contract", establishing the criteria and indicators of subordination is a starting point for an accurate classification of a contractual relationship in the event of and in connection with labour and the protection of employees from abuses in the misclassification of their genuine employment status. In North Macedonia's labour law system, legal subordination is the only applicable and clear-cut criterion for determining the existence of an employment relationship. Economic dependence as an independent criterion has no relevance in determining the employment status of workers as "employees" or "self-employed".[44] The LLR defines the

41 See Todor Kalamatiev and Aleksandar Ristovski, "The Concept of 'Employee': The Position in the Former Yugoslav Republic of Macedonia", in *Restatement of Labour Law in Europe: Vol. I*, eds. Bernd Waas and Guus Heerma van Voos (Oxford: Hart Publishing, 2017), 240.

42 Law on Obligations (Закон за облигационите односи) (*Official Gazette of Republic of Macedonia*, No.18/01).

43 See Todor Kalamatiev and Aleksandar Ristovski, *Factual Employment Relationship and Freelance Work in the Macedonian Legal System* (Београд: Радно и Социјално Право, Бр.1/2015, Година XVIV, 2015), 10–11.

44 Kalamatiev and Ristovski, "The Concept of 'Employee" (2017), 238.

term "employment relationship" – the definition is provided below – but it does not contain any additional specific provision aimed to prevent the concealment of the employment contract which can be treated as a principle of "primacy of facts" or "legal presumption for the existence of an employment relationship". The aforementioned legal principles derive from ILO labour standards, and their introduction into the North Macedonian labour legislation would enable workers to seek legal protection before the competent court, which could "reclassify" (i.e. annul or alter) the disguised (i.e. concealed) "civil" contract into a genuine contract of employment. In addition, these standards would also deepen the legal competencies of labour inspectors to combat bogus self-employment.

Definition of the term 'employment relationship' and establishment of criteria and indicators of subordination

Unlike the definition of the employment contract, which is left to labour law theory,[45] the definition of an employment relationship is set out in North Macedonian labour legislation. According to the current LLR, an employment relationship is defined as any "contractual relationship between the employee and the employer where the employee voluntarily takes part in the employer's organized working process in exchange for salary and other remuneration, personally and continuously carries out the work according to the instructions and under the supervision of the employer".[46]

In the definition of the term "employment relationship", the LLR refers to two subordination criteria: the performance of work according to the instructions and under the supervision of the employer and the participation of the employee in the employer's organized working process. The first criterion – which, in comparative labour law, is called "control of the work and instructions"[47] or "control test"[48] – is regulated by the LLR under additional provisions. In this regard, the LLR stipulates that an employee must observe the requirements and the instructions of their employer in relation to fulfilment of working duties under the employment relationship.[49] Further on, the LLR provides that an employee must conscientiously carry out the work at the job for which they have concluded their employment contract, during the working hours and at the location set down for carrying out the work, respecting the organization of the work and the business activity of the employer.[50] This statutory provision is related closely to the second subordination criteria – which, in comparative labour law, is referred to as the "integration of the worker in the enterprise"[51] or "integration test".[52]

An important indicator that emphasises the differences between "contracts of employment" and "contracts for services" is the indicator that relates to the question whether the work is performed within or outside the scope of the business activity/profession of the employer. In the period before the adoption

45 In North Macedonian labour law theory, the contract of employment can be defined as a contract on the basis of which a person commits himself or herself to work on behalf and at the expense of another person in exchange for remuneration. See: Gzime Starova and Tito Beličanec, *Labour Law* (Скопје: Универзитет "Св.Кирил и Методиј" , Правен факултет, 1996), 128.

46 Law on Labour Relations, article 5(1).

47 European Labour Law Network, *Regulating the Employment Relationship in Europe: A Guide to Recommendation No. 198* (Geneva: ILO, 2013), 38.

48 Simon Deakin and Gillian Morris, *Labour Law* (Oxford: Hart Publishing, 2009), 133–135.

49 See Law on Labour Relations, article 31.

50 See Law on Labour Relations, article 30(1).

51 European Labour Law Network, *Regulating the Employment Relationship in Europe: A Guide to Recommendation No. 198* (Geneva: ILO, 2013), 38.

52 Simon Deakin and Gillian Morris, *Labour Law* (Oxford: Hart Publishing, 2009), 135–136.

of the LLR of 2005, many employers, unable or unwilling to employ persons under employment contracts, frequently engaged workers by means of contracts for services, which started to be "identified" as contracts of employment or substitutes.[53] Hence, the LLR of 2005 introduced the so-called "special contracts" (посебни договори), aimed at separating contracts of employment from contracts for services, which often were misused in practice to disguise genuine employment relationships. As "special contracts", the current LLR considers "those contracts the subject of which is the independent manufacture or repair of certain things, independent performance of certain manual or intellectual work".[54] Taking into consideration their definition, it can be concluded that, in principle, "special contracts" (regulated by the LLR) can be compared to "contracts for services" (regulated by the Law on Obligations), i.e. they may be treated as a subspecies of contracts for services. Still, the key difference between these contracts is found in the scope of application. In this regard, unlike contracts for services which can be concluded for carrying out certain work/services regardless of their scope of application, "special contracts" can be concluded for the performance of work/services that do not lie within the scope (i.e. are outside the scope) of the employer's activity.[55] Special contracts also may be concluded for cultural and artistic work with a person who carries out cultural and artistic activities.[56] Hence, the conclusion of employment contracts is restricted to the scope of an employer's core activities, while special contracts are concluded beyond the scope of an employer's business activities or respective field.

In the contemporary forms of organization of business and production activities, there is often a loose and blurred border between "core" and "non-core" activities of employers. Hence, in practice, employers in North Macedonia use different ways to recruit workers to carry out certain work/services that are outside the scope of their "core" activities. This includes, for example, subcontracting (i.e. outsourcing, especially by engaging firms that perform maintenance and cleaning, security, IT services among others); temporary agency employment; directly engaging workers on a casual (temporary and occasional) basis, whereby their payment is provided through a so-called "copyright agency", in which case only personal income tax is paid; the casual worker may also be directly paid by the employer (cash-in-hand) without using the services of a "copyright agency".[57] Theoretically, "special contracts" can be concluded for all from the abovementioned ways of recruiting workers. However, in practice, these contracts are usually concluded for engaging workers directly by employers on a casual (temporary and occasional) basis for carrying out work/services in low-skilled jobs, construction, crafts, catering, tourism, cultural activities, IT services, sales agents and other forms of freelance activity. Special contracts are not subject to any formal registration, and persons employed under these contracts are usually not covered

53 Gzime Starova, *Labour Law* (Скопје: Просветно Дело А.Д.,2005), 254.

54 Law on Labour Relations, article 252(1).

55 See Law on Labour Relations, article 252(1).

56 *Ibid.,* article 252(2).

57 In the North Macedonian legal system, there is no specific legal act regulating the competencies and activities of the so-called "copyright agencies". These agencies find the legal basis for their functioning in the Law on Copyright and Other Related Rights (*Official Gazette of the Republic of Macedonia*, No. 115/10). Usually, copyright agencies provide outsourcing services to their clients related to making copyright contracts and contracts for services and regulating the payment under such contracts, after their clients have engaged "external" providers of services who are always natural persons. Hence, copyright agencies cannot be equated with temporary employment agencies because they do not recruit and contract out workers but only regulate the "manner of engagement and payment" of already recruited workers (i.e. external providers of services) by their clients. While the regulation of payment of persons engaged with copyright contracts serves to formalize the legal transactions with authors for the creation of copyright works (e.g. books, computer programs, musical work, photographic work, audio-visual work and so on), the services of the copyright agencies are also used for concluding various contracts for services that are not considered copyright contracts (e.g. contracts for the engagement of consultants, persons engaged in promotions and presentations, as well as contracts for occasional engagement of persons in technical and auxiliary work). It is questionable whether copyright agencies are authorized to provide services related to the conclusion of contracts for services, given that many of these contracts are, in fact, temporary and occasional work contracts or contractual relationships which, in fact, contain clear criteria and indicators for the existence of a genuine employment relationship.

by the compulsory social insurance system and appear as "formally" unemployed persons.[58] From the aforementioned, it becomes evident that the direct employment of workers by employers on a casual (temporary and occasional) basis can, to a lesser or greater extent, be treated as informal employment.

De lege ferenda, "special contracts" should be viewed as derogations from the LLR because, in practice, employers often use them as a "backdoor entry" for concealing genuine employment contracts and preventing workers from exercising their labour and social security rights. On account of the abolition of "special contracts", the legislature should consider the possibility of introducing "contracts for temporary and occasional work" (i.e. casual work arrangements). These contracts could be regarded as either entirely outside the employment relationship, as "imperfect contracts" between labour and civil law that provide for limited employment rights (such as minimum wage, limited duration of working time and so forth) or as classic employment contracts, fully subsumed under the personal scope of the application of labour legislation. A solid basis for the modelling of casual work in North Macedonian labour legislation may also be the legal frameworks of certain Central and Eastern European countries (e.g. Hungary,[59] Romania[60] and so on).

Other indicators aimed at distinguishing employment contracts from contracts for services mentioned in North Macedonian labour law theory are the following: *bearing economic risk* (when the parties conclude an employment contract, usually the overall economic risk is borne by the employer; under a contract for services, usually the risk is borne by the service contractor, i.e. the performer of the work); *methods of payment for the performance of work* (in the employment contract, the employee usually is entitled to receive a salary at regular intervals; in a contract for services, the service contractor usually gets a single monetary compensation for the entire work performed, paid after the work has been performed); *obligation to perform the work personally* (in an employment contract, only the employee and no other person can do the job in their behalf, while in the contract for services, the service contractor/entrepreneur can entrust the execution of the work duties to a third party).[61]

Apart from the statutory provisions defining the term "employment relationship" and their interpretation in theory, in North Macedonia there is no specific case law from which the criteria and indicators relevant for labour law judges in the process of distinguishing between employment and service contracts can be

58 With amendments in five separate laws on which the foundations of labour and social security legislation of North Macedonia are based (Law on Labour Relations, Law on Pension and Disability Insurance, Law on Health Insurance, Law on Contributions for Mandatory Social Insurance and Law on Insurance against Unemployment), in 2015, an attempt was made to regulate so-called "freelance work" (хонорарна работа). The basic goal of the legislature was to determine the legal position of "freelance workers" and to include this category of persons within the social security regime. In that regard, the then amendments to the Law on Labour Relations concerning "special contracts" stipulated that the remuneration received by the worker for the work/services carried out on the basis of a concluded special contract was subject to payment of contributions for mandatory social insurance in accordance with the law. Still, the unclear legal provisions that shaped the legal regime of "freelance work", the unpreparedness of the state institutions (primarily, the Pension and Disability Insurance Fund of North Macedonia) as well as the inadequate financial burden on persons who had generated income performing certain physical and intellectual work resulted in the abolition of the regulations on "freelance work" after only seven months of being introduced.

59 Act LXXV of 2010 on Simplified Employment regulates so-called "occasional work", defining it as an employment relationship that is established between an employer and employee with the following limitations on its duration: up to a total of five consecutive calendar days; up to a total of fifteen calendar days within one calendar month and up to a total of ninety calendar days within one calendar year. This form of work may occur in the following variants: seasonal work in agriculture; seasonal work in tourism and occasional work. See Gyorgy Kiss, "New Forms of Employment in Hungary", in *New Forms of Employment in Europe*, eds. Roger Blanpain and Frank Hendrickx (Alphen aan den Rijn: Wolters Kluwer, 2016), 237.

60 Romania started to regulate casual work with the adoption of the Law on Day Labourers (No. 52/2011) of 2011. Day labourers are employed on a temporary basis and paid per day worked. The most common sectors in which day labourers are employed are agriculture, tourism and entertainment and audio-visual industries. The minimum duration of work for the same beneficiary is one day (eight hours of work) while the maximum is 90 days (not necessarily continuous) within a calendar year. See Raluca Dimitriu, "New Forms of Employment in Romania", in *New Forms of Employment in Europe,* eds. Roger Blanpain and Frank Hendrickx (Alphen aan den Rijn: Wolters Kluwer, 2016), 324.

61 See Todor Kalamatiev and Aleksandar Ristovski, *Differentiation of the Employment Relationships from Other Contractual Relationships and Addressing the Issue of "Disguised Employment"* (Skopje: Business Law, Year XIV, No. 33, 2015), 21–26.

extrapolated. Courts simply cannot rely on adequate legal grounds to act on potential legal disputes related to misclassification of the employment status or contracts of workers. Nor did we come across any document or other form of soft law adopted by the State Labour Inspectorate or the Ministry of Labour and Social Policy. This may be a consequence of the fact that North Macedonia still has not accepted and incorporated the ILO Employment Relationship Recommendation, (No. 198),[62] which, *inter alia*, provides for the establishment of two types of indicators for the purpose of determining the existence of an employment relationship: indicators related to the performance of work and indicators related to the remuneration of the worker.[63]

Combating informal employment and concealment of the employment relationship (i.e. disguised employment relationship)

According to data from 2016, "informal employment" in North Macedonia[64] accounts for approximately 18 per cent of the total number of employees in the country.[65] Informal employment in North Macedonia can be viewed in a broader context, encompassing forms of unregistered activities, "under-declared" employment (envelope wages) and forms of employment that are not registered at the Employment Service Agency, i.e. not reported to the system of compulsory social insurance (so-called "undeclared" employment). For the purposes of this chapter, the term "informal employment" also refers to cases where there is a concealment of the employment relationship (disguised employment).

The prohibition and prevention of performance of *unregistered activities* in North Macedonia became subject to statutory regulation for the first time in 2014 with the adoption of the Law on Prohibiting and Preventing Performance of Unregistered Activities.[66] This Law primarily determines what must be considered performance of unregistered activities and its exemptions. In this respect, the following actions are considered unregistered activities: "performing an activity that is not registered in the special registries determined by law, except for the trade registry (for legal entities) or not registered with a competent body (for natural persons); performing an activity without having a prescribed act issued by a competent body in accordance with law and without fulfilling the conditions for carrying out a registered activity (for both legal entities and natural persons) and performing an activity contrary to the prohibition of performing an activity issued by a competent body (for both legal entities and natural persons)".[67] The Law also lists a wide range of activities that are considered exemptions from unregistered activities.[68]

62 ILO Employment Relationship Recommendation, 2006 (No. 198).

63 ILO Employment Relationship Recommendation, 2006 (No. 198), 13(a) and (b).

64 Informality is a complex and multi-layered concept. In defining this concept, the ILO uses the term "informal employment" which refers to all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements. See ILO, Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), I.2(a). Within the EU, it can be encountered under the term "undeclared work" and is therefore defined as any paid activity that is lawful in nature (excluding criminal activities) but is not declared to public authorities. See European Commission, Communication from the Commission on Undeclared Work, COM (1998) 219 final, 4.

65 Informal employment in North Macedonia is characterized by different structural features that can be viewed through several criteria such as: *gender representation* (according to this criterion, informal employment is higher among men and accounts for 20 per cent of the total number of employed men in 2016 compared to informal employment of women, which accounts for 15 per cent of the total number of employed women in the same year); *level of education* (according to this criterion, informal employment dominates among workers with completed primary education and among workers with three and four years of secondary education – with approximately 40 per cent each); *economic sectors* (according to this criterion, around two thirds, 65–66 per cent of the total number of informally employed workers work in the agriculture sector, 10 per cent in construction and around 6 per cent in wholesale and retail trade, vehicle repair); *economic status* (according to this criterion, the self-employed have the highest share of informal employment with 36 to 39 per cent and unpaid family workers); *most common domain of informal employment* (according to this criterion, around two thirds of the total number of informal workers are found at unregistered businesses). See: Ministry of Labour and Social Policy, *Strategy for Formalising the Informal Economy in the Republic of Macedonia*, 2018–2022 (Skopje: February 2018), 13.

66 Law on Prohibiting and Preventing Performance of Unregistered Activities (Закон за забрана и спречување на вршење на нерегистрирана дејност) (Сл.весник на Република Македонија, бр. 199/14).

Considering the legislature's approach in the regulation of unregistered activities, we conclude that combating unregistered activities in North Macedonia is mainly focused on two forms of unregistered paid activities: first, unregistered *business* carried out by a legal person (i.e. small enterprise) and, second, unregistered *work activity* performed by a natural person (entrepreneur) within the framework of self-employment.[69] The Law on Prohibiting and Preventing Performance of Unregistered Activities neither regulates the form of "undeclared employment" (i.e. undeclared work, performed in the form of a "*de facto*" employment relationship) nor governs other forms of work that have the same characteristics as informal employment (e.g. disguised employment relationships).

Undeclared employment is a type of "employment" which usually lacks a formal – i.e. written – employment contract between the contracting parties and the worker, which is not declared for compulsory social insurance purposes.[70] Earlier (before the amendments to the LLR in 2009), employers were required to register workers with compulsory social insurance ***three days after*** their employment contracts were signed. Despite this legal requirement, certain employers still found ways to circumvent the law and failed to register workers for compulsory social insurance in a timely manner.[71] When faced with labour inspection control, the "justification" of these employers was that three days had not elapsed since the "signing" of the employment contract and that they would complete the registration within the legally prescribed period. The subsequent legislative changes therefore were intended to prevent such abuses. In this regard, the current text of the LLR primarily provides that "the employee may not commence work prior to entering into an employment contract and registration to mandatory social insurance by the employer".[72] In addition, the Law requires employers to file a registration form for employees for compulsory social insurance, ***one day*** **before** the employee begins to work, and ***one hour*** **before** the employee begins to work in case of urgent and unpostponable matters.[73] Hence, these legal provisions can be interpreted in a way that every worker who has begun to work – i.e. they are found at a certain job performing work tasks which resemble work tasks resulting from an employment relationship – shall be considered an "employee" registered in mandatory social insurance. This approach facilitates the work of the State Labour Inspectorate in combating undeclared employment. A labour inspector who finds an undeclared (i.e. unregistered) worker working with an employer has the authority to take the following measures: *first*, to order the employer within a period of eight days as of date of receipt of the decision to enter into an employment relationship of an indefinite period[74] with the undeclared worker or other persons and without public advertisement of the vacancy and, in the following three months, not to reduce the total number of employees; *second*, to put forward to the employer a settlement by issuing

67 See Law on Prohibiting and Preventing Performance of Unregistered Activities, article 6(1).

68 These are the activities listed: (1) performing other activities that are necessary for the performance of the activity or that are performed along the registered activity; (2) occasional performance of an activity for which the obligation to register with a competent body is excluded by law; (3) own-use work; (4) family assistance; (5) neighbourhood assistance; (6) sale of personal used items; (7) work performed without financial compensation or other material benefit if it is not performed on a regular basis; (8) publishing, performing and presenting the work of artists; (9) activity performed by individuals at selling points in organized markets, who are registered in the registry of the Public Revenue Office and are lump-sum taxed for the activity they perform; (10) necessary work to prevent accidents or to eliminate the consequences of natural and other disasters; (11) service performed for household needs and (12) work performed outside the scope of the employer's activity, and for which the employer concludes a contract with a certain person. See Law on Prohibiting and Preventing Performance of Unregistered Activities, article 6(2–8).

69 For more on "paid activity" as unregistered work, see Edoardo Ales, "Undeclared Work: An Activity Based Legal Typology", *European Labour Law Journal,* Volume 5, No. 2 (2014), 157.

70 Aleksandar Ristovski, *Rights at Work for Youth in Macedonian Context: Decent Work for Young People* (ILO: National Adaptation of Facilitator's Guide and Toolkit on Rights at Work for Youth, 2018), 28.

71 See Law on Amending and Supplementing the Law on Labour Relations from 28 October 2009 (*Official Gazette of the Republic of Macedonia*, No. 30/09).

72 Law on Labour Relations, article 13 (7).

73 Law on Labour Relations, article 13 (3).

74 Arguably, this should entail both registration with the social insurance as well as the conclusion of a contract of employment.

an order for a misdemeanour fine in accordance with the Law on Misdemeanours; *third,* if the employer does not accept the order, to initiate a misdemeanour procedure.[75]

"*Under-declared employment*" in North Macedonia primarily covers practices of employers in which they pay social security contributions and personal income tax to the employees in a lower amount compared to the actual remuneration of the employees and pay employees an additional salary "cash-in-hand". This kind of informality is also known as an "envelope wage" or "concealed wage".[76]

Despite the fact that the *disguised employment relationship* is not explicitly mentioned in the documents (strategies, programmes and so forth) which address informal employment in North Macedonia, we consider this as non-standard form of work, having the same characteristics as informal employment, which is often present in practice. Forms of disguised employment in the country can be found in various activities in the private sector such as transport, construction, tourism, consulting services, information technology, media[77] and the like. Disguised employment is particularly prevalent in the public sector (education, healthcare, social protection, state administration bodies). Despite the significantly higher regulation of public sector employment[78] compared to the private sector, public sector employers find abusive ways of engaging workers without entering into an employment relationship. Employers exploit the absence of adequate statutory provisions prohibiting disguised employment relationships and conclude various contracts with workers – usually using the services of so-called "copyright agencies"– which are not employment contracts and for which no social security contributions are paid (only personal income tax). Persons engaged in this way do not have the status of "employees" (they are not included within the scope of public sector employees) and are colloquially referred to as "volunteers" or "freelancers".[79] In the absence of provisions in the LLR establishing the principle of "primacy of facts" or "the legal presumption for the existence of an employment relationship", it appears that the legislature has focused solely on the public sector to combat disguised employment.

Disguised employment in the public sector is more visible as workers in such a position have more opportunities to express their problems publicly, thus attracting wider public attention. Given that the state

75 Law on Labour Relations, article 259 (1).

76 According to several studies, "envelope wage" is the most widespread type of informality in North Macedonia. In 2017, 17.8 per cent of workers with a formal employment contract received an "envelope wage". Envelope wage is most prevalent among the recipients of the minimum wage (62 per cent of minimum wage workers receive an envelope wage in addition to the salary received on their "account"). Structured according to economic activities, the envelope wage is most prevalent among workers in the construction industry (23.2 per cent) and services (21.5 per cent). See Finance Think, Плата во плико (Број 1, октомври 2017).

77 According to the survey of the Independent Trade Union of Journalists and Media Workers (CCHM), more than one third (36.6 per cent) of journalists in North Macedonia have the status of freelance workers, but, in reality, many of them are in disguised employment relationships. The employment of such journalists consists of an eight-hour working day (Monday to Friday), on-call work for weekends and holidays, and other duties and responsibilities similarly to other colleagues who have concluded employment contracts with the same employer, including the prohibition to write for another media outlet. In practice, there are cases in which long-standing engaged correspondents are faced with unexpected "termination of cooperation letters" from the media publisher, solely due to a change of management of the medium. In this way, the termination of cooperation is carried out in an informal manner (e.g. by sending an e-mail expressing appreciation for cooperation). See Todor Kalamatiev and Aleksandar Ristovski, *Employment Status of Journalists and Media Workers in the* Republic of Macedonia (Skopje: Collection of Papers of the Iustinianus Primus Law Faculty in Skopje, International Conference "Media and Human Rights", 2016), 254–255.

78 The Law on Public Sector Employees of 2015 (Закон за вработените во јавниот сектор, Сл.весник на Република Македонија, бр.27/14), which is a "*lex generalis*" for public sector employees, provides for the classification of job positions in the public sector. According to this classification, job positions in the public sector are organized into groups, subgroups, categories and levels (article 14 and article 15). The Law also regulates the procedure for employment in the public sector (chapter IV-a).

79 According to relevant data from 2016, there were a total of 4,684 persons engaged in the public sector with volunteer contracts, service contracts, authors' contracts or other contracts. The majority of these persons worked in public health institutions, universities, schools and kindergartens. See Ministry of Information Society and Administration, Annual Report on the Register of Public Administration Employees (2016), 29.

is their "employer", the ruling political parties have an interest in meeting the demands of these individuals, expecting their political support in return. Therefore, on 12 February 2015, the Parliament of the Republic of North Macedonia adopted the so-called Law on Transformation into Permanent Employment Relationships.[80] The reason for the adoption of this legal act was the need to address the long-standing and adverse practice of "employment" of persons in the public sector on legal grounds contrary to the contract of employment, and which, *de facto*, excluded these persons from the scope of labour legislation. The purpose of the Law on Transformation into Permanent Employment Relationships is to convert contractual relationships of persons engaged on the basis of a volunteer contract, service contract, copyright contract or other contracts with state government institutions in the fields of culture, education, health, and child and social protection, and with local governments and public enterprises, institutes, funds and other legal entities established by North Macedonia into indefinite employment relationships and to limit the period and number of persons who can be "hired" under such contracts.[81]

Furthermore, the Law provides for the possibility of transforming a contractual relationship into an employment relationship of an indefinite duration for persons who have been working on the basis of a contract lasting at least three months up to 30 November 2014 and who have valid contracts at the time that the Law was introduced. This law also envisages a procedure for the transformation of these contracts into indefinite employment relationships, restrictions on future hiring of workers with volunteer contracts and contracts for services and so forth.[82] Despite the positive intention of the legislature to regulate the employment status of many disguised public sector employees, dilemmas regarding the discretionary and voluntaristic approach in the determination of the criteria for transformation still remain. In this regard, we cannot find a logical explanation to the following questions: why a minimum of three months is taken as a criterion (and not, for instance, two or four months); what happens to persons who had interruptions, i.e. breaks in their contracts precisely in the period necessary to prove the continuity of their engagement, despite having been engaged in the same work for years; what about persons who had the required continuity in their work but did not have or could not submit appropriate evidence (e.g. contracts or notices of payment for their work) because the contracts or payment notices they received were issued on a quarterly basis rather than a "month-to-month" basis, among others. Additionally, it seems that the positive effects of this law only had a "one-time" effect and application. Despite the regulation of the genuine employment status of a large number of persons in the public sector, there are still many other workers who continuously work with contracts different from employment contracts and still find themselves in disguised employment relationships.

Conclusion

This in-depth analysis of the legal regime of regulating fixed-term work in North Macedonia conducted in this chapter shows that the existing provisions are fairly flexible and oriented towards the interests of employers and that there are obvious regulatory gaps that need to be filled in future in order to achieve more adequate protection of fixed-term employees and prevent abuses in the duration of their employment through the conclusion of successive (consecutive) fixed-term contracts. The traditional position, both in North Macedonia's labour legislation and labour law theory, is that the employment relationship of an indefinite duration is a "rule" while fixed-term employment is an "exception". Nonetheless, such an assumption is not supported by existing labour regulation and practice. In reality, there is insufficient

80 Law on Transformation into Permanent Employment Relationships (Закон за трансформација во редовен работен однос) (Сл. весник на РМ бр. 20/2015).

81 Law on Transformation into Permanent Employment Relationships, article 1.

82 Law on Transformation into Permanent Employment Relationships, articles 2–7.

protection of fixed-term employees, uncertainty that accompanies their employment relationship and an inadequate legal regime for preventing the abuse of fixed-term employment contracts. The new Law on Labour Relations will need to address this. In this regard, it is more likely that the legislature will reintroduce the objective justification (i.e. making the conclusion of fixed-term contracts conditional upon the existence of objective reasons). What is likely to be a source of debate is the manner for determining such objective reasons: whether by introducing a general ground (a mandatory requirement that the work for which the employer requires employees is of a temporary nature) or by providing an exhaustive listing of specific cases for which the conclusion of fixed-term employment contracts is allowed (e.g. replacement of a temporarily absent worker, increased volume of work, seasonal work, project work and so forth). It is also expected that the maximum duration of fixed-term work of five years shall also be reduced to maximum of three years.

De lege ferenda, the legislature should also resolve the dilemmas concerning the following: the legal "fate" of the employment relationship of fixed-term employees replacing temporarily absent employees who became permanently absent and do not return to work; the legal consequences of the "*de facto*" extension of employment relationships of employees whose fixed-term employment contracts have expired; the more adequate protection of trade union members and female employees against discriminatory termination, i.e. non-renewal of their fixed-term contracts and so on.

Additionally, in North Macedonia, there is a lack of a systematic approach for identifying and combating disguised employment. The disguised employment relationship – a relatively "new" phenomenon which became apparent after the country's independence and the introduction of the contractual conception of employment relations – is studied insufficiently in North Macedonia's labour law theory. Although the labour legislation defines the term "employment relationship" along with the basic criteria of legal subordination, there is no adequate statutory framework and appropriate legal mechanism for the protection of the rights of workers in disguised employment relationships. This is further reflected in the fact that case law does not provide for the possibility of bringing a legal dispute before the court to determine the legal status of the subject of the contract for services, particularly when it effectively meets the "factual" assumptions associated with an employment contract. All this leads to an erroneous legal position that the contracting parties have unlimited freedom in determining the classification of their contract and absolute autonomy in regulating their mutual rights and obligations. In the future, the legislature will have to take into account the solutions embedded in the ILO Employment Relationship Recommendation, (No. 198), especially those related to the introduction of the principle of "primacy of facts" or "legal presumption for the existence of an employment relationship". In parallel, it is arguably necessary to extend the statutory competences of the Labour Inspectorate to prevent and protect workers against disguised employment relationships and to consider the possibility of according competences to the Labour Inspectorate to reclassify "sham contracts" into contracts of employment.