Reflections on the introduction of Universal Labour Guarantee in selected Central and Eastern European countries

Edited by
Cristina Mihes and Tvisha Shroff

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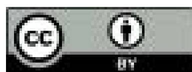

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4. The 'grey' area between employment and self-employment and the development of non-standard forms of work: Today's context in Macedonian labour law, *Aleksandar Ristovski*

4.1 Introduction

Traditionally, the legal regimes that regulate personal work relations are built upon a so-called "binary divide" – a concept aimed at distinguishing between "the employment relationship/employment contract/ dependent (subordinate) labour" on one side, and "the other personal work relations/contracts for services as a generic category/independent (not subordinate) labour" on the other (Freedland and Countouris 2011, 104–120). While the impregnable application of the "binary divide" as a consequence of the industrial socio-economic regulatory model (hierarchical systems of production, legal subordination and dominance of the so-called archetypal model of the standard employment relationship) (see McCann 2008, 4–5)[74] marked a large part of the twentieth century, the contemporary world of work has been facing profound changes caused by globalization, changes in the organization of production, an increasing importance and share of service-related jobs in total employment and recent waves of digitalization and robotization (see Blanplain 1997, 187–194; Hendrickx 2018, 195–205). Such changes have increased the pressure to redefine the boundaries of the binary system, and thus to reconsider the personal scope (whether a person is "within" or "outside" of the employment relationship) and the material scope (what rights are generated by different employment statuses) of labour law (see ILO and ELLN 2013, 5). At the same time, changes in the world of work are leading to new, non-standard forms of employment that are a deviation from the standard employment relationship model. The ILO classifies the following four types of non-standard forms of employment: forms that are not "open ended" (temporary employment); forms that are not full time (part-time and on-call work); forms that are not direct subordinate relationships with the end-user (multi-party employment relationships) and forms that are not part of an employment relationship (disguised employment and dependent self-employment) (ILO 2016, 8).

To describe the space that is created between "dependent" work (employment) and "autonomous" work (self-employment), the term "grey area" is used in the literature (Perulli 2011, 140). The first meaning of the term "grey area" refers to certain forms of work that appear as self-employment but in fact are "subordinated" employment, that is, an employment relationship. This includes so-called "bogus self-

74 The standard employment relationship can be defined as a working arrangement where: the worker concludes a contract of an indefinite duration; the contract is concluded between two contractual parties (bilateral); for a full-time work (covering standard duration – typically 40 hours per week and a standard organization – typically distributed across five working days, eight hours each) and the work is performed on the employer's premises.

employment" or *disguised employment relationships*. The second meaning of the grey area primarily refers to the "objectively ambiguous" forms of work that do not fit into either of the two existing models (employment relationship vs. self-employment). This includes "intermediate" forms of work or "*tertium genus*" employment statuses, which have the features of both "dependent" and "autonomous" labour, and for which the generic term "*dependent self-employment*" or "economically dependent work" is used. In principle, the grey area entails *forms of work that involve multiple parties*, where it is not disputed whether there is an employment relationship or not, but questions who is the genuine employer of the employees (Countouris 2007, 163): for example, some forms of contracting-out, that is, labour dispatch, or so-called "*casualization*" of work whereby many workers are left without any labour law protection (Hendrickx 2018, 203). The extension of the grey area is not only a problem for workers (who are exposed to poor legal and social protection and precarious working conditions) and trade unions, but also for employers who adhere to legal regulations, as well as for the state, because it causes unfair competition and generates market uncertainty and encourages tax evasion (Thörnquist 2015, 412). Hence, to address such problems arising from the grey area between employment and self-employment, a new, doctrinal but also regulatory approach to labour law is needed, primarily because the conventional understanding of subordination as a concept based on "formal" rather than "substantial" criteria (such as the unequal bargaining capacity between employer and employee), is no longer able to cover all forms of dependent labour and economic activity in today's world of work (Ameglio and Humberto Villasmil 2011, 84).

After more than 15 years since the adoption of the Labour Relations Law of 200575 and more than 30 amendments to the basic text of the law, North Macedonia is on the verge of adopting a new Labour Relations Law. In that regard, some of the dilemmas that are becoming increasingly relevant are: What steps are being taken by the Macedonian labour law system concerning the global debate on redefining the boundaries of the traditional binary system and expanding the protective framework of labour legislation? What types of non-standard forms of work that occupy the grey area between employment and self-employment can be recognized in the Macedonian legislation and practice? What regulatory measures should be taken to address the disguised and objectively ambiguous forms of work and what are the prospects for introducing new non-standard forms of work intended to formalize informal employment and reduce precariousness? Keeping in mind these questions, this chapter aims to analyse the current situation in North Macedonia and present the trends in Macedonian labour legislation.

4.2 The personal scope of the application of labour law

The rigid boundaries between employment and self-employment arising from the binary divide are being re-examined at the international, regional and national levels. There is also an obvious need to introduce a new and more comprehensive taxonomy of employment statuses in order to provide more adequate protection to workers lacking in labour law protection.

The International Labour Organization has anticipated the phenomenon of persons short of adequate labour law protection since the 1950s (Marin 2006, 339). The ILO's activities concerning the regulation of the employment relationship intensified at the end of the 1990s,[76] but they did not receive their normative expression until 2006, with the adoption of the Employment Relationship Recommendation (No. 198). Paragraph 13 of Recommendation No. 198 establishes two types of *indicators* for the existence of an employment relationship (indicators related to the performance of work and indicators related to the payment of remuneration to the workers). It provides for the *primacy of facts* and establishes general guidelines for the purpose of facilitating the determination of the existence of an employment relationship in paragraph 9, such as the introduction of a *legal presumption* that an employment relationship exists in paragraph 11 (b). A document of paramount importance here is the Report of the ILO Global Commission on the Future of Work, which, *inter alia*, provides for the establishment of a *Universal Labour Guarantee* aimed at affording adequate protection to all "workers". Although the ILO supervisory bodies,

75 Labour Relations Law of the Republic of Macedonia (*Official Gazette*, No. 62/2005).

76 The agenda of the 85th session of the International Labour Conference in June 1997 foresaw a first discussion on the question of "contract labour" and respectively on the proposed Convention and Recommendation concerning contract labour. The Proposed Convention provided for two separate forms in which contract labour shall be performed. The *first* referred to work performed pursuant to a direct contractual arrangement other than a contract of employment between the contract worker and the user enterprise, while the *second* envisaged work provided for the user enterprises by a subcontractor or intermediary.

even prior to the adoption of the Global Commission Report, considered the application of fundamental principles and rights at work (freedom of association and effective recognition of the right to collective bargaining and freedom from forced labour, child labour and discrimination) to *all workers* (including the self-employed) (Stefano and Countouris 2019, 58), the Universal Labour Guarantee establishes an additional set of universal "basic working conditions" (adequate living wage, limits on hours of work and safe and healthy workplaces) applicable to *all workers regardless of their contractual arrangement or employment status*.

In EU law, the notion of "worker" is usually placed in the context of several different regulatory domains, which in principle refers to three meanings of this term (Giubboni 2018, 225). According to the first and sole meaning that falls within the exclusive competence of EU law, the term "worker" is defined in the context of freedom of movement in the common (internal) market. It is a product of the long-standing practice of the European Court of Justice/Court of Justice of the EU, and as such is defined broadly enough to cover not only persons in an employment relationship (standard subordinated employees [CJEU 1986], [77]) but also those in atypical forms of employment,[78] professional athletes,[79] as well as jobseekers.[80] The broad scope of the term "worker" as defined for the purpose of equalizing the conditions for freedom of movement is also reflected in the domains of equal treatment and anti-discrimination legislation, as well as of health and safety at work. According to the second meaning, the definition of the term "worker", that is, migrant worker, is intended for the purposes of social security and the coordination of national social security systems. Finally, the third meaning, which is most relevant in terms of the personal scope of application of the EU labour law directives, actually refers to the subsidiary application of national labour law and the definition of the term "worker" in accordance with national legislation and practice. In effect, the recent Directive (EU) 2019/1152 on predictable and transparent working conditions has made a significant contribution to help resolve the "classification" problems of labour law, and thus to determine its personal scope of application. Referring to the practice of the Court of Justice of the EU in establishing criteria for determining the status of "worker", the Directive covers a wide scope of workers (domestic workers, on-demand workers, occasional workers, voucher based-workers, platform workers, trainees and apprentices) provided that they fulfil those criteria. The only workers excluded from the personal scope of application of the Directive are genuinely self-employed persons (EU Directive 2019/1152 (6)).

Of great importance for determining the personal scope of the application of labour law are the legal approaches taken in the national labour law systems of certain countries. In the United Kingdom, an employment status of "worker" has been introduced which, in addition to "employees", also includes individuals who undertake to do or perform work *personally* or services for another party to the contract whose status is n*ot by virtue of the contract that of a client or customer of any profession or business undertaking,*[81] or so-called "*semi-dependent self-employed workers*". The reflection of this regulatory technique on a doctrinal level is mirrored in the establishment of the concept of the so-called "*personal work contract*", which in addition to contracts of employment includes so-called other personal work contracts, which in turn are further divided into two groups – "other personal work contracts concluded by genuinely self-employed persons" (contracts that almost entirely belong in the field of civil and commercial law) and "other personal work contracts concluded by semi-dependent, self-employed persons" (contracts that are partially regulated by labour law) (Freedland 2009, 25). Certain countries of continental Europe may apply a "positive" categorization in their legal approaches to regulating the grey area between employment and self-employment (for example, "employee-like persons" in Germany; "para-subordinated workers" in Italy; "economically dependent autonomous workers" in Spain; and so on). Although the introduction of "intermediate" employment statuses is not immune to criticism (for example, because it might incite employers to increase the use of contractual arrangements different from the employment contracts, or even to disguise employment relationships with "quasi-subordinated" ones [Stefano and Countouris 2019, 60]), it seems that the new theoretical and regulatory methods and approaches concur with the idea that a single and comprehensive category of "worker" that will meet the needs for an expanded personal scope of labour protection is not the most appropriate solution. Hence, in theory, there are different typologies for classifying persons who perform work personally, such as: subordinate workers, autonomous workers, the dependent self-employed and the free self-employed (Hendrickx 2018, 205) or "standard employees", "public officials", "liberal professions", "individual

77 See CJEU, *Lawrie-Blum v Land Baden-Wiirttemberg*. Case C-66/85, 3 July 1986.

78 For instance, see the judgments in the following cases: CJEU, *Levin v Staatssecretaris van Justitie*, C-53/81, 23 March 1982; CJEU, *Kempf v Staatssecretaris van Justitie*, C-139/85, 3 June 1986; CJEU, *Raulin v Minister van Onderwijs en Wetenschappen*, C-357/89, 26 February 1992; and CJEU, *Brown v Secretary of State for Scotland*, C-197/86, 21 June 1988.

79 See CJEU, *Union Royale Belge des Societes de Football Association (ASBL)* v *Bosman,* Case C-415/93, 1996; CJEU, *Jyri Lehtonen and Another* v *FRBSB,* Case C-176/96, 2000.

80 See CJEU, *The Queen v Immigration Appeal Tribunal*, Case C-292/89, 26 February 1991.

81 Employment Rights Act, 22 May 1996, article 230 (1).

entrepreneurial workers (for example, freelance workers and consultants)", "marginal workers (for example, casual workers, volunteers and so on)" and "labour market entrants (for example, trainees and apprentices)" (Freedland 2007, 6) and the like.

The Labour Relations Law of North Macedonia (LRL), defines the terms "employment relationship" and "worker", while the definition of the term "employment contract" is left to the domestic labour law theory (see Starova and Beličanec 1996, 128; Kalamatiev 1996, 242). The employment relationship, pursuant to LRL, article 5, paragraph 1, item 1, is defined as "a contractual relationship between the worker and the employer whereby the worker voluntarily joins the work process organized by the employer, for salary and other remuneration, and performs the work in person and continuously according to the instructions and under the supervision of the employer." The normative "anatomy" of this definition refers to the existence of several significant elements of the employment relationship, among which the most significant is the element of subordination.82 Similar to many comparative labour law systems of European countries, the notions "employment relationship" and "employment contract" are also considered equal in terms of Macedonian labour law (Waas and Van Voss 2017, xxiii). Although, historically viewed, the relationship between the employment contract and the employment relationship, may figuratively be treated as a relationship of "which came first – the chicken or the egg", it could be concluded that the employment relationship had emerged as a result of statutory intervention on the employment contract (Ravnič 2004, 372), that is, as a result of the influence of extra-contractual factors on the exchange of labour for wages (Frimerman and Nikolič 1980, 50). However, the key difference between the Macedonian and labour law systems of many European countries is that, in those labour law systems, the employment contract is not "confined" to a strict formality as a condition for its validity.83 Conversely, in the Macedonian labour legislation, the employment contract is defined as a strictly formal contract entered into in writing in article 15, paragraph 1. A contract that is not entered into in writing does not produce a legal effect, since the written form is its primary constitutive element and the condition for its validity (ad solemnitatem). Concomitantly, it is the written contract that is proof of the existence of the employment relationship (ad probationem). Pursuant to the LRL in article 13, paragraph 1, the employment relationship shall be established by the signing of an employment contract, and the worker cannot start with work before concluding an employment contract and before the employer registers the worker for social insurance in article 13, paragraph 7. Moreover, the Law provides for detailed content which must be stipulated in every employment contract.84 In practice, it is typically considered that an employment relationship is non-existent unless the employer and worker have entered into a formal employment contract (in writing) and/or the employer has failed to register the worker for mandatory social insurance, regardless if both contractual parties have entered into a "factual" relationship that might be equated to an employment relationship. Equating the employment relationship to the employment contract, when the written form is a condition for the validity of the employment contract, leads to a significant narrowing of the personal scope of labour legislation and protection of workers, primarily to the detriment of undeclared (informal) workers and workers in disguised employment relationships. Additional confirmation of the formal equation between the terms "employment relationship" and "employment contract", can be found in the existing definition of the term "worker", which, is defined in the LRL, article 5, paragraph 1, item 2, as "any natural person employed on the basis of a concluded employment contract". Despite the fact that the LRL nominally provides for a broader understanding of the term "worker", it can be inferred that in fact the narrow notion of "employee" (as a subordinated worker in an employment relationship) is applied. In addition to workers in a standard employment relationship (in permanent and full-time work), the term "workers" in Macedonian labour legislation is also applicable to individuals who personally perform certain non-standard (atypical) form of work (fixed-term workers, seasonal workers, part-time workers, home-based workers, domestic workers, temporary agency workers). Persons who conclude contracts to "enter" the labour market (such as trainees [article 56, paragraph 2] and workers on probation [article 60, paragraph 2]) are also included in the category of "workers". The legislation also leaves room for different interpretations of the status of members of the management bodies of the companies and other persons with special authorizations and responsibilities – both of them, commonly labelled "managers". The status, rights and obligations of these persons are regulated by the Law on Trade

82 Subordination is discussed in more detail in section 4.3.2. of this paper.

83 In many European countries (Cyprus, Denmark, Finland, France, Greece, Iceland, Ireland, Italy, Malta, Portugal, Switzerland and so on), there is no formal obligation for the employment contract to be concluded in writing. Even in countries where the contracting parties are obliged to conclude an employment contract in writing (Croatia, Estonia, Latvia, Luxembourg, Norway, Poland, Russia, Slovakia, Slovenia, Turkey and so on), the legal consequences for non-compliance with such an obligation is limited and the contract is deemed to exist if the employee started working in exchange for pay. See Bernd Waas and Guus Heerma van Voss, eds., *Restatement of Labour Law in Europe* (Hart Publishing, 2017), p. xxix–xxx.

84 For example, the existing Labour Relations Law, in article 28, paragraph 1, provides for 12 mandatory elements (clauses) that should be contained in each employment contract. Among them, there are provisions, which are considered to have no status of essential elements of the contract (essentialia negotii), such as the obligation of the employer to inform the employee about dangerous jobs and so on

Companies85 (LTC) and the Labour Relations Law. LTC implicitly stipulates in article 366, paragraph 2 that the members of management bodies of companies (executive members of the bodies of the board of directors, members of the executive body and the administrator), as persons performing a function on the basis of election, may or may not enter into an employment relationship with the company. If they enter into an employment relationship, LTC's article 366, paragraph 4 provides for several exceptions to the LRL (establishment and termination of the employment relationship, disciplinary responsibility, salary and other remuneration and protection of employees' rights), while they are also excluded from the scope of collective agreements. On the other hand, the other persons with special authorizations and responsibilities as persons appointed by a decision of the management body, are formally employed by the management body of the company, but they are subject to the same exceptions from the regime of labour legislation and collective agreements according to LTC's article 366, paragraphs 3 and 4. The LRL, without making clear the distinction between these two categories of members of management bodies, that is, treating both categories of persons as "managers", qualifies them as persons in an employment relationship. In doing so, the LRL's articles 54 and 55 permit certain derogations from specific aspects of the employment relationship of the "managers" (for example, concerning conditions and limitations of fixed-term employment; working hours; daily rest periods and annual leave; remuneration of work and termination of the employment contract). De lege ferenda, it is necessary to differentiate and clarify the status and rights of the "managers", so that those who are essentially subordinated to the management body, that is, the company (as an employer) should have an unambiguous status of employees. It is also necessary to harmonize the scope of rights stemming from an employment relationship applied to these employee managers, given that the two laws governing their position (LTC and LRL) provide for a different set of "exceptions" compared to other employees. Finally, the group of "workers" who may conclude employment contracts (but may also be engaged as self-employed) includes professional athletes, journalists, accountants, artists and so on, while the employment status of church employees is unclear, despite the fact that in practice, they are treated as self-employed, both in terms of labour legislation and social security and tax regulations (Kalamatiev and Ristovski 2017, 232).

4.3 Regulation of the employment relationship and self-employment

4.3.1 Criteria and indicators for determining an employment relationship

Although the Labour Relations Law, in the definition of the term employment relationship, provides for several essential elements (contractuality, bilateralism, remuneration, personal performance of work and subordination), subordination is a key, distinctive criterion for distinguishing the employment relationship from other working relationships, while the other essential elements have a secondary (subsidiary) role compared to subordination (see Kalamatiev and Ristovski 2015, 307–320). LRL refers to two main 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 work and instructions" [European Labour Law Network n.d.] or "control test" [Deakin and Morris 2009, 133–135]) is regulated by the LRL in article 31 with additional provisions. In this regard, the Law stipulates that the employee shall be obliged to observe the *requirements and the instruction*s of the employer in relation to the fulfilment of the work duties under the employment relationship. Furthermore, the LRL's article 30, paragraph 1 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 place* set down for carrying out the work, respecting the *organization of the work and the business activity of the employer*. This statutory provision is closely related to the second subordination criteria (which in comparative law is termed "*integration of the worker in the enterprise*" [European Labour Law Network n.d.] or "*integration test*" [Deakin and Morris 2009, 133–136]).

In addition to the main criteria for determining the existence of an employment relationship, there are other significant indicators for differentiating between employment contracts and contracts for services in

85 Law on Trade Companies, *Official Gazette*, No. 28/2004.

the Macedonian labour law system. In this regard, one of the relevant indicators refers to the question of whether the work is performed *within or outside of the employer's scope of activities,* where the performance of work within the scope of activities of the employer, refers to the existence of an employment relationship/ employment contract according to article 252 of the LRL. Other indicators distinguishing employment contracts from contracts for services are the following: *performance of the work in person* (in the case of employment contracts, only the worker and nobody else could perform the work on his/her behalf, while in the case of contracts for service, the person performing the work may entrust a third party with the performance of the work); *continuity* (the employment contract usually assumes an uninterrupted and relatively enduring performance of the work, as opposed the contract for service); *bearing the risks associated with the work* (under employment contracts, the employer bears fully the risks associated with the work, while under contracts for service the risk is borne by the performer of the work); *the manner of payment* (under employment contracts, the worker acquires the right to salary, which is paid periodically, at specific intervals, while under contracts for service, the performer of work usually receives a single monetary compensation after the completion of the work) and so on (Kalamatiev and Ristovski 2015, 19–27).

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 can be analysed, nor is there any document or other form of soft law 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 incorporated the ILO Employment Relationship Recommendation, 2006 (No. 198) into its national law.

4.3.2 The notion of self-employment and the determination of the employment status of self-employed persons

Defining the term "self-employment" and identifying persons who can fall into this category is a complex legal, economic and statistical operation. From a legal point of view, additional difficulties are caused by the regulatory context in which this term is defined (labour legislation, social security, company law and tax law). The legal regime governing self-employment in North Macedonia 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 the employment relationship, and self-employed persons as the antipodes of persons having the employment status of employees. Defining the term "self-employed persons" under the direct method arises from the definitions used in several different regulations in the field of social security. Thus, the Law on Mandatory Social Insurance Contributions provides that a "self-employed person" is a *natural person* performing an *autonomous economic activity* or *professional or other intellectual services* to earn an *income*, on his or her *own account*, under conditions laid down in the law.[86]

Identical definitions are also stipulated by the Law on Pension and Disability Insurance[87] and the Law on Employment and Insurance against Unemployment.[88] Self-employed persons are also expressly included in the personal scope of the Law on Health Insurance[89] and the Law on Occupational Safety and Health.[90] Several elements can be drawn from the definition of the term "self-employed persons" and used to determine the employment status of these persons that distinguish them employees. A 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 the employer) pursues an economic activity or provides professional or other intellectual services to earn an income, *for his or her own account* (and not on behalf of and on the account of an employer). The self-employed person performs the *economic activity* or *the professional and other intellectual service* professionally, that is, as an occupation. The business of the self-employed person is carried out with the aim of *generating income* (rather than earning a salary).

Despite this solid definitional base, self-employment in North Macedonia causes many quandaries, primarily from the aspect of company law and tax law. The term self-employment is not explicitly mentioned either in the context of the Law on Trade Companies or the Law

86 Law on Mandatory Social Insurance Contributions, *Official Gazette*, No. 142/2008, article 4, paragraph 1, item 10.

87 Law on Pension and Disability Insurance, *Official Gazette,* No. 98/2012, article 7, paragraph 1, item 7.

88 Law on Employment and Insurance against Unemployment, *Official Gazette*, No. 37/1997, article 2, paragraph 1, item 2.

89 Law on Health Insurance, *Official Gazette*, No. 65/2012, article 5, paragraph 1, item 3.

90 Law on Occupational Safety and Health, *Official Gazette*, No. 92/2007, article 3, paragraph 1, item 1.

on Personal Income Tax (hereinafter, LPIT).91 Yet, two categories of persons that are commonly considered to be self-employed persons are: sole proprietors and independent performers of activities. Pursuant to the LTC, *a sole proprietor*, shall be a natural person, who as a profession performs some of the trade activities determined by the Law's article 12, paragraph 1, while being personally and unlimitedly liable for his/her liabilities with his/her entire assets according to article 12, paragraph 2. The category independent performer of activity is not explicitly defined in either the LTC or the LPIT, but it is determined by exclusion or deduction. Thus, according to the LTC's article 8, the independent performers of activity can be determined as natural persons who are not considered as commercial entities. These include natural persons performing an agricultural or forestry activity (individual farmers); craftsmen and natural persons performing services; natural persons performing hospitality services by renting rooms in their place of residence and natural persons engaged in freelance professions (attorneys at law, notary publics, medical doctors and others). On the other hand, the term independent performer of activity, according to the LPIT's articles 19 and 20, has a slightly broader scope, including both natural persons engaged in economic activities (sole proprietors), as well as other groups of independent performers of activities such as: natural persons performing agricultural activity (individual farmers), natural persons performing craft activity (craftworker) and natural persons performing professional and other intellectual services (accounting, appraising, architecture, auditing, consulting, cultural, dental, engineering, health, journalism, law, notary, , sports, veterinary and other intellectual activity).

Although the legal regimes of company and tax law provide a relatively broad framework for the coverage of self-employed persons, this framework usually includes "traditional" forms of "regulated" self-employment (craftworker, independent performers of activities, individual farmers, and sole proprietors) which presupposes mandatory registration in the Central Register of the Republic of North Macedonia, and where necessary prior mandatory registration in an appropriate special register in accordance with the rules governing the respective activity, that is, profession. The options of other "self-employed" persons (freelancers) who independently perform an activity or profession, which can be treated as "new" or "modern", or which are not regulated (for example, in the IT sector, graphic design and multimedia, entertainment, various types of freelancers, consultants and so on), are usually limited to registering an "unincorporated" (for example, sole proprietor) or "incorporated" enterprise (for example, a single-member limited liability company). According to the existing regulations, freelancers do not have the possibility to register in the form that corresponds to their preferences to be regarded as persons who are closer to the concept of "self-employment" than "entrepreneurship" (see Perulli 2003, 10)92 and to the contracts they are concluding in the capacity of self-employed persons, which are of a civil-law nature (contracts for services) and as such are different from the contracts that are considered as commercial contracts.93 This situation is contrary to the public interest, that is, to bring these persons under the regime of insurance holders of a mandatory social insurance, but also their individual interest to acquire social security rights. Hence, the self-employed "freelancers" most often operate in the domain of the informal economy. In our view, the regulatory framework of social insurance, should de lege ferenda, provide space for the introduction of an adequate category of payers of social security contributions, that is, insured persons, which will include self-employed freelancers.

91 *Official Gazette*, No. 241/18.

92 In theory, a main criterion for distinguishing between entrepreneurial activity and self-employment is the way in which work and the means of production are organized. If the economic activity is carried out without an organizational base, then it is considered self-employment. Otherwise, it is usually considered that the performance of the activity, that is, profession, is organized in the form of an "enterprise". However, it is worth mentioning that in practice, entrepreneurial activities can often be very small (that is, they are referred to as micro-enterprises), where the organizational factor is of minor importance compared to the personal efforts put in by the person running the enterprise.

93 According to the Law on Obligations (*Official Gazette*. No. 18/2001), commercial contracts shall be considered contracts which trade companies and other legal persons performing economic activity, shop owners and other individuals that as a registered profession perform a certain economic activity, conclude between themselves, for carrying out the activities which represent the subject of their work or are related to those activities. See article 17, paragraph 2.

4.4 Non-standard forms of work in the 'grey' area between employment and self-employment (legal framework, practices and perspectives for future regulation)

4.4.1 Disguised employment relationship

Traditionally, Macedonian labour law theory, under the influence of labour law theory from the period of socialism, considered the disguised employment relationship as a subspecies of the so-called "factual employment relationship" (see also Baltič and Despotovič 1970, 41).[94] The "factual employment relationship" theory, emphasized the illegal character of the *de facto* employment, at the expense of introducing legal mechanisms for its requalification into "legal" employment relationship (Kalamatiev and Ristovski 2015, 7–10). More recent theoretical approaches in North Macedonia, inspired by the ILO classification, define disguised employment relationship as a non-standard form of work, emphasizing the need to introduce appropriate legal mechanisms to combat it and the precariousness it causes in relation to the position and rights of workers ranging from employment to social security (Ristovski 2021). Forms of disguised employment in North Macedonia can be found in various activities of the private sector, both in the "more traditional" ones (catering, construction, transport) and in modern activities and professions (consulting services, marketing, media, information and communication technologies and so on). Surprisingly, the disguised employment relationship is particularly present in the public sector (education, health care, social protection, state administration bodies and so on) (see Ministry of Information Society and Administration 2016).[95] A disguised employment relationship is concluded under the "veil" of various designated or undesignated contracts which only by their title, legal qualification or content (that usually does not reflect the genuine relationship between the parties) constitute civil law contracts, that is, contracts which are not treated as employment contracts (for example, contracts for services, copyright contracts, but also temporary and occasional work contracts, volunteer contracts and so on). Despite this practice, North Macedonia lacks a systematic approach to identifying, regulating and combating disguised employment. The single, more significant "normative response" stipulated by the LRL, aimed against the abuse of contracts for services as a substitution of employment contracts, was the introduction of the indicator "performance of the work within or outside the registered activity or profession of the employer", the purpose of which was to differentiate contracts of employment from the so-called "special contract", that is, contracts for services.[96] As a measure to combat disguised employment in the public sector, in 2015, the Assembly of the Republic of Macedonia adopted the so-called Law on Transformation into Permanent Employment Relationship.[97] This Law provides for persons who shall be entitled to transformation of their working relationships into permanent employment relationships (those are the 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 dynamics and the manner of the transformation, restrictions on future hiring of workers under volunteering contracts and service contracts and so on [98] It seems that the positive effects of the Law had a one-time effect and application, since despite the regulation of the true employment status of a large number of persons in the public sector, there are still many others who continuously work under contracts different than employment contracts and are in disguised employment relationships.

In the forthcoming period one should expect that the legislature would consider the solutions incorporated in ILO Employment Relationship Recommendation (No. 198), in particular those relating to the introduction of the principles of "primacy of facts"

94 Under the term "factual employment relationship", in addition to "disguised employment" (concluding a contract for service in order to conceal the true employment status of the employee under an employment contract), the following situations could also be included: (1) practices of entering into an employment relationship with an employee who does not meet the stipulated or prescribed conditions for employment; without publicly a job vacancy or without adhering to the form of the contract; (2) undeclared, that is, unregistered employment; (3) situations in which the employment relationship continued to exist despite the absence of a legal basis (for example, the employee continued to work for the employer after the expiration of the fixed-term employment contract or after the termination of the employment with the employer).

95 According to relevant data from 2016, there were a total of 4,684 persons engaged in the public sector with volunteer contracts, service contracts, authors' contracts or other contracts. The majority of these persons worked in public health institutions, universities, schools and kindergartens.

96 For more on "special contracts", see Section 4.2.

97 Law on Transformation into Permanent Employment Relationship (*Official Gazette*, No. 20/2015).

98 Law on Transformation into Permanent Employment Relationship, articles 2–7.

and "legal presumption for the existence of an employment relationship". The legal presumption for the existence of employment relationship should serve as legal ground to reclassify false service contracts (disguised employment relationship) into contracts of employment (genuine employment relationship) with a possibility for claiming retroactive exercise of labour and social security rights. This should apply provided that the contractual relationship between the employer and the worker meets the requirements for the existence of employment relationship and the employer fails to prove otherwise. In this regard, the extension of the scope of competencies of the State Labour Inspectorate, as well as the review of its current competencies, would also be of relevance.

4.4.2 Special contracts as forms of work outside the employment relationship

In the period before the adoption of the LRL of 2005, many employers, unable or unwilling 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 (Starova 2005, 274). Hence, the LRL of 2005, in its article 252, paragraph 1, introduced the so-called "special contract" defining them as contracts for the performance of work which is *outside of the employer's activity*, and that have as their subject matter, an independent manufacture or repair of certain things, the independent performance of certain manual or intellectual work. Special contracts may also be concluded for artistic and cultural work with a person who carries out artistic and cultural activities as mentioned in article 252, paragraph 2. By their legal nature, special contracts are typical contracts for services, with the difference that, they can be concluded for the performance of work/services that do not lie within the scope (that is, they are outside the scope) of the employer's activity. In the contemporary forms of organization of business and production activities, there is often a loose and blurred border between "core" and "other" activities of employers. Moreover, when inscribing in the trade register, employers usually apply the so-called "general business clause", which is an indication that the commercial entity can perform all activities according to the National Classification of Activities.[99] This situation calls into question the application of the indicator "*performance of work/services within or outside the employer's activity*" as an indicator for distinguishing employment contracts from contracts for services, and thus, in a sense, undermines the true significance of the special contracts. Although at first glance, special contracts may act as a legal basis for concluding various contractual arrangements (for example, subcontracting, temporary agency employment and so on), we believe that the intention of the Law is under special contracts to subsume only civil contracts (contracts for services in generic form), on the basis of which, the agreed work, that is, services shall be performed personally, by self-employed persons in the capacity of freelancers. These primarily include contracts for services that are concluded through the so-called "copyright agencies",[100] where, in addition to the remuneration paid to the worker, a personal income tax is also paid, or in cases where the worker is engaged informally and paid in cash, without using the services of the copyright agency. Special contracts are not subject to any formal registration, and persons engaged exclusively in this way are usually not covered by the mandatory social insurance system and appear as "formally" unemployed persons. The 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 (Kalamatiev and Ristovski 2020, 385–386). With the amendments in five separate laws on which the foundations of labour and social security legislation of Macedonia are based (Law on Labour Relations, Law on Pension and Disability Insurance, Law on Health Insurance, Law on contributions for mandatory social insurance and Law on Insurance against Unemployment), and that entered into force at the beginning of 2015, an attempt was made to regulate freelance work. The basic goal of the legislature was to determine the legal position

99 See Law on the One-Stop-Shop System and Keeping a Trade Register and a Register of Other Legal Entities, Official Gazette, No. 84/2005), article 7.

100 In the Macedonian legal system, there is no specific legal act regulating the competencies and activities of the so-called "copyright agencies". These agencies find the legal basis for their functioning in the Law on Copyright and Other Related Rights (*Official Gazette*, No. 115/2010). Usually, copyright agencies provide outsourcing services to their clients related to making copyright contracts and contracts for services and regulating the payment under such contracts, after their clients have engaged "external" providers of services who are always natural persons. Hence, copyright agencies cannot be equated with temporary employment agencies because they do not recruit and contract out workers but only regulate the "manner of engagement and payment" of workers (external providers of services) already recruited by their clients. While the regulation of payment of persons engaged with copyright contracts serves to formalize the legal transactions with authors for the creation of copyright works (for example, books, computer programs, musical work, photographic work, audio-visual work and so on), the services of the copyright agencies are also used for concluding various contracts for services (including contracts for temporary and occasional work) that are not considered copyright contracts (for example, contracts for the engagement of consultants, persons engaged in promotions and presentations, as well as contracts for occasional engagement of persons in technical and auxiliary work).

of so-called "freelance workers" and to subsume this category of persons within the social security regime. In that regard, the then amendments to the Labour Relations Law 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 Macedonia) as well as the inadequate financial burden on persons who had generated incomes performing certain physical and intellectual work resulted in the repealing of the regulations on freelance work after only seven months from their introduction.

4.4.3 Casual work

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 (ILO and ELLN 2013). Its constituent elements are the "short duration" and the "intermittent" character of the work (Stefano 2016, 424). A casual worker, can be defined as a worker who carries out temporary and occasional work for an employer, either on a one-off basis (for a very short period of time, even if it is full-time) or occasionally (on an *ad-hoc* basis), "if" and "when" the employer requests the worker to perform such work (Macdonald 2009, 215–216). Although casual work in different variants (as temporary and occasional; weekly, daily or hourly) is primarily associated with the labour law systems and practices of developing countries, it is increasingly regulated in developed countries as well. In developed countries there are other, similar non-standard forms of work, the main features of which are the uncertain quantity and distribution of delegated work (as in on-call work or zero-hour contracts), rather than the "duration" of the engagement itself (as in casual work). However, unlike casual work, where there is usually a lack of so-called "mutuality of obligations" (as a test for determining an individual's employment status applicable in common law) (see Deakin and Morris 2009; Countouris 2015, 174)[101] or "continuity" (as an indicator applicable in continental law), in on-call/zero-hours work, mutuality of obligations/continuity is commonly considered to be existent, thus leading to a qualification of this form of working relationship as an employment relationship.

In North Macedonia, casual work is not separately regulated in the labour nor the social security legislation. It is explicitly mentioned only in the context of tax law, through the *contracts for temporary and occasional performance of services*, [102] provided by the Law on Personal Income Tax, without, however, the Law providing a definition that will more substantially define these contracts. As a consequence, contracts for temporary and occasional performance of services are considered civil contracts, which are usually expected to be concluded through a "copyright agency" where a personal income tax will be paid. In practice, temporary and occasional work is often performed informally, without concluding any written contract, while payment is often made on a "cash-in-hand" basis. Contractual arrangements that correspond to the characteristics of temporary and occasional work (short duration and discontinuity) are found in the performance of low-skilled jobs in agricultural, catering, construction, cultural activities, IT services, sales, tourism and so on. Non-standard forms of employment in the Macedonian labour legislation, which by their characteristics, perhaps, are closest to temporary and occasional work, are fixed-term and seasonal employment. Yet, it seems that the key difference between these forms of employment on the one hand, and occasional work on the other, is that, in fixed-term and seasonal employment, there is, or at least is expected to be, some "continuity" and relative "stability" in the performance of the work.[103] It is important to note that the continuity or "uninterrupted performance of work" is also an element, that is, a criterion for the existence of an employment relationship, stipulated in the definition of the employment relationship in the LRL, and as such, it might appear as a kind of an "obstacle" for qualifying occasional working relationships as employment relationships. Hence, if the Macedonian legislature decides to regulate occasional work in the context of labour law, it could be expected to qualify as work "outside" the employment relationship or work performed on the

101 The emergence of the "mutuality of obligations" doctrine, for example, test is associated with the seminal work by Mark Freedland (The Contract of Employment of 1976) and the 1980s cases of *O'Kelly* and *Nethermere*. According to Deakin and Morris, a "mutuality of obligations" can be understood as a presence of mutual commitments to maintain the employment relationship in being over a period of time, for example. to make work available in the future (on the part of the employer) and to be available for work (on the part of the worker). See Simon Deakin and Gillian S. Morris (N 51) 138.

102 See LPIT, article 14, paragraph 1.

103 For example, seasonal work is defined as a work carried out during particular periods – seasons, which does not last *more than eight months in a period of 12 consecutive months* (LRL, article 47, paragraph 1). The new LRL is expected to introduce the so-called "employment contract for permanent seasonal work", which would serve as a legal ground for renewable seasonal employment, that would oblige the contracting parties to continue the employment relationship in the next season, after the expiration of the employment contract due to the end of the work in the previous season.

basis of a "mixed contract" (between an employment contract and a contract for services) by extending certain, selected employment rights (for example, occupational health and safety, limited working hours, daily and weekly rest, minimum hourly or daily wage, collective labour rights, dismissal protection and so on) to occasional workers, and of course, by adding adequate social security protection. The reasons for "legalization" of occasional work in North Macedonia should be sought in the need to fight informal employment as well as to reduce precariousness of "de facto" occasional workers. Macedonian legislation, *de lege ferenda*, could apply some of the regulatory techniques familiar to comparable labour law systems. Those are, in particular: limits on the maximum duration of occasional work (on a weekly, monthly and/or annual basis) and transformation of this "very" atypical form into a "less" atypical form (such as fixed-term work) if the worker works longer or contrary to the maximum duration; restricting its application only to work/services outside the employer's main activity; determining the scope of persons who could be engaged in occasional work (for example, part-time employees, pensioners, students, unemployed and so on); extension of eligibility qualifications, primarily for acquiring social security entitlements (for example, allowance during maternity and parental leave, during temporary incapacity for work due to sickness and injury or unemployment benefits) in order to cover the periods of "interruption" in the total qualification period for exercising the specific entitlements and so on. A good basis for modelling temporary and occasional work in the Macedonian labour legislation can be the legal frameworks of several EU countries such as: Romania (which has regulated day labour for the performance of "unskilled working activities of an occasional nature"); Hungary (regulating so-called "simplified employment" which can be entered into to carry out seasonal work in agriculture and tourism or causal work in other sectors); Slovakia (where three different schemes of "agreements of work performed outside the employment relationship" exist such as: work performance agreements, with the aim of regulating work that is limited by obtaining expected results; agreements on work activities, with the aim of regulating occasional activities limited by the type of work and agreements on temporary work for students); Netherlands (where three types of intermittent work arrangements exist such as: on-call or stand-by work; zero-hours contracts and minimum-maximum contracts); Italy (where two types of contracts for intermittent work exist, namely: the first, in which, the worker is not bound to accept calls and the employer offer of a minimum amount of work, and the second, in which, the worker undertakes to accept the calls) and so on (Stefano 2016, 438).

4.4.4 Contractual arrangements involving multiple parties (subcontracting)

Commonly, the first association for a working relationship involving multiple parties is temporary agency work. 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 tasks or services, entrusts another entity (subcontractor) with the execution of part of the tasks or services that fall within the scope of the awarded contract and are provided to a specific client. The tasks or services provided by the subcontractor include manufacture of specific goods or rendering specific services for the client. For the purposes of providing them, the subcontractor hires workers and supervises and directs their work, even in the cases where the work process is carried out on the premises of the client (the so-called principal employer). Another form similar to subcontracting is so-called "externalization" or "outsourcing" of work (see Bronstein 2009, 61).[104] which may be defined as an assignment of certain business activities (functions and processes) of the enterprises to external service providers who, based on (often) a long-term (civil or commercial) contract, undertake to render specific services for the enterprises that engaged them (Chamberland 2003).

The labour legislation of North Macedonia does not regulate forms of work involving multiple parties other than temporary agency work.[105] Private Employment Agencies are established in a procedure and under terms and conditions provided by the Law on Private Employment Agencies, and they are licensed to perform temporary employment services (Kalamatiev and Ristovski 2019, 32). In contrast, other forms of work involving multiple parties usually fall within the scope of the general civil, that is, commercial law, and entail entering into various civil, that is, commercial contracts. In the context of *subcontracting* (primarily in the construction sector), it is particularly important to identify 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

104 While the term "outsourcing" is more frequently used in English, "externalization" appears in French, and in Spanish, this phenomenon is described variously as "outsourcing", "externación" and "terciarización".

105 Temporary agency work has been a subject of regulation in the Macedonian legal system since 2006: first, by the 2006 Law on Agencies for Temporary Employment (no longer in force) and then by the 2018 Law on Private Employment Agencies (*Official Gazette*, No. 113/2018), which is currently in force.

dismal 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 according to article 3, paragraph 1, indent 2. Furthermore, article 15 of the 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. In practice there is no unified manner of application of this provision. In some cases, each subcontractor is responsible for the occupational safety and health of its own workers, while in others there is a general occupational safety and health plan that integrates the plans of individual subcontractors. In practice there are also cases where an employer, despite not having either a status of a subcontractor or a license to operate as a temporary employment agency, based on a contract, assigns the workers it employs to perform work for another beneficiary employer. Macedonian legislation neither contains an adequate legal ground for such form of contracting out workers nor does it provide the relevant rules on establishing the liability for damages.

4.4.5 Dependent self-employment

According to the ILO definition, dependent self-employment is defined as a working relationship where the worker (formally a self-employed person) performs certain tasks, that is, services for another contracting party (client) under a contract different from a contract of employment but *depends on one or a small number of clients for the income and receives guidelines regarding how the work is to be done* (ILO 2016, 36). Despite the authoritative source of the previous definition, it does not, however, ultimately display the contribution of economic versus "certain" legal indicators of subordination (for example, giving guidance on time, place and content of work [Böheim and Muehlberger 2006, 2]) in defining a working relationship as dependent self-employment. In dependent self-employment, it is usually considered that the decisive factor is the existence of economic dependence of the economically weaker party in relation to the economically stronger party (economic subordination), rather than the fact of whether the person is technically subordinated to the orders and instructions of another person (legal subordination) (Supiot 2001, 14). The very fact that the client gives certain technical instructions, or "dictates" the way the contractor will organize his/her work (given that the contractor does not have access to an open market and puts his/her work equipment and materials to the function of the client), does not mean that the criteria for the existence of "legal subordination" are met, and that the employment status of the contractor is that of an employee. A lack of clarity about the extent of contribution and interdependence of the indicators of economic and legal subordination in determining the definition of dependent self-employment, contributes to uncertainty and a potential risk of confusion with another closely associated non-standard form, namely, the disguised employment relationship (Rosioru 2014, 287). Hence, the way in which dependent self-employment is defined, in many respects, depends on the national policy approaches and practices applied in the various countries that regulate this non-standard form of employment. While in certain countries (for example, Germany, Spain and so on), "quantitative" criteria – or criteria arising from the economic dependence of the person in relation to the client (for example, the minimum threshold of income depending on the same client or a limited number of clients) – are prevailing, other countries (for example, Austria, Italy and so on) focus instead on criteria based on the "personal link of coordination" of the worker with the client's organization (De Stefano and Countouris 2019, 23). As individuals who are "halfway" between the self-employed and the employed, dependent self-employed workers share similarities and differences with both. Despite their formal status as self-employed persons, dependent self-employed workers are in a position of economic dependence on a single employer (principal, client) for a great portion of their income and under a certain degree of control or coordination in the performance of the activities by such employer or employers (principals, clients) (Countouris 2007, 72). This distinguishes them from genuinely self-employed persons and makes them similar to the genuinely employed. Dependent self-employed workers are not entering into employment contracts but contracts for services, and they retain some discretion in terms of the manner of performance of the work and the time when the work is performed (Muehlburger 2007, 5). In this sense, they are similar to genuinely self-employed persons and different from the genuinely employed. Nevertheless, unlike the employed, the dependent self-employed workers do not generally benefit from the protections granted to employees both by law and collective agreements (Bronstein 2009, 54). In any case, certain countries that recognize this form of work are extending rights arising from employment and social insurance to dependent self-employed persons (see ILO 2016, 37–38).[106]

106 For instance, in Germany, where they are called *employee-like persons*, they have rights to access to labour courts, annual leave, protection against discrimination and collective bargaining, but they have no protection against unfair dismissal; in Italy, where they are called *para-subordinate workers*, they have the rights to access labour courts, limited social security rights, OSH regulation coverage, limited maternity and sickness protection, collective bargaining and minimum compensation rights and restrictions on early termination of contracts, but they do not have rights to protection against dismissals, limited working hours and rest periods; In the United Kingdom, where they are included in the definition of "workers", they have the right to minimum wages and limited working hours, but no right to protection against dismissal and so on.

Dependent self-employment as an "intermediate" form of work between employment and self-employment is still not significantly present in the legislation of Central and Eastern European countries (see Vodovnik and Korpič-Horvat 2015, 88).[107] One of the main reasons is a common socialist past and a long tradition and impact of the binary model on the national labour law systems (Gyulavári 2014, 245). The situation is similar in North Macedonia, where not only dependent self-employment is not subject to regulation in labour legislation and social security, but, with rare exceptions among theorists (see Kalamatiev and Ristovski 2016), it is also not adequately recognized by the expert community, including Macedonian social partners. This is due to the fact that, in the Macedonian labour law system, "economic dependence" (as one of the main and prevailing elements in determining dependent self-employment) has no particular significance, both in the context of determining the essential elements of the employment relationship and in the context of expanding labour law protection over persons who do not have the status of workers (employees) while at the same time being in a need of adequate protection (see Tičar 2020, 520). However, it is worth noting that with the mentioned amendments to several laws in the field of labour relations and social security that were in force in the period from early January to late July 2015 (the so-called Laws on Freelancers), an attempt was made to regulate the status and position of persons earning income from the performance of physical and/or intellectual work, on the basis of one or more contracts for services, copyright contracts or other contracts which set a compensation for the performed work (see Kalamatiev and Ristovski 2015, 19). Individuals belonging to this category constituted an exceptionally heterogeneous group. This group, on the one hand, included 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 persons, that is, they were treated as "*formally unemployed*", while, on the other hand, it included the *employed, self-employed and pensioners* earning income under civil law contracts in addition to regular salaries/pensions/income from carrying out their registered activity. Given the definitions of dependent self-employment in the literature, the manner of regulation of the status and position of the so-called "*unemployed freelancers*" (as natural persons who can enter into a *single* contract, that is, a contract with *a single client*, which sets compensation for the performed work) created certain similarities between them and the dependent self-employed workers. However, due to several legal deficiencies and public criticism, especially of the Law on Freelancers, led to its revocation. The absence of a regulatory framework for governing dependent self-employment in North Macedonia does not mean that, in practice, no forms of work can be found which to a greater or lesser extent meet the elements of dependent self-employment. Examples of dependent self-employment can be found in various activities such as: catering, certain types of legal representation, construction, crafts, distribution, education and training, entertainment, insurance, media, marketing, telemarketing, tourism, transport and so on (Kalamatiev and Ristovski 2016, 53).

4.5 Conclusion

The grey area between employment and self-employment and the emergence of specific non-standard forms of work aimed at filling this area does not occur incidentally or by accident. They are a consequence of tectonic changes in the world of work. Labour law (as a regulatory framework but also as a scientific discipline) faces the challenge of finding an appropriate way to address such changes in order to maintain its basic and essential function – regulating the position and rights of workers in need of protection. The theory identifies various approaches to achieving the mentioned goal of labour law, ranging from maintaining the "status quo" and leaving a flexible boundary between labour and civil law, to redefinition (enlargement) of the notion of subordinate work, to creating an intermediate category (that is, an employment status) between subordinate work and self-employment and to setting forth a "hard core" of social rights which shall be applicable to all workers irrespective of their contractual arrangement (Rosioru 2014, 304). The latter is most in line with the ILO approach in determining the personal and material scope of worker protection at the universal level. A genuine confirmation is the establishment of the

107 Slovenia can be singled out as an exclusion from this group, since as of 2013, it began to regulate "economically dependent self-employed persons". Slovene labour legislation defines economically dependent self-employed person as a self-employed person who, on the basis of a civil law contract, performs work in person, independently, and for remuneration for a longer period of time in circumstances of economic dependency and does not employ workers (article 213 of the ERA-1). Economic dependency means that a person receives at least 80 per cent of his or her annual income from the same contracting entity. As such self-employed persons perform their work for the most part for one client, and the legislature enacted limited labour law protection also for them. The protection that labour legislation assigns to economically dependent self-employed persons consists of: prohibition of discrimination, minimum notice periods, the prohibition of the termination of a contract in cases of unfounded reasons for termination, payment for contractually agreed work appropriate for the type, scope, and quality of the undertaken work, and liability for damage.

Universal Labour Guarantee, which guarantees *to all workers* (regardless of their contractual arrangement or employment status) the enjoyment of *fundamental principles and rights of work* and *basic working conditions* (adequate living wage, limits on hours of work and safe and healthy workplaces).

There is a long and ongoing process to adopt a new Labour Relations Law in North Macedonia. Hence, the great expectations about the new Law focus on its normative responses to the contemporary challenges faced by the Macedonian "worker" and the labour market. In this context, it is expected that appropriate legal mechanisms will be introduced to address undeclared (informal) work and disguised employment in order to protect "*de facto*" employees and "bogus self-employed persons" who are excluded from the protective framework of labour legislation and social security. The grey area covering the space between subordinated work (employment) and independent work (self-employment) require appropriate regulatory measures, but the Macedonian legislation still has difficulties in recognizing and properly regulating self-employment. Attempts to regulate so-called "freelance work" in 2015 ended in failure and the issue of the status and rights (primarily of social security) of freelancers (as *de facto* self-employed persons concluding civil law contracts) still remains unresolved. Casual work is subject to regulation by tax legislation and is occurring in practice, but it is still not regulated in the context of labour and social security law. Meanwhile, dependent self-employment is still considered an "abstract" notion, not only for the general community but also to a large extent for the expert community in the country, including the social partners. Let us hope that the issues analysed in this chapter will attract the attention of the "stakeholders" participating in the process of shaping labour legislation and will contribute to finding the most adequate solutions in the purview of the adoption of a new, long-awaited Labour Relations Law.