
# Non-standard forms of employment in North Macedonia

Final integrative report

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# List of abbreviations and acronyms

| | |
|---|---|
| **ESA** | Employment Service Agency |
| **FTCs** | Fixed-term contracts |
| **ILO** | International Labour Office / Organization |
| **IT** | Information Technology |
| **LFS** | Labour Force Survey |
| **LRL** | Labour Relations Law |
| **LOSH** | Law on Occupational Safety and Health |
| **NSE** | Non-standard employment |

# ▶ 1. Introduction

Non-standard forms of employment (hereafter non-standard employment-NSE) are a common feature of labour markets worldwide. Their importance has increased over the past few decades in both developed and developing countries, and their use has been extended to new sectors and new occupations.

NSE include various employment arrangements which are different from the "standard employment relationship" that is a job that is full-time, with indefinite duration (also called open-ended or permanent) and characterized as a subordinate relationship between a worker and an employer.[1] While for some workers, the NSE is a choice which is mainly a result of the need for greater flexibility in working hours, own organization of the work, higher earnings due to the non-payment of social security contributions, etc., for plenty of workers the NSE is the only option for earning an income which is also associated with low (or non-existent) labour and social protection. Some of the NSE forms are not formally an employment relationship so that workers do not benefit from the labour protection and rights such as minimum wage, social security coverage, paid sick leave (and maternity leave), etc. This dichotomy also appears from an employers' perspective. For some employers, NSE are a useful tool for greater flexibility, reduction of fixed costs especially in times of high uncertainty, whereas for others it is the only way to find the needed workforce. ILO research has shown, however, that the extensive use of NSE may also result in challenges for employers due for instance to increased absenteeism, possible conflicts between permanent and temporary staff, etc. Table 1 presents details about the typology of NSE and common types/forms of NSE.

**Table 1 - Typology of NSE**

| Category | Common forms | Characteristics |
|---|---|---|
| Temporary Employment | Fixed-term contracts, including project- or task-based contracts; seasonal work; casual work, including daily work | Not open-ended (permanent) |
| Part-time and on-call work | Normal working hours fewer than full-time equivalents; marginal part-time employment; on-call work, including zero-hours contracts. | Not full time |
| Multi-party Employment Relationship | Also known as 'dispatch', 'brokerage' and 'labour hire'. Temporary agency work; subcontracted labour. | Not direct, subordinate relationship with end use |
| Disguised Employment / dependent Self-Employment | Disguised employment, dependent self-employment, sham or misclassified self-employment. | Not part of employment relationship |

ILO (2016), p. xxii.

These different NSE forms appear in different legislative forms such as employment contracts, civil/service contracts, some fall under other legislation (such as company or tax laws), and can be both formal (written, in a form of contract)) and informal (verbal agreements). There are also important overlaps between the terms NSE and informality.[2] Many forms of NSE such as disguised employment, dependent

1 ILO, Non-Standard Employment Around the World: Understanding challenges, shaping prospects, 2016. Available at: wcms_534326.pdf (ilo.org).
2 ILO, Non-Standard Employment Around the World: Understanding challenges, shaping prospects, 2016. Available at: wcms_534326.pdf (ilo.org).

self-employment, multi-party employment relationships etc. do not provide adequate legal protection both in law and in practice which makes them part of the informal employment.

Whatever the reasons for the growth of NSE around the world are, it seems that they are mainly a reflection of the changes in the world of work stemming from the quest for higher flexibility on both sides of the labour market, technological developments, the decline in the trade union density, and the rise of new sectors and occupations, among other reasons.

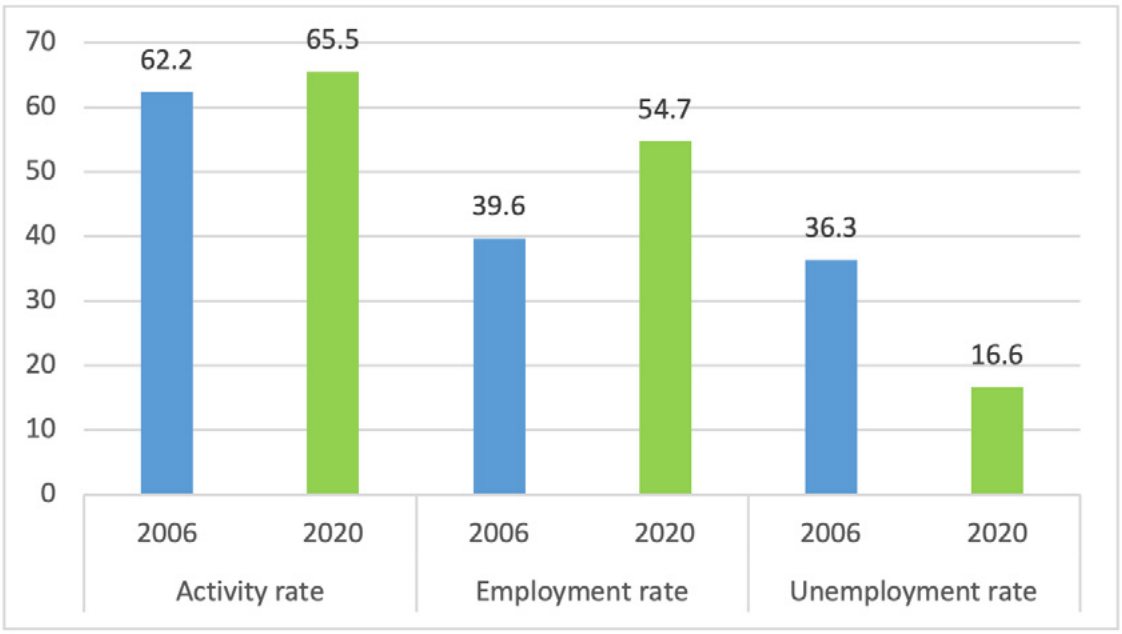
The North Macedonian labour market is also changing, although at a slower pace. The last two decades are characterized by relatively large decline in the unemployment rate (from 36.3% in 2006 to 16.6% in 2020), and a transition from an excess supply of workers to a tight labour market with a lack of workers as reported by employers (though not confirmed by the official statistics). Informality has also declined considerably, from 24.9% in 2010 to 12.9% in 2020. These changes have also triggered change in the dynamics of the worker-employer relationship evidenced in this report. While the world of work has changed in North Macedonia as elsewhere, labour legislation and collective bargaining did not. This has left many new types of workers jobs (such as the gig economy) non-regulated and out of the social protection system, but also led to lost tax revenues for the state. Labour Force Survey (LFS) data do not show a rise in the NSE in North Macedonia, which is opposite to the global trends. However, that may be a result of the failure of the LFS to capture the growing diversity of employment relationships (agreements). On the other hand, the field study provided valuable evidence for the use of NSE and the rising forms such as digital platform work.

Hence, the aim of this study is to provide a more comprehensive analysis of the NSE in North Macedonia, based on findings from three different aspects/studies of the NSE: i) economic study which analysed the micro labour market data of LFS with a focus on NSE, ii) legislative study on NSE covering predominantly labour law but also other laws which regulate some forms of NSE (such as civil law, tax law, commercial law), and iii) qualitative study based on field work (interviews and focus groups with workers and employers). The analysis and findings will be used as evidence to develop recommendations with a view to modernize and improve the legislation, to improve the position of the workers engaged through NSE, provide the needed flexibility to employers, to improve the enforcement of the existing regulation, and to increase formalization and tax compliance.

# ▶ 2. Labour market developments in North Macedonia with a focus on non-standard forms of employment

The North Macedonian labour market is characterized by high unemployment, and low employment and participation rates. Nevertheless, there has been considerable progress over the last two decades in all main labour market indicators, with exception of the gender gaps in activity and employment, which prevail at high levels (Figure 1). Youth unemployment has declined, following the overall unemployment rate, from 59.8% in 2006 to 35.7% in 2020. Informality almost halved between 2010 and 2020, from 24.9% to 12.9%.[3]

**Figure 1 - Main labour market indicators, 2006 and 2020**




Source: Makstat database, http://makstat.stat.gov.mk.

The LFS data capture some forms of NSE which cannot be identified through the administrative data, at least not to the extent that would be necessary for this study and for policymakers so as to gather evidence for policy responses. The LFS can be used to identify few forms of NSE such as temporary employment (mainly fixed-term contracts), part-time work, self-employment, informal work (defined either as an employment relationship with a non-registered business, or as without payment of social contributions), work from home and agency work.

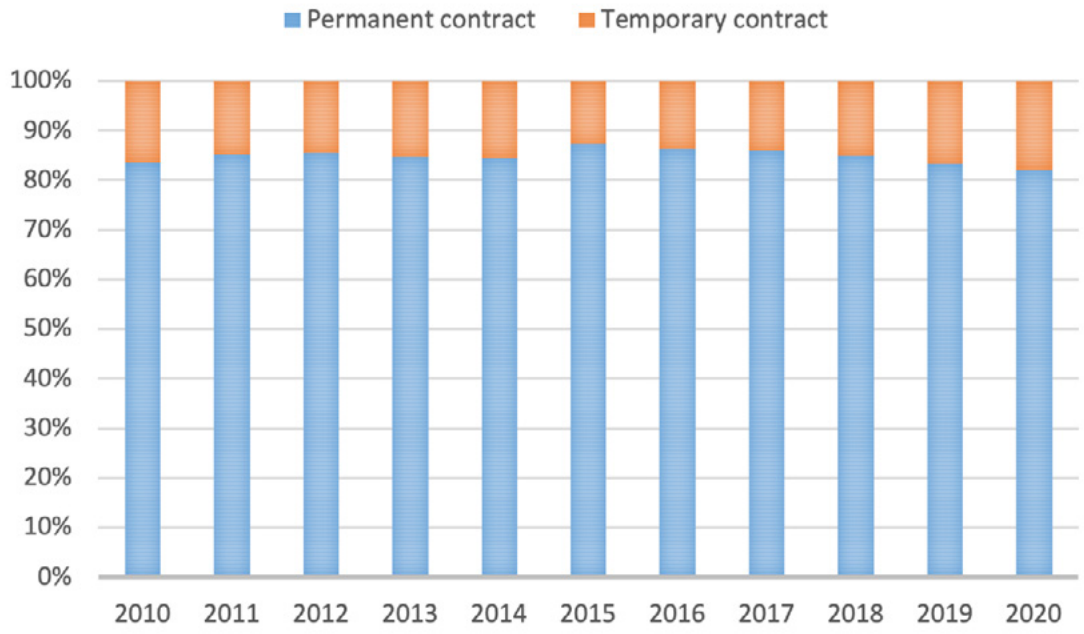
3 Petreski, M. Statistical analysis and shift-share analysis of non-standard forms of employment in North Macedonia, ILO, 2021. Based on micro data analysis of Labour Force Survey Data.

### ▶ Box 1: Challenges with the terminology

There is a large issue with the inconsistency and non-harmonized terminology used nationally in the area of NSE. This is the case for the legislation, where different laws use different terminology, for instance for the self-employed persons. In addition, the LFS terminology and data collected are not fully harmonized with the practice and the legislation. Further issues arise when N. Macedonian employment-related terms are translated into English, there is a high discrepancy with the ILO terms and definitions. For instance, LFS uses a distinction between fixed-term and permanent wage employment. Then, fixed-term is broken down into several categories: occasional work, temporary work, seasonal and intermittent work. In ILO terminology, the temporary work is broken down to fixed-term, casual, seasonal, etc. This creates confusion. Similarly, one form of NSE used quite often in North Macedonia are civil contracts which are termed "contracts for temporary and occasional work", where the word temporary is again confusing when translated in English and when compared to the ILO terminology. While this study will try to be as clear as possible, some confusions may still arise.

An analysis of the LFS micro data has been conducted for the period 2010-2020. Findings show that the share of temporary employment is relatively stable, with some fluctuations across the years. During the analysed period, between 12.6% and 17.8% of workers were employed on a temporary basis, and the remaining share has a permanent (indefinite) work contract (see **Figure 2**).[4]

**Figure 2 – Share of workers with temporary contracts**



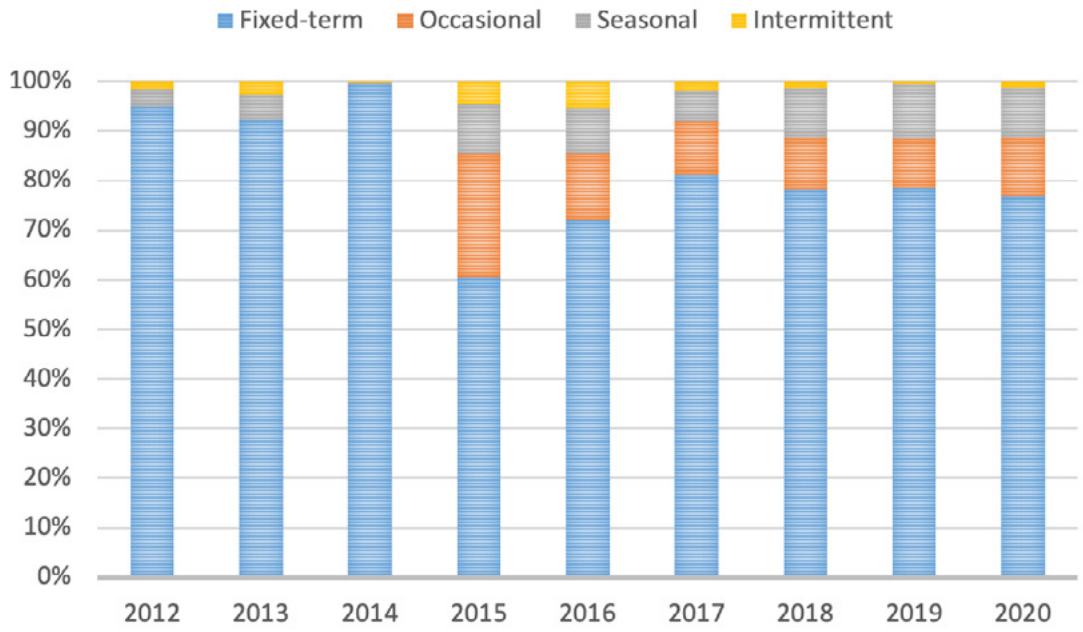

Source: LFS.

Major part of the temporary contracts category consists of fixed-term contracts (**Figure 3**). A robust analysis could not be made previous to 2015, because until then, the group 'fixed-term' also comprehended occasional contractual arrangements. The share of fixed-term contracts among

4 Very small part may be also part-time employment which is very rare in North Macedonia.

temporary contracts increased to 76.9% in 2020 from 60.4% in 2015, but this may be driven by the thin line between what is fixed-term and occasional work. The share of seasonal contracts is relatively stable at around 10% of all temporary contracts.

**Figure 3 – Types of temporary contracts**




Source: LFS.

Very few workers in North Macedonia are working in part-time jobs, only 4% of workers (both formal and informal) in 2020. The trend was generally declining though with some fluctuations between years. Part-time work arrangements are uncommon in North Macedonia, an issue we explain in detail in section 4.1.4.

LFS data also show a very small use of work from home and temporary agency work. In 2020, only 0.2% of wage employees were contracted through a temporary agency, whereas only 0.8% of employees were working from home. While work from home during the Pandemic was low, still it represented a large increase by 167%, from 0.3% in 2019. The work through a temporary agency (the so-called multi-party employment) was highest in 2010, but still of small magnitude (1.4% of all workers).

# ▶ 3. North Macedonian Labour Law: the scope and the concept of the standard employment relationship

The North Macedonian legal system applies a binary model with an employment relationship/employment contract (regulated by the Labour Relations Law-LRL)[5] on one hand, and other working relationships/contracts for services, on the other. The LRL and its scope of personal application in North Macedonia implies that the major precondition for a person to have an access to the entire corpus of rights stemming from the labour legislation is for the person to be in an employment relationship/have employment contract and status of "employee".[6] This implies that the status of "employee" is crucial as most labour and social protections are associated with it. On the other hand, the rights and obligations of persons with an employment status of self-employed workers that pursue autonomous work and do not fall in a subordinate position, are subject to civil law (mainly the Law on Obligations)[7] and commercial law, and are not regulated by the labour law. Given the large changes in the world of work, globalization, technological changes, new business models, etc., one of the crucial challenges for the labour legislation is to define which persons or workers should be subject to the protective regulations and the full range of labour rights. In such circumstances, the distinction between the "dependent" and "independent" labour raises the issues: *"whether a person is in an employment relationship or not", as well as "what type of labour and social rights are generated by the different employment statuses of the workers".*[8] The newly emerged labour reality, often contribute towards false, unlawful or ambiguous application of the substantive law, leading to: i) *"disguised employment relationship"* (i.e. "misqualification" of the subordinate worker as a "self-employed" person), ii) *"ambiguous" working relationship* (dominated by the economic, as opposed to legal subordination, yet, the worker is outside the scope of the employment relationship) and in iii) *"triangular"*, i.e. "tripartite" employment relationship (established through mediation by Temporary Employment Agencies or entailing "staff-leasing" between companies, making it exceptionally difficult to determine the actual employer of the workers).[9]

LRL defines the terms *"employment relationship"* and *"employee"*, while the definition of the term *"employment contract"* is subject to the domestic labour law doctrine.[10] **Employment relationship**, pursuant to LRL is defined as *"contractual relationship between the employee and the employer whereby the employee voluntarily joins the work process organized by the employer, for salary and other remuneration, and performs the work in-person and without interruption according to the instructions and under the supervision of the employer".*[11] **Employee** shall mean *any natural person who has entered into an employment relationship based on an employment contract.*[12] Note should be taken of the fact that the tendencies on a global level, observed through the prism of the international labour standards, and specifically, the more recent ILO conventions and recommendations (such as, Convention 190 and Recommendation 206 on Prevention of Violation and Harassment in the World of Work), which, apart from "employees", protects "persons working irrespective of their contractual status", as well as other persons in the world of work. These categories include trainees, interns and apprentices, jobseekers and employment candidates, even persons performing authorizations, duties or responsibilities of an employer.[13]

Despite the fact that LRL nominally provides for a broader term "worker", it can be noticed that in fact the narrow sense of the term "employee" is applied. Moreover, the labour legislation "equalizes" the terms "employment relationship" and "employment contract". Still, the North Macedonian labour

5 LRL, Official Gazette of North Macedonia No. 62/05.
6 The direct translation of the term used in the LRL is "worker", but the true meaning is "employee".
7 Law on Obligations, Official Gazette of North Macedonia No. 18/2001.
8 European Labour Law Network, Regulating the Employment Relationship in Europe: A Guide to Recommendation No.198, (Governance and Tripartism Department; International Labour Office, Geneve, 2013), p. 5.
9 See Countouris, N. The changing law of the employment relationship - comparative analyses in the European context, (Ashgate, 2007), p. 71-85.
10 See Kalamatiev, T. and Ristovski, A. The Concept of Employee: The Position in the Former Yugoslav Republic of Macedonia, (Hart Publishing, 2017).
11 LRL, Article 5, paragraph 1, item 1.
12 LRL, Article 5, paragraph 1, item 2.
13 C190, Article 2, paragraph 1.

legislation establishes **the employment contract** as a strictly formal contract entered into in writing.[14] In practice, it is typically considered that an employment relationship is non-existent, unless the employer and employee have entered into a formal employment contract (in writing) and/or the employer has registered the employee for mandatory social insurance, regardless if both contractual parties have entered into a "factual" relationship that might be equalized with an employment relationship. As a consequence, the undeclared, i.e. informal workers do not have status of "employees" and the protective provisions of the labour legislation shall not be applicable to them.

The majority of individual and collective labour rights is regulated by the Labour Relations Law (for instance: limited working hours, minimum wage, breaks, annual leaves, rest periods, protection against dismissal, establishment of and membership in trade unions, collective bargaining, strike) and they cover only "employees". However, some special laws extend other significant rights to all workers (for instance: Law on Occupational Safety and Health[15], Law on Prevention and Protection against Discrimination[16], Law on Protection from Harassment at Work[17], Law on Volunteering[18], Law on Internship[19]). For instance, the Law on Occupational Safety and Health applies to all employed persons which include any person employed by an employment contract or any other contractual arrangement, self-employed, individuals performing professional or other activity Including sole proprietors), and person that performs work as part of a training programme.[20] The same holds for the Law on Protection against Harassment at Work.

The North Macedonian LRL is based on the concept of the so called **"standard employment relationship"**. The term standard employment relationship can be placed in both sociological and in normative context. In sociological context, the standard employment relationship constitutes a dominant form of a working relationship that covers performance of a "stable, socially protected, continuous full time work".[21] In normative context, standard employment relationship can be defined as a permanent (indefinite) full-time working relationship, between an employee and an employer, in the business premises of the employer and under employer's supervision and control.[22] However, the changes in the world of work challenge the traditional sociological and normative paradigms of the "standard employment relationships", and give a rise to new non-standard forms of work that can be qualified as deviations from the standard employment relationship model.

14 See LRL, Article 15, paragraph 1.
15 Law on Occupational Safety and Health, Official Gazette of North Macedonia, No. 92/07)
16 Law on Prevention and Protection against Discrimination, (Official Gazette of North Macedonia, No. 127/2010).
17 Law on Protection against Harassment at Work, Official Gazette of North Macedonia, No. 79/2013.
18 Law on Volunteering, Official Gazette of North Macedonia, No. 85/2007.
19 Law on Internship, Official Gazette of RM, No. 105/21.
20 Law on Occupational Safety and Health, Article 3, paragraph 1, line 1.
21 Bosch.G et al., Working Time and the Standard Employment Relationship, (Edited by Jean-Yves Boulin, Michel Lallement, Jon.C. Messenger and Francois Michon, in Decent Working Time – new trends, new issues, International Labour Office, Geneva, 2006), p. 44.
22 Fudge.G, R.Owens et al., Precarious Work, Women and the New Economy: The Challenge to Legal Norms, (Oñati International Series in Law and Society, Hart Publishing, Oxford and Portland Oregon, 2006), p. 10.

# ▶ 4. From legislation to practice: regulation of non-standard forms of employment and results from field work

This section of the report combines the legal aspects of the regulation of NSE with the practice of their use (i.e. findings from the field study).[23] Each subsection presents the legislative aspect of the specific NSE, along with the findings from the employers' and employees' interviews. Where available, statistical data are added. Some comparative examples and practices are also highlighted.

Using the ILO typology for classification of the non-standard forms of employment, the current labour legislation in North Macedonia recognizes the following forms: in the group of temporary work *(fixed-term contracts and seasonal work contracts)*; in the group of part-time work and on-call work *(part-time work employment contract)* and in the group of employment forms that involve multiple parties *(temporary agency work contracts)*. Even though the North Macedonian labour legislation does not foresee and regulate explicitly the other non-standard forms of employment, as classified by ILO (casual work, on-call work, subcontracting, and dependent self-employment), the practice shows that these forms, more or less, are present at the North Macedonian labour market. Similar is the situation with "telework" and "work on digital platforms", subject to analysis in this study.

The field study showed that apart from the standard permanent contract, most used types of NSE in practice are: time limited (fixed-term) and a broader category of service contracts (also called freelance) which includes temporary/casual work, civil contracts and author/copyright contract. Findings of the economic study (micro LFS data) show that NSE are less likely to occur among older workers, more experienced workers, and in large firms, with no specific difference based on gender.[24]

## 4.1 Temporary Employment

### 4.1.1. Fixed-term work

The fixed-term work/contracts (FTCs) have been present and regulated in the North Macedonian legislation since the independence of the country (along with part-time and seasonal work). The approach of the current labour legislation in the regulation of fixed-term employment contracts is contradictory and unbalanced. On one hand, LRL leans towards permanent employment contracts[25], determining the FTCs as a "possibility"[26] and introduces a rebuttable presumption for the existence of a permanent employment relationship, in terms when the employment contract does not set forth the duration of the contract[27]. However, on the other hand, the LRL includes detailed provisions that regulate the FTCs which implicate that the fixed-term work is not an "exception" compared to the "rule" of establishing permanent employment relationship.[28]

The LRL does not require an objective reason (ground) for entering into the **initial** (first) FTC. The sole case where the legislator explicitly refers to existence of an objective reason for conclusion of a fixed-term employment contract is the *"replacement of the temporary absent worker until his/her return at work"*.[29] North Macedonian labour legislation incorporates one of the three measures aimed at protection against abuses arising from the use of successive FTC as set forth in the Council Directive 99/70/EC concerning the framework agreement on fixed-term work, that is the *"maximum total duration of successive FTC's"*. The

23 The field study was implemented in the period October-November, 2021. In total 45 in-depth interviews were conducted or which 35 with workers (and workers' organizations) and 10 with employers/employer' associations. In addition, three focus groups discussions were held with employers. See Mojsoska-Blazhevski, ILO, 2021 for a complete qualitative study.
24 Petreski, M. Statistical analysis and shift-share analysis of non-standard forms of employment in North Macedonia, ILO, 2021.
25 LRL, Article 14, paragraph 1.
26 LRL, Article 14, paragraph 2.
27 LRL, Article 14, paragraph 3.
28 Ristovski. A. Fixed-term contracts and disguised employment relationships in North Macedonia, ILO, 2021a.
29 See: Labour Relations Law, Article 46, paragraph 2.

other two protective measures for the workers, such are the *"establishing of objective reasons justifying the renewal of such contracts/relationships"* and the *"limitation of the number of renewals"* do not apply.[30] Pursuant to LRL, employment contract may be concluded for a *fixed term, for performance of same works, with or without interruptions up to five years.*[31] The maximum total duration of the fixed-term employment relationship of five years refers to performance of "*same*" work. This leaves a room for employers to avoid the legal consequence arising from the expiration of the maximum total duration of the fixed-term work, being transformation of the fixed-term employment relationship into a permanent employment relationship. The FTCs shall be terminated upon the expiry of the period for which it has been entered into, when the agreed work is completed or when the reason for entering into the contract shall cease to exist.[32]

FTCs can both be a choice of workers that combine work with education, or have some responsibilities or plans that keep them from committing to a work of permanent character. However, LFS data show that 70% of workers in North Macedonia are working on FTCs because they cannot find an employment with a permanent contract, suggesting that fixed-term employment is not a choice. In the latter case, it is important that the legislation prevents the abuse of such contracts, which can be done through limitations on their renewals, limit to their overall duration (the case in North Macedonia) or the prohibition of fixed-term work for permanent tasks.

FTCs are the main type of NSE used in North Macedonia, as evidenced both by the LFS data (see section 2) and the interviews and focus groups discussions (FDGs). Findings from the field study with employers showed that the main reason behind the use of FTC in North Macedonia is the needed flexibility, in light of the unpredictable business environment. The FTCs are mainly used as a more flexible substitute to permanent work contracts. FTCs are used sometimes also as a substitute for the seasonal work, especially in construction and hospitality sectors. In employers' understanding, seasonal work contracts (which are a sub-category of the FTCs) are geared towards the agriculture.

*"The unpredictability of the business is the main reason for contracting workers based on fixed-term contracts month by month. If there is work, it is not a problem to extend the contracts as we do now."* Call centre

Some employers referred to the Covid-19 situation in which their activity declined a lot, stating that they would have not survived the period if they had more workers employed on permanent basis.

The other important reason for using the FTC is that these contracts are used as a trial period, when employers explore whether the worker is a good match for the job. Although a "contract for trial work" exists in the LRL (article 60), its use in practice is very small as employers prefer FTCs because the trial work is limited to 4 months and cannot be renewed. The field study found the use of FTCs almost in all sectors covered, such as construction, call centres, bakery, trade, media, etc. While companies argued that they would like to keep all good workers as there is an insufficient supply of such workers in the country, they still use FTCs because of the business unpredictability.

The third main reported reason for using FTCs by employers is that the process of termination of the permanent contract with incompatible workers is long and there is always a possibility for abuse by workers in the termination process. Employers complain about the administrative burden of hiring and firing workers with permanent contracts, especially in unstable businesses.

The use of FTCs is reversely proportional to the size of the company, with small companies reverting more often to FTCs, as a way to control the fixed costs and to balance the seasonal character of the work (hospitality and tourism). Some employers (in the construction sector) argue that the new changes in the LRL – where the maximum duration of the fixed-term contracts could be reduced to two years, as well as the possibility for declaration of Sunday as a non-working day will negatively impact their businesses.

According to employers, FTCs are good both for employers and for workers.

*"The need for nonstandard forms of employment is combined, on the one hand it suits employers because they cannot provide continuous work for 12 months and at one point it would be unprofitable to give them a salary with complete insurance and contributions, and on the other hand the workers themselves are constantly*

30 Ristovski, A. Regulating non-standard forms of employment in North Macedonia, ILO, 2021b.
31 Labour Relations Law, Article 46, paragraph 1.
32 See: LRL, Article 64.

*looking for better paid work, whether in the country or abroad, because they know that they will find it, because it is difficult to find a competent and qualified worker in this field."* Construction

The LRL forbids the less favourable treatment in terms of employment conditions, as well as of the rights and obligations of the employees with FTCs compared to the employees with permanent contracts. Exception exists in case of different treatment justified by "objective reasons".[33] The law, however, fails to precisely define the term "comparable" employee in permanent employment. No adequate definition and interpretation of the term "objective reasons" for justification of the different treatment of employees in FTCs and of employees in permanent employment can be found in the collective agreements or in court practice. In principle, the North Macedonian labour legislation includes "qualifying period" (i.e. length of service of the employee with the employer) as a condition for acquiring specific entitlements emerging from the employment relationship. Hence, workers, regardless of the employment relationship (permanent or fixed-term), usually gain the full scope of rights since the first day of employment. However, there are cases where the exercise of a specific right is conditioned by a minimum legal qualifying period (length of service), such as the right to a full annual leave for which a qualifying period of at least six months is required.[34]

The qualifying period may indirectly impede the exercise of right to trade union organization of fixed-term workers.[35] In context of health insurance related rights, qualifying period implies for the right to salary allowance during an absence from work due to maternity and parental leave or salary allowance in the event of temporary incapacity to work due to illness and injury. There are no legal differences between employees on FTC and permanent contracts in exercising the right to unemployment benefits in case of unemployment.[36]

The interviews and focus groups show that employees with FTCs have all rights and privileges as employees with permanent contracts such as annual leave, sick and maternity leave etc., after the initial six months. The exception here are employees in media (journalism) which complained that they are not enjoying some of the rights stemming from the employment relation such as uninterrupted rest, payment for overtime work, etc., but they also acknowledged that the same applies for the employees with permanent contracts. Same as for "regular" employees, employers pay social security upon payment of wages, on behalf of the employees with FTC.

*"They have the right for vacation days, of course. We keep records. After 6 months and if their contract is extended and in 99% of cases it is extended then they have the right to leave, I think they were 20 days."* Call centre

As a negative side of the FTCs some employers emphasize that it can negatively affect motivation for the employees as they are faced with uncertainty about the future. They also emphasize that employees who turn out good, may still leave after this "trial" period. Given the rising problem of lack of workforce and even more so, quality workforce, this presents a large challenge to businesses.

*"Sometimes even it is a good worker, s/he can still leave without any advance notice after the contract expires, although I'd like that person to continue the collaboration."* Professional translation

Findings showed some cases of violation of the LRL. For instance, in some cases (few) FTCs are used for more than 5 years (which is over the maximum allowed duration by the legislation). Some employees also reported that their FTCs are extended by employers without informing them even for a longer period (4-5 months) and they still keep working, hoping that the contract has been extended. Studies found several negative sides of the FTCs. In particular, some employees mentioned that have difficulty in obtaining bank loans, especially long-term loans (such as house loans) because of working under FTC. In addition, the economic study estimated a wage gap between workers with permanent contracts and those on FTC of 13.6% in 2020. When accounting for the personal worker' characteristics, the adjusted gap declined to 6.5%, meaning that workers with FTCs have less favourable characteristics (in terms of age, education, etc.) vs. employees with standard contracts. Some workers with FTCs held a view that

33 See LRL, Article 8, paragraph 3.
34 See LRL, Article 139.
35 See Kalamatiev.T, A.Ristovski, Temporary Work and Forms of Work Outside of the Employment Relationship in North Macedonia - de lege lata vs. de lege ferenda, (Schulthess, 2020).
36 The eligibility period needed for realization of this right is nine months of uninterrupted employment or 12 months with interruptions in the last 18 months (See for this: Law on Employment and Insurance in Case of Unemployment, Article 65).

despite the greater certainty offered by the standard form of employment such contracts are not always superior, as employees on such contracts are prohibited to have an additional work and are often forced to do other things outside of their job descriptions as administrative work.

The new LRL (which is under preparation) already introduces significant changes in the legal regime of fixed-term work, which would, on one hand, establish a more adequate balance between the needs and interests of the employees and employers, and on the other hand, address the existing legal gaps that create ambiguities in practice. It is almost certain, and there is an implicit agreement between the social partners, that the total maximum duration of the fixed-term employment relationship will be reduced, and that the FTC will be transformed to permanent employment, regardless of the type of work that is performed by the employee ("same" or "different") with the same employer after the expiration of the maximum duration of the contract.

### 4.1.2. Seasonal work

Even though the seasonal work is regulated in a separate provision of the LRL and contains more specific features when compared to the general regulation of the fixed-term employment, still it is considered as a type of fixed-term employment since the legal grounds for execution of seasonal work are found in the conclusion of a so-called *fixed-term employment contract for execution of seasonal works*.[37] Seasonal work is executed in a specific period – season which *may not exceed eight months in a period of 12 consecutive months*.[38] The manner of defining the seasonal work inclines to relative "stability" and "continuity" in this non-standard form of employment. However, it does not imply that the seasonal work may not be carried out in periods with interruptions and discontinuity, which, in essence, are inherent features of casual (i.e. temporary and occasional) work.[39]

Unlike the general regime regulating the FTCs, and due to its urgent and pressing character, the employment contract for performance of seasonal work may be established without a public announcement of the vacancy, for a period not longer than 90 days, and with mediation of the Employment Service Agency (ESA).[40] In case of rescheduling of hours of work for seasonal work, North Macedonian legislation stipulates limitations to the maximum duration of the working hours of the seasonal worker, which may not exceed 12 hours per day or 55 hours per week, and it may not be for a period of time longer than four months.[41] Probation period is also allowed for the seasonal workers, limited to three days.

Small number of employers in the interviews reported hiring seasonal workers. This coincides with the LFS data which show that approximately 1.5% of all workers are performing seasonal work. However, what is considered in the LFS as seasonal work does not fully correspond to the legislative meaning of seasonal work, that is a work performed through an employment contract for seasonal work. A worker who self-report to be a seasonal worker in the LFS, may be employed through a seasonal work contract, but may also work informally, through verbal arrangement and receive payment in cash, or may hold a civil contract (for casual work). As already stated in the previous section, it appears that employers prefer the use of genuine FTCs instead of seasonal ones even in cases when the work is seasonal (such as hotels in the main touristic places). The use of formal seasonal contracts seems to be limited to agriculture.

In the sectors which are likely to experience a high seasonality, such as agriculture, tourism in general hospitality and hotels, employers often turn to other forms of contractual arrangements other than seasonal work. Many businesses in these sectors use of civil contracts (both verbal and written) as a cheaper and more flexible substitute for the seasonal contracts (discussed below).[42] For instance, some of the interviewed employers hire students when they're on a summer break, either using civil contracts

37 See LRL, Article.47, paragraph 2.
38 LRL, Article 47, paragraph 1.
39 For example, apple picking season in Prespa region usually starts at the end of September lasts for four or five weeks. The work is postponed for a certain period if the harvest is interrupted by rain, after which the workers return to work. See: https://www.brif.mk/i-vo-makedonija-se-baraat-sezonski-rabotnitsi-dnevnitsa-po-1-000-denari-za-berene-na-jabolka-grozje-aronija/
40 LRL, Article 22, paragraph 6.
41 LRL, Article124, paragraph 3.
42 Civil contracts (formal ones, written) are only subject to payment of a personal income tax, and exempted from payment of mandatory social contributions.

or informal, verbal agreement. Similarly, when there are special events (such as wedding parties and cocktails) employers use casual workers for a day or two, using civil contracts or just verbal agreement. These additional workers are commonly already employed in some other hotels or restaurants but there are also cases in which those casual workers are employed in the public administration (taking sick leave or days off for earning some additional income). The choice of the type of contractual arrangement seems to be mutually agreed by both parties. We will come back to the issue of casual work and civil contracts in section 4.1.

In the hotels and hospitality sector, there is a fear among employers of losing even more of the low-skilled, blue-collar stuff. In their view, waiters and other hotel personnel come to work with no prior experience and ask for high salaries, whereas the more experienced one emigrated or go and work abroad only in the high season which is enough for them for a decent living year-round. They argue for some support measures from the Government to cover some of the insurance payments, so employers can give employees higher wages and prevent them from going for work abroad (for instance, vouchers which will cover part of the mandatory insurance for the seasonal workers). Such vouchers may also stimulate greater use of seasonal contracts which will give workers access to the employment related rights.

There's a general impression that employers aren't fully informed of all the types of work contracts that exist in the LRL and that some minor changes in the regulation of seasonal contracts can affect their use.

From legislative viewpoint, the treatment of seasonal workers is same as for the FTCs, and they enjoy same rights and obligations stemming from the LRL. The field study did not find evidence for a less favourable treatment of seasonal workers.

Within the current preparation of the new LRL, there are some planned changes regarding the seasonal work regulation. Perspectives of the future regulations of the seasonal work are mainly oriented towards the introduction of the so-called "employment contract for permanent seasonal works" which would serve as an additional opportunity for renewable seasonal employment that would oblige contracting parties to continue the employment relationship for the following season, together with the traditional employment contracts for seasonal works which terminate when the season is over, i.e., upon the expiry of the fixed-term employment contract for performance of seasonal works. The employment contract for permanent seasonal works is inspired by the same contract regulated by the Labour Act of Croatia.[43] Such form of seasonal employment would be beneficial for both parties of the agreement: it will help employers who work seasonally to timely procure workers for the following season and would also provide a certain degree of employment certainty and stability in the next season for the seasonal workers, as well.

The field work and practice though show that employment contract for seasonal work (i.e. *fixed-term employment contract for execution of seasonal works*) is not an appealing option for employers, be they in agriculture or in other sectors with high seasonality, such as tourism, hotels and hospitality. Findings of the field work imply that employers in sectors which are likely to use seasonal workers use other, more cheap and flexible options as a way to balance the unstable demand and seasonality of their work (such as verbal contractual arrangements). Some others, with longer season register their workers on standard, permanent contracts, but on a minimum wage so that workers have the security (social contributions are paid all around the year) and employers are confident that the same workers will work when the season starts.

### 4.1.3. Casual Work

Casual work may be defined as the engagement of workers on a very short-term or on an occasional and intermittent basis, often for a specific number of hours, days or weeks.[44] In Macedonian terminology, casual work involves two types of contractual agreements called temporary and occasional work (in the ILO terminology "temporary" is the broader category which among others includes casual work). We will

43 Labour Code, article 16.
44 See ILO, supra No. 28.

proceed using the Macedonian terminology. A temporary and occasional worker is a worker who carries out temporary and occasional work for an employer, consisting of a one-off (on a very short-term, even if the worker works full-time in that period) or occasionally (ad hoc basis) performance of work tasks, "if" and "when" the employer requests from the worker to perform such work tasks.[45] While both types of work, i.e. services, of a "temporary" and "occasional" nature are usually short-lived, the former are usually performed continuously and without interruption ("once"), while the latter, from time to time, with frequent interruptions between engagements.[46]

Temporary and occasional work in North Macedonia is not regulated under the LRL. It is explicitly mentioned only in the context of tax law, through the so-called *contracts for temporary and occasional performance of services of legal and natural persons*, as provided by the Law on Personal Income Tax.[47] Such contracts are not qualified as employment contracts. They are commonly referred as civil or service contract. The closest non-standard form of employment in the existing North Macedonian labour legislation used in the context and as a basis for engagement of temporary and casual workers are the so-called *"special contracts"*.[48] The special contracts (regulated by the LRL) both in their definition and in their essence, are equal to service contracts/contracts for services. Service contracts can be both of formal character (signed agreements between both parties) and informal character (verbal). In the first case, the contract is subject to a payment of personal income tax, and in the second one the payment is done in cash. Temporary and casual workers are not covered by the social security system, which means that they do not have adequate social protection against any possible social risks. Therefore, the position of these workers is precarious, because in addition to their exclusion from the scope of labour legislation (including individual and collective employment rights), they are also exempt from the social security regime (the right to pension and disability insurance, the right to health insurance and the right to unemployment insurance).

The use of civil contracts in the country is widespread (also confirmed by the field study), for workers of different age, skills level, industries and occupations, though with some differences regarding the worker' and employer' characteristics. These contracts are used for construction jobs, crafts, catering, tourism, cultural activities, IT services, sales agent jobs and various other forms of freelance activities. Translation services, art, musicians, professional athletes are also contracted occasionally, depending on the current needs through civil contracts or copyright contracts. Civil contracts are also used for the professional athletes, although that is in discrepancy with the legislation.[49] The field study showed that some athletes in order to have some social security, are employed pro forma usually in a company of the club owner or pay social security themselves through companies of friends (usually insured on the minimum wage). The importance of civil contracts further increased with the rise of the digital platform work, which is analysed latter in the study. Another similar option are civil contracts which are mediated through the so-called "Copyright agency" through which they payment is also subject only to the personal income tax. The Agency charges for the service but also finds a way as to reduce the tax base for the recognized costs.

Findings of the field study show that the main reasons for the use of the civil contracts are: i) due to the workers' preference for such contracts, ii) a result of the nature of the assignment (limited scope and time of the assignment) or iii) used by employers to reduce labour costs or to explore the compatibility of the worker and the company.[50] The findings also show that such contracts are also used in the public administration. The cases of use of civil contracts in public administration are clearly an example of disguised employment (see section 4.5), whereas interviews with workers did not reveal other such cases in the private sector.

There are situations in which the workers themselves (mostly blue-collar workers) ask not to be employed or engaged through the standard forms of employment (employment contract) and prefer civil contracts (formal or verbal). Some of these workers have a preference over civil contracts as they work in multiple

45 Lynda Macdonald, Tolley's Managing Fixed-Term and Part-Time Workers, (Lexis Nexis UK, 2009).
46 An example of "temporary" short-term works is as follows: archaeological excavations, revitalization of frescoes, reconstruction of art objects, etc.; an example of "casual" short-term works is as follows: mowing grass in city parks, maintaining order at sports competitions, etc. See Лубарда Б, Увод у Радно Право – са елементима социјалног права, (Belgrade, 2016).
47 Official Gazette of North Macedonia, No. 241/2018.
48 See: LRL, Article 252.
49 Law on sport, Official Gazette No. 29/2022 (with several changes afterwards).
50 Although the Labour Law gives a possibility for a trial work over a period of 6 months.

places simultaneously and combine the work, but also want to earn higher take-home wage (by not paying social contributions).

*"It happens that one of these workers is prepared to help with work after finishing his work and stays for an additional 2-3 hours for which we over-compensate them. Otherwise, they work with us for 2-3 hours, then they go to another place, then to the third place and everyone agrees on payment in cash."* Bakery owner

There are workers which have a strong preference for verbal (informal) agreements which is usually related to a specific socio-economic status. One large category of workers who insist on verbal agreements for performing a work are workers who use some social benefits which can be withdrawn in case the worker find a job and has an income (such as beneficiaries of the guaranteed minimum income, old-age pension of family pension). Those workers receive some additional non-monetary benefits based on their status of recipients of social assistance (free kindergarten for their kids, free university education, etc), which makes formal work an unattractive option. Some other workers owe money from credit loans and if they receive an income on their bank accounts the so-called executors will immediately (automatically) withdraw all the income coming to their bank account (their bank accounts are blocked). One of the income categories exempted from the execution of a dept is the social assistance[51] (article 116). In case an indebted worker earns a wage or income, executors can withdraw up to a half of his/hers wage until the dept is repaid (article 117). Some employers say that sometimes there is no way that they can push workers to sign some contractual arrangement and, in a situation of lack of workers, they accept the worker's requirements. They feel like the victim in this relationship, but emphasize that the market is seeing a decline in the supply of some specific occupations/workers.

*"People owe a lot. They are chased by the banks due to unpaid loans, electricity and water bills unpaid. Recently, they're all borrowing from those who give fast loans where the interest rates are high. They owe money to friends and acquaintances. All of this makes people think of making more money, but not be registered or registered for less, so the banks and other creditors take less from them."* Hospitality

The use of service contracts is also widespread among educated workers, usually describing themselves as freelancers. They either work in the country and those working on digital platforms. We analyse the legislation and practice of digital platform workers in detail in section 4.4.

Attempts to formalize civil contracts and to transform them into some form of employment contract are difficult due to the heterogeneity of the workers engaged in such arrangements. Some of these workers are voluntarily into such relation (and even preferring a verbal agreement), some are involuntary working under such contracts, and some are engaged in such contracts as an additional activity besides their work and are hence enjoying all fundamental rights from the employment relation (such as IT workers, translators, public sector employees, etc.). Hence, any regulation of these contracts with an aim to bring these workers under the umbrella of the LRL should be well thought and specific to certain categories of workers (in cases of disguised employment and those who are from a disadvantaged socio-economic background).

Temporary and casual workers do not have an access to workplace protection and entitlements that apply to employees. They are also not part of the collective bargaining. Though, some of them mentioned that there is some informal negotiation taking place with the employers or clients on the price, expected quality, deadline for completion of work and manner of payment.

Some of the options for better regulation of casual work can be found in comparable labour law systems. Those are, in particular: specifying the maximum duration of casual work (on a weekly, monthly and/or annual level) and transformation of this "very" non-standard form into a "less" non-standard form (such as fixed-term work) if the worker works longer or contrary to the maximum duration; limiting its application only to work outside the main activity of the employer; specifying the engagement and payment of casual workers on a daily or hourly basis; determining the scope of persons who could be engaged in casual work (for example, unemployed, students, part-time employees, retirees, etc.). It would be of great importance for the legislation and practice to resolve the dilemma whether temporary and occasional work will be considered as a form of work "in employment relationship" with access of temporary and occasional workers to all or some rights arising from labour legislation. Some legislative

51 Law on execution, Official Gazette No. 72/16, 142/16, 233/18 и 14/20.

changes may also be done in the pension system and the system of social assistance (the guaranteed minimum income) as to allow pensioners or recipients of family pension to perform some paid work.

### Criteria for determination of the existence of an employment relationship vs. civil contracts

When defining the term "employment relationship" the LRL refers to two main criteria of subordination, in particular: performance of the work (by the employee) *according to the instructions and under the supervision of the employer and the inclusion* (of the employee) *in the work process organized by the employer.* The first criterion means that the employee is obliged to comply with the employer's requirements and instructions relating to the performance of the duties arising from employment.[52] The second criterion means that the employee is under obligation to carry out the work with due diligence at the job for which he has entered into an employment contract, at the time and place set forth for the performance of the work, *observing the organization of the work and the business activity of the employer.*[53]

In addition to the main criteria for determination of the existence of an employment relationship, the LRL, explicitly or implicitly, also refers to other indicators of the existence of such relationship, i.e. making a distinction between employment contracts and civil contracts. In this context, one of the relevant indicators refers to the issue whether the work is performed *within or outside of the scope of activities of the employer.* In that regard, employment contracts are always entered into for work within the scope of activities of the employer, while the civil contracts (service contracts) are entered into for work outside the scope of activities of the employer. Other indicators distinguishing employment contracts from service contracts are presented in Table 1.

**Table 2 – Differences between employment and service contracts**

| Indicator | Employment contract | Civil contract |
|---|---|---|
| performance of the work in person | only the worker and nobody else could perform the work in his/her behalf | the person performing the work may entrust a third party with the performance of the work |
| continuity | assumes an uninterrupted and relatively lasting or certain performance of the work | interrupted and short term work |
| risk associated with job | employer bears fully the risks associated with the job | the risk is borne by the contractor |
| manner of payment | worker customarily acquires the right to salary, which is paid periodically, at specific intervals | the contractor usually receives a single monetary compensation after the completion of the work |

Source: Authors' presentation based on Kalamatiev, T. and Ristovski, A. (2015).

However, the application of the legal provisions and identifying the "employment relationship" in practice is very difficult. Besides the legal provisions and their theoretical interpretation, there is no case law in North Macedonia which may be used to determine the criteria and indicators that judges deem to be relevant when distinguishing employment contracts from service contracts. In addition, no documents

53 See: LRL, article 30, paragraph 1.

were found or other form of soft law adopted by the State Labour Inspectorate or the Ministry of Labour and Social Policy. Moreover, North Macedonia has not accepted and transposed the ILO Employment Relationship Recommendation (no. 198), which, inter alia, provides for the establishment of two types of indicators in view of establishing the existence of an employment relationship, in particular: indicators relating to the performance of the work and indicators relating to the payment of remuneration to the workers.

## 4.2 Part-time and on-call work

### 4.2.1. Part-time work

The ILO Part-Time Work Convention, 1994 (No. 175) defines the term "part-time worker" as an employed person whose normal hours of work are fewer than those of comparable full-time workers. However, the legal and statistical definitions of part-time work often differ. In many countries, the legal definition is similar to that used in Convention No. 175. Others have set a maximum number of hours for part-time work (such as 25 hours per week or two-thirds of normal full-time hours). For comparative statistical purposes, however, part-time work is usually considered as working fewer than 35 hours, or 30 hours, per week.

Part-time work is one of the traditional forms of non-standard employment. Globally, the incidence of this type of work has grown over the past decades, it also experienced a diversification of its forms, which include: "substantial part-time" (21–34 hours per week); "short part time" (20 hours or less); and "marginal" part-time (fewer than 15 hours per week). In some instances, working arrangements may involve very short hours or no predictable fixed hours, and the employer has no obligation to provide a set number of hours of work, which is known as "on-call work", and may include so-called "zero-hours contracts". Part-time employment is more common among women and can help workers, especially those with children or other care responsibilities, to enter or remain in the labour market. It can also provide opportunities for workers who want to combine work with education or professional training. However, it is considered to be beneficial only if it is a voluntary choice of the workers concerned and equal treatment is guaranteed to them.

Part-time work as a separate form of NSE was regulated in the North Macedonian labour legislation for the first time with the adoption of LRL from 2005. The current text of the LRL defines the employment contract for part-time work, where part-time work is considered the time that is shorter than full-time work with the same employer.[54] The labour legislation does not establish an explicit minimum and maximum limit of working hours, in which the worker may work part-time. However, implicitly, the LRL considers 20-hours working week as a standard (yardstick).

The interviews showed that the part-time work contracts are used very rarely which is in line with the data from the LFS which show that only 3.7% of North Macedonian workers are employed based on such agreements (the EU average is 17.2% in 2020). Women are slightly more likely to work part-time (4.1% of total employment) vs men (3.3%). There are different reasons for the low use of part-time work in North Macedonia, both on the supply and demand side. On the demand side, employers very rarely publish vacancies for part-time workers. Still, there are cases in which part-time employment contracts mask the actual working hours as a way to save on labour costs, i.e., the practice of registering the employee for part-time work, while they actually work full-time and receive the remaining half of the earned salary as an "envelope wage". On the supply side (labour) it seems that there is no motivation to work on such contracts because the income would be too low, and women seem to make a decision whether to work full-time (or seek full-time employment) or to stay inactive. Some other reasons may include discrimination and unequal treatment of part-time workers compared to full-time workers; limited benefits arising from the social security system; limited opportunities for professional advancement and career development, etc.[55] Comparative data with the EU-27 shows that slightly higher share of part-time workers in North Macedonia would prefer to find a full-time job relative to the EU-27 part-timers,

54 LRL, Article 48, paragraph 2.
55 Kalamatiev, T. and Ristovski, A. (supra, no.38).

however majority of part-time workers in North Macedonia stated that they work part-time for "other reasons" (as much as 38.4% of women and 53.5% of men working part-time).

According to the North Macedonian labour legislation, part-time workers have the same contractual and other rights and obligations arising from employment, as well as the same working conditions as the comparable full-time workers.[56] This applies to both "contractual" and "other" (non-contractual, legal), and to both individual and collective employment rights. While the LRL provides for an equal treatment and prohibits discrimination against part-time workers compared to full-time workers, same as in the case of FTCs, it does not specify the "comparable" entity. Equality and non-discrimination in the rights and working conditions of part-time workers primarily refers to "quality", i.e., the type and scope of rights, but not the "quantity", i.e., the extent to which these rights will be exercised, because it, mainly depends on the "proportionality", i.e., the ratio of the working hours worked by part-time workers in relation to the comparable full-time workers. The principle of proportionality encompasses both "material" rights deriving from employment (salary, salary allowances in case of paid absence from work, severance pay in case of dismissal due to business reasons, etc.), as well as part of "intangible" rights (for example, the right to annual leave). In practice, there are some dilemmas about the application of the principle of "proportionality" in the exercise of certain material employment rights of part-time workers such as payments for "work-related expenses" (for example, per diems for business trips at home or abroad, family separation allowance, etc.). As for the proportional use of the annual leave, the LRL specifies that the part-time worker is entitled to annual leave with a minimum duration of ten working days.[57] This provision, in itself, seems to be proportional to the minimum duration of the full duration of the employee's annual leave (i.e., 20 working days), and implies that the part-time employee was employed for half of the full-time employment (or 20 working hours per week). The principle of equality and non-discrimination and proportional exercise of the rights of part-time workers is also applied in the context of the social security regulations. For instance, a part-time worker should have an uninterrupted insured length of service for a period of 12 instead of 6 months (in order to be entitled to a maternity allowance); or 30 years instead of 15 years of service (in order to become entitled to an old-age pension). This situation can have a discouraging effect on part-time employment in the country.

The interviews undertaken for this study included only few part-time workers. In one of those cases the worker held a FTC with less hours of work than the regular working week (a combination of fixed-term and part-time contract). The fixed-term type of contract was requested by the employer whereas workers asked for working fewer hours per week (part-time) due to "family circumstances". Part-time workers confirmed that they enjoyed same rights as other workers. Employers also confirmed that part-time workers enjoy same rights as the full-time workers (and those on FTCs).

The practice (i.e. field work) confirmed that part-time workers have same treatment as full-time workers. However, they are generally not part of collective bargaining. The economic study found that part-time workers in 2020 earned 13% lower wage than workers with standard employment contracts. However, the adjusted wage gap is positive meaning that workers with part-time contracts, on average, have characteristics associated with higher earnings (such as education, work experience, etc.) compared to workers on standard contracts.

Perspectives for future regulation of part-time work in North Macedonia mainly refer to the need for full harmonization of labour legislation with EU Directive 97/81/EC concerning the framework agreement on part-time work, as well as to ensure that part-time workers are protected and enjoy the statutory rights. Though, as field evidence and LFS data show, there is no large "demand" for part-time work. The new LRL is expected to define the term *"comparable full-time worker"*. Given that Directive 97/81/EC takes a flexible approach in defining the principle of "proportionality", stating that this principle will be applied *"where appropriate"*[58], it is to be expected that the new Law will limit the application of this principle only to material rights (salary and other monetary income). The new law may also reconsider the possibility for *"additional"* work of the part-time worker work with the employer, beyond the agreed number of working hours either with the same employer or other employers which can contribute to reducing the "under-declared" work or work through a civil contract.

56 See: LRL, Article 48, paragraph 3.
57 See: LRL, Article 48, paragraph 4.
58 Directive 97/81/EC, Article4, item 2.

### 4.2.2. On-call work

On-call work (or zero-hours contract) can be defined as a contractual relationship or arrangement under which an employer agrees to pay for work done but makes no commitment to provide a set number of hours of work per day, week or month.[59] It is characterized by extremely short periods of prior notice, envisages a high fluctuation of working hours (from 0 to full time), employees have no certainty regarding the amount of income they will earn or the organization and scheduling of working hours, since their employment depends on the fact whether the employer "will call them" or "will not call them" to work, and for all that time, the employees undertake to be available to the employer.[60] In this regard, on-call work usually puts the employee in an extremely precarious position, without having any control over income security (that is, the minimum amount of work and salary) and time security (that is, the minimum number of working hours), and their scheduling, as well as over the minimum announcement/notification period for the upcoming work activity).

This form of NSE is not regulated in North Macedonia, and no cases of such type of contractual arrangement was found in practice in the field work. If, in future, the North Macedonian labour legislation introduces on-call work, it will have to take into account certain comparative practices, in order to ensure minimum income security and work-family balance of the on-call workers. Such solutions usually gravitate around: *the introduction of a guaranteed minimum number of working hours* in order to ensure a minimum amount of work and income (for example, in Denmark or France); *payment of a certain, minimum number of working hours per shift, even in case the employer cancels the shift or reduces the working hours in it* (for example, in certain federal states in the USA, the Netherlands, Germany); *payment of availability allowances* during periods when workers do not work because they do not receive a call from the employer (for example, in Italy); minimum period of advance notice (for example, in Germany, Italy, etc.).[61]

## 4.3. Contractual arrangements involving multiple parties

### 4.3.1. Temporary Agency Work

Temporary agency work has been regulated in the North Macedonian legal system since 2006, firstly by the 2006 Law on Agencies for Temporary Employment (out of force), and then by the 2018 Law on Private Employment Agencies[62], which is currently in force. Temporary agency work assumes the existence of a tripartite contractual relationship including, in particular: a private agency holding a temporary employment license; temporary agency worker and a user undertaking/firm (referred as beneficiary employer in the national legislation).

Temporary agency workers are engaged both in the private and the public sector to perform lower and higher skill work. Within the framework of temporary agency work, the contractual relationship established among the parties is a relationship among: 1) the temporary agency worker (hereinafter: the worker) and the private agency holding a license for temporary employment (hereinafter: the agency); 2) the agency and the user undertaking, i.e. employer, and 3) the user undertaking and the worker. An employment contract or relationship is signed between the agency and the worker, whereas a commercial contract binds the agency and the user-employer. The user-employer pays fees to the agency, and the agency pays the wages and social insurance contributions to the worker.

In practice, the employment contracts entered into by the workers and the agency are limited to *temporary employment contracts* that are valid until a specific date or a specific period of time is reached, and after the expiry of such period, they are terminated.[63] The legal regime governing temporary agency work in North Macedonia does not provide for the possibility for the worker and agency to enter into a

59 See Deakin, S, New Forms of Employment: Implications for EU Law – The Law as It Stands, (New Forms of Employment in Europe, Wolters Kluwer, 2016), p.47.
60 ILO, (supra, no.28).
61 ILO, supra, no. 28.
62 Law on Private Employment Agencies, Official Gazette of North Macedonia, No. 113/2018.
63 See: General conditions for recruitment of temporary workers (Internal enactment of the Temporary Employment Agency "Partner", which applies to all offers and contracts relating to recruitment of workers to carry out temporary work for the beneficiary employer), Skopje, 2012, p. 11.

permanent employment contract (which would have the legal nature of a "global" or "umbrella" contract, filling in the legal vacuum and providing for the worker's rights in the period between two consecutive assignments). The employment contracts entered into by the worker and the agency (i.e. temporary agency work contracts) may include both FTC and temporary and occasional work contracts (the shortest duration of which is usually one day, and for the duration of the contract the worker acquires the right to a daily wage, as well as payment of social security contributions).

The Law on Private Employment Agencies stipulates certain conditions for entering into temporary agency work contracts. Such conditions include: i) *the existence of objective reasons* (listed expressly in the law) at the time of entering into the contract, ii) *maximum period of time* of assignment of the worker to carry out work for the user-employer and iii) worker may be assigned to the user-employer only for a work of *"temporary nature"*[64] The maximum period of assignment of the worker to the user-employer is *two years, with or without interruptions and concerns the performance of the same temporary work.*[65]

In practice, the agencies do not always take into account the existence of "objective reasons" as a mandatory prerequisite for engaging and assigning workers to the users-employers. There is an even more blatant "circumvention" of the legislation in the cases of exceeding the maximum period of assignment of the worker to the user-employer to perform the same work by fictive and unlawful "change' of the job, i.e. type of work (similar to the FTCs).

The worker exercises the rights arising from employment from the agency. In terms of the termination of these contracts, the Law on Private Employment Agencies refers to the general regulations governing labour relations, i.e., LRL, primarily in terms of the usual manner of termination, i.e. termination by the expiry of the term of the contract. The Law prohibits the early termination of the temporary agency work contract for economic reasons by the employer, thus providing for relative stability and certainty of the worker's employment and the assignment by the agency.

The use of temporary work through an agency is very rare in North Macedonia. In 2020, only 0.2% of workers were engaged through such multi-party agreement. Field work also confirmed low use of such contracts in general, so that such arrangements were present only in hotels and restaurants.

Temporary agency workers enjoy de jure equal treatment in terms of basic employment and work conditions (as laid down in the general regulations governing labour relations and occupational safety and health) for the duration of the assignment to the user-employer as the workers employed directly by the same employer for the performance of the same work.[66] Mandatory social contributions also apply to these workers. The temporary agency worker is also entitled to equal treatment in terms of remuneration[67] and should have access to all collective rights arising from employment that are laid down in the labour law. The limitations and challenges that temporary agency workers are facing in the context of the social security rights are identical as those of fixed-term employees and seasonal workers.

In practice, remuneration that temporary agency workers receive is sometimes lower in comparison to workers directly employed by the beneficiary employer, which is in part due to the use fee charged by the agency (paid by the user-employer). The economic study did not find any wage gap however a caution is made because of the low number of workers on such contracts in LFS. In practice, agency workers are sometimes placed in an unfavourable financial position because the agency is late or is not paying regularly the salary or social security contributions to the worker, as a consequence of the late invoicing of the payments for the salary and social security contributions by the beneficiary employer. The study of Ristovski (2021) finds some legal and practical barriers for inclusion of these workers within the collective bargaining. Employers from this sector are associated in the National Federation of Temporary Employment Agencies, whereas there are no workers' associations.

Furthermore, the field work showed that temporary agency workers are facing difficulties in applying for bank loans, obtaining visas to enter foreign countries, and the female workers are also facing discrimination in the form of non-renewal of employment contracts due to pregnancy.

64 See: Law on Temporary Employment Agencies, article 4, paragraph 1.
65 Law on Private Employment Agencies, article 24, paragraph 2
66 See: Law on Private Employment Agencies, article 19 and Article 20.
67 See: Law on Private Employment Agencies, article 26, paragraph 4, indent 10.

There are still certain issues relating to the regulation of temporary agency work that need to be addressed more adequately, such as the conditions for entering into employment contract, i.e. assignment of temporary agency workers to user-employers, the possibility for introduction of *permanent employment relationships*, which is to be established between the worker and the agency may also be taken into consideration, inclusion of the agency workers into collective bargaining, etc. (see Ristovski, 2021 for details).

### 4.3.2. Other forms of contractual arrangements involving multiple parties

Besides temporary agency work, there are also other forms of work involving multiple parties. They usually take the form of "subcontracting", where the economic operator who has been awarded the contract to provide certain works or services, entrusts another entity (subcontractor) with the execution of part of the works or services that fall within the scope of the awarded contract and are provided to a specific client. The works or services provided by the subcontractor include the manufacture of specific goods or rendering specific services for the client. For the purposes of providing the agreed works or services, the subcontractor hires workers and supervises and directs their work, even in the cases where the work process is carried out in the premises of the client (the so-called principal employer) Another form similar to subcontracting is the so-called "*externalization*", or "*outsourcing*"[68], which may be defined as an assignment of regular business activities (functions and processes) of the undertakings to external service providers who, based on (often) long-term (civil law or commercial) contract, undertake to render specific services for the undertakings that engaged them.[69]

The LRL in North Macedonia does not regulate other forms of work involving multiple parties other than temporary agency work. In the context of *subcontracting* (mainly in the construction sector), one of the important issues is the identification of the principal employer of the workers for the purposes of determining the obligations arising from the occupational safety and health system and establishing the liability in cases of occupational injuries and accidents. In this regard, despite the insufficient clear definition it provides, the Law on Occupational Safety and Health (LOSH) expands the meaning of the term "employer" so as to include other natural or legal persons who use the services of workers on any legal ground other than employment contract.[70] Furthermore, LOSH provides that whenever two or more employers undertake activities simultaneously at one site, they have to agree in writing on the issues relating to workers' safety and health.[71] In practice there is no unified manner of enforcement of this provision.

Although *outsourcing*, similar to subcontracting, falls within the scope of general contractual law, some of its aspects are governed by the LRL. Such is, for instance, the aspect of "transfer of the employment contract" as a consequence of the change of employer, or the so-called "transfer of the undertakings, businesses or parts of undertakings and businesses". LRL implicitly defines outsourcing as "tasks and activities of the employer related to the manufacture or provision of services and similar related activities, take over by a legal or natural person, that carries them out on its own behalf and liability, in facilities or premises specified for performance of such tasks and activities".[72] In this regard, outsourcing, similar to other cases involving a change of employer, leads to transfer of the workers' employment contracts (from the employer-transferor to the employer-transferee), hence to retaining the employment and the acquired rights arising from employment and working conditions.[73] However, in practice, such legal consequences are not applied.[74]

68 Usually, the term "outsourcing" is characteristic for countries under the influence of the common business law, while the term "externalization" is used in France. Spain also uses the term "terciarización". See Bronstein, A. International and Comparative Labour Law, Current Challenges (Palgrave Macmillan, ILO, 2009), p. 61.
69 Chamberland, D. Outsourcing – The sourcing column, (Canadian Corporate Council, Volume 12, Number 5, March/April, 2003.
70 See: LOSH, article 3, paragraph 1, indent 2.
71 See: LOSH, article 15.
72 See: LRL, article 68-a, paragraph 4.
73 Kalamatiev, T. and Ristovski, A. Transfer of Undertakings and Protection of Employees' Individual Rights in the Republic of Macedonia, (Nomos, 2019).
74 Ristovski, A. Regulating non-standard forms of employment in North Macedonia, ILO, 2021b.

The field work found few cases of outsourcing and no cases of subcontracting although It involved several construction companies (both in interviews and focus groups discussions). Construction companies contract out architects and other professionals as consultants for a short period when starting a project, using civil contracts for consultancy. Employers in other sectors use outsourcing for activities and services which are not their core business and/or there is no constant work flow. This involved outsourcing of marketing, accounting, legal work and IT. Sometimes companies use specialized agencies and companies for these services, very few of them contract individuals with contracts for services (civil law contracts or copyright contracts). Some employers reported to outsource services like lightning and sound systems are outsourced with contracts with specialized companies.

## 4.4. Self-employment and dependent self-employment

### 4.4.1. Notion of self-employment and determination of the employment status of self-employed persons

The legal regime governing self-employment in North Macedonia, i.e. the employment status of self-employed persons may be defined using two methods, in particular: the indirect (residual) method and the direct (immediate) method. Based on the indirect method, self-employment may be defined as the antipode of employment relationship, and self-employed workers as antipodes of workers with employment status of employees. Defining the term "self-employed persons" under the direct method arises from the definition of such persons in several different regulations in the field of employment and social security. The Law on Employment and Insurance Against Unemployment provides that a "self-employed person" is a natural person pursuing economic activity independently or providing professional or other intellectual services to earn a living, for his/her own account, under conditions laid down in law.[75] Identical definitions are also stipulated by: the Law on Pension and Disability Insurance[76] and the Law on Mandatory Social Insurance Contributions.[77] Self-employed persons are also explicitly included in the personal scope of the Law on Health Insurance[78] and the Law on Occupational Safety and Health.[79] Several elements can be drawn from the definition of the term "self-employed persons" which distinguish them from workers, i.e. employees. The self-employed person is always a natural person who performs particular work personally or mostly personally. This person, *independently* (without receiving any instructions from and working under the supervision, control and disciplinary authority of an employer) pursues an economic activity or provides professional or other intellectual services for remuneration, *on his or her own account* (and not on behalf and for the account of an employer). The self-employed person pursues the economic activity or provides the professional and other intellectual services professionally, i.e. as an *occupation*. The economic activity of the self-employed person is pursued in the function of *generating income* (rather than earning a salary).

From a legal perspective, self-employment in North Macedonia is regulated under the Company Law.[80] These includes primarily the "commercial entity" registered as "sole proprietor", who is a natural person who, as a profession, performs one or several of the commercial activities stipulated by the Company Law[81] and is personally liable without limitation with his entire property.[82] Furthermore, self-employment may also arise from the performance of craft activity, activity of individual farmers and performance of certain professions or occupations that are regulated (lawyers, notaries, physicians, etc.) or not regulated by law. Additional formal type of self-employment is the so-called individual farmer. Self-employment is encouraged and supported by law, since it is a condition for using state subsidies for agriculture, as well as it provides a certain social security.

75 Law on Employment and Insurance in Case of Unemployment, article 2, paragraph 1, indent 2.
76 Law on Pension and Disability Insurance, Official Gazette of North Macedonia, No. 53/2013, article 7, paragraph 1, indent 7.
77 Law on Mandatory Social Insurance Contributions, Official Gazette of the North Macedonia, No. 142/08, article 4, paragraph 1, indent 10.
78 See: Law on Health Insurance, Official Gazette of North Macedonia, No. 65/12) article 5, paragraph 1, indent 3.
79 See: Law on Occupational Safety and Health (Official Gazette of the Republic of Macedonia no. 92/07), article 3, paragraph 1, indent 1.
80 Company Law, Official Gazette of North Macedonia, No. 28/04.
81 Company Law, article 12, paragraph 1.
82 Company Law, article 12, paragraph 2.

From statistical viewpoint (LFS), there are two categories who are classified as self-employed, one being an employer and the other an own-account worker. While all employers in this sense are formal (based on LFS data), half of the own-account workers in 2019 were informal (49%). Most of the own-account workers are in the age groups 35-44 (27.2%) and 45-54 (31%). In addition, they are predominantly with primary education (36.6%) and 4-year secondary education (35.7%). Though, 5.5% are also tertiary educated self-employed.

The regulations in the field of social insurance refer to a sole proprietor (though using slightly non-harmonized terminology), but also include other natural persons who do not have the status of workers or employees. For instance, according to the *Law on Pension and Disability Insurance*, such persons are: natural persons performing economic activities and do not have other tax base; individual farmers; independent artists; natural persons registered as performers of independent activity of retail trade at stalls and markets, provided they are not insured on any other ground.[83] Similar provisions are used in the *Law on Health Insurance*. Within the mandatory health insurance, self-employed persons and other categories mentioned above are excluded from the ranks of persons entitled to monetary allowances for illness and injury, pregnancy, birth and maternity, and for travel expenses. Individual farmers are included in the social security legislation and pay social contributions on a lump-sum.

In practice, the notion of a self-employed person is much broader and involves freelancers and other workers who perform activities based on civil contracts. Informal self-employment appears in a form of temporary/casual work for 2-3 employers mainly based on a completed work, and can be realized through civil contracts (formal, written), online service contracts (informal), etc. The main criteria to distinguish it as self-employment is that the worker organizes the work herself/himself, and does not report directly to an employer. In most instances, the workers also provide the equipment himself/herself. These forms of contracts do not include social insurance. They are more frequently appearing in ICT, media, arts, but also in construction, online sales and digital platforms work.

Many workers combine different types of work and different NSE (sometimes also a standard employment relationship) as to earn higher incomes. In transport, especially the taxi drivers have an additional work or more jobs. One of the interviewees holds a FTC with a brokerage house, a civil contract with a related company and also has a civil contract working as a tourist guide (and self-identifies as a self-employed person).

*"In addition to this work, I give lessons of English to Turks and sell clothes on Instagram. As a taxi driver, I set my own working hours, I give lessons in the evenings three times a week, and on Instagram I sell during breaks or on Sundays".* Taxi driver

Employers argued that low-skilled workers often abuse sick leave and work for other employers, for additional earnings. In the media, there are significant changes taking place as a result of the collapse of the traditional media and the emergence of new media (Internet portals, Facebook) and the increasing importance of the PR activity. As a choice or due to necessity, there is more and more self-employment – freelance. The nature of the sector also defines the forms of employment, and most journalists prefer to work on NSE as to get higher incomes. They consider themselves a self-employed person, informal one.

*"I had an employment contract in a print medium. I was limited to earn extra, while the salary was not that high. When you have an employment contract with one medium then you must not work for another. The work of the journalists is to provide the information, the story... Then I worked as much as now, I did not worry about the salary at the first of the month, but now I earn more and enjoy the freedom when it comes to whom to work with and what to work".* Media worker

Informal self-employment is also widespread among persons selling online, mainly on Instagram and Facebook (cakes, creative plaster toys, ornaments, clothes and decorations). These workers perform different types of activities and business operations such as product creation, marketing on the social media, selling and distributing to clients, while they do the work at home. Some don't have additional work, but some of them have a standard employment contract with an employer.

Self-employment (mainly in a form of freelance) is also widespread in the IT sector and digital platform work, mainly for the white-collar workers. This is usually implemented in a form of civil contracts or

83 Law on Pension and Disability Insurance, article 11.

independent contractors (those working for foreign markets). In these sectors and among white-collar workers, NSE seem to be a choice of employees, and rarely imposed (see section 4.4). Most of the self-employed persons interviewed in IT sector had multiple contracts at the same time. An exception was an installer in the ICT sector, who was made redundant, with a secondary education and over 50 years of age, unable to find a standard form of employment, he works temporarily/casually through civil law contract or through an employment agency.

Informal self-employment is also widespread among workers in arts, entertainment and recreation declare themselves as self-employed or freelance.

*"I consider myself a self-employed person because I have been obtaining work and clients independently for more than 12 years."* Entertainment

The perception of self-employment or freelance in these sectors includes independence in obtaining and organizing work. The work tasks include illustrator, graphic designer, photographer, video and social marketing, etc. These workers glorify the flexibility in working time, flexibility of where they work, independence. The work in the country is acquired through satisfied customers and recommendation. The work abroad is acquired through online intermediary platforms like 99design. The work in the country is regulated by a civil law contract, copyright contract, FTC or a verbal agreement, while abroad by an independent contractor agreement through the appropriate intermediary platform.

The information collected through the interviews does not show cases of dependent self-employment as all interviewed self-employed were performing work for several clients, stipulated that that form of work is their choice and argued that they are better off than a comparable worker in the same sector/industry.

Social security is an important dimension of the contractual arrangement and employment of a person, considered as one of the fundamental rights of employment relationship. Social insurance of informal self-employed persons is a rather complex issue of analysis and also for regulation. Two general patterns regarding the social security are observed here (though with not very strict distinction). One category are workers who do not pay social contributions out of necessity, mainly the low-skilled workers who prefer cash payments either to receive higher take-home pay (also avoid paying back debts) or to avoid losing some social rights (guaranteed minimum income, pension, etc.). For instance, an informally self-employed person, who is registered as unemployed person in ESA "identifies himself/herself as self-employed person without a legal status", and receives a free health insurance through a spouse. He works alone and provides the work independently. There are such examples in agriculture, construction, transport, hospitality and catering, trade and other sectors. These workers enjoy free health insurance through several possible channels: though their spouse/parent, based on the formal status of unemployed, as a recipient of the guaranteed minimum income (or family member), or as a pensioner. Still, they are not paying pension insurance, and there is no option in the current legislation that they do so. However, some of them have already reached the minimum years of service which qualifies them for a minimum pension.

The other category, those who do not pay social security contributions out of choice, include workers who do not have confidence in the social system and/or have an option for a cheaper access to a social system, and at the same time have simple ways of non-payment such as receiving the payment abroad (in ICT and arts), or in cash (in arts or construction). An illustration of non-payment of social security, and use of services of the social system is a termination of payment after reaching 15 years of service (reported by few workers), thereby obtaining the right to a pension of 62 or 64 years and use of health insurance through a spouse. An illustration for reducing the amounts of social security is the use of a company of a relative, friend, acquaintance, where a pro forma employment is implemented by payment of the minimum wage and the lowest amount of social security thereto (they return back the paid minimum wage). Few of the informal self-employed workers reported that they established a company jointly as to enjoy the rights of the employment contract. Many workers have expressed distrust of how much they need to pay for social security and what kind of (bad) services they receive; most of them pay additional, private health insurance and state that they are not interested in the state old-age pension. Some argue that the current legislation (labour and other) does not provide an appropriate form for their registration/formalization. While the registration of a formal company (sole proprietor) may help them become formal and reduce the burden of "hiding" in the system, they noted two main problems with that option. While the registration of a company is fast and simple, there are additional costs such

as accounting, communal business tax, and if they register the company at home address, they may face industrial price for electricity and heating. The second challenge is that sole proprietors cannot export whereas all workers who provide services online are actually exporting. These findings call for certain actions related to other legislation such as Company Law and also some support measures for the costs associated with running a company. A successful example of putting a self-discipline for payment of contributions is the policy of conditioning the payment of subsidies on the status of registered individual farmer.

Field study showed that in general informally self-employed persons or freelancers work long hours. Long hours are their own decision and under their control and can be up to 18 hours a day (online sales), and 100 hours per week (tourism, during a season). Of course, the deadlines for completing the works have an impact. In arts/entertainment and sports, the working hours depend on a calendar of events or competitions. Some of these workers, though being happy with their situation, miss paid sick leave, mainly maternity leave, and annual leave. Some mentioned the constraint of obtaining home loans, but for the others it was not an issue.

### 4.4.2. Dependent self-employment

Dependent self-employment is a working relationship where the worker (as a formally self-employed person) performs services for the other contractual party (principal, client, user employer) under a contract different from a contract of employment but *depend on one or a small number of clients for their income and receive direct guidelines regarding how the work is to be done*.[84] For dependent self-employment, the most important fact is the existence of economic dependence of the economically weaker party from the economically stronger party (economic subordination), rather than the fact whether the person is technically subordinated to the orders and instructions of another person (legal subordination).[85] Due to such conditions for performance of the work, "dependent self-employed workers" form the so-called "intermediary" category positioned in between genuine employees and genuine self-employed individuals.[86] Dependent self-employment is defined using the following three main criteria: *primarily personal work, continuity over time and single or mostly single client, i.e. employer.*[87]

The labour law and social insurance legislation in North Macedonia do not provide for dependent self-employment as a nonstandard form of work, and do not recognize intermediary categories of workers in between employees and self-employed individuals. However, it should be noted that the amendments of several laws in the field of employment relationships and social insurance in 2015 were made in an effort to regulate the status and position of persons who *realize income by carrying out physical and/or intellectual work, based on a service (civil) contract, or other type of contract for performance of work, who were colloquially dubbed "freelancers".*[88] Individuals belonging to this category constituted an exceptionally *inhomogeneous group*. As section 4.1.5 showed this group, on one hand, includes individuals performing physical and/or intellectual work, who lacked the status of insurance holders of mandatory social insurance in the form of employed or self-employed individuals (the terms "unemployed" or "genuine" freelancers is used commonly in the country), and on the other hand, it includes the *employed, pensioners, and self-employed individuals* who realize income under contracts in addition to regular salaries/pensions/income. In 2015, amendments to several laws in the field of labour relations and social security (so-called Laws on Freelancers) were introduced. However due to several legal deficiencies and public criticism they were soon revoked after several months. The idea of the legal changes was to include freelancers in the social insurance regime which has positive implications, such as: reduction of tax non-compliance;

84 ILO, Non-Standard Employment Around the World: Understanding challenges, shaping prospects, 2016.
85 See Supiot, A. Beyond Employment – Changes in Work and the Future of Labour Law in Europe (Oxford University Press, 2001), p. 14.
86 Böheim, R and Muehlberger, U. Dependent Forms of Self-employment in the UK: Identifying Workers on the Border between Employment and Self-employment, (Forschungsinstitut zur Zukunft der Arbeit, Institute for the Study of Labor, IZA DP No.1963, 2006), p. 2.
87 Perulli, A. Economically dependent/quasi-subordinate (parasubordinate) employment: legal, social and economic aspects, (http://ec.europa.eu/social/BlobServlet?docId=2510&langId=en, accessed on 07 March 2015), p. 76.
88 Kalamatiev, T. and Ristovski, A. Економски зависен труд и економски зависни работници – нова форма на работа и нов (tertium genum) работно-правен статус на работници помеѓу вработените и самовработените лица, (Зборник во чест на Јане Миљовски, 2016).

elimination of unfair competition; and guaranteeing certain basic rights under pension and disability and health insurance to these persons. However, the Laws did not make a distinction between the genuine freelances (those who are not employed or self-employed formally) and those who work elsewhere (or are pensioners) and perform some work in order to earn more.

In practice, examples of freelancers who meet the criteria to be categorized as dependent self-employed individuals have existed both prior to and after the repealing of the so-called Laws on Freelancers, in various activities, in particular: *insurance business* (for certain insurance representatives having the status of external associates in insurance companies and being excluded from the companies' acts on classification of jobs), *marketing promotion* (for certain marketing promotors hired by tele-cable operators), driving schools (for some driving instructors who use their own vehicles, but carry out the work under the "designations" of the driving school that hired them under a contract, etc.). The field work which included insurance brokers did not show examples of depended self-employment as all interviewed persons had a standard employment elsewhere and performed this activity as an additional earning possibility.

The rise of the "gig" or "on-demand" economy in recent years, where the work is mediated through online web platforms or apps has brought renewed attention to dependent self-employment and disguised employment. Workers in the gig economy are commonly classified as independent contractors, despite that they may be closely supervised and their "wage" is paid through a specific application or internet platform. Given that these forms of employment are not a formal employment relationship, these workers are excluded from the benefit of rights at work, such as paid sick leave, annual leave, minimum wage, social security, etc and do not enjoy the freedom of association (ILO, 2021). This phenomenon is further analysed in section 4.4.2.

### 4.4.3. Disguised employment relationship

Disguised employment is when workers are hired as independent contractors (through civil contracts) but their work is monitored by their supervisors as though they were employees. The real nature of the work relationship is hidden to bypass labour regulations.

Forms of disguised employment relationship in North Macedonia may be found in various activities in the private sector, such as transport, construction, hotel industry, consultancy services, information technology, media, etc., and the disguised employment relationship is particularly present in the public sector (education, healthcare, social protection, public administration bodies, etc.). The field work did find examples of disguised employment other than in the public sector. In this context, the LRL had introduced as early as 2005 the so-called "special contracts" in order to distinguish employment contracts from civil contracts, which, in practice, were often misused in view of disguising the actual employment relationship. As opposed to employment contracts, which are always entered into for work *within the scope of activities of the employer*, special contracts (service contracts) are entered into *for work outside the scope of activities or profession of the employer* and such contract may also be entered into *for work in the field of arts and culture*.[89] Furthermore, special contracts are out of the scope of the obligations for any type of formal registration, and the persons hired in this manner are usually not covered by mandatory social security schemes and feature as "formally" unemployed persons.

Disguised employment in North Macedonia may be treated as a bogus, intentional and manipulative qualification of the employment relationship as other form of contractual relationship so as to avoid or reduce the employers' costs that would arise from the proper application of the regulations, primarily in the spheres of labour law and social insurance.[90] In practice, the contractual parties are entering into various titled or untitled contracts, written and verbal, though predominantly in a form of civil (service) contracts or agreements.

North Macedonia lacks a systematic approach to identification, regulation and combating disguised employment relationship. Although labour legislation defines the term "employment relationship", it

89 LRL, article 252, paragraph 2.
90 See: Kalamatiev, T. and Ristovski, A. Фактички радни однос и хонорарни рад versus македонског правног система, (Радно и Социјално Право, Бр.1/2015, Година XVIV, Београд), p. 10-11.

still has not established an adequate legal mechanism to protect the rights of workers in disguised employment relationships. In the forthcoming period one should expect that the legislator would take into account the solutions incorporated in ILO Employment Relationship Recommendation (no. 198), in particular those relating to the introduction of the principles of "primacy of facts" and "legal presumption that an employment relationship exists". If the new LRL continues to regulate employment contracts as strictly formal agreements, it should be expected that it would establish additional legal presumption for the existence of employment relationship, which would serve as ground for recognition of "invalid" employment contracts made verbally and/or without registering the worker in mandatory social insurance, and would lead to reclassification of the "*de facto*" into "*de jure*" employment relationship. This would also entail an extension of the scope of competencies of the State Labour Inspectorate.

## 4.5. Other non-standard forms of employment in North Macedonia

### 4.5.1. Home-based work/Telework

Working from home is an important feature of the contemporary world of work. Long associated with labour-intensive, repetitive work in the industrial sector ("industrial homework"), it also encompasses higher-skilled workers on digital labour platforms as well as remote workers ("teleworkers") in service industries.[91]

According to ILO estimates, in 2019 about 7.9% of the employed population around the world belonged to the broader category of "home-based work", which also includes work carried out by independent, self-employed workers in their home (or adjacent grounds or premises). The incidence of home-based work globally is higher among women (amounting to 11.5% of women's employment share and 5.6% of employment for men).

Home-based work and telework may have certain advantages over standard work arrangement such as saving time and costs on travel to and from work/parking/maintenance, may improve work/life balance, gives an opportunity for flexible scheduling, may reduce stress, increase job satisfaction, etc.

Since the first LRL as of 1993 until today, North Macedonian labour legislation regulates "home-based work" as a form of work performed in the home of the employee or in premises of his/her choice, other than the workplace of the employer, through a *conclusion of a home-based work employment contract.*[92] North Macedonia also ratified the ILO Home Work Convention(C-177) in 2012, but despite ratification, the LRL fails to, partially or fully, incorporate several important issues arising from the content of Convention C-177, such as:

i) *certain elements of the definition of home-based work* (for example, the element that home-based work is carried out for remuneration and results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used, or the fact that the persons with employee status do not become homeworkers simply by *occasionally performing* their work as employees at home, rather than at their usual workplaces);

ii) *equality of treatment between workers working at home and other employees* in the premises of the employer, which is the central element of the Convention.

On the other hand, the existing legal framework in North Macedonia does not regulate teleworking as a form of employment, i.e. organization of work at a remote workplace, different from home-based work, which is carried out by using ICT. Although the COVID-19 pandemic increased the need for teleworking as an effective mechanism for organising and performing work and for protecting the health and safety of workers, teleworking was neither introduced into labour law nor into collective agreements. During the state of emergency due to the COVID-19 pandemic, teleworking was not genuinely regulated by any Decree with a force of law. The sole legal acts that implicitly recommended public and private sector employers to apply teleworking/home-base work were the bylaws adopted in early March 2020.[93]

91 https://www.ilo.org/global/topics/non-standard-employment/WCMS_743755/lang--en/index.htm.
92 See: LRL, Article50.
93 See: Measures and Conclusions of the Government of the RNM dated 10 and 11 March and Decision of the Government dated 12 March, 2020.

Although telework is not regulated formally, it does appear in practice both in the private and public sector. For example, according to a 2020 study conducted by the International Labour Organization (ILO) and the European Bank for Reconstruction and Development (EBRD) assessing the impact of COVID-19 on employment in North Macedonia, as many as 15% of employers reported to have implemented teleworking.[94] Similarly, the UN Women study conducted in 2020 shows that many workers switched to teleworking during the Pandemic, with women being more likely to switch to working from home.[95] This was the case with 35% of the employed women surveyed relative to 23% of the men. Nevertheless, in practice, the dilemma arises as to the legal basis, as well as in general, the *legal framework for regulating the rights, obligations and responsibilities* applied by the contracting parties in the organization of teleworking/home-based work.

While home-based work and telework can help more women to combine their duties around home and taking care of children and elderly with developing a professional career, the UN Women study during the Pandemic showed that teleworking during the Pandemic presented a large stress to working women who had to balance their job requirements, home school their children and complete other household activities. For instance, women spent 44 per cent more time on cleaning and maintaining their own dwelling and surroundings during the pandemic and 40 per cent more time on cooking and serving meals and on household management.[96]

In the future, the legislator is expected to regulate the home-based work, first of all, by harmonizing it with ILO Home Work Convention No. 177 and ILO Home Work Recommendation no. 184. For the teleworking, it is expected that the legislator will take into account the European Framework Agreement on Telework of 2002 concluded between the European social partners (ETUC, UNICE / UEAMP and CEEP).

### 4.5.2. Digital platform work

The emergence of the gig or platform economy (also termed sharing economy, peer2peer economy, etc.) is one of the most important new transformations in the world of work. An important component of the platform economy is digital labour platforms which includes both: i) web-based platforms, where work is outsourced through an open call to a geographically dispersed crowd ("crowdwork", or online work), and ii) offline, on-demand work in a specified physical location that is mediated by digital labour platforms or mobile apps (De Stefano, 2015; Codagnone et al., 2016; ILO, 2016).[97] [98] Both types of work have been expanding to numerous sectors and occupations, and gaining prevalence in all parts of the world. They both have similarities with other forms of NSE, especially with casual work and the disguised employment relationship (ILO, 2016). They also rise important concerns regarding the labour protection as most workers are classified as independent contractors or freelance workers.

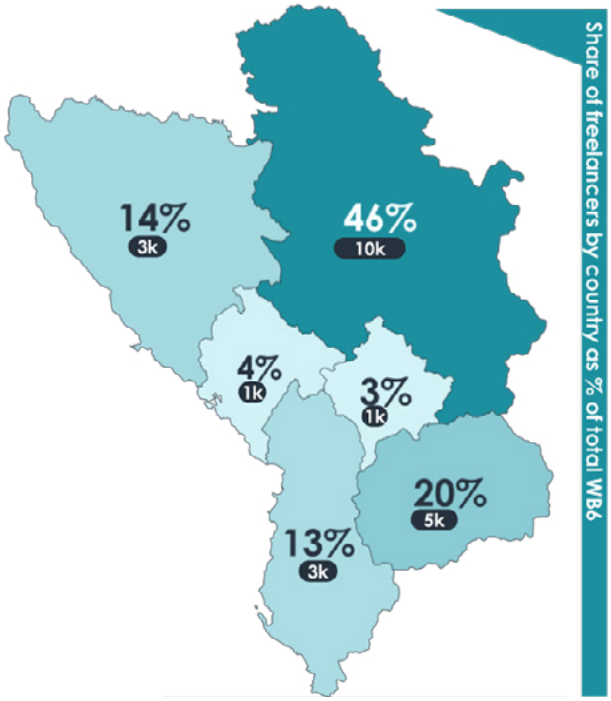
Initially, online work through digital platforms was led mainly by "freelancers" as a way to access the international markets.[99] In contrast, work through apps is a newer phenomenon which was mainly driven by the entry into local markets by international companies, such as Uber for transport, and most recently Glovo for delivery. The latter is not the case in North Macedonia, maybe because of its small market size which makes it unattractive for international companies. These two types of digital work which are enabled by digital technologies attract different types of workers and result in significantly different outcomes for workers. While there are no quality national data on the size of digital work in North Macedonia, the AnalyticsHelp (2018) placed Serbia and North Macedonia in 2018 among the leading countries in Europe and in the world by the percentage of digital workforce relative to the country's total population and total workforce. A more recent overview of the digital work in Western Balkan (January

94 See: ILO and EBRD, (2020), Covid-19 and the World of Work - Rapid Assessment of the Employment Impacts and Policy Responses for North Macedonia, p. 21.
95 UN Women (2020). Rapid Gender Assessment: The impact of COVID-19 on women and men in North Macedonia. Available from https://bit.ly/3sUNJ2F. [Accessed November 1 2020].
96 Ibid.
97 De Stefano, V. (2015) The rise of the 'just-in-time workforce': On-demand work, crowd work and labour protection in the 'gig-economy', Comparative Labor Law and Policy Journal, 37(3): 471- 503.
98 Codagnone, C., Abadie, F. and Biagi, F. The Future of Work in the 'Sharing Economy'. Market Efficiency and Equitable Opportunities or Unfair Precarisation. EUR 27913. Luxembourg (Luxembourg): Publications Office of the European Union; 2016. JRC101280.
99 Aleksynska, M. Digital Work in Eastern Europe: Overview of Trends, Outcomes and Policy Responses, ILO, 2021, available at: Digital Work in Eastern Europe: Overview of Trends, Outcomes and Policy Responses (ilo.org).

2022) also shows that North Macedonia is among leading countries in the region in terms of the number of freelancers and share in population.

### ▶ Box 2: Size and characteristics of digital work in North Macedonia, 2022

The analysis of the digital work in Western Balkan countries based on the UpWork jobmarket performed in January 2022 shows that North Macedonia is among the leaders in the region in terms of size of digital work and share in population.* According to the numbers and activity of freelancers who are registered on the UpWork platform, there are in total 5,000 freelancers from North Macedonia (of the total of 23,000 in Western Balkan) of which 31% are inactive on the platform (only registered). The number of active freelancers in North Macedonia is 3,200, which is 22% of all freelancers from Western Balkan (whereas the share of Macedonians in overall population in the region is 12%). While the number and share of digital platform workers in North Macedonia is comparatively high and increasing, the average payment per person in the country is lowest in the region. In particular, the average amount earned per person in North Macedonia is USD9,000, and the average hourly rate is USD18 (the regional average being USD20). The total income of freelancers in North Macedonia is USD29 million, which translates to USD13.9 per capita (highest in the region). The maximum amount earned by a freelancer in North Macedonia is half a million USD.




Source: Brief Analysis, Digital Work: Upwork jobmarket analysis.[100]
* While these data does not capture freelancers working on other platforms, UpWork is the largest portal so data are highly relevant.

Crowdwork is mediated by an online digital platform that connects an unlimited number of entities (clients/employers, users and workers) globally via the Internet (for example, *Amazon Mechanical Turk, UpWork, CrowdSource, FigureEight*) and provides the infrastructure required for performance of the tasks from any place of the world. The status of a crowdworker is usually that of a "freelancer" who independently performs certain tasks for other persons, the so-called "Crowdsources", and bears the risk independently and is responsible for the results of his work, regardless of his/her actual relationship with the crowdsourcer or the digital platform. Such status often puts crowdworkers in an unequal economic position compared to their contractual counterparties. Their vulnerability is particularly evident in

100 Swiss Agency for Development and Cooperation (SDC) and UNDP. Available at: available at: UpWork Brief_Draft_1[99] (2).pdf.

cases where the work they deliver is rejected without giving justified reasons for such rejection and without being paid, as well as in cases where their endurance on the digital platform is jeopardized due to poor evaluation they receive for the work performed or when they decide to switch to other platform but the scores are not transferable. Some crowdworkers are somewhat dependent on the digital platform because they usually establish a long-term connection to the platform, which makes them similar to employees. In some instances, crowdworkers may be stuck in dependent self-employment. Crowdworking is not regulated in the North Macedonian legislation, nor is it properly recognized and addressed by the social partners in the social dialogue and collective bargaining. Crowdworkers from North Macedonia mainly work for international digital platforms. As argued in 4.1.3, these workers are mainly engaged through service contacts, as independent contractors and hence do not enjoy the rights and benefits of the employment relationship. This raises several dilemmas, not only regarding the application of the applicable law, but also regarding the registration, i.e. the status and obligations of these persons in relation to the mandatory social insurance.

There are also digital platforms established in North Macedonia which act as intermediary for clients (foreign companies) and professionals from North Macedonia and elsewhere. These companies have several employees on standard employment contracts but then sign nonstandard contracts with the professionals who use their platform to find clients or use three-party agreements. This type of work mainly involves white collar and younger workers though it increasingly involves professionals with over 15 years work experience.

*"We offer a service platform, these professionals are not employed with us, we only mediate in finding clients for them and we earn when they earn. For that we use contact for services, i.e. hire them as individual contractors. The problem is our legislation which is too narrow and cannot incorporate this type of workers who work for all around the world, from North Macedonia. In this way, workers do not have any social security (and have relatively high incomes), and the state loses potential tax revenues."* Digital platform for professionals

Indeed, as argued in sections 4.1.5 and 4.3.1, informally self-employed persons do not have access to the rights form the employment relationship and no access to social security funds (there is no base for payment of social contributions). Registering formally as a sole proprietor seems to be associated with more costs than benefits, hence is not considered as an alternative. Some countries have done in past some legislative changes as to improve the position of freelancers. One such example is Romania, where the social security system was reformed in 2018 with the main objective of combating undeclared work by reducing incentives for employers to use civil contracts instead of labour contracts (Roşioru, 2019). Moreover, recent EU-level initiatives to regulate digital labour platforms will constitute important sources of law for Eastern Europe.

Work relations through online digital platforms remain largely informal. While data on informality on online platforms is not available for North Macedonia, data for Serbia show that two thirds of online workers are informally engaged (without written contracts with clients) (Aleksynska, 2021).

The field study showed that some of the online digital platform workers register themselves pro forma as being regularly employed in a company of their friends and relatives, on a minimum wage, in order to receive at least some social security (they pay all the social contributions and hence receive a health insurance and also old-age pension in the future). This is also important for them as to be able to buy additional health insurance. Those that do not pay the insurance, show high distrust in the social funds.

*"Under conditions when the main social security, especially the health insurance, is "empty" and with poor services, every person should have the right to a gross salary and a decision whether he/she wants to pay the social security." This is also within the context of the need for the self-employed "freelancers to have easier opportunities to be able to arrange their work of service and social security themselves, and not to have the options of just state apparatuses."* Digital platform worker.

The situation with the offline platform work through online apps is also problematic because although apps have all the attributes of an employer, they do not recognize that it is in an employment relationship with its workers. However, as mentioned above, the offline digital apps in North Macedonia are local, hence they operate under different conditions. Interviews showed that these workers in North Macedonia do have formal contractual arrangements with the employers (providers of the apps) and

can choose between a standard employment contract and a civil contract. Interviewed persons are by choice engaged through a civil contract. Workers are responsible for their own insurance, social security contributions and tax contributions. The company does not check compliance with such social obligations, and neither pays social security contributions on behalf of workers. The payment is based on the number of deliveries (tasks completed) and the distance and is done through a bank account. Workers mainly use own equipment which involves mobile phone and a bike (or car). Workers on civil contracts are treated equally as those on standard contracts, though not enjoying the social security. They are not aware of any association of similar workers or a trade union which may represent their interests. They are happy with the flexibility that the work offers.

Across Eastern Europe, online platform workers are mainly young, in their 30s, with equal representation of genders and highly skilled. While initially IT professionals dominated this pool of workers, today it is more diversified and includes a range of occupations, with three main broad categories dominating the online freelance: i) IT (including software and technology development), ii) content writing, translating, editing, and iii) the creative and multimedia industry (design, work with photos and videos). While IT sector is strongly dominated by men, content writing is strongly dominated by women.

Both online and offline platform workers work long hours. There is a difference in the hours of work whether it is the main activity i.e. job of the worker or an additional activity. In many instances, the work is in atypical hours. These workers usually can manage their schedule directly in the app and can work as much as they want to. Some days or even weeks with 0 hours, other days can put more than 12 hours of availability, but still depends on the number of actual clients who schedule consultation with them. Still, if a worker wants to earn a bonus, they will have to work approximately 42 hours per week (usually 6 days, 7 hours per day).

*"They can work as much as they want to. Some mark in the system that they are busy for a whole week, then they open free slots for 12 hours for contracting. But in the end we pay them for the hours they've had a client, not by an open schedule."* IT company

Aleksynska (2021) finds that among platform workers in Eastern Europe, earning incomes from online work is one of the main motivations for undertaking these activities. The reviewed studies uniformly show that, in Eastern Europe, earnings from online work have so far been quite attractive, whether as a complementary or as a main source of income. Second main motivation is the work flexibility and autonomy offered by platform work. Still, some workers find that they do not have full autonomy in their work, they become somewhat dependent on a platform or client and end up in a disguised employment relationship.

Online work through digital labour platforms has raised many challenges for policymakers such as income under-reporting and tax non-compliance, lack of social protection and security of both online and offline freelancers, worker status in employment vis-à-vis the apps, administrative registration of "online freelancers", etc. The key challenge is still the fact that most digital workers, both online and offline, are classified as self-employed. Hence, they fall outside the scope of labour laws, and cannot be part of a trade union under national law. They are not covered by collective bargaining agreements as there is no clearly attributable employer who would serve as a collective bargaining counterpart. Moreover, most workers on digital labour platforms are dispersed, and any interaction they may have is virtual at best.

Field work shows that there is a disparity between online platform workers and workers working via digital platforms offline. Online workers are not interested in being organized (at least not in the formal structures as they exist today). These workers can be identified as genuine freelancers, they are involved in such relationship by their choice and they indeed benefit from the advantages that platform work offers them. This finding is similar to the findings from online digital workers in Eastern Europe in general. These online workers generally enjoy higher earnings and better working conditions than those available in local labour markets. Hence, they are not unhappy with the development of digital work and do not seek its regulation. While they generally argue that are not interested in social insurance, many of them are registered with a standard employment contract, pro forma with friends, relatives.

Online digital platform workers use different ways of payment, trying to hide from the system, such as Payoneer (https://www.payoneer.com/). Some recent development (increased commissions for

payments through Payoneer, non-functioning of PayPal, as well as the limited movement across borders to maintain accounts abroad during the Pandemic) changed their preferences and now majority of them receive payment through the bank account. This also implies that they have to pay the personal income tax. Hence, they now complain about the amount of personal income tax (11%), for example compared to Bulgaria, where it is 10%.

Digital workers for whom this work is just an additional activity to the standard work often rely on income security, social security provisions and other protection offered to them though their main job in the traditional sector. They do not seek labour protection in the digital labour market. Workers operating offline through mobile apps are not aware and show no interest in trade union representation and activities. In other countries, there are some examples of association-type entities which represent their interests. Online freelancers in North Macedonia became more active in recent period organizing public debates and discussions on possibilities to regulate but also to ease their work, and are considering the establishment of an association of freelancers to better represent their interests.

# ▶ 5. Conclusion and recommendations

## 5.1. Summary of findings

Non-standard forms of employment (NSE) are a common feature of the labour markets worldwide, and North Macedonia is no exception. While global trends show a rise in NSE, LFS data for North Macedonia do not show such trends, although the survey may not capture well the new, more vague examples and types of NSE. The field study (qualitative) provided evidence for the existence of some forms of NSE, both the ones regulated by the Labour Relations Law (LRL) and some other related laws, but also some types which fall under the auspices of other legislation (commercial law, contractual law, etc.). Moreover, the study found informal contractual arrangements, and confirmed the rise of the digital platform work. Still, due to the limited size of the sample, no conclusions can be made of the magnitude of the different types of NSE.

The North Macedonian labour market is changing slowly but surely from a slack labour market with excess labour supply to a tighter labour market, where employers report a lack of workers (though not confirmed by the official statistics). Informality has also declined considerably, from 24.9% in 2010 to 12.9% in 2020. These changes have also triggered change in the dynamics of the worker-employer relationship evidenced in this report. In many instances it seems that the NSE is a choice of a worker or at least mutually agreed between workers and employers. Workers prefer such contractual arrangements so as to: (i) receive higher take-home pay (not paying social contributions), retain social rights and benefits (the guaranteed minimum income, old-age or family pension) and to avoid execution of dept - relevant mainly for low-skilled workers; as well as (ii) for flexibility and autonomy in the work and because of distrust in the social security system (and the state) – mainly holding for white-collar workers. Informality is also present among some types of NSE. Although most types of NSE exclude workers from employment-related rights, they find ways to access social security and the system offers different alternatives for that: through a spouse/parent, pro-forma employment on a minimum wage, registration as unemployed, combining standard work with additional work through NSE, etc. There is evidence that some workers on NSE (mainly the genuine freelancers, which include online digital platform workers) are demanding new forms of employment relationship which will allow them to be formal and enjoy certain rights and benefits of employment relationship (and bring tax revenues to the state).

While the world of work has changed in North Macedonia, as elsewhere, labour legislation and collective bargaining did not adjust to the new environment which has many implications from low social security of workers, to lost tax revenues, etc.

## 5.2. Recommendations

**General recommendations:**

- *Statistical information:* There is a need for improvement of the data collection on NSE within the Labour Force Survey (LFS). LFS is the only available instrument which collects employment data that has a potential to identify and capture different forms of NSE. The micro data analysis undertaken for the purpose of this study showed some issues with the terminology used in the LFS, but also a somewhat narrow scope of questions/information on NSE. ILO (2018), for instance, shows that some countries are able to capture in greater detail NSE and to differentiate even disguised employment and dependent self-employment among individual contractors (Australia, Mexico, etc.).
- *NSE terminology:* Terminology which is used nationally for different forms of NSE should be harmonized. For instance, different laws use different formulation for casual work (tax law and law on mandatory social contributions). Even larger challenges appear when comparing national terminology with that of the ILO. Policymakers should consider preparing an English dictionary of the labour law terminology. Much confusion arises around the ILO-termed casual work which is not

recognized as employment contract in North Macedonia but appears in other laws as a term (mainly the Law on Personal Income Tax).

- *Legislative changes:* The study shows that there is a need for better, more precise regulations of some NSE within the Labour Relations Law (LRL) as well as incorporation of some ILO Conventions. It also shows a need for some additional regulation (for instance in case of freelance workers), which may go beyond the LRL in the tax legislation, commercial law, etc. However, every intervention in the legislation should balance well between the protection of workers and the need to ensure flexibility for employers. This is especially the case for any new forms of employment. The practice shows that otherwise, economic agents find ways how to circumvent the application of law or the authorities find it difficult to monitor the implementation.

  Some of the intended changes in the practice can be implemented by collective agreement, not all changes should be forced though legislation.

- *Legal introduction of new forms of NSE:* In case of a decision for introduction of new forms of employment, the new legislations should be clear and concise and not continuously changed; monitoring should be put in place to ensure compliance. Regulation should be simple in order to ensure easier implementation. Discussion of new employment forms should be included in policy areas other than labour and social protection, such as business development, but also in perspective of the current and future trends such as international competitiveness, ageing of population, emigration, brain drain, etc.

- *Extend the access to trade union membership and collective bargaining:* Reduce the barriers and limitations for trade union membership for workers with NSE, including self-employed and workers with civil contracts. Poland recently introduced the possibility that the self-employed or those working under civil contracts (and any worker that is not employer) officially can be members of trade unions. Though, in Slovakia, trade unionists argue that the "structural obstacles" within their traditional organizations prevent digitals workers from joining unions (Sedláková, 2018).

- *Extension of the personal scope of protection of the LRL:* Protecting the NSE workers especially those involved in disguised employment and dependent self-employment and generally workers in precarious jobs requires a clearer set of criteria determining the existence of an employment relationship. The subordination criteria, necessary for establishing an employment relationship, should also be complemented by economic dependency criteria, as well as by acknowledging the asymmetry in economic powers of both parties to the agreement (Lioutov, 2019). Although LRL defines the term "employment relationship" and sets several criteria and indicators of its existence, it still has not established an adequate legal mechanism to reclassify the "false" into a "real" status of "employees" of the workers in disguised employment relationship and to protect their rights arising from their employment and social insurance. Workers whose employment contracts are not concluded in a written form and/or are not registered in the mandatory social insurance (i.e. they are "de facto" or undeclared employment relationship) face the similar situation. In this context, following recommendations are provided:

  - Ensuring the extension of the scope of application, and the protection, of the labour law to all workers part of an employment relationship – whether or not the employment relationship is characterised by the existence of an employment contract; and amending the definitions of the notions of "employee" and "employer";

  - Ensuring, in line with Paragraphs 9 and 11 (b) of the Employment Relationship Recommendation 2006 (No. 198), that the determination of the existence of an employment relationship be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties;

  - Including a legal presumption according to which an employment relationship exists where one or more relevant indicators is present – in line with ILO Recommendation No. 198 and comparative best practices;

- Ensuring that an employment contract be considered only as legal proof of the existence of an employment relationship, but not as a qualifying or indispensable condition for the determination of the existence of an employment relationship.

The above changes should be accompanied by an extension of competencies of the State Labour Inspectorate to reclassify the "de facto"/undeclared employment into lawful employment relationship.

- *Improving the definition of employer in related legislation:* The legal framework (mainly, the Law on Occupational Safety and Health) should be improved in terms of introduction of more appropriate and comprehensive definition of the term employer, for the purposes of determining the obligations arising from the occupational safety and health system and establishing the liability in cases of occupational injuries and accidents.
- *Increasing the attractiveness or making redundant some forms of formal employment arrangements:* Policymakers should try to improve the regulation of the formal forms of employment which are subject of the LRL, in consultation with employers and workers, and taking into account new trends in the labour market. This applies to fixed-term contracts, but also to the other forms of contracts which are used very rarely. In particular, employers favour the use of fixed-term contracts over trial work contracts and seasonal contracts. Better information provided to employers on the specifics of different work contracts can help employers to sue the most appropriate ones.
- *Making formality a more attractive option:* Policymakers should reassess the eligibility criteria for the social benefits. The current system (for instance, of conditions set to receive the guaranteed minimum income) creates disincentives for the beneficiaries to take up formal work as they will lose the right immediately when they receive an income (wage) on their account. For instance (this has already been proposed to the government to support Roma activation and employment) there should be a gradual – and not immediate – reduction (and removal) of the guaranteed minimum income for a recipient that finds a formal job. In addition, they may be allowed to keep the status of social support recipient for some extended period. Some changes in the servicing of old debts the low-skilled workers may bring more formalization in the working arrangements. For instance, instead automatic withdrawal of ½ of wage or income received on the bank account, the amount can be reduced to ¼ of the wage/income. Further, a fixed minimum amount could be protected against possible wage deductions. In more general terms, measures could be guided by the ILO Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).

**Specific recommendations by type of NSE:**

- Based on the analysis presented in this report, following changes in the regulation of *Fixed-term contracts* (TFCs) is proposed:
  - Reduction of the total maximum duration of the fixed-term employment and establishment of the transformation of the fixed-term to permanent employment, regardless of the type of work ("same" or "different") performed by the employee with the same employer;
  - Introduction of one or more additional measures for protection against employment abuses by concluding successive fixed-term employment contracts, from the following options: limitation to the number of renewals/extensions; an objective reason for extension; limitation to the percentage of workers in fixed-term employment in the total number of employees with the employer. Whatever solution is considered, special attention should be given to the applicability in practice in terms of inspections by the State Labour Inspectorate;
  - Introduce legal presumption for the existence of a permanent employment relationship (i.e. transformation of the employment relationship) in cases of "actual" extension of employment relationship to workers whose FTCs have expired and were not timely extended;
  - Review the qualifying criteria for acquiring entitlements to allowances arising from health insurance and insurance against unemployment.

- The regulation of *seasonal work* may be improved by introducing a new type of seasonal agreement based on the experience of Croatia, called permanent seasonal works. This work arrangement will adequately specify the conditions for the obligation of the seasonal worker (to be available) and the employer (to provide work) in the new season, including the justified reasons for the seasonal worker to be able to reject the work offer of the employer in the new season without suffering harmful consequences. All aspects of such regulation should be taken into account and well defined, including the payment of social contributions. Moreover, the study found that sometimes truly seasonal contracts are substituted with FTCs. Some additional discussion with employers is needed so identify the obstacles to using seasonal work contracts (especially in tourism and hospitality).
- In the area of *casual work* efforts should be made as to distinguish the work arrangements that are truly casual (and can be realized though civil contracts) and work that can be characterized as employment relationship (resembling FTC, but also dependent self-employment, or disguised employment through civil contracts). The above should be done in a view that workers should receive higher protection and access to the right of the employment relationship. The main issue here being that once some of these contracts switch to less non-standard ones (regulated by the LRL) the labour costs will increase which seems to be a problem for some workers (who want to take higher take-home pay) and some employers (who consider the gross wage as a labour cost).

  Some measures for better regulation of casual work are:

  - Determination of the maximum duration of temporary and occasional work (on a weekly, monthly and/or annual level) and transformation of these "very" non-standard form into a "less" non-standard form (such as fixed-term work) if the worker works longer or beyond to the legally prescribed maximum duration;
  - Restrict the application of temporary and casual work only to works beyond the main activity of the employer.
- Following changes are required as to improve the part-time regulation, some of which may increase the attractiveness of the part-time employment contracts:
  - Introduction of the term "*comparable* full-time worker" in the Labour Relations Law and its harmonization with EU Directive 97/81/EC on part-time work;
  - Limiting the principle of "proportional exercise of equal rights in proportion to working hours" only to the material rights from employment (salary and other monetary benefits);
  - Alignment of the conditions (qualifying period) for acquiring certain rights from employment or social security (for example, pregnancy allowance, maternity leave, unemployment benefits), regardless of the length of employment, that is, the length of service of part-time workers compared to full-time workers. For instance, if the Law stipulates a six months insurance period for acquiring maternity and parental leave allowance (calculated for a full-time employee), the same insurance period (length of service) should be required for part-time employees;
  - Reconsider the possibility for *"additional work"* of the part-time worker work with the employer, beyond the agreed number of working hours and address the dilemmas concerning the status of the "additional" working hours;
  - Improve the existing provisions related to part-time work with several employers in order to guarantee better synchronization and coordination in the work of the employee;
  - Review the existing additional work requirements which provide for limitation of the maximum working time to up to ten hours per week and mandatory prior consent, in view of their harmonization with the respective EU Directives (Directive 2003/88/EC and Directive EU 2019/1152);
  - Facilitate the development of quality part-time work on a voluntary basis, in line with ILO Convention No. 175 and EU Directive 97/81/EC.

- Consider regulation of on call work in the LRL, in a balanced way as to ensure some security for workers (a minimum amount of work and income to the employee, minimum notice period of the employees' hours of work etc) as well as the flexibility for the employers which arises from the nature of the work performed.
- The use of *temporary agency work* is very low in North Macedonia. Still, some changes may be implemented to improve the regulation such as:
  - *Review the conditions* for entering into employment contract, i.e. assignment of temporary agency workers to user-employers, since, in practice, the same temporary agency workers remain assigned to the same user-employers for several years, without getting standard employment;
  - Assess the need and possibility for introduction of *permanent employment relationship* established between the worker and the agency, which would regulate the payment of the worker in the period between two assignments;
  - Undertake adequate steps to address the challenges in the *exercise of the rights to organize and bargain collectively* within the temporary agency work.
- The rise of the *digital platform work* where workers are almost entirely engaged as independent contractors (through service, freelance contracts) presents many challenges for policymakers. The phenomenon of the digital platform work is relatively new and completely unregulated in North Macedonia. A distinction should be made between crowdworkers (online workers, mainly more educated, working for foreign companies) and workers on apps (offline workers, serving domestic market, usually less educated). The study showed that, in most cases, crowdworkers are satisfied with their position and that their contractual arrangement is a personal choice. Still these workers do not enjoy some of the fundamental rights from employment.
  - Any policy tools implemented in this area need to have a strong self-enforcing component, as is the example of individual farmers who have a self-propensity to register formally and pay taxes and contributions (though on a reduced level) as a condition to receive state subsidies. There is also a need for coordinated policy responses across different ministries and agencies.
  - Some changes in the Company Law may open a room for formalization of some of the online digital platform workers who are genuine freelancers (mainly white-collar workers) who are informally self-employed. During interviews (also in the public discourse), some of these workers mentioned that there is no appropriate legal form for their status, as well as that registering as sole proprietors is not an option for them as that particular type of company cannot export. Ukraine shows a good example where in 2016 a reduction of administrative barriers for the "export of services" was implemented and the legal procedures for doing business with online entrepreneurs were somewhat simplified (Aleksynska, 2021). The law was intended to legalize online freelance activity with foreign clients, which was at the time out of the scope of legal regulation. However, any such changes have to be carefully though and, as previously argued, with some self-enforcing component, i.e. the approach of carrot rather than stick. The case of Ukraine showed that the legal changes did not bring the expected results because of complex administrative regulation.
  - Another policy option is the example of Romania where in the mid 2010s, the country managed to adopt legal instruments establishing a series of criteria to determine the legal nature of the work relationship. This legal change was integrated into the Tax Code rather than the Labour Code. The Tax Code therefore listed the criteria for qualification as a freelancer (at least four of seven conditions have to be met: Roşioru, 2019).
  - Improved regulation of the criteria to establish an employment relationship would be particularly useful in the case of workers on location-based app (drivers, delivery riders, cleaners, etc.) who are frequently in a relation of dependency towards the platform. In addition to ILO Recommendation No. 198, legislative initiative at the EU level may offer useful guidance.
  - In both options analysed above, workers (freelancers) should receive and opportunity to access the social funds, and some other rights of the employment relationship. This implies that certain

changes should be made in the social security legislation, where these workers can self-report/ register. In order to make this option attractive, a minimum (and maximum) cap should be put on the tax base at a reasonable level (for instance, the average wage in the economy) for a certain time period (say 5 years).