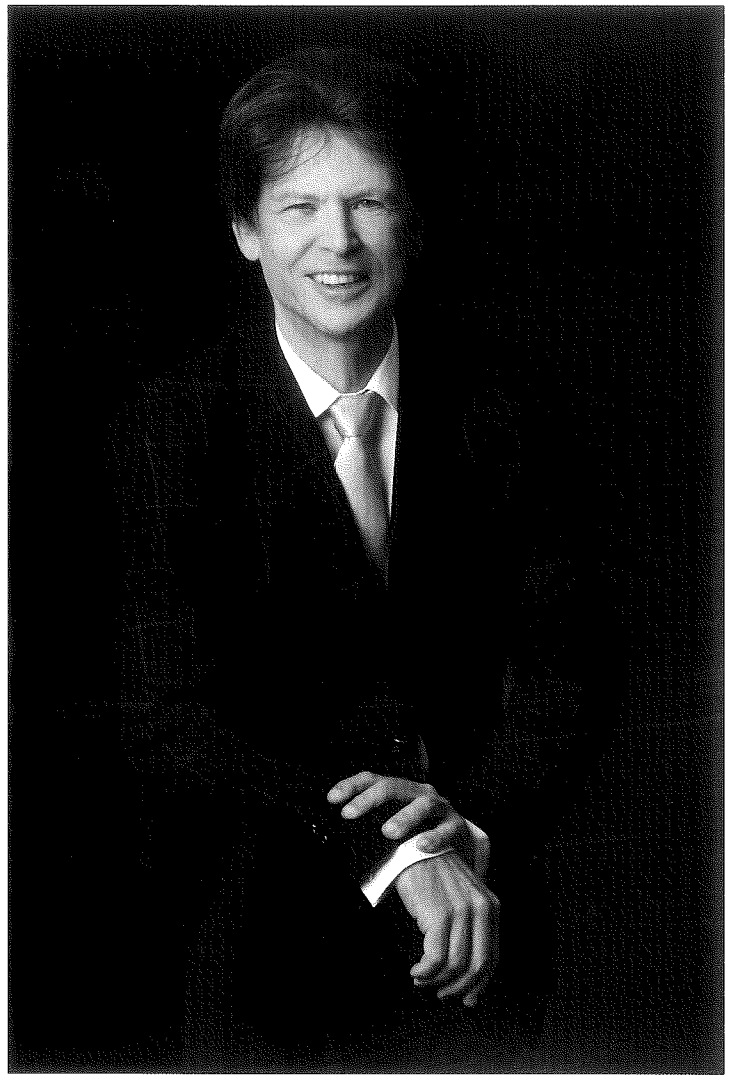

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Vorwort und Dank

Die vorliegende Festschrift spiegelt in schöner Weise die breit gefächerten Interessen- und Arbeitsgebiete von Wolfgang Portmann wider, indem sie 50 Beiträge schwergewichtig aus den Gebieten nationales und internationales Arbeitsrecht, Datenschutzrecht, Prozessrecht, Privat- und Sozialversicherungsrecht vereinigt. Diese eindrückliche Sammlung hochkarätiger Beiträge war nur möglich dank der spontanen Bereitschaft der Autorinnen und Autoren, an dieser Festschrift mitzuwirken. An sie geht deshalb der erste grosse Dank der Herausgeber.

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Die Herausgabe dieses Werkes wäre schliesslich nicht möglich gewesen ohne die grosszügigen Beiträge namhafter Verbände, Unternehmen und Einzelpersonen. An sie geht der besondere Dank der Herausgeber.

Zürich, im März 2020

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institutions are missing, for example, the hiring out of workers to clients by agencies (temporary agency work),[45] a new notion of 'the worker' and regulations on 'digital work'. This approach results in leads to extensive abuse by employers.

The underlying principle of any new labour law regulations introduced in the Labour Code should stipulate that all persons whose livelihood depends on their work have the same legal and factual status as the employed. We should not forget that according to the Constitution, the State is the guarantor of social justice, equality and the dignity of the citizens. Within this context, efficient steps should be taken to protect 'atypical workers'.

[45] The law on temporary agency employment is expected to be enacted during 2019.

Temporary Work and Forms of Work Outside of the Employment Relationship in North Macedonia – de lege lata vs. de lege ferenda

TODOR KALAMATIEV / ALEKSANDAR RISTOVSKI

Table of contents

I. Introduction

The issue of non-standard (atypical, flexible) forms of work has drawn the attention and scientific focus of many international authors, organisations and stakeholders in the last two decades. Consequently, in theory there are various definitions and classifications of non-standard forms of work united around the idea that they are deviations from standard forms of employment. The International Labour Organization identifies the following four global groups of non-standard forms of work: forms of work that are *not open-ended*, i.e.

not based on a contract of indefinite duration (temporary employment); forms of work that are *not full time* (part-time and on-call work); forms of work *without a direct, subordinated employment relationship with the end user* (multi-party employment relationship), and forms of work *not part of an employment relationship* (disguised employment, dependent self-employment, etc.).[1]

Non-standard forms of work have become increasingly important in the Macedonian labour market. Their development can be traced in Macedonian labour legislation. In this regard, the labour legislation of North Macedonia is marked by two periods: the period from the adoption of the first Law on Labour Relations of 1993 until the adoption of the second Law on Labour Relations of 2005[2], and the period from the adoption of the second Law on Labour Relations of 2005[3] until today.[4]

Starting from the ILO typology for the classification of non-standard forms of employment, the following forms can be found in the Republic of North Macedonia's current labour legislation: in the group of temporary employment (*fixed-term employment contracts and seasonal work*); in the group of part-time and on-call work (*part-time employment contracts and part-time employment contracts with multiple employers*) and in the group of multi-party employment relationships (*temporary agency employment contracts*). In addition to the aforementioned non-standard forms of work, Macedonian labour legislation regulates the following forms: *homeworking employment contracts*, *employment contracts with domestic workers* and *employment contracts with managerial persons* (*managerial contracts*). Finally, Macedonian labour legislation also regulates certain forms of work provided outside of the employment relationship. This primarily includes so-called «*special contracts*», and based on certain features in this group can also be classified as so-called «*contracts for voluntary service*» and «*additional work*». *Casual work* or the variants in which it is found

1 ILO, Non-Standard Employment Around the World-understanding challenges, shaping prospects, 2016, 7 ff.

2 The Law on Labour Relations of 1993 (Official Gazette of the Republic of Macedonia, no. 80/93), for the entire period of its validity, comprised three non-standard forms of work: *employment relationships of a definite duration* (fixed-term employment contracts), *seasonal work, and employment* contracts *for work at home*. In the first phase of development of the Macedonian labour legislation, non-standard forms of work were restrictively regulated and employers did not have the required flexibility for more widespread use.

3 The adoption of the Law on Labour Relations of 2005 (Official Gazette of the Republic of Macedonia, no. 62/05) which is still in force following numerous amendments, corresponded to the realisation of two basic goals: harmonisation of Macedonia's labour legislation with the EU's «acquis communitaire» and the continuation and deepening of the already initiated trend of flexibilisation of the employment relationship and particularly of firing and hiring.

4 At the time of writing this paper, a third phase in the development of the Macedonian labour legislation has already begun, and that is the phase of the adoption of new law/s in the field of labour, i.e. labour relations. In 2018, the first version of the two new laws were drafted, the first of which «Draft-Law on Labour Relations» aimed to regulate individual labour relationships, while the second «Draft-Law on Trade Unions, Employers' Associations and Collective Bargaining» aimed to regulate collective labour relations. So far, the drafts have not been transposed into new laws adopted by the Parliament of the Republic of North Macedonia.

(for example, temporary and occasional work) are not subject to regulation in Macedonian labour legislation. Yet, these forms of work are present in practice and often appear as a «veil» to conceal employment.

Considering the complexity and scope of the issue of non-standard forms of work, conducting an integral and comprehensive analysis of all non-standard forms present in the Macedonian labour law system goes beyond the scope of this paper. Hence, the paper looks at two of the four global groups, namely temporary work and the forms of work provided outside of the employment relationship. Within the «temporary work» group, fixed-term employment contracts are subject to a more detailed analysis. The authors point to the major regulatory gaps in Macedonian labour legislation that cause ambiguity and uncertainty in the application of this non-standard form of work and deepen the precarity in which fixed-term workers may find themselves. Within the group «forms of work provided outside of the employment relationship», the existing legislation is primarily analysed vis-à-vis the problem of disguised employment and the misclassification of the genuine employment status of workers engaged to perform work with contracts other than contracts of employment. The disguised employment relationship is put in the context of «informal employment»[5] which according to 2016 data, covers approximately 18.5 per cent of the total number of persons employed in the country.[6] The Macedonian legislator introduced the so-called «special contracts» as forms of work «outside» the scope of the employment relationship. Do these contracts serve to increase the employer's flexibility in recruiting new workers and decrease undeclared work or do they contribute to the further expansion of disguised employment in the country? These are some of the dilemmas that shall be addressed in this paper.

Like other non-standard and standard forms of work, non-standard forms of work classified within the groups of temporary work and work performed «outside» of the employment relationship should meet the decent work parameters. Hence, the authors of this paper aim to identify the key decent work deficits in the work of certain groups of non-standard workers in North Macedonia (primarily in the field of their legal regulation, collective labour

5 Informality is a complex and multi-layered concept. In defining this concept, the ILO uses the term «informal employment» which refers to all economic activities by workers and economic units that are—in law or in practice—not covered or insufficiently covered by formal arrangements. See *Transition from the Informal to the Formal Economy Recommendation*, 2015 (no.2014), I. 2 (a). Within the EU, it is found under the term «undeclared work» and is therefore defined as any paid activities that are lawful as regards their nature (excluding criminal activities) but not declared to the public authorities. See *Communication from the Commission on Undeclared Work*, COM (1998) 219 final, 4. Informal employment in North Macedonia can be understood within a broader context, encompassing forms of unregistered activities, under-declared employment (i.e. envelope wage) and forms of employment that are not registered in the Employment Service Agency, i.e. not reported to the system of compulsory social insurance (so-called undeclared employment). For the purposes of this paper, the term «informal employment» also refers to cases where there is a concealment of the employment relationship (disguised employment).

6 Ministry of Labour and Social Policy, Strategy for formalizing the informal economy in the Republic of Macedonia, 2018–2022, Skopje, 2018, 13 ff.

rights and scope and level of protection in the social security system), and to offer «de lege ferenda» solutions to improve their position.

II. Temporary work

Temporary work is a heterogeneous term. Consequently, in theory, there is no single, objective definition of this term.[7] Certain authors refer to an «expansive» definition of temporary work as a concept composed of a range of working relationships (non-standard forms of work) that deviate from the standard employment relationship along the axis of its duration, in that they are, at least formally, finite rather than open-ended. [8] According to other authors, temporary work contracts may encompass contracts whose termination date is defined and agreed in advance; contracts for assignments, i.e. that will expire automatically on the completion of an agreed job or project; contracts that will come to an end at the occurrence of a defined future event; seasonal contracts, i.e. activated for the duration of a specified season of the year or during a particularly busy period of the year for the organisation; casual contracts where the individual is engaged on an ad-hoc, as required basis, etc.[9] In terms of the Macedonian labour law system, the most adequate classification of the non-standard forms of work within the group of temporary work is the classification that includes the following three general forms of non-standard work: *fixed-term work*; *seasonal work* and *casual work*. [10]

A. Fixed-term work

Given the assumption that the employment relationship of indefinite duration is the general rule, prominent international authors take the stance that fixed-term contracts are the «exception» and have to be justified by objective reasons.[11] This stance is also shared by domestic labour law doctrine.[12] Is it really so in North Macedonia? The affirmative response to this dilemma should have found its support both in the national legislation and practice. First of all, the Law on Labour Relations provides that the employment contract shall be concluded for a period which is not defined in advance (employment for an indefinite period)[13], but an employment contract *may* also be concluded for a period defined in advance

7 KOUKIADAKI, The Regulation of Fixed-Term Work in Britain-A Comparative Overview, Wolters Kluwer, 2010, 23 ff.
8 MCCANN, Regulating Flexible Work, Oxford University Press, 2008, 102 ff.
9 MACDONALD, Managing Fixed-Term and Part-Time Workers, Lexis Nexis UK, 2009, 121 ff.
10 See РИСТОВСКИ, Права на младите на работното место во Република Македонија – пристојна работа за младите луѓе, ILO, 19 ff.
11 BLANPAIN, Fixed-Term Employment Contracts – A Comparative Study, Vanden Broele Publishers, 2009, 18 ff.
12 КАЛАМАТИЕВ, Работниот однос на определено време во Законот за работните односи на Р.Македонија, Зборник во чест на животот и делото на Васил Грчев, Универзитет «Св.Кирил и Методиј», Правен Факултет – Скопје, 2002, 307 ff.
13 Law on Labour Relations, Art.14, para 1.

(fixed-term employment).[14] An employment contract, whose duration is not determined therein, *shall be considered to be an employment contract of indefinite duration*.[15] Consequently, the legislator introduced an irrefutable presumption, which excludes the possibility of proving that a fixed-term employment relationship has been established if the particular employment contract does not stipulate a provision determining the period for which the contract was concluded. However, the overall picture of the role and significance of fixed-term contracts, their position vis-à-vis contracts of indefinite duration (open-ended contracts) and the level of protection of fixed-term employees should not be built solely on the initial premises on which labour legislation and statistical data are founded.[16] True confirmation of the paradigm that «concluding employment contracts for an indefinite period is a general rule, while concluding fixed-term contracts is an exception from the established rule» is to be found in the very way of regulating fixed-term work. The analysis that follows raises serious reasons to conclude that the said paradigm does not correspond to normative and factual reality.

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

The dilemma of the «existence» or «non-existence» of objective justification (reasons) for establishing a fixed-term employment relationship will be resolved by means of a short chronological analysis of North Macedonia's labour legislation for the period of the country's independence to date. Macedonian labour legislation, for most of its existence, provided objective reasons for concluding fixed-term employment contracts. Objective reasons were mandatorily required for the conclusion of fixed-term contracts in the period following the adoption of the first Law of 1993 and its subsequent amendments to the enactment of the new Law of 2005[17], and thereafter, from the adoption of the new Law to its amendments of 2008.[18]

14 Law on Labour Relations, Art.14, para 2.
15 Law on Labour Relations, Art.14, para 3.
16 According to the statistical data of 2019 (second quarter), 16.7 per cent of the total number of employees in North Macedonia worked under employment contracts of a temporary duration (source: Eurostat http://ec.europa.eu/eurostat/data/database).
17 The LLR of 1993 (until the amendments of 2003) exhaustively enumerated the admissible «cases» (justifications) for establishing a fixed-term employment relationship. In doing so, the Law stipulated the following cases: *seasonal work; increased volume of work; replacement of an absent worker* and *work on a project* (see Law on Labour Relations of 1993, Art. 23). Compared to the basic text of the Law on Labour Relations of 1993, its amendments of 2003, as well as the new Law on Labour Relations of 2005, introduce more general and elastic formulation for determination of the objective reasons for concluding fixed-term employment contracts. The amendments of 2003 stipulated that the fixed-term employment relationship may be established for performing activities *which by their nature are of a definite period*, with or without interruption, up to three years (see Law on amending and supplementing the LLR, Official Gazette of RM, no. 25 from 08.04.2003, Art. 2).
18 The basic text of the new Law on Labour Relations of 2005 retained the identical legal formulation in determining the objective reasons for the commencement of the fixed-term employment relationship, but it increased the maximum limitation *up to four years* (see LLR of 2005, Art.46).

The Law on amendments and modifications of the Law on Labour Relations of 2008 repealed the phrase «performing activities which by their nature are of a definite period of time» from the basic text of the Law of 2005[19], by which, it practically abolished the existence of an «objective justification» (reason) as a precondition to conclude a fixed-term employment contract.[20]

The current labour legislation does not precondition the conclusion of the initial, nor subsequent (successive) fixed-term contracts with the existence of «objective justification». Thus, it turns out that employers have full freedom to employ fixed-term employees, regardless of the fact whether the job position or the work for which they are employed is of a permanent or temporary nature, as well as whether it is outside or within the main business activity of the employer. This practice is not illegal, but it does not appear to be in conformity with the principle legal position taken in the LLR that fixed-term employment is merely a «possibility» or «exception» from the «rule» that employment relationships are established for an indefinite duration.

The only case in which the legislator explicitly refers to the existence of objective justification for concluding a fixed-term contract is the case of *«replacement of a temporarily absent employee»*.[21] However, the very fact that the LLR in none of its provisions preconditions the validity of the fixed-term contract by formally stipulating the objective justification, i.e. the reason for its conclusion, indicates that neither the failure to stipulate a reason such as the replacement of a temporarily absent employee should not cause nullity of the contract or any other consequences that could result from its invalidity.

[19] Law on amending and supplementing the LLR (Official Gazette of RM, no. 106 from 27.08.2008, Art. 4).

[20] The abolition of the objective reasons for concluding fixed-term contracts in the national labour legislation should be perceived with special caution. Such caution primarily stems from the need to harmonise Macedonian labour legislation with the international labour standards, such as the ILO Termination of Employment Recommendation no.166 which refers to limiting recourse to fixed-term contracts to tasks of a temporary nature (see Part I, 3 (1). Similar to the ILO Recommendation, EU Directive 99/70/EC on fixed-term work emphasises the need for a balanced use of fixed-term contracts. The principal position of Directive 99/70/EC is that «employment contracts of an indefinite duration are the general form of employment relationships and contribute to the quality of life of the workers concerned and improve performance» (see General considerations, 6). Directive 99/70/EC also stipulates that the protection of workers from abuses of their employment relationship can be provided by introducing objective reasons for the use of fixed-term employment contracts (see General considerations, 7). However, the Directive should not be interpreted in the sense that it introduces an obligatory requirement for establishing objective reasons for the parties' first entry into a fixed-term employment contract (see RÖNNMAR, Labour Policy on Fixed-Term Labour Contracts in Sweden, Regulation of Fixed-Term Employment Contracts – A Comparative Overview, Wolters Kluwer, 2010, ff 164). In this regard, it can be considered that the Directive leaves a so-called «regulatory limbo» in allocating the initial period of employment (see MCCANN (FN 10), 123 f.

[21] See Law on Labour Relations, Art.46, para 2.

2. *Legal mechanism for the protection of employees against abuse in their employment through the conclusion of successive fixed-term contracts*

Macedonian labour legislation applies one of the three measures of protection against abuses of the fixed-term employment relationship which are stipulated in EU Directive 1999/70/EC **on fixed-term work,** and that is the measure *«limitation of the maximum total duration of the successive fixed-term employment contracts».*[22] This means that the employer may conclude one or multiple successive contracts with the employee whose renewal is not conditioned by the existence of any objective reason, as long as the limitation of the maximum duration of the fixed-term employment relationship determined by law is respected. According to the LLR, the employment contract may be concluded for a definite period of time of **up to five years** for carrying out **the same activities, with or without interruption**.[23]

The limitation of the duration of the fixed-term employment relationship of up to five years refers to the performance of the «**same**» activities. The Law does not contain a provision by means of which it closely specifies the term «performance of the same activities», but it may encompass the activities belonging to the same group or category of job positions that are normally prescribed by the collective agreement or employer's act, i.e. the Act on job systematisation.[24] There are frequently cases in which just before the expiration of the maximum period, which limits the duration of the fixed-term employment relationship, employers enter into a new fixed-term employment contract with the employee, engaging him or her to perform «other» activities that can only be nominally but not essentially different from the activities that were a constituent part of the previously concluded employment contracts. In this way, employers avoid the legal consequences resulting from the expiration of the maximum period of limitation of fixed-term employment contracts, and that is the transformation of the fixed-term employment relationship into an indefinite employment relationship. Hence, we find it more appropriate if the maximum period of limitation of fixed-term employment contracts refers to *«any»* activities performed by a particular employee *with the same employer* and not only for the performance of the «same» activities.

Apart from the dilemma over the «type of activities» that the fixed-term employees are supposed to perform, the Law on Labour Relations of North Macedonia has raised another problem regarding the continuity of their performance of work. The resolution of this problem concerns the need for a consistent interpretation of the legislative phrase '**work with**

[22] The labour legislation does not envisage the remaining two measures of protection against abuses of the fixed-term employment relationships such as *the determination of objective reasons justifying the renewal* of the fixed-term employment contracts and *the limitation of the number of renewals* of such contracts. See Council Directive 1999/70/EC, clause 5 (1).

[23] Law on Labour Relations, Art. 46, para 1.

[24] КАЛАМАТИЕВ, РИСТОВСКИ, Работа на определено време и работа со неполно работно време, нестандардни форми на работа во работното законодавство на Република Македонија, Деловно Право, Година XVII, Бр.34, Скопје, 2016, 662 ff.

or without interruption', which should be analysed in terms of the maximum period of five years for the limitation of fixed-term work. The current Law on Labour Relations does not contain any legal provision for determining the «time gap» between the expiration of the previous and the conclusion of the new fixed-term employment contract.[25] Such an approach might imply a certain security aspect for the fixed-term employees, but on the other hand, it could be very rigid for the employers.

3. *Conditions for transformation of the fixed-term employment relationship into an employment relationship of indefinite duration*

The fixed-term employment relationship ***shall be transformed*** *into an employment relationship of indefinite duration, provided that the employee continues to work after the expiry of the maximum period for the limitation of the employment contract under the conditions and in the manner defined by law.*[26] With this provision, the legislator introduces an irrefutable legal presumption according to which if the employee continues to carry out the work tasks with the employer, even for one day after the expiration of the maximum term (of five years) determined by law, the employment relationship will be considered to have been transformed from a fixed-term to an open-ended contract. The transformation of the fixed-term employment relationship into one of indefinite duration does not depend on the adoption of any act (decision, notice) by the employer. Yet, should the employer refuse to transform the employment relationship of the employee into an indefinite one, the employee may initiate a procedure for the protection of his or her rights. If, however, the employer does not intend to extend (i.e. renew) the employment contract with the employee and the conditions for a transformation of the employment relationship into one of indefinite duration are not met, the employer may terminate the fixed-term contract. It is a special (ex lege) termination of the employment contract which is different from termination by «dismissal», i.e. the unilateral cancellation of the concluded fixed-term contract.[27]

We conclude this part of the paper by referring to another «regulatory gap» which creates great legal uncertainty in practice and therefore requires an appropriate statutory intervention. This gap occurs in cases where the fixed-term contract was concluded for a period shorter than five years and the employee continued to perform his or her tasks with the same employer even after the expiration of the contract without concluding a new (successive) contract, but with the difference that the employer had not deregistered (signed out) the employee from compulsory social insurance.[28] In practice, these cases put the employee

[25] In comparison, the amendments and modifications on the Law on Labour Relations of 2003 stipulated that the interruption of the work that is less than 30 working days shall not be taken into consideration when calculating the total period of fixed-term employment whose maximum duration was three years. See: Law on amending and supplementing the LLR of 1993, Art. 2, para 1.

[26] See Law on Labour Relations, Art. 46, para 3.

[27] See Law on Labour Relations, Art. 64.

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

in a very uncertain and precarious position. On the one hand, the employee is formally registered in the system of compulsory social insurance, but on the other hand, does not have a clear view of the actual duration of his or her «new» employment contract, because neither signed such a contract nor received an «annex» for extension of the duration of the previously signed fixed-term contract. Employers often abuse the existing «grey zone» by unilaterally terminating the «de facto employment relationship» of the employees and signing them out from compulsory social insurance, where employees do not have proper legal grounds for legal protection against termination of their employment contracts. In the absence of an explicit legal provision that will fill the specific «legal void», interpretations in theory and case law vary from the stance that *the contracting parties concluded a «new» (successive) contract of employment, the nature and duration of which shall depend on their will*[29] to the stance *that the employment relationship should be transformed into an indefinite employment relationship.*[30] All this indicates that legal changes are necessary in order to bridge the existing regulatory gaps.

4. *Legal status of fixed-term employees*

De lege lata, the Law on Labour Relations prohibits less favourable treatment in terms of employment conditions and rights and obligations arising from the employment relationship of fixed-term employees compared to employees employed under a contract of indefinite duration. An exception to this prohibition exists in case the difference in treatment is justified by objective reasons.[31] The Law, however, fails to specify the term «comparable» employee employed for an indefinite period.

In principle, «qualification period» (i.e. the length of service of the employee with the employer) in Macedonian labour legislation has no special significance and role as a condition for acquiring a certain qualification (entitlement). Hence, employees, regardless of the duration of their employment relationship (open-ended or fixed-term), usually acquire a full range of rights from the first day of their employment. This encompasses both individual rights (e.g. rest periods and leave from work, limited duration of working time, salary, dismissal protection – the existence of a valid reason for dismissal, notice period, severance

[29] See КАЛАМАТИЕВ, РИСТОВСКИ, (FN 26), 661 f.

[30] See Билтен на Судската Практика на Врховниот Суд на Република Македонија 2016–2017, 2018, 40 ff.

[31] See Law on Labour Relations, Art. 46, para 3.

pay for dismissal due to business reasons, etc.) and collective rights (trade union association and organisation, collective bargaining, strike, etc.). However, there are certain cases in which a minimum legal qualification period must be fulfilled for the employee to gain access to the exercise of a particular entitlement. These cases primarily include employees' social security entitlements, such as salary allowance during maternity and parental leave or during temporary incapacity for work due to sickness and injury. The condition for the exercise of both rights, inter alia, is that the health insurance has lasted at least six months without interruptions before the incident occurred.[32] Such a qualification period, which implies continuous (uninterrupted) employment of at least six months, is unfavourable to fixed-term employees whose employment is shorter than six months or who have a break between two fixed-term contracts of more than one month. Fixed-term employees face similar barriers in exercising their rights to unemployment insurance benefits.[33] This is despite the fact that for the entire period during which the employees are in an employment relationship (however long the period may be), they are registered in the compulsory social insurance system, meaning they are obligated to pay unemployment insurance contributions. As for collective rights, despite the absence of formal obstacles to the exercise of their trade union membership and collective bargaining rights, the rate of trade union membership of fixed-term employees is much lower than that of employees with open-ended contracts. We draw this conclusion from the fact that many fixed-term employees are employed in sectors in which trade union organisation is less or non-existent.[34] Formal barriers to the exercise of individual aspects of the right to trade union association of fixed-term employees can also be found in the statutes of certain trade unions.[35]

B. Seasonal and Casual work

Seasonal work is influenced by seasonal factors such as climatic seasons, holidays and agricultural preparations or harvests.[36] Seasonal work in North Macedonia is one of the «older» non-standard forms of employment, which was also present in the (derogated) Law on Labour Relations of 1993. In the Macedonian labour law system, contracts for seasonal work are treated as employment contracts and seasonal workers have the status of employees. An indicator that facilitates the designation of a «seasonal contractual relationship» as

[32] See Law on Health Insurance (Official Gazette of RM no. 25/20), Art. 15, para.1, point 1.

[33] Namely, the qualification period required for the exercise of this right is nine months of continuous employment or 12 months with interruptions in the last 18 months. See Law on employment and insurance against unemployment (Official Gazette of RM, no. 37/97), Art.65.

[34] See МЕЃУНАРОДНА ОРГАНИЗАЦИЈА НА ТРУДОТ, Национална Програма за Достоинствена Работа 2019–2022, Република Северна Македонија, 7–8 ff.

[35] For example, the Statute of the Trade Union of the Workers in the Chemical, Metal and Non-Metal Industry of the Republic of North Macedonia, provides for the right of its members to appoint or be appointed or elected to the bodies of the trade union, but only after reaching a one-year uninterrupted membership in the union (see Статут на Синдикатот за хемија, неметали и метали на Република Македонија, чл.17, ст.1, точка 1).

[36] See ILO, Resolution concerning statistics on work relationships, ICLS/20/2018/Resolution I, 17 ff.

an employment relationship is the relatively greater stability and continuity of this temporary form of work compared to casual work.[37] This is also confirmed by the approach taken in current labour legislation that defines seasonal work as work which, due to the climate or natural conditions, is not carried out during the whole year, but in particular periods – seasons, which *do not last more than eight months in a period of 12 consecutive months*.[38] The legal framework of seasonal work in the Republic of North Macedonia consists of provisions concerning the commencement, organisation and termination of seasonal employment. For reasons of urgency and necessity, seasonal employment relationships may be established without public advertisement (i.e. competition), but up to 90 days at most, by intermediation of the competent employment intermediation service.[39] Where seasonal work is performed in unequally distributed working time, Macedonian labour legislation provides for a limitation on the maximum duration of the seasonal worker's working time, which cannot be longer than 12 hours a day or 55 hours a week for a period not longer than four months.[40] The Law on Labour Relations also provides for a special regime for termination with dismissal of contracts for seasonal work compared to other regular contracts. The specificity of the termination refers to the shorter than usual duration of the notice period, which shall be seven working days in cases where the employer terminates the employment contract.[41] Employment contracts for seasonal work may also contain a probationary period clause that can last three working days during which the employer shall be entitled to cancel the contract.[42]

Casual work can be defined as work that is executed for a very short period, or occasionally and intermittently, often for a specific number of hours, days or weeks. It is usually performed informally, and as such is very often assumed to be outside the scope of employment regulation.[43] Casual work is not subject to regulation in Macedonian labour and social insurance legislation. It is present in practice, but its regulation is left solely to tax law. Temporary and occasional work, i.e. *contracts for the temporary and occasional provision of services to legal and natural persons* – contracts that are formally stipulated in the Law on Personal Income Tax can be considered equivalent to casual work.[44] The temporary and occasional provision of services contracts are not treated as employment contracts (they

[37] In practice, seasonal work in North Macedonia is sometimes composed of periods of continuous work combined with periods of interruption. For example, seasonal apple picking work in the Prespa region usually begins in late September and lasts four or five weeks. Work is ceased for a certain period of time if harvesting is interrupted by rain, after which 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/ , accessed on 06.08.2019).

[38] Law on Labour Relations, Art. 47, para 1.

[39] See Law on Labour Relations, Art. 22, para 6.

[40] Law on Labour Relations, Art. 123, para 3.

[41] Law on Labour Relations, Art. 88, para 3.

[42] See Law on Labour Relations, Art.60, para 3.

[43] See ILO, (FN 3), 22 f.

[44] Official Gazette of RM, no. 241 from 26.12.2018.

exist outside of the scope of labour legislation) and temporary and occasional workers engaged under such contracts are usually equated to self-employed persons, i.e. freelancers. Temporary and occasional workers are not covered by the social insurance system, which means that they do not have any social protection against potential social risks. Hence, the legal position of these workers is very precarious, as in addition to being excluded from the scope of labour legislation (including individual and collective labour rights), they are also excluded from the social security legislation (i.e. the rights to pension and disability insurance, health insurance and unemployment insurance). In practice, contracts for the temporary and occasional provision of services are concluded either for carrying out very short-term «temporary work/services», but with some continuity (e.g. which are performed only once or last for one day or a few consecutive days) or for carrying out very short-term «occasionally performed work/services» with almost non-existent continuity (e.g. which are performed only once or on an «if» and «when» required basis, with frequent breaks between each separate engagement), or for performing both «temporary» and «occasional» work/services combined.[45] The reasons for legalising temporary and occasional work in North Macedonia should be located in the need to fight informality and to improve the position of workers factually engaged in such non-standard forms of work. Macedonian labour legislation, de lege ferenda, could apply some of the regulatory mechanisms that are familiar in comparative labour law systems. Such mechanisms are determining the maximum duration of casual work; restricting its application only to non-core activities (i.e. outside of the employer's main business); regulating the engagement and payment of casual workers on a daily or hourly basis, etc. A solid basis for the modelling of casual work in Macedonian labour legislation may also be the legal frameworks of certain Central and Eastern European countries (e.g. Hungary[46], Romania[47], etc.).

[45] Examples of carrying out temporary short-term work/services are archeological excavations, revitalising frescoes, reconstruction of art objects, etc. Examples of carrying out occasional short-term work/services are conducting polls, mowing grass in the city parks, maintaining order at sports competitions, etc. See ЛУБАРДА, Увод у Радно Право – са елементима социјалног права, Београд, 2016, 133 ff.

[46] The Act LXXV of 2010 on Simplified Employment regulates so-called «occasional work», defining it as an employment relationship that is established between an employer and employee with the following limitations in its duration: up to a total of five consecutive calendar days; up to a total of 15 calendar days within one calendar month and up to a total of 90 calendar days within one calendar year. This form of work may occur in the following variants: seasonal work in agriculture; seasonal work in tourism and occasional work. See Kiss, New Forms of Employment in Hungary, New Forms of Employment in Europe, Wolters Kluwer, 2016, 237 ff.

[47] Romania started to regulate casual work with the adoption of the Law on Day Labourers (No. 52/2011) of 2011. Day labourers are employed on a temporary basis and paid per day worked. The most common sectors in which day labourers are used include agriculture, tourism and entertainment and audio-visual industries. The minimum duration of work for the same beneficiary is one day (eight hours of work) while the maximum is 90 days (not necessarily continuously) within a calendar year. See DIMITRIU, New Forms of Employment in Romania, New Forms of Employment in Europe, Wolters Kluwer, 2016, 324.

III. Forms of work outside of the employment relationship

The systematisation and classification of working relationships in North Macedonia is strongly influenced by the so-called «binary» system.[48] On one side of this system are the «employment relationships» based on an «employment contract» and regulated by the Law on Labour Relations. On the other side are the «remaining» contractual relationships based on «contracts for services» or other personal work contracts that derive from general contract law and are primarily regulated by the Law on Obligations.[49] Despite the initial impression that North Macedonia's legal system clearly distinguishes the scope of application of labour legislation from the scope of application of general contract law, the situation in reality is very different. This is evidenced by the significant presence and spread of so-called «disguised employment relationships» (i.e. bogus self-employment, sham contracts, etc.) that put workers in a vulnerable and precarious position, disabling their access to labour law and social security rights. In North Macedonia, disguised employment can be defined as the deliberate and manipulative qualification of the employment relationship as «other» contractual relationships to avoid or reduce the costs for employers that would arise from the proper application of the regulations, primarily in the field of labour law and social security law.[50] In practice, contracting parties conclude various designated or undesignated contracts which alone by their title, legal qualification or content (which usually does not reflect the genuine relationship between the parties) constitute civil law contracts, i.e. contracts that are not treated as employment contracts. Part of such contracts is subject to the regulation of classical civil-law legislation (e.g. contracts for services, author's contracts, etc.), another part is subject to the regulation of labour legislation or other legislative acts (e.g. so-called «special contracts», volunteer contracts, contracts for the temporary and occasional provision of services, etc.). The conclusion of these contracts performed outside the employment relationship does not mean *per se* abuse or misclassification of the genuine employment relationship. Yet, practice has shown that they are often concluded contrary to their purpose and in situations where there are clear indicators of the existence of an employment relationship.

A. Defining the term «employment relationship» (establishing criteria and indicators of subordination) and fighting disguised employment

Defining the term «employment relationship/employment contract», i.e. establishing the criteria and indicators of subordination, is a starting point for an accurate distinction of the

[48] See Kalamatiev, Ristovski, The Concept of 'Employee: The Position in the Republic of Macedonia, *Restatement of Labour Law in Europe*, Hart Publishing, 2017, 240 ff.

[49] Law on obligations (Official Gazette of RM, no. 18/01).

[50] See Kalamatiev, Ristovski, Фактички радни однос и хонорарни рад versus македонског правног система, Радно и Социјално Право, Бр.1/2015, Година XVIV, Београд, 10–11 ff.

working relationship and the protection of employees from abuse in their genuine employment status.[51] Unlike the definition of the employment contract, which is left to labour law theory[52], the definition of the employment relationship is set out in the Macedonian labour legislation. According to the current Law on Labour Relations, the employment relationship is defined as any *contractual relationship between the employee and the employer where the employee voluntarily takes part in the employer's organised working process in exchange for a salary and other remunerations, personally and continuously carries out the work according to the instructions and under the supervision of the employer.*[53] In the definition of the term «employment relationship», the Law on Labour Relations refers to two subordination criteria: *the performance of the work according to the instructions* and *under the supervision of the employer and the participation of the employee in the employer's organised working process*. The first criterion (which in comparative labour law is called «control of the work and instructions»[54] or «control test»[55]) is regulated by the LLR with additional provisions. In this regard, the Law stipulates that the employee shall be obliged to observe the requirements and the instructions of the employer in relation to the fulfilment of the work duties under the employment relationship.[56] Further on, the LLR provides that the employee shall be obliged to conscientiously carry out the work for which he or she has concluded the employment contract, *during the working hours* and *at the location* set down for carrying out the work, *respecting the organisation of the work and the business activity of the employer.*[57] This statutory provision is closely related to the second subordination criteria (which in comparative law is termed *«integration of the worker in the enterprise»*[58] or «integration test»[59]).

Apart from statutory provisions defining the term «employment relationship» and their interpretation in theory, there is no specific case law in North Macedonia through which the criteria and indicators relevant for labour law judges in the process of distinguishing between employment and service contracts (i.e. forms of work outside the employment relationship) can be derived. Nor did we come across any document or other form of soft law

51 In the Macedonian labour law system, legal subordination is the only appropriate and clear-cut criterion for determining the existence of an employment relationship. Economic dependence as an independent criterion has no relevance in determining the employment status of workers as «employees» or «self-employed». See KALAMATIEV, RISTOVSKI, (FN 50), 238 f.

52 In Macedonian labour law theory, the contract of employment could be defined as a contract on the basis of which a person commits himself or herself to work on behalf and at the expense of another person in exchange for remuneration. See СТАРОВА, БЕЛИЧАНЕЦ, Трудово Право, Универзитет «Св.Кирил и Методиј» Скопје, Правен факултет, 1996, 128 ff.

53 Law on Labour Relations, Art. 5, para 1.

54 EUROPEAN LABOUR LAW NETWORK, Regulating the Employment Relationship in Europe: A guide to Recommendation, No. 198, International Labour Office, Geneva, 2013, 38 ff.

55 DEAKING, MORRIS, Labour Law – fifth edition, Hart Publishing, 2009, 133–135 ff.

56 See Law on Labour Relations, Art. 31.

57 See Law on Labour Relations, Art. 30, para 1.

58 EUROPEAN LABOUR LAW NETWORK, (FN 56), 38 f.

59 DEAKING, MORRIS, (FN 57), 135–136 f.

adopted by the State Labour Inspectorate or the Ministry of Labour and Social Policy. All of this may also be a consequence of the fact that North Macedonia has still not accepted and incorporated the ILO Recommendation concerning the Employment Relationship (No. 198), which, inter alia, provides for the establishment of two types of indicators for the purpose of determining the existence of an employment relationship: *indicators related to the performance of work* and *indicators related to the remuneration of the worker.*[60] Additionally, the Law on Labour Relations does not contain any specific provision aimed to prevent the concealment of employment and that can be treated as a principle of «primacy of facts» or «legal presumption for the existence of an employment relationship». Hence, disguised employment (as a relatively «new» phenomenon after the independence of North Macedonia and the introduction of the contractual concept of the employment relationship), which has characteristics of informal employment, exists in the country.

Forms of disguised employment in North Macedonia can be found in various activities in the private sector such as transport, construction, tourism, consulting services, information technology, media[61] and the like, while it is particularly prevalent in the public sector (education, health care, social protection, state administration bodies, etc.). Despite the significantly higher regulation of public sector employment compared to the private sector, public sector employers find «manipulative» ways to engage workers without entering into an employment relationship. They use the absence of adequate statutory provisions that prohibit disguised employment relationships and conclude various contracts with workers (usually using the services of so-called copyright agencies) that are not employment contracts and for which no social security contributions are paid, but only personal income tax. Persons engaged in this way do not have the status of «employees» (are not included in the scope of public sector employees) and are colloquially referred to as «volunteers» or «freelancers».[62] In the absence of provisions in the Law on Labour Relations that would establish

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

61 According to the survey of the Independent Trade Union of Journalists and Media Workers (CCHM), more than one-third (36.6 per cent) of journalists in North Macedonia are freelance workers, but in reality, many of them are in a position of disguised employment. The engagement of such journalists consists of an eight-hour working day (Monday to Friday), on-call work for weekends and holidays and other duties and responsibilities just like other colleagues who have concluded employment contracts with the same employer, including the ban to write for another medium. In practice, there are cases in which long-term engaged correspondents are faced with unexpected «termination of cooperation letters» from the media publisher, solely due to a change in management of the medium. In doing so, the termination of cooperation is carried out in an informal manner (by sending an e-mail expressing appreciation for the cooperation). See КАЛАМАТИЕВ, РИСТОВСКИ, Работно-правен статус и прекарна положба на новинарите и медиумските работници во Република Македонија, Зборник на Правниот Факултет «Јустинијан Први» во Скопје, 2016, 254–255 ff.

62 According to relevant data from 2016, there were a total of 4,684 such persons engaged in the public sector with volunteer contracts, service contracts, author's contracts or other contracts. The majority of these persons worked in public health institutions, universities, schools and kindergartens. See MINISTRY OF INFORMATION SOCIETY AND ADMINISTRATION, Annual Report on the Register of Public Administration Employees of 2016, 29 ff.

the principle of «primacy of facts» or «the legal presumption for the existence of an employment relationship», it seems that fighting disguised employment is focussed solely on persons engaged in the public sector. Namely, on 12 February 2015, the Parliament of the Republic of North Macedonia adopted the so-called Law on Transformation into Permanent Employment Relationships.[63] The reason for the adoption of the Law was the need to address the long-standing and adverse practice of «employment» of persons in the public sector on legal grounds that are contrary to the contract of employment, and which de facto excluded these persons from the scope of labour legislation. The purpose of the Law on Transformation into Permanent Employment Relationships is to convert contractual relationships of persons engaged on the basis of a volunteer contract, service contract, author's contract or other contracts with state government institutions in the fields of culture, education, health, child and social protection, and with local governments and public enterprises, institutes, funds and other legal entities into permanent employment relationships, and to limit the period and number of persons who can be 'hired' under such contracts.[64] Furthermore, the Law provides the possibility of transforming a contractual relationship into an employment relationship of indefinite duration (for persons who had been working on the basis of a contract that lasted at least three months up to 30 November 2014 and who had valid contracts at the time the Law was introduced), the procedure of transformation into an indefinite employment relationship, the restrictions on future hiring of workers with volunteer contracts and contracts for services, etc.[65] Despite the positive intention of the legislator for this Law to regulate the employment status of many disguised public sector employees, dilemmas regarding the discretionary and voluntarist approach in the determination of the criteria for transformation still remain. Additionally, it seems that the positive effects of the Law had a «one-time» effect and application, since despite the regulation of the genuine employment status of a large number of persons in the public sector, there are still many others who continuously work with contracts that differ from employment contracts and are still in disguised employment relationship.

B. Special contracts as forms of work outside the employment relationship

In the period before the adoption of the LLR of 2005, many employers, unable or not willing to employ persons with employment contracts, frequently engaged workers by means of contracts for services which had somehow started to be «identified» as contracts of employment or to substitute them.[66] Hence, the LLR of 2005 introduced the so-called «special contract» aimed at separating contracts of employment from contracts for services, which were often misused in practice to disguise genuine employment relationships. In doing so,

[63] Law on Transformation into Permanent Employment Relationships (Official Gazette of RM, no.20/2015).
[64] Law on Transformation into Permanent Employment Relationships, Art. 1.
[65] Law on Transformation into Permanent Employment Relationships, Art. 2 – Art. 7.
[66] Старова, Трудово Право, Просветно Дело А.Д Скопје, 2005, 254.

the Law introduced the indicator «performing work/services *within or outside* the scope of the business activity/profession of the employer» as a key indicator to distinguish «employment contracts» from «contracts for services.» The current LLR considers special contracts to be those for the independent manufacture or repair of certain things, the independent performance of certain manual or intellectual work.[67] Taking into consideration their definition, it can be concluded that in principle, special contracts (regulated by the Law on Labour Relations) can be equated with contracts for services (regulated by the Law on Obligations), i.e. they may be treated as a subspecies of the contracts for services. Still, the key difference between these two contracts is found in their scope of application. In this regard, unlike contracts for services that can be concluded for carrying out certain work/services, regardless of their scope of application, special contracts can be concluded for the performance of work/services that do not lie within the scope (i.e. are outside the scope) of the employer's activity.[68] Special contracts may also be concluded for cultural and artistic work with a person who carries out cultural and artistic activities.[69] Hence, the conclusion of employment contracts shall always be restricted to the scope of the employer's core activities, while special contracts shall be concluded outside the scope of the business activities or the employer's profession. In the contemporary forms of organisation of business and production activities, there is often a loose and blurred border between «core» and «non-core» activities of employers. In practice, employers in North Macedonia use different ways to recruit workers to carry out certain work/services that are outside the scope of their «core» activities. Such ways, for example, are: subcontracting, i.e. outsourcing (especially by engaging firms that perform maintenance and cleaning, security, IT services, etc.); temporary agency employment (primarily by hiring temporary agency workers to perform specific non-continuous work/services that are not part of the core business activity of the user undertaking); directly engaging workers on a casual (temporary and occasional) basis, whereby their payment is provided through a so-called «copyright) agency» in which case only a personal income tax is paid, or the casual worker is directly paid by the employer (cash-in-hand) without using the services of an « copyright agency». Theoretically, special contracts can be concluded in all of the above mentioned ways for recruiting workers. The way in which they are defined and regulated in Macedonian labour legislation makes it possible. However, in practice, these contracts are usually concluded to directly engage workers on a casual (temporary and occasional) basis for carrying out work/services in low-skilled jobs, construction, craft works, catering, tourism, cultural activities, IT services, sales agents and other various forms of freelance activities. Special contracts are not subject to any formal registration, and persons engaged in this way are usually not covered by the compulsory social insurance system and appear as «formally» unemployed persons.[70] The

[67] Law on Labour Relations, Art. 252, para 1.
[68] See Law on Labour Relations, Art. 252, para 1.
[69] Law on Labour Relations, Art 252, para 2.
[70] With the amendments in five separate laws on which the foundations of labour and social security legislation of North Macedonia are based (Law on Labour Relations, Law on Pension and Disability Insurance, Law on Health Insurance, Law on Contributions for Mandatory Social Insurance and Law

period in which workers are hired under a special contract is not counted in their length of service with the employer, and workers have virtually no employment rights except for certain benefits (such as occupational health and safety protection; protection against discrimination and protection against harassment at the workplace) that are acquired as a result of the extension of the personal scope of application of several special laws. [71]

IV. Conclusion

A thorough study and proper regulation of the non-standard forms of work classified within the «temporary work» and «work outside the employment relationship» groups is of great importance for the Macedonian labour law system for at least three reasons: first, because of their presence in practice; secondly, because of their relation to informal employment, and thirdly, because of the room for significant improvement of the legislative framework and thus of the legal status of workers engaged with them.

The traditional position in both Macedonian labour legislation and labour law theory is that the employment relationship of indefinite duration is a «rule» while *fixed-term employment* is an «exception» to the established rule. Nonetheless, such an assumption is not supported by the existing labour regulations. In reality, there is insufficient protection of fixed-term employees, uncertainty that accompanies their employment relationship and an inadequate legal regime for preventing abuse of their fixed-term employment contracts. The new Law on Labour Relations will need to change this «reality». In this regard, it is more certain that the legislator will recall the objective justification, i.e. the conditioning of the conclusion of fixed-term contracts with a mandatory existence of objective reasons. It is also expected that the maximum duration of fixed-term work of five years will be reduced accordingly. De lege ferenda, the legislator should also resolve the dilemma concerning the legal consequences of the «de facto» extension of employment relationships of employees whose fixed-term employment contracts have expired. The dilemmas and problems that are present in fixed-term work are also present in *seasonal work*. *Casual work* (i.e. *temporary and*

on Insurance against Unemployment); in 2015, an attempt was made to regulate so-called «freelance work». The basic goal of the legislator was to determine the legal position of the so-called «freelance workers» and to subsume this category of persons within the social security regime. In that regard, the then-amendments to the Law on Labour Relations concerning the «special contracts» stipulated that the remuneration received by the worker for the work/services carried out on the basis of a concluded special contract is subject to payment of contributions for mandatory social insurance in accordance with the law. Still, the unclear legal provisions that shaped the legal regime of «freelance work», the unpreparedness of the state institutions (primarily the Pension and Disability Insurance Fund of North Macedonia) as well as the inadequate financial burden on persons who had generated incomes performing certain physical and intellectual work, resulted with the abolition of the regulations on «freelance work» after only seven months since their introduction.

[71] See Occupational Safety and Health Law (Official Gazette of RM, no. 92/07); Law on Prevention and Protection against Discrimination, (Official Gazette of RSM, no. 50/10 from 22.05.2019); Law on Protection against Harassment at the Workplace, (Official Gazette of RM, no. 07/13).

occasional work) is not subject to regulation in Macedonian labour and social security legislation. In practice, the application of contracts for the temporary and occasional provision of services is placed under the general rules of contract law and these contracts are often used to disguise a genuine employment relationship and to generate informal employment. De lege ferenda, in order to meet the interests of employers for greater flexibility in employment, Macedonian labour legislation could set up an adequate legislative framework for the application of the contracts for the temporary and occasional provision of services. These contracts could be stipulated either as entirely outside the employment relationship, as «imperfect contracts» between labour and civil law that provide for limited employment rights (such as minimum wage, limited duration of working time, etc.) or as classic employment contracts, fully subsumed under the personal scope of application of labour legislation.

In North Macedonia, there is a lack of a systematic approach to the identification of disguised employment and to the fight against it. Although labour legislation defines the term «employment relationship» along with the basic criteria of legal subordination, there is not yet an adequate statutory framework for regulation and an appropriate legal mechanism for protection of the rights of workers in disguised employment relationships. In the coming period, the legislator will have to take into account the solutions embedded in the ILO Recommendation concerning the Employment Relationship (No. 198), especially those related to the introduction of the principles of «primacy of facts» or «legal presumption for the existence of an employment relationship». In parallel, it will be necessary to extend the statutory competencies of the labour inspectorate to prevent and protect workers against disguised employment relationships, and to consider the possibility of appointing competences to the labour inspectorate to reclassify «sham contracts» into contracts of employment. It seems that the problem of disguised employment relationships in the country is further compounded by the existence of so-called «*special contracts*» which are regulated by the Law on Labour Relations and classified as forms of work outside the employment relationship. De lege ferenda, we believe that the special contracts should be derogated from the Law on Labour Relations because they are very often used as a «backdoor» for disguising genuine employment relationships, depriving many workers from exercising their labour and social security rights and fostering informal employment. The risk of «eradicating» the boundary between employment contracts and contracts for services, which is partially neutralised by special contracts due to the existence of the indicator «performing work/services *within or outside* the scope of the business activity/profession of the employer» could be offset by the introduction of clearer criteria and indicators of the existence of an employment relationship as well as through an institutionalisation of the principles of «primacy of facts» or «legal presumption for the existence of an employment relationship». Employers will either way (even without the specific statutory provisions regulating special contracts) find opportunities and ways to hire workers to perform certain

work/services that fall outside of their core business activities by applying the rules of general contract law than by way of outsourcing or using the services of temporary employment agencies.

Europakompatibilität im Schweizer Arbeitsrecht

ANDREAS KELLERHALS / WESSELINA UEBE

Inhaltsverzeichnis

I. Einführung

Es ist noch nicht lange her, dass das Schweizer Volk über die sog. Selbstbestimmungsinitiative abgestimmt hat[1] und damit mittelbar darüber befinden konnte, inwieweit die Schweizer Rechtsentwicklung in Zukunft «selbstbestimmt», also von äusseren Einflüssen isoliert werden kann. Womöglich war es die Erkenntnis, dass die bisherige weitreichende internationale Vernetzung der Schweiz nur schwerlich aufzuhalten, geschweige denn umzukehren ist, die zur Ablehnung dieser Initiative führte. Tatsächlich belegen Studien, dass nahezu ein Drittel der zwischen 1990 und 2010 durchgeführten Gesetzesrevisionen voll oder teilweise

[1] Die Abstimmung über die Volksinitiative «Schweizer Recht statt fremde Richter (Selbstbestimmungsinitiative)», fand am 25. November 2018 statt; die Initiative wurde mit 66,2% abgelehnt. Vgl. hierzu https://www.admin.ch/gov/de/start/dokumentation/abstimmungen/20181125/selbstbestimmungsinitiative.html und https://www.bk.admin.ch/ch/d/pore/va/20181125/det624.html.