Restatement of Labour Law in Europe

Volume II

Atypical Employment Relationships

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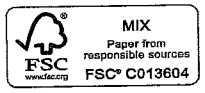

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Bernd Waas
General Editor
Frankfurt, August 2019

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TODOR KALAMATIEV AND ALEKSANDAR RISTOVSKI

I. INTRODUCTION

AMID GLOBAL SOCIETAL changes that have generated changes in the organisation of work, 'employment flexibility' has become an integral part of the labour legislation of the Republic of North Macedonia.[1]

Over the years, Macedonian labour legislation has extended the number of atypical (non-standard) forms of work. This situation is a direct consequence of the structural changes in the Macedonian economy (the transition from self-governing socialism to a market economy) and the result of two additional reasons that have influenced the country's normative framework.

The first reason for the increase in atypical employment relationships originates from the requirement to harmonise Macedonian labour legislation with both international labour standards[2] and EU legislative acts.[3]

The second reason is closely related to the first and reflects the tendency towards modernisation and adaptation of the Macedonian labour law

[1] See in Т Каламатиев, А Ристовски, *Флексибилност и Сигурност Радног Односа у Радном Законодавству Републике Македоније (развој и перспектива)* (Радно и Социјално Право, часопис за теорију и праксу радног и социјалног права, Бр.1/2013, Година XVII, 2013) pp 84–87.

[2] In this latter context, specific mention should be made of the following ILO Conventions: Workers with Family Responsibilities Convention, 1981, No 156 (ratified in the Parliament of the Republic of Macedonia on 17 November 1991); Home Work Convention, 1996, No 177 (ratified in the Parliament of the Republic of Macedonia on 3 October 2012); Private Employment Agencies Convention, 1997, No 181 (ratified in the Parliament of the Republic of Macedonia on 3 October 2012).

[3] In this latter context, a reference should be made to the partial harmonisation of the Macedonian labour legislation with the following EU Directives: Directive 97/81/EC on part-time work; Directive 98/70/EC on fixed-term work and Directive 2008/104/EC on temporary agency work.

system to comparative labour law systems (particularly to those of the EU Member States), which provide a broad range of atypical forms of work that are constantly increasing.[4]

The labour legislation of the Republic of North Macedonia entails a number of different atypical forms of work such as fixed-term work; seasonal work; part-time work; part-time work with multiple employers; employment contract for work at home; employment contract with domestic workers; employment contract with managerial persons (managerial contract) and temporary agency work.

II. FIXED-TERM WORK

A. Legal Definitions/Formal Requirements

When defining the term 'fixed-term work' (*работа на определено време*), Macedonian labour law theory and legislation usually refer to the 'duration of employment'.[5] Based on its duration, the employment relationship may be classified into the following two general groups: an employment relationship of indefinite duration and a fixed-term employment relationship, where the former is the 'rule' and the latter is an 'exception' to the established rule.[6] Such an assumption can be based on the available statistical data as well.[7]

An employment relationship shall be established by signing an employment contract, ie the form must be in writing.[8] According to the Law on Labour Relationships of the Republic of North Macedonia (*Закон за работните односи*), the employment contract shall be concluded for a period of time which is not defined in advance (employment for an indefinite period of time).[9] An employment contract whose duration is not determined therein shall be considered an employment contract of indefinite duration.[10]

[4] See in G Starova, *Possibilities for Flexible Employment under Specific Employment Contracts in the Law on Employment Relations of the Republic of Macedonia* (III. International Labour Law Dialogue, Flexible and Secure Employment, GV Založba Publishing Company, Ltd, 2008) p 42.

[5] Г Старова, *Трудово Право* (Просветно Дело А.Д Скопје, 2005) p 242.

[6] Т 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 година), p 307.

[7] According to the statistical data of 2016 (fourth quarter), 14.7% of the total number of employees worked with employment contracts of a temporary duration (source: Eurostat http://ec.europa.eu/eurostat/data/database).

[8] See in Law on labour relations, Official Gazette of the Republic of Macedonia, no 62/05 of 28 July 2015) Закон за работните односи на Република Македонија (Сл.весник на РМакедонија, бр.62/05 од 28 July 2005 година), член 15, став 1.

[9] Закон за работните односи, член 14, став 1

[10] Закон за работните односи, член 14, став 3.

Employment contracts *may* also be concluded for a period of time defined in advance (fixed-term contract).[11] Macedonian labour legislation defines the term 'fixed-term employee' as well, which covers any person under an employment contract concluded directly between the employer and the employee, when the expiry of the employment contract is determined by objective reasons, such as a specific date, completion of a certain task, or occurrence of a certain event.[12]

B. Lawful Stipulation of the Contractual Terms

In general, the commencement of a fixed-term employment relationship is conditional upon fulfilling the 'objective' grounds legitimising the conclusion of an employment contract for a definite period of time. The current legislation of the Republic of North Macedonia differs from this principal position to a greater or lesser extent. Chronological analyses of Macedonian laws on labour relationships refer to the Law on Labour Relationships (*Закон за работните односи*) of 1993.[13] This Law represented a single regulation that enumerated the admissible 'cases' for establishing a fixed-term employment relationship: seasonal work; increased volume of work; replacement of an absent worker; and work on a project.[14] These cases did not exhaust the 'list' of objective reasons for concluding fixed-term employment contracts. In practice, the Law left room for employers to introduce other cases for concluding a fixed-term employment contract, which will be based on their internal regulations or collective bargaining agreements. At the same time, the theory was dominated by the view that regardless of the variety in existing cases, the main reason for concluding a fixed-term employment relationship is the nature of the work, which is work for a definite period.[15] Hence, two general conditions for concluding a fixed-term employment relationship had to be met, namely: the fulfilment of specific legal preconditions (ie objective reasons) and the determination of certain cases under which an employment relationship can be established.[16]

Compared to the basic (ie original) text of the Law on Labour Relationships of 1993, the amendments and supplements of 2003, as well as the

[11] Закон за работните односи, член 14, став 2.

[12] Закон за работните односи, член 5, став 1, точка 3.

[13] Закон за работните односи од 1993 ('Сл. весник на Р Македонија' бр.80/93).

[14] See in Закон за работните односи од 1993 ('Сл. весник на РМакедонија' бр.80/93) член 23.

[15] Д Миленков и Т Томановиќ, *Прирачник за правата и обврските од работен однос* (Агенција 'Академик'—Скопје, 1995) p 89.

[16] Т Каламатиев, *Работниот однос на определено време во Законот за работните односи на Р Македонија* (Зборник во чест на животот и делото на Универзитет 'Св.Кирил и Методиј', Правен Факултет—Скопје, 2002 година) p 308.

basic text of the Law on Labour Relationships of 2005 introduced a more general and flexible formulation to determine the objective reasons for concluding a fixed-term employment contract. The Law on Amendments and Modifications of the Law on Labour Relationships of 2003 stipulated that a fixed-term employment relationship may be established for performing activities which by their nature are of a definite period—with or without interruption—for up to three years.[17] The original text of the Law on Labour Relationships of 2005 retained the identical legal formulation in terms of the objective reasons for concluding a fixed-term employment relationship, but it increased the maximum limitation to 'fixed-term employment with or without interruption for up to four years'.[18] Nevertheless, following the first amendments, the Law on Amendments and Modifications of the Law on Labour Relationships of 2008 repealed the phrase 'performing activities which by their nature are of a definite period of time' from the original text of the Law. Thereby, it practically abolished the existence of an 'objective reason' as a precondition to concluding a fixed-term employment contract. Additionally, these amendments and modifications to the Law on Labour Relationships increased the maximum limitation to 'fixed-term work, with or without interruption, for up to five years'.[19] Hence, the Macedonian labour law system does not require the existence of 'objective reasons' when concluding the initial or subsequent contract(s) of employment, ie the parties are free to choose the type of employment contract and its duration. Moreover, the Law on Labour Relationships includes the 'replacement of a temporarily absent employee' as a possible reason for concluding a fixed-term employment contract.[20] Despite the fact that the Law fails to regulate this 'legal gap', in theory and in practice there is a prevailing view that when concluding a fixed-term employment relationship to replace a temporarily absent worker, the maximum term for fixed-term employment of five years does not apply. This means that the duration of the contract for the replacement of a temporarily absent worker may be either longer or shorter than five years, but in any case, not longer than the actual absence of the temporarily absent worker.[21]

The lack of an objective reason for establishing a fixed-term employment relationship does not mean that no legal mechanism exists to prevent abuse of the use of successive fixed-term employment contracts. The Law

[17] Закон за изменување и дополнување на Законот за работните односи од 2003 година (Сл.весник на Р Македонија бр.40/03) член 2.

[18] Закон за работните односи од 2005 година (Сл.весник на Р Македонија бр.62/05), член 46.

[19] Закон за изменување и дополнување на Законот за работните односи од 2008, член 4, став 1.

[20] See in Закон за работните односи, член 46, став 2.

[21] Т Каламатиев и А Ристовски, *Работа на определено време и работа со неполно работно време, нестандардни форми на работа во работното законодавство на Република Македонија*, Деловно Право, Издание за теоријата и практиката на правото, Бр.34, Мау 2016, Скопје, стр. 655.

on Labour Relationships of the Republic of North Macedonia allows the conclusion of fixed-term employment contracts for up to five years to perform the same activity, with or without interruption.[22] Macedonian labour legislation applies one of the three measures of protection against abuse of fixed-term employment relationships, which are stipulated in Council Directive 1999/70/EC on the framework agreement on fixed-term work, namely the 'limitation of the maximum total duration of the successive fixed-term employment contracts or relationships', which may not exceed five years for the same activity, with or without interruption.[23] The employer may conclude one or multiple successive contracts with the employee, but must adhere to the overall maximum limitation of five years.

The limitation of the duration of fixed-term employment relationships refers to the performance of the 'same' activity. The Law does not explicitly define the term 'performance of the same activity', but may entail activities that belong to the same group or category of jobs that are usually prescribed by the collective agreement or an employer's act, ie an Act on Job Systematisation (*Акт за систематизација на работните места*). Ultimately, the employment contract is the most direct legal source, and must contain a clause that regulates the key aspects in terms of type of work and the worker's activities.[24] There are frequent cases in which just before the expiration of the maximum period limiting the duration of the fixed-term employment relationship, employers enter into a new fixed-term contract with the employee, engaging him/her to perform 'other' activities that are nominally but not essentially different from the activities that were a constituent part of previously concluded employment contracts.[25] Thereby, employers circumvent the legal consequences resulting from the expiration of the maximum period of limitation of fixed-term employment contracts, namely a transformation of the fixed-term employment relationship into one of indefinite duration. Hence, it would be more appropriate if the maximum period of limitation of fixed-term employment contracts referred to 'any' activities performed by a particular worker and not only to the

[22] Закон за работните односи, член 46, став 1.

[23] *Argumentum a contrario*, Macedonian labour legislation does not envisage the remaining two measures of protection against abuses of fixed-term employment relationships, namely: the determination of objective reasons justifying the renewal of the fixed-term employment contract or relationship; and the limitation of the number of renewals of such contracts or relationships.

[24] The Law on Labour Relationships envisages that the employment contract (among other elements) shall contain the job title, that is, data on the type of work for which the employee has concluded the employment contract, including a brief description of the work s/he is to carry out under the contract (Article 28, para 1(3)).

[25] А Ристовски, *Редефинирање на бинарниот модел на работните односи и регулирање на нестандардната работа* (докторска дисертација, Скопје, 2015) стр. 327.

performance of the 'same' activity. This means that the legal mechanism to prevent abuse of successive fixed-term employment contracts ought to include any individual contract between the employer and the 'same' employee (within the limitation of up to five years), regardless of whether such a contract was concluded for the performance of the 'same' or 'other' activities. The application of such a measure could be a contribution to preventing the so-called 'rotation' of fixed-term employees.

Apart from the dilemma over the 'type of activities' fixed-term employees may perform, the Law on Labour Relationships of the Republic of North Macedonia has created another problem regarding the continuity of their performance of work. To resolve this problem, the proper interpretation of the legislative phrase 'work with or without interruption' needs to be defined, and should be determined in terms of the maximum period of five years for the limitation of fixed-term work. Interruption between two consecutive employment contracts presupposes a disruption of the continuity, which is essential for determining the cumulative period of fixed-term work. However, the Law on Labour Relationships does not contain any legal provision to determine the 'time gap' between the expiration of the previous and the conclusion of the new fixed-term employment contract.[26] Such an approach might imply a certain 'security' aspect for fixed-term employees, but on the other hand, it would be very rigid for employers. The security aspect for employees lies in the fact that the law does not allow the existence of discontinuity, ie an interruption between successive fixed-term employment contracts.[27] On the other hand, this approach may be too rigid and constraining for employers who—even after the expiry of a period of several years in which there is both a de facto and a de jure interruption between successive contracts of employment for the performance of the 'same' activity—will be required to respect the maximum limit of fixed-term work of up to five years even if they have no intention of transforming the employment relationship of the particular employee into a permanent employment relationship.

The transformation of the fixed-term employment relationship into a permanent one is the final, crucial factor in terms of preventing the abuse of

[26] In comparison, the amendments and modifications to the Law on Labour Relationships of 2003 stipulated that interruption of work which is less than 30 working days shall not be taken into consideration when calculating the total period of fixed-term employment with a maximum duration of three years. See in Закон за измени и дополнувања на ЗРО од 1993 година, член 2, став 1.

[27] In cases where the employee concludes a fixed-term employment contract (for example, of one year) which shall terminate by the expiry of that period, and a few years later (for example, after three years) concludes a new fixed-term employment contract with the same employer for the performance of 'same' activities (for example, for a period of one year), the time interruption of three years between the two employment contracts is treated as a period included in the total, maximum term for the limitation of the fixed-term employment that is five years.

successive contracts of employment and in terms of the preference of employees for security and stability within employment. The fixed-term employment relationship shall be converted into an employment relationship of indefinite duration, if the employee continues working after the expiry of the maximum period of limitation of the employment contract, under the conditions and in the manner defined by law.[28] Should the employer refuse to convert the employee's employment relationship into a permanent one, s/he may initiate a procedure for the protection of his/her rights. The employee can thus protect his/her employment rights before the employer (by submitting a written request to the employer for the rectification of the violation of a particular right, ie for the fulfilment of the employer's obligations towards the employee)[29] and eventually before a competent court (by submitting a claim, if the employer does not fulfil its obligations, ie does not rectify the violation of the employee's rights upon the employee's written request).[30] In practice, the employee first submits a request for the transformation of his/her employment relationship;[31] if the employer fails to act, the employee may exercise his/her right by filing a declaratory lawsuit against the employer before the competent court. There is an exception to the legal presumption of the transformation of the employment relationship relating to employment contracts for seasonal work, which may include multiple successive contracts regardless of their total duration, which cannot be converted into contracts of employment of indefinite duration.[32] Additionally, the Law on Labour Relationships stipulates another circumstance which is treated as an 'exception' to the general rule on the transformation of employment relationships after the expiry of the cumulative period of five years. A transformation of an employment contract may occur if the employee works in a position for two years, which became vacant due to the retirement of an employee or other grounds, and for which funds have been provided, if the employer determines that there is a permanent need for the employee under the conditions and in the manner determined by law.[33] Assuming that the remaining criteria for an early transformation of the employment relationship have been met, the 'other ground' for which a

[28] See in Закон за работните односи, член 46, став 3.

[29] See in Закон за работните односи, член 181, став 1

[30] See in Закон за работните односи, член 181, став 3.

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

[32] See in Закон за работните односи, член 46, став 3.

[33] See in Закон за работните односи, член 46, став 4.

particular post may become vacant may, for example, be the 'death of the previously replaced employee'.[34]

The Law on Labour Relationships does not contain any provision to resolve the legal consequences resulting from an invalid conclusion and duration of a fixed-term employment contract. In fact, Macedonian labour legislation fails to recognise several important aspects related to penalising the consequences of the unlawful existence of a fixed-term employment relationship. The *first aspect* encompasses the dilemma related to the legal treatment of fixed-term employment contracts concluded contrary to the conditions under which such a contract may be concluded, while *the latter aspect* relates to the 'legal gap' that exists in the event of extension of fixed-term employment contracts without having to conclude a new (successive) contract. The Law on Labour Relationships does not precondition the conclusion of the initial, nor of the successive fixed-term employment contract on the existence of objective reasons. Starting from such a presumption, it can be concluded that the courts' practices are restrictive, in the sense that they are often unwilling to interpret a fixed-term employment contract signed without containing any objective reason as a partially null and void contract, ie as a contract that may be converted into an employment contract of indefinite duration by a court decision.[35] The *second aspect* reflects a particular practice which is also prevalent in the 'regular' labour market in the Republic of North Macedonia. It refers to the factual situation in which a fixed-term employment contract had ceased to exist *ex lege* (for example, due to the expiry of the term), but the employee continued to perform his/her activities at the same employer (so-called 'factual employment relationship').[36] In the absence of an explicit legal provision that fills this specific 'legal void', it can be argued that the continued performance

[34] In the labour dispute registered under РО.бр.87/13 from 13 June 2013, the Basic Court in Tetovo (as a first instance civil court) ruled that the plaintiff (a class teacher in an elementary school) met the requirements for the transformation of the fixed-term employment relationship into one of indefinite duration. In the given case, the employee had continued working in the same position for more than two years for which the financial funds were provided and the employer determined that there was a permanent need for the employee, and the post ultimately became vacant due to the death of the previous employee.

[35] Contrary to current legislation and court practice, in the archives of the courts of the Socialist Republic of Macedonia before the country's independence, there are court decisions that legitimise the transformation of the employment relationship into one of indefinite duration depending on when the fixed-term employment relationship was established. For example, the Court of Associated Labour adopted a decision which held that if the worker deems his work to be for a fixed term, even though his/her work consists of labour activities that are not of a temporary nature, it shall be presumed that the worker established a permanent employment relationship (Court Decision, No 207/86 from 25 September 1986).

[36] At the request of the business community of the Republic of Macedonia, the Employment Agency of the Republic of Macedonia along with the Health Insurance and the Pension and Disability Insurance Fund, introduced a simpler procedure in 2012 to register/deregister employees whose fixed-term employment contracts for the performance of the same activity have been extended without an interruption in the employment relationship. Under the modified procedure, the previous 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 institution related to the initial fixed-term employment contract at the employer is valid as long as the cumulative employment relationship lasts, and it includes all consecutive contracts of employment until the expiry of the maximum statutory limitation for fixed-term contracts. Consecutive employment contracts with no interruption are usually concluded in the form of a new contract or in an annex to the existing contract. Irrespective of whether the consecutive employment contract occurs in the form of a new contract or in an annex to the existing contract, it relates to the performance of the same activity and contains a provision for fixing the term, eg its duration.

of the activity by the employee at the same employer after the expiry of the previous fixed-term employment contract does not mean that the contracting parties have entered into an employment relationship of indefinite duration but rather that they have concluded a new (successive) contract of employment, the nature and duration of which depends on their will.[37]

C. Termination/End of Fixed-Term Contracts

Fixed-term employment contracts may end with the expiration of the period for which they were concluded, ie fulfilment of the condition specified in the contract. In practice, there are several ways to limit its duration. The term may be fixed by a calendar date, by satisfying a certain condition, ie the completion of a certain task or by the occurrence of a certain event. The fixing of the term by calendar date consists of designating the exact date of expiry of the contract (for example, the contract expires on 10 June 2016) or by indicating the total duration of the contract (for example, the contract is concluded for a total period of three months from the date of its conclusion).[38] Apart from the calendar method, there are fixed-term employment contracts that cease to be valid upon the completion of a certain task (for example, work on a project).[39] Finally, a fixed-term employment contract may also end with the occurrence of a certain event (for example, the return to work of a temporarily absent worker).[40] The Law on Labour

[37] D Marinkovič and M Ruždjak, *Zakon o Radu* (komentar, primjeri, sudska praksa, 2005) p 31.

[38] In theory, there is the view that the calendar method, eg determining the exact date of expiry of a fixed-term contract, is the most appropriate way to set the duration of the contract. By using this method to fix the term of the contract, employers can avoid any unwanted consequences resulting from the transformation of the fixed-term into a permanent employment relationship, especially in cases when the term is neither certain nor specified in the contract. See in D Milkovič et al, *Prestanak Ugovora o Radu*, Veliki Komentar Novog Zakona o Radu (Vaša Knjiga Zagreb, 2010) p 172.

[39] In this case, there is the so-called descriptive fixing of the term of the contract, which can be determined by inserting both the specific condition, eg completion of a certain task, and the calendar date.

[40] In such a case, the validity of the employment contract will expire at the time of occurrence of the resolutive condition (the return to work of the temporarily absent employee),

Relationships supplements the methods to terminate fixed-term employment contracts. Thus, a fixed-term employment contract shall cease to be valid upon the expiry of the period for which it was concluded, that is, upon completion of the agreed work or upon the end of the reason for which the contract was concluded.[41] The question that arises in practice is whether the employer is required to issue a separate formal decision to end the fixed-term employment relationship in terms of fulfilling the condition (term) under which the contract was concluded, or whether it is sufficient to only inform the employee that the term has expired. Usually, the employer is required to notify the employee in writing that the condition has been fulfilled, ie that the term has expired.[42] This notification is a 'reminder' for the employee about the definite end of his/her employment relationship and it does not have a constitutive nature. The lack of a written notice of the expiry of the term or the fulfilment of the conditions of the contract cannot have any legal consequences for the legitimacy and admissibility of the termination of the employment contract. This is the case because the employer confirms that the contract of employment is fixed at the time of signing, and will terminate when the conditions are fulfilled, i.e. the expiry of the duration for which the contract was concluded.[43]

Macedonian labour legislation does not contain any provision on the possibility of either the employer or employee cancelling the fixed-term employment contract and the legal consequences of such a dismissal for the duration of the contract. Under such circumstances, the standard rights and obligations applicable to the cancellation of employment contracts of indefinite duration usually apply, including inter alia the existence of a justified ground for dismissal and the procedure prior to the cancellation of the contract, namely the notice period. Compared to the legal regime for the cancellation of fixed-term employment relationships, the Law on Labour Relationships explicitly provides for a 'dismissal' as a way of terminating the validity of the employment contract for seasonal work and for work during a probation period as distinctive types of fixed-term employment contracts.[44]

which shall predetermine the date of termination of the employment relationship by itself. See in Т Камчевска, *Работни односи—засновање, распоредување и престанок* (Сигнум, 1997) p 190.

[41] Закон за работните односи, член 64.

[42] Д Миленков и Т Томановиќ, *Прирачник за правата и обврските од работен однос* (Агенција 'Академик'—Скопје, 1995) p 205.

[43] Т Камчевска, *Работни односи—засновање, распоредување и престанок* (Сигнум, 1997) p 190.

[44] The Law on Labour Relationships envisages a distinctive specificity in relation to the termination of seasonal employment relationships by dismissal. The duration of the minimum notice period shall be seven working days when the employer terminates the seasonal employee's employment contract. (See in Закон за работните односи, член 88, став 3). The dismissal occurs as a legal ground for terminating the employment contract if the employee fails to successfully complete the probation period. (See in Закон за работните односи, член 99, став 1, точка 2). Such a dismissal is treated as a dismissal without notice. On the other hand, the Law on Labour Relationships provides the employee with the possibility to terminate the employment contract during the probation period. The notice period in such a case shall be three days. (See in Закон за работните односи, член 60, став 5).

D. Rights and Status of Fixed-Term Worker

(i) Equal Treatment

Macedonian labour legislation is harmonised with EU Directive 99/70/EC on the framework agreement on fixed-term work, including the principle of non-discrimination against fixed-term employees. As regards employment conditions, the Law on Labour Relationships prohibits less favourable treatment of fixed-term employees simply because they have a fixed-term employment contract, compared to employees who are employed for an indefinite period, unless differentiated treatment is justified by objective reasons.[45] The Law fails to specify the term 'comparable' employee employed for an indefinite period. At the same time, the case law of courts competent for resolving labour disputes does not clarify the meaning of 'objective reasons' justifying differentiated treatment between fixed-term and permanent employees. The principle of equal treatment is evident again when determining the qualifications for obtaining certain employment rights which derive from the length of service, ie the continuity of the employment relationship. In this regard, the Law stipulates that the period for acquiring qualifications in relation to certain conditions shall be the same when employing permanent or fixed-term workers, unless the period for acquiring the qualifications is longer than the duration of the fixed-term employment contract.[46] In practice, there are cases where the fixed-term employee does not fully or only partially acquires a certain qualification due to the fact that the period for acquiring such a qualification is longer than the duration of his/her contract of employment. An employee who has concluded a fixed-term employment contract shorter than six months is not eligible for payment of maternity and parental leave. This is attributable to the provisions of the Law on Health Insurance (*Закон за здравствено осигурување*), which stipulate the conditions for obtaining the right to a salary allowance for pregnancy, childbirth and maternity leave. According to this Law, the insured person may exercise the right to salary allowance if s/he has contributed to health insurance for at least six months without interruption, among other criteria, before the given event occurred.[47] The same situation exists in the context of acquiring the right to full annual leave. According to the Law on Labour Relationships, an employee who establishes an employment

[45] Закон за работните односи, член 8, став 3.

[46] Закон за работните односи, член 8, став 4.

[47] See in Закон за здравствено осигурување, Сл.весник на РМ бр.25/20, член 15, став 1, точка 1.

relationship for the first time shall acquire the right to full annual leave after an uninterrupted period of service of at least six months at the same employer, regardless whether the employee works full-time or part-time.[48]

(ii) Employment Opportunities

The labour legislation of the Republic of North Macedonia stipulates the right of fixed-term employees to be informed about vacant posts. Thus, the Law on Labour Relationships requires employers to inform fixed-term employees about vacancies by posting a notification in a visible place at the employer's premises to ensure that they have the same opportunity to access permanent employment as the other employees.[49] In addition, employers should, to the extent possible, facilitate access of fixed-term employees to appropriate training opportunities to enhance their skills, career development and professional mobility.[50]

(iii) Other Matters

Macedonian labour legislation does not provide for other provisions that may be considered supplementary rights for employees who have concluded a fixed-term employment contract.

E. Information and Consultation

Macedonian labour law has not yet established a proper legal framework to enable the systematic participation of employees in decision-making processes. Labour legislation contains several provisions on the 'information and consultation' of employees in general, as well as in terms of collective dismissals.[51] Employers in Macedonia are not required to inform and/or consult employee representatives about the number or representation of fixed-term employees.

F. Specific Provisions

In addition to the Law on Labour Relationships (as a general law governing employment relationships), the Law on Public Sector Employees (*Закон за*

[48] See in Закон за работните односи, член 139.
[49] See in Закон за работните односи, член 25, став 10.
[50] See in Закон за работните односи, член 25, став 11.
[51] These provisions (arts 94-a and 95) aim to harmonise the Law on Labour Relationships with the European Framework Directive on Information and Consultation (2002/14/EC) and the Council Directive on collective redundancies (98/59/EC). Yet despite nominal compliance with the aforementioned EU directives, the Law on Labour Relationships does not provide for a substantial definition and procedure for electing 'employee representatives', eg a 'works council', and does not determine its competences, rights, obligations, etc.

вработените во јавниот сектор) as well as other special laws, cover fixed-term employment relationships. The Law on Public Sector Employees contains several objective grounds for concluding fixed-term employment contracts. Such objective grounds are: replacement of a temporarily absent employee (for more than one month); temporary increase in workload; seasonal work; unforeseen short-term activities that arise during the performance of the employer's main activity; work on a project; or filling special jobs in the cabinet of the President of the Republic of Macedonia, the President of the Assembly of the Republic of North Macedonia, the deputy presidents of the Assembly of the Republic of North Macedonia, the President of the Government of the Republic of North Macedonia, the deputies of the President of the Government of the Republic of North Macedonia, or the ministers and the General Secretary of the Government of the Republic of North Macedonia, for the purpose of carrying out tasks and duties of special advisors.[52] The replacement of a temporarily absent employee as an objective ground for establishing a fixed-term employment relationship shall last until the expiry of the absent employee's approved absence, but not longer than two years at most.[53] The temporary increase in workload, seasonal work and unforeseen short-term activities that arise during the performance of the employer's main activity as objective grounds for establishing a fixed-term employment relationship shall last until the needs of the employer have been fulfilled, but one year at most.[54] Finally, the work on a project as an objective ground shall be valid until the end of the project, but no longer than five years in total.[55] However, employment of the special advisors at the offices of the previously mentioned state institutions shall last until the expiry of the term of office of the functionary in whose cabinet the person is employed.[56] Besides the Law on Public Sector Employees, provisions with an identical or similar content may be found in a few other special laws such as the Law on Administrative Servants (*Закон за административните служ беници*), the Law on Judicial Service (*Закон за судската служба*), the Law on Public Prosecution Service (*Закон за јавнообвинителската служба*), the Law on Primary Education (*Закон за основно образование*), the Law on Secondary Education (*Закон за средно образование*), the Law on Higher Education (*Закон за високо образование*), etc.

[52] За ова види Закон за вработените во јавниот сектор,Сл.весник на РМ бр.27/2014, член 22, став 1.
[53] Закон за вработените во јавниот сектор, член 22, став 2.
[54] Закон за вработените во јавниот сектор, член 22, став 3.
[55] Закон за вработените во јавниот сектор, член 22, став 4.
[56] Закон за вработените во јавниот сектор, член 22, став 5.

G. Collective Bargaining Agreements Deviating from Statutory Provisions

The provisions of the Law on Labour Relationships regulating fixed-term work are fundamental provisions that cannot be derogated from '*in pejus*' by collective agreements, ie contracts of employment. In this regard, the Law on Labour Relationships stipulates that the collective agreement, ie employment contract, cannot set out less favourable rights than those laid down by a Law, and if they contain such provisions, they shall be considered null and void and the relevant provisions of the Law shall apply.[57] Collective agreements that regulate particular aspects of fixed-term employment relationships usually take over the relevant provisions stipulated in the Law or provide for minor changes compared to the statutory provisions.[58]

III. PART-TIME WORK

A. Legal Definitions/Formal Requirements

In Macedonian labour law, full-time working hours with a maximum of 40 working hours per week are treated as the standard form of work.[59] In theory, the prevailing view is that full-time employment allows employers to reasonably use the working abilities of employees, enabling employers to optimally distribute their workforce, while the employees fully acquire their guaranteed employment rights.[60] In the Macedonian labour market, the primacy of full-time work compared to part-time work is also evident in the statistical data which reveal a huge gap between the share of employees hired on a full-time and part-time basis.[61]

[57] Закон за работните односи, член 12, став 2.

[58] Provisions that regulate certain aspects of fixed-term work can be found in both the Primary Education Collective Agreement and the Secondary Education Collective Agreement of the Republic of Macedonia. For example, these collective agreements state that the fixed-term employment relationship can be established for a period of time predetermined for teaching of up to 12 months in the school year (член 11, став 1); The employment relationship based on a fixed-term employment contract shall be converted into a permanent employment relationship, if the employee continues to work after the expiry of the period of up to five years with or without interruption (член 11, став 2).

[59] Law, that is, the collective agreement, may define working hours shorter than 40 hours a week, but not less than 36 hours a week, as full-time hours. (See in Закон за работните односи, член 116, став 3).

[60] T Popovič, *Radno Pravo* (Beograd, 1980) p 133.

[61] According to the data for 2015, part-time work constitutes 4.4% of total employment in the Republic of Macedonia. Despite the low rate of part-time work, the potential for its increase and improvement are obvious, especially if we take into account the continuing flexibilisation of the Macedonian labour market as well as the low employment rate of women, which is estimated at 39.9% (source: www.stat.gov.mk).

The Law on Labour Relationships defines the legal grounds for establishing a part-time employment relationship, namely the part-time employment contract.[62] Part-time work shall be considered work that entails working hours that are shorter than full-time working hours at the employer.[63] The labour legislation of the Republic of North Macedonia does not provide for the distribution of part-time working hours.[64] In any case, the amendment to the Law on Labour Relationships of 2013 imposes an obligation on the employer to determine the start and end time of the daily working hours of the employee under a part-time employment contract and to keep separate records of part-time employees. The Employment Service Agency of the Republic of North Macedonia shall inform the State Labour Inspectorate about all part-time contracts once a month.[65] The aim of this provision is to prevent abuse of working hours of workers who are registered as part-time workers but actually work full-time and are paid the remaining half of their net wage in cash.[66] Finally, the conceptual definition of part-time employment differentiates between 'part-time' working time (*неполно работно време*) and 'shortened' working time (*скратено работно време*). While 'part-time' working time refers to the atypical (non-standard, flexible) form of employment, the term 'shortened' working time refers to the reduction, ie shortening of the full-time working time to protect the health and safety of employees with special needs, and employees who work in especially difficult, arduous jobs harmful to the employee's health. In this regard, 'shortened working time' is used in two different cases. *In the first case*, shortened working time encompasses so-called 'exceptional cases' in

[62] Закон за работните односи, член 48, став 1.

[63] Закон за работните односи, член 48, став 2.

[64] An exception to this principle can be found in the Law on Public Sector Employees, which states that working hours shorter than full-time working hours shall be deemed part-time working hours and must be at least 20 hours and a maximum of 30 hours a week. (See in Закон за вработените во јавниот сектор, член 23, став 2).

[65] Закон за работните односи, член 48, став 6.

[66] According to the findings of the State Labour Inspectorate, instead of registering the exact hours of when an employee comes and leaves from work, there was a widespread practice until 2012 to record 'eights' (for full-time work) and 'fours' (for half of full-time work, eg part-time work) in the working time records of the employees, on the basis of which the inspectors had no actual insights at the time of conducting the inspection into whether an employee was working more hours than the agreed part-time working time, because the employers argued that the inspection was being conducted when the employee was at work. The amendments of 2013 contributed to resolving this situation. Yet, some employers still find ways to bypass their legal obligations. Some of them do not determine the daily organisation of working hours (start and end time) in the employment contracts of the employees. Others determine the daily organisation of part-time working hours, but contrary to the contract, request the employees to work full-time working hours. This is an offence for which the labour inspector may issue a misdemeanor charge.

which the employee works less than full-time hours (shortened working time) in accordance with the regulations on pension and disability insurance and the regulations on health care insurance. This form of shortened working time relates to employees who are 'disabled' or are in medical rehabilitation.[67] In the *second case*, the shortened working time is related to so-called 'exceptional conditions', and refers to employees who work in especially difficult, arduous jobs that are harmful to the health of the employee.[68]

B. Opportunities for/Right to Part-Time Work

The Law on Labour Relationships does not envisage the possibility for a direct adjustment of part-time work to the needs of the employees for a better work-life balance and upon their request. The only exception in this regard is the possibility to work shortened working hours, ie half of the full-time working time (20 working hours per week) in order to care for and protect children with developmental problems and special educational needs. In this case, the shortened working time (half of the full-time working time) is considered full-time work, as the remuneration for the remaining half of the working hours shall be compensated for by the state budget in accordance with the social welfare regulations.[69] Such an option shall be granted to one of the parents of the child only if both parents are employed or if the employee is a single parent.[70]

The right to change the working time from full-time to part-time is only found in the Law on Public Sector Employees. The Law, inter alia, stipulates that the responsible person at the employer's organisation may adopt a decision on part-time working hours upon the employee's request to care for the first-born child until it reaches the age of two, care for the second-born child until it reaches the age of two and a half, and care for the third-born child until it reaches the age of three.[71] In that case, the responsible person at the employer's organisation may adopt a decision upon the request of the employee to change his/her working time, within the statutorily prescribed period of 15 days.[72] Any future amendments to the Law on Public Sector Employees ought to provide for justified grounds that will limit the discretionary power of the employer to reject the employee's request to change his/her working hours.

[67] See in Закон за работните односи, член 122.
[68] Закон за работните односи, член 122-а.
[69] See in Закон за работните односи, член 169, став 2.
[70] See in Закон за работните односи, член 169, став 1.
[71] See in Закон за вработените во јавниот сектор, член 23, став 3, алинеа 2, 3 и 4.
[72] See in Закон за вработените во јавниот сектор, член 23, став 5.

C. Opportunities for/Right to an Extension of Working Time

In principle, the labour legislation of the Republic of North Macedonia prohibits the unilateral extension of the working time by the employer. The Law on Labour Relationships stipulates that the employer may not order the part-time employee to work longer than the agreed working hours, except in cases in which additional work is required due to natural or other disasters.[73] The prohibition on working longer than the agreed working hours includes overtime work as well. Yet in the same provision, the Law on Labour Relationships implicitly permits the 'extension of working time', if the contracting parties envisage such a possibility in their contract of employment. Case law is still not clear on this 'legal void', but in our view, if the extension of working hours (ie overtime work) is stipulated in the contract, the contracting parties are free to autonomously determine both the terms and conditions of its introduction and the amount of compensation for the working hours exceeding the agreed working time.

D. Rights and Status of Part-Time Worker

(i) Equal Treatment

The labour legislation of the Republic of North Macedonia envisages the right to equal treatment of part-time employees. The Law on Labour Relationships stipulates that the employee who has concluded a part-time employment contract shall have the same contractual and other rights and obligations arising from employment as the full-time employee, and shall exercise these rights and obligations proportionally to the time for which s/he has concluded the employment contract, except for those otherwise defined by law.[74] Principally, this provision is related to two segments of part-time employment. *The first segment* refers to equal employment rights and obligations of part-time employees compared to full-time employees, whereby employers are required to provide the same employment conditions for both types of employees. Yet besides the prohibition of discrimination against part-time employees, the Law on Labour Relationships does not specify 'the comparative' full-time employee whose employment rights and obligations represent the basis for comparing the working conditions of these two types of employees. *The second segment* refers to the exercise of employment rights of part-time employees in proportion to the working hours during which they perform their work. In practice, it is important

[73] See in Закон за работните односи, член 48, став 5.
[74] See in Закон за работните односи, член 48, став 3.

to determine 'how' and to 'what extent' part-time employees can obtain tangible (remunerative) and intangible (non-remunerative) employment rights, and whether the principle of 'proportionality' is applicable in the exercise of all employment rights.

A basic tangible employment right of all employees, including part-time employees, is the right to payment. The salary (or more precisely the basic salary) obtained by the employees usually results from their regular work, performed in a full-time working capacity and their normal working performance, ie average working results. The temporal determination of the salary underlines the connection between the payment and full-time working time. Hence, in cases in which the salary is determined temporarily (based on the duration of the full-time working hours), part-time employees shall exercise the right to payment in proportion to their working hours specified in their employment contract.[75] The identical analogy, indicating the principle of '*pro rata temporis*' also exists for other tangible employment rights, especially with regard to 'salary allowances' (which are compensated through paid leave, such as for illness or injury, holidays, etc). The basis for calculating the payment is usually the employee's average salary over the past 12 months (unless otherwise defined by this or another Law).[76] Still, the practical implementation of the principle of 'proportionality' in the exercise of other, specific tangible employment rights is not applied. The Law on Labour Relationships specifies the 'allowances for work-related costs' and other material allowances, but their detailed regulation is subject to collective agreements.[77] The inability to enforce the principle of proportionality in relation to the *number* of working hours arises when the basis for

[75] I Govič, DM Drača, *Ugovor o Radu* (TIM press, Zagreb, 2005) p 96.

[76] See in Закон за работните односи, член 112, став 8.

[77] The general collective agreement for the private sector in the field of economics (GCAPE) envisages several types of work-related allowances that set out their amounts. These include: daily allowance for national business trips; daily allowance for business trips abroad; field allowance; compensation for living separated from the family; compensation for the expenses of using own vehicle to meet the needs of the employer; compensation for moving costs to meet the needs of the employer (член 35, став 1). Allowances are also paid: in case of death of the worker, compensation to his/her family is paid in the amount of three months' basic salary; in case of death of a family member of the worker, compensation is paid to the worker in the amount of two months' basic salary; in case of difficult consequences of a natural disaster, at least in the amount of one month's basic salary; for continued sick leave longer than six months, as a result of injury at work or a professional disease in the amount of the basic monthly salary; for a jubilee award in the amount of one month's basic salary—for at least 10 years of work at the same employer; at retirement, in the amount of at least two months' basic salary (член 35, став 2). By the agreement to amend and modify the GCAPE of 2013, the contracting parties (the Organisation of Employers of Macedonia and the Federation of Trade Unions of Macedonia) envisage the right to annual leave regress (allowance). According to the new contents of the GCAPE, the annual leave regress shall be paid in the amount of at least 40 per cent of the basic wages, provided that the employee has worked for at least six months within the calendar year for the same employer (See in Спогодба за изменување и дополнување на Општиот колективен договор за приватниот сектор од областа на стопанството, Сл.весник на РМ бр.189 од 31 December 2013, член 10).

calculating work-related costs and other material allowances is the *average monthly net salary paid per employee in the Republic of North Macedonia during the past three months*.[78] When analysing this provision, it becomes evident that the basis for calculating the allowances for work-related costs corresponds to the average monthly net salary paid per employee in the Republic of North Macedonia, and not to the employee's average monthly net salary paid at the employer (which is, of course in favour of the part-time employee, because it increases his/her remuneration).

The principle of 'proportionality' in the exercise of intangible employment rights (rest periods, leaves, etc) can be evaluated in a similar way. Usually, intangible employment rights are a consequence resulting from the act of 'employment' itself, meaning that a part-time employee acquires the same and equal intangible rights as a full-time employee.[79] Confirmation of such an approach can be found in the regulation of the right to the daily and weekly rest period.[80] It appears that the only deviation from the principle of equal and fixed duration of the right to rest is identified in the legal treatment of breaks at work (whereby the employee is supposed to work at least four working hours a day in order to obtain a partial right to a break in the amount of 15 minutes)[81] and annual leave, which according to the Law on Labour Relationships is at least 20 working days (but the part-time employee shall be entitled to annual leave with a minimum duration of ten working days).[82] Other intangible employment rights which part-time employees are entitled to in the same amount, regardless of the duration of their working time, are the rights to absence from work (paid and unpaid), duration of the notice period in case of dismissal, etc.

(ii) Dismissal Protection

The labour legislation of the Republic of North Macedonia does not provide for a special legal regime on the dismissal protection for part-time employees. The same rights and obligations prescribed on the termination of the employment contract by dismissal (such as justified reasons for dismissal,

[78] Општ колективен договор за приватниот сектор во областа на стопанството, член 35г, став 2.

[79] V Jelčič, *Radno Vrijeme* (Knjižnica B Adžija) p 172.

[80] According to the Law on Labour Relationships, the employee shall be entitled to a daily rest time of at least 12 hours continuously between two consecutive working days within a 24-hour period (See in Закон за работните односи, член 133, став 1). The employee shall have the right to a weekly rest time of at least 24 uninterrupted hours, plus 12 hours of daily rest as referred to in art 133 of this Law (See in Закон за работните односи, член 134, став 1).

[81] See in Закон за работните односи, член 132, став 2.

[82] See in Закон за работните односи, член 48, став 4.

procedure prior to the dismissal, notice periods, etc) as are applicable to full-time employees shall be provided for part-time employees. One noticeable aspect in this regard is the application of the '*pro rata temporis*' principle in terms of exercising the right to 'severance payment' as an '*ultima ratio*' entitlement of employees in the event of termination of their employment contract for business reasons (ie economic, organisational, technological, structural or similar reasons).[83] This actually means that part-time and full-time employees are entitled to the identical *number* of net monthly salaries (severance payments) arising from the identical length of service at the employer, but the *amount* of the part-time employee's severance payment will be different (lower) than that of the full-time employee. Finally, the Law on Public Sector Employees stipulates that if needed by the institution, the responsible person at the institution may adopt a decision on part-time work in case of a temporary decrease in workload.[84] This decision shall be adopted within a period of 15 days after the request directed to the employee, but upon his/her request.[85] In order to protect part-time employees from dismissal, the Law on Public Sector Employees '*de lege ferenda*' ought to specify that the refusal of the employee to consent to changes to his/her working time from full-time to part-time should not constitute a legitimate reason for dismissal.

(iii) Other Matters

Macedonian labour legislation does not provide for other provisions that may be treated as supplementary rights of employees who have concluded a part-time employment contract.

E. Information and Consultation

Part-time employees do not have any special rights to information and consultation. Their right to information and consultation is an integral part of the general legal framework regulating employee participation that is provided in the Macedonian labour legislation.

[83] Under such circumstances, the employer shall be required to pay the employee a 'severance payment' from one up to six months' net salary, depending on years of employment, and the base for calculating severance pay shall be the average net monthly salary of the employee in the last six months before the dismissal, but it may not be lower than 50 per cent of the average net monthly salary per employee in the Republic paid in the preceding month before the dismissal. (See in Закон за работните односи, член 97, став 1 и став 2).

[84] See in Закон за вработените во јавниот сектор, член 23, став 3, алинеа 1.

[85] See in Закон за вработените во јавниот сектор, член 23, став 4.

F. Other Part-Time Arrangements

The Macedonian labour law system provides for the right to part-time work with several employers with the purpose of achieving full-time working hours (*работа со неполно работно време со повеќе работодавачи*).[86] This means that an employee may conclude two or more part-time employment contracts with two or more employers whereas the total amount of hours worked at all employers (cumulatively) may not exceed the 'normal' limitation of working time, namely the upper maximum of 40 hours a week. Considering the complex legal nature of part-time work with several employers, several dilemmas on the organisation of working time at different employers may arise in practice: the use of rest periods (especially annual leave), absences from work, etc. The Law on Labour Relationships 'recognises' the potential difficulties in synchronising the separate aspects of the organisation of work at different employers and in this regard, stipulates that the employee shall be obliged to agree with the employers on his/her working hours, the use of annual leave and other absences from work.[87] On the other hand, employers where the employee is employed on a part-time basis shall be required to assure the employee simultaneous use of annual leave and other absences from work, unless it would cause them damage.[88]

The final form of work that can be subsumed under the group of other part-time arrangements and which assumes an extension of working hours is so-called 'supplementary work' (*дополнително работење*). The Law on Labour Relationships states that an employee who works full time may, as an exception, conclude a part-time employment contract with another employer, however, for not more than 10 hours a week and with previous consent of the employer that employs him/her on a full-time basis.[89] In this regard, the Law on Labour Relationships explicitly indicates that 'supplementary work' is equated with 'supplementary employment relationship'.[90] A legal preconditions for exercising 'supplementary work' is the limitation of working hours—it may not be performed for more than 10 hours a week and prior consent of the employer is necessary where the employee is employed on a full-time basis. The purpose of limiting 'supplementary work' to not more than 10 hours a week derives from the need to protect

[86] See in Закон за работните односи, член 49, став 1.

[87] Закон за работните односи, член 49, став 2.

[88] Закон за работните односи, член 49, став 3.

[89] За ова види ЗРО, член 121, став 1.

[90] In practice, there is a common dilemma whether 'supplementary work' is a means to engage workers under an employment relationship or outside of it. Supplementary work as a special form of work based on a part-time employment contract has existed since the adoption of the Law on Labour Relationships of 2005; and for an extensive period, there was no possibility in practice to pay the compulsory social contributions arising from such a contract.

the health and safety of employees from excessive work, as well as from the interest of the state in stimulating the employment of unemployed persons. Similarly the need of prior consent of the employer/s where the employee is employed on a full-time basis, can be evaluated in the light of employers' interest in having a productive employee at their disposal. Prior consent of employer/s can also be analysed in terms of the ban on competition. Finally, the Law on Labour Relationships determines how 'supplementary work' based on a part-time employment contract is to be terminated. Accordingly, the employment contract shall cease to be valid in accordance with this Law after the expiry of the agreed period, or after the withdrawal of the employer's consent where the employee is employed on a full-time basis.[91]

On-call work (*работата на повик*) is not comprehensively and thoroughly regulated in Macedonian labour law.[92] Finally, Macedonian labour legislation does not recognise the shared workplace (*делење на работното место*) (job-sharing) model as a separate form of part-time work.[93] This practice is common among standard part-time employment contracts which do not provide for mutual and shared rights, obligations and responsibilities applicable to the part-time employees.

G. Collective Bargaining Agreements Deviating from Statutory Provisions

Much like the regulation of fixed-term employment, collective agreements that regulate specific aspects of part-time employment usually adopt the relevant provisions stipulated in the Law or provide for minor changes from the statutory provisions.[94]

In fact, employers were only required to pay personal income tax under the tax law regulations. Such a legal position of the part-time employment contract as a legal ground for engaging a worker to perform supplementary work had led to an overlap of this type of contract with the contract for services.

[91] Закон за работните односи, член 121, став 3.

[92] The Law on Labour Relationships refers to the possibility of regulating the 'on-call on-site work' (дежурство) in health institutions, based on the regulations in the health sector (See in Закон за работните односи, член 118). Yet the Law is understated in terms of the introduction of on-call on-site work in other professional activities as well as the forms of its payment. On the other hand, the Law on Labour Relationships does not refer to the term 'on-call off-site work' (приправност, готовност) at all.

[93] The right to a shared workplace was set out in the labour legislation of the former Socialist Republic of Macedonia. See in Т Несторовски, *Прирачник за практична примена на Законот за работните односи со судска практика* (Македонија Биро, Скопје, 1983) стр. 117.

[94] Provisions that regulate certain aspects of part-time work can be found in the collective agreement for communal activities of the Republic of North Macedonia (член 67, став 2) and the collective agreement for the catering services of the Republic of North Macedonia (член 68, став 2). These collective agreements state that part-time employees who work at least four hours are entitled to food during work.

IV. TEMPORARY AGENCY WORK

A. Legal Definitions/Formal Requirements

Temporary agency work is an atypical form of work recognised in Macedonian labour law. It is based on the Law on Temporary Work Agencies (*Закон за агенциите за привремени вработувања*) of 2006.[95] The Macedonian Parliament has ratified the ILO Convention on Private Employment Agencies (No 181) as well.[96] The Parliament of the Republic of North Macedonia, in cooperation with the social partners, has drafted a proposal on a new Law on Private Employment Agencies (*Предлог Закон за приватните агенции за вработување*) aimed at replacing the existing Law on Temporary Work Agencies.[97] As regards the public sector, legal provisions that regulate temporary agency work at public sector employers can be found in the Law on Public Sector Employees.[98]

The Law on Temporary Work Agencies determines the general legal framework of temporary agency work in the Republic of North Macedonia. According to this Law, temporary agency work presupposes the existence of a tripartite legal relationship involving three parties: the temporary work agency, the temporary agency worker and the user undertaking. The temporary work agency (*Агенција за привремени вработувања*) is defined as a legal entity which in accordance with the Law concludes employment contracts with temporary agency workers for the purpose of hiring them out to perform temporary work at a user undertaking under its supervision and management.[99] According to the Law, a temporary agency worker (*Привремен агенциски работник*) is an employee who has concluded an employment contract with a temporary work agency and can be hired out to perform temporary work at a user undertaking under its supervision and management.[100] Finally, the Law defines the user undertaking (*Работодавач корисник*) as a legal entity or natural person for whom or

[95] See in Law on Temporary Employment Agencies, Official Gazette of the Republic of North Macedonia, no 49/06/ Закон за агенциите за привремени вработувања, Сл.весник на Р Македонија, бр. 49/06.

[96] ILO Convention on Private Employment Agencies (No 181) was ratified on 26 March 2012 by the Macedonian Parliament.

[97] The proposal on the new Law on Private Employment Agencies was submitted to the Macedonian Parliament in July 2016.

[98] In cases of 'replacement of a temporarily absent employee, who is absent for more than a month', 'seasonal work'; 'work on a project' or 'filling special jobs in the cabinets of the president of particular institutions in the country', the responsible person at the institution may, inter alia, conclude a contract for hiring a worker from a temporary work agency (See in Закон за вработените во јавниот сектор, член 22, став 8).

[99] Закон за агенциите за привремени вработувања, член 3-а, став 1, точка 3.

[100] Закон за агенциите за привремени вработувања, член 3-1, став 1, точка 4.

under whose supervision and management the temporary agency worker works.[101]

In Macedonia, there are no official statistical data on the exact number of temporary agency workers. Temporary agency workers are engaged both in the private and public sector.[102] They can be found both at lower and higher skilled jobs.[103]

B. Registrations, Licensing, Financial Guarantees, etc

The Law on Temporary Work Agencies stipulates the procedure, conditions and financial guarantees required for registering and licensing an agency.

Registration of the temporary work agency entails enrolment in the Register of Agencies for Temporary Work, maintained by the ministry responsible for labour activities.[104] To enter the Register of Temporary Work Agencies, an application for registration must be submitted, the contents of which and its additional enclosures are prescribed in a Rulebook of the Ministry of Labour and Social Policy.[105] Upon the entry of the agency in the Register of Temporary Work Agencies, the ministry responsible for labour activities shall adopt a decision on the basis of which the agency is entered in the Central Register of the Republic of North Macedonia and acquires the status of a legal entity.[106]

Licensing is an additional, mandatory phase in the establishment of a temporary work agency. The licence for providing temporary employment shall be issued by the ministry responsible for labour activities, with a validity period of two years and a possibility for extension.[107] There are three types of licences ('A' licence—for the conclusion of more than 250 employment contracts, 'B' licence—for the conclusion of up to 250 employment contracts, and 'C' licence for the conclusion of up to 100 employment

[101] Закон за агенциите за привремени вработувања, член 3-1, став 1, точка 5.

[102] On the basis of an interview conducted with a representative of the temporary work agency 'Partner' (a leading agency in the Republic of North Macedonia that has registered more than 18,000 persons as members and potential temporary agency workers), we found that the majority of temporary agency workers registered in this agency are hired out to user undertakings in the private sector, especially in the construction and services sectors. Nonetheless, the number of temporary agency workers hired out to user undertakings from the public sector is quite large.

[103] In practice, temporary agency workers are employed in jobs as general workers, construction workers, confectioners, waiters, computer operators, technicians, professional associates, etc. (See in www.partner.com.mk, accessed on 10 September 2016).

[104] See in Закон за агенциите за привремени вработувања, член 5-д, став 1.

[105] See in Rulebook on Registration and Keeping the Register of Temporary Employment Agencies of the Ministry of Labour and Social Policy, no 08-5431 of 2 June 2006.

[106] Закон за агенциите за привремени вработувања, член 5-д, став 3.

[107] See in Закон за агенциите за привремени вработувања, член 9, став 1.

contracts), which are differentiated according to the number of employment contracts that may be concluded by the temporary work agency and the temporary agency worker.[108] The licensing of temporary work agencies is conditional on the fulfilment of certain special and technical requirements stipulated in the Law.

According to the Law on Temporary Work Agencies, the registration and licensing of the agencies is preconditioned by an obligation of their founders to deposit a bank guarantee. The amount of the bank guarantee differs (from EUR 50,000 to EUR 100,000) depending on type of the licence.[109] The Law stipulates that the bank guarantee shall be used if the temporary work agency fails to pay the salary and contributions to the salary of employees for more than three months.[110]

Pursuant to the current and available data, there are a total of 18 temporary work agencies enrolled in the Register of Agencies for Temporary Employment by the Ministry of Labour and Social Policy.

C. Relationship between Temporary Agency Worker and Temporary Work Agency

(i) Fixed-Term and Part-Time Contracts

The legal regime of temporary agency work in the Republic of North Macedonia consists of a tripartite legal relationship. Formal and direct contractual relationships are established between the temporary agency worker and the temporary work agency on the one side, and between the temporary work agency and the user undertaking on the other. A legal ground for establishing a contractual (employment) relationship between a temporary agency worker and an agency is the 'employment contract', while a legal ground for establishing a contractual relationship between the agency and the user undertaking is the 'contract to hire out a worker'.[111]

The Law on Temporary Work Agencies provides for an indirect application of the legal provisions of the Law on Labour Relationships regulating the 'standard' employment contract to the contract of employment concluded between the temporary agency worker and the temporary work agency.[112] The contract between the temporary agency worker and the temporary work agency is a formal contract that must be concluded in writing.

[108] See in Закон за агенциите за привремени вработувања, член 9, став 2.

[109] See in Закон за агенциите за привремени вработувања, член 6, став 1.

[110] Закон за агенциите за привремени вработувања, член 6, став 2.

[111] See in Закон за агенциите за привремени вработувања, Глава III, точка 1 'Contract for hiring out a worker to an employer user' (член 11-член 13) и точка 2 'Employment contract' (член 13-член 18).

[112] See in Закон за агенциите за привремени вработувања, член 13, став 3.

Its compulsory contents are prescribed by the Law.[113] In practice, the temporary agency worker usually signs a fixed-term employment contract with the temporary work agency and the duration of these contracts corresponds to the duration of the worker's assignment at the user undertaking. The contracts of employment are also called 'temporary agency employment contracts' (*договори за привремено агенциско вработување*) and they are valid until a certain date or for a certain period of time, on the expiry of which their validity terminates.[114] By virtue of these contracts, a temporary agency worker can be hired on a temporary, but also on an occasional basis, and the duration of his/her engagement at the user undertaking must be at least one working day for which the agency worker acquires both the rights to adequate pay (ie per diem) and adequate social insurance contributions.[115] The majority of such employment contracts provide for working hours that are shorter than the full-time working hours; hence they are treated as part-time temporary agency work contracts.

(ii) Rights and Obligations/Liability

The conclusion of the employment contract between the temporary agency worker and the temporary work agency is a legal precondition for establishing an employment relationship between the parties. On the basis of the concluded contract of employment, the temporary agency worker and the temporary work agency shall acquire legal and contractual rights and obligations arising from the employment relationship. The legal regime of the temporary work agency in the Republic of North Macedonia is characterised by ambiguity in the regulation of entitlements and liabilities of the contracting parties. The Law on Temporary Work Agencies envisages key provisions that govern the rights to equal treatment, salary and the protection of health and safety at work of temporary agency workers. It can be concluded that a temporary agency worker hired through an agency acquires the right to salary and all the remaining work-related financial allowances, social

[113] The contents of the temporary agency employment contract must include: data on the contracting parties, the duration of the temporary employee's assignment at the user undertaking (duration of the employment contract); the date of commencement and completion of the work; the exact name and head office of the user undertaking; the place of work; the employee's tasks performed at the user undertaking; the working hours (daily and weekly); the amount of salary, salary contributions, allowances, periods and the manner of payment, and the obligations of the temporary work agency towards the employee during the period of his/her hiring out to the user. (Закон за агенциите за привремени вработувања, член 13, став 2).

[114] See in General conditions for the provision of temporary workers (Internal Regulations of the Temporary Work Agency 'Partner' which shall apply to all offers and contracts relating to the provision of workers for the performance of temporary work activities at the user undertaking), Skopje, 2012, p 11.

[115] Based on the information obtained from the interview with the representative of the Temporary Work Agency 'Partner'.

insurance contributions, rights to limited working time, holidays and leave (only paid) as if they were directly employed by the user undertaking.[116] In terms of obligations, the Law on Temporary Work Agencies stipulates that the assigned worker shall be required to perform the work in compliance with the instructions of the user undertaking.[117] In practice, cases can be found in which a temporary agency worker is obliged to pay a penalty if s/he concluded an employment contract with the agency but did not appear in the workplace at the user undertaking on the agreed day, or if s/he wants to terminate the employment relationship before the expiration of the employment contract and without any specific reason.[118] On the other hand, one of the primary obligations of the temporary work agency is to prepare and submit a special calculation of the salary and the salary contributions of the temporary agency worker on behalf of each user undertaking at which they are hired out.[119]

The Law does not envisage any provisions that regulate the liability of the contracting parties for damage caused while at work or in relation to work. In practice, there are clauses in the temporary agency employment contract on the basis of which the temporary work agency is exempt from its liability to compensate for the damage or loss caused by the temporary agency worker to the user undertaking or a third party. The agency (as a formal employer) may not be excluded from so-called 'objective liability' for damage caused by the temporary agency worker to the user undertaking or a third party while at work or in relation to the work. A legal void exists in cases where there is a liability of the user undertaking for damage caused to the temporary agency worker as well. This derives from the fact that Macedonian labour legislation does not contain legal provisions that will address the liability of the user undertaking and/or the temporary work agency in cases where the temporary agency worker suffers damage while at work or in relation to work.

(iii) Dismissal Protection

The dismissal protection of temporary agency workers is an unclear and only partially regulated segment of the legal framework governing temporary agency work in Macedonia. The Law on Temporary Work Agencies does not contain any legal provisions that stipulate either justified grounds for dismissal, or the procedure prior to the termination of the employment

[116] General conditions for the provision of temporary workers of the Temporary Work Agency 'Partner', Skopje, 2012, pp 17–20.

[117] Закон за агенциите за привремени вработувања, член 16, став 1.

[118] According to the general conditions for the provision of temporary workers of the Temporary Work Agency 'Partner', Skopje, the penalties the worker is required to pay shall be 30 % of the agreed net salary.

[119] See in Закон за агенциите за привремени вработувања, член 11-а.

contract of temporary agency workers. Nevertheless, the Law, for its part, provides certain specificities on the termination of temporary agency employment contracts pertaining to notice periods and unjustified reasons for dismissal. The Law envisages the possibility of 'early' cancellation of the employment contract, both by the temporary work agency and the temporary agency worker, by giving five days' written notice for employment contracts concluded for up to 30 days and 10 days' written notice for employment contracts concluded for more than 30 days.[120] In addition, the Law on Temporary Work Agencies states that the end of a user undertaking's need for a temporary agency worker prior to the expiration of the term laid down in the contract cannot be a reason for terminating the contract between the user undertaking and the temporary work agency or between the temporary work agency and the temporary agency worker.[121]

D. Relationship between Temporary Agency Worker and User Undertaking

(i) Legal Type of Relationship

In the Macedonian labour law system, the legal relationship established between the temporary agency worker and the user undertaking is not regulated by a direct, formal contract between the two parties. The temporary agency worker and the user undertaking do not sign any formal agreement. This implies that their legal relationship is more factual than formal, and it is established by the very fact of 'hiring out the temporary agency worker to perform work at the user undertaking, under its supervision and management' (*отстапување на привремениот агенциски работник на работа кај работодавачот корисник, под негов надзор и раководство*).

(ii) Rights and Obligations/Liability

The rights and obligations between the temporary agency worker and the user undertaking are operationalised through the temporary work agency. Nevertheless, the Law on Temporary Work Agencies sets forth a principal provision that 'the user undertaking and the temporary agency worker shall be required to comply with the provisions of this Law, any other law and collective agreement which bind the user undertaking as regards the rights and obligations directly related to the performance of work.'[122] The user undertaking is responsible for the management and supervision of the work

[120] See in Закон за агенциите за привремени вработувања, член 17, став 1.
[121] Закон за агенциите за привремени вработувања, член 17, став 2.
[122] Закон за агенциите за привремени вработувања, член 16, став 2.

performed by the temporary agency worker. Hence, it has certain specific liabilities extending especially to the field of occupational safety and health. Furthermore, the Law provides for two additional obligations of the user undertaking that can also be treated as rights of the temporarily hired workers. These obligations, ie rights, are exercised directly in relation between the temporary agency worker and the user undertaking. They refer to the obligations of the user undertaking to inform the hired temporary agency worker about all published announcements for vacancies,[123] as well as to give temporary agency workers equal access to training planned for the permanent employees.[124] The legislator views the role of temporary agency employment contracts as a 'stepping stone' in the career development of the temporary agency worker that should lead to a permanent and stable employment relationship. Hence, the Law on Temporary Work Agencies treats the clauses of temporary work agency employment contracts that prohibit or hinder the conclusion of employment contracts between the user undertaking and the hired temporary agency worker after s/he has been hired out as null and void.[125]

(iii) Health and Safety

The labour legislation of the Republic of North Macedonia, including the Law on Temporary Work Agencies, emphasises the need to ensure the safety and health of workers. In this regard, the Law deems the user undertaking responsible both for the health and safety at work of the hired out workers and for the application of the legal provisions regulating protection at work.[126] In practice, the user undertaking has distinct obligations related to the protection of health and safety of the temporary agency worker. These include the following obligations: training of the temporary agency worker to safely perform his/her tasks; providing the premises and equipment for work; urgent and immediate information to the competent authorities in the event of an injury or accident at work; providing personal protection equipment, depending on the type of work, etc.[127] Finally, the Law on Temporary Work Agencies stipulates the right of the ceded worker to refuse the work if the user undertaking does not ensure him/her health and safety at work in compliance with the appropriate regulations.[128]

[123] See in Закон за агенциите за привремени вработувања, член 3-г, став 1.
[124] See in Закон за агенциите за привремени вработувања член 3-г, став 2.
[125] See in Закон за агенциите за привремени вработувања, член 3-д.
[126] See in Закон за агенциите за привремени вработувања, член 15.
[127] General conditions for the provision of temporary workers of the temporary work agency 'Partner', Skopje, 2012, p 18.
[128] See in Закон за агенциите за привремени вработувања, член 16, став 4, алинеа 1.

E. Relationship between Temporary Work Agency and User Undertaking

According to the Law on Temporary Work Agencies, a legal basis for hiring out a temporary agency worker to perform temporary work is the contract for hiring out workers (*договор за отстапување на работник на работодавачот корисник*), concluded between the temporary work agency and the user undertaking.[129] The contract for hiring out workers is actually a civil, ie commercial, contract obligating the agency to hire out one or more workers to the user undertaking for the performance of a temporary assignment under its supervision and direction, while the user undertaking is required to pay an adequate fee to the agency for the services provided.[130] It is a formal contract (it is mandatory to conclude it in writing),[131] and following its conclusion, the agency shall be required to submit a copy of every contract concluded to hire out a worker to a user undertaking to the Labour Inspectorate and to the Employment Service Agency of the Republic of North Macedonia within a period of five days from the day of conclusion of the contract.[132] The obligations that arise from concluding the contract for hiring out a worker must be adhered by (*pacta sunt servanda*), because their application is also reflected in the temporary work agency employment contracts and thus bear on the legal position of the hired out agency worker as well. In this respect, the court practice in the Republic of North Macedonia can be described as at least 'reserved' in relation to the early termination of contracts for hiring out workers by the user undertakings.[133]

The conclusion of the contract for hiring out workers is preceded by several measures deriving from the relationship between the temporary work agency and the user undertaking. In practice, an initial measure in the relationship between the parties is the notification by the user undertaking of the intention to hire a temporary agency worker, which is usually submitted

[129] Закон за агенциите за привремени вработувања, член 11, став 1.

[130] In addition to this contract, the contracting parties usually also conclude a *general* (principal) *cooperation contract* in practice, by which the temporary work agency shall be bound to provide temporary workers to the user undertaking whenever such a need arises.

[131] Закон за агенциите за привремени вработувања, член 11, став 2.

[132] Закон за агенциите за привремени вработувања, член 12, став 3.

[133] The plaintiff (a temporary work agency) and the defendant (a user undertaking from the public sector) had concluded a contract for hiring out workers according to which the plaintiff was to hire out seven workers to the defendant for the performance of precisely defined activities for a period of one year, on the basis of which, later on, the plaintiff concluded seven individual employment contracts with the hired out workers. The defendant terminated the contract for hiring out workers ahead of time (before the expiration of the contract) referring to his right to early termination of contracts due to changed circumstances (Art 122 of the Law on Obligations of the Republic of Macedonia, Official Gazette no18/2001). The defendant based his allegations for the early termination of the contract for hiring out workers on the fact that there were no financial resources provided by the Budget of the Republic of Macedonia aimed at financing temporary employment, eg due to the lack of approval from the Ministry of Finance. On appeal, the Court of Appeal in Skopje by Decision ТСЖ.бр.-553/11 of 15 September 2011, upheld the Decision of the Basic Court that the defendant had unlawfully terminated the contract due to changed circumstances, stating that at the time of conclusion of the contract, he was required to consider those circumstances or avoid and overcome them in a timely manner. Additionally, the Court of Appeal upheld the Basic Court's decision by which the defendant was ordered to pay the invoiced debt to the plaintiff for the use of the temporary agency worker.

in the form of a request for hiring a temporary worker.[134] The agency must recruit individuals who have registered as a potential temporary agency worker, informing them about their status as potential employment candidates. Following a request by the user undertaking to hire temporary workers, the agency carries out the selection of potential employment candidates for an interview at the user undertaking. The user undertaking chooses among the interviewed workers. The temporary work agency shall provide temporary employment services by charging the user undertaking a service fee.[135] The Law prohibits the agency from charging the temporary agency worker a service fee for the temporary employment at another user undertaking.[136] In practice, the amount of the fee that the agency will charge the user undertaking depends on the number of temporarily hired out workers; the duration of the employment contract; whether the agency has been exposed to costs related to additional training of the workers, etc.[137] In addition, the fee is normally paid as a percentage of the gross salary.[138]

The legislator envisaged certain justified restrictions that are applicable when concluding a contract for hiring out workers between the temporary work agency and the user undertaking. The working activities for which a temporary agency worker can be hired out to a user undertaking are of a 'temporary nature', and they are stipulated in the Law on Temporary Work Agencies in an exhaustive and 'numerus clausus' manner. In this regard, a contract for hiring out workers may be concluded in the event of: replacement of a temporarily absent employee; a temporary increase in the workload; a seasonal job; work on a project; specific non-continuous work that is not part of the predominant business activity of the user undertaking; and unpredictable short-term activities deriving from performing the predominant business activity of the user undertaking.[139] The legislator indirectly establishes certain objective grounds for the commencement of an employment relationship between the agency and the worker, and

[134] General conditions for the provision of temporary workers of the temporary work agency 'Partner', Skopje, 2012, p 18.

[135] See in Закон за агенциите за привремени вработувања, член 8, став 1.

[136] See in Закон за агенциите за привремени вработувања, член 8, став 2.

[137] General conditions for the provision of temporary workers of the Temporary Work Agency 'Partner', Skopje, 2012, p 22.

[138] Eg, for up to 10 hired workers, the agency's provision amounts to 10% of the agreed gross salary; for up to 20 hired workers, the agency's provision amounts to 8% of the agreed gross salary; for up to 30 hired workers, the agency's provision amounts to 7% of the agreed gross salary, etc.

[139] See in Закон за агенциите за привремени вработувања, член 4, став 1.

objective reasons for the hiring out of the worker at the user undertaking. The Law sets forth a maximum period for the hiring out of workers at the user undertaking: for the performance of the same activities as long as the need exists, but no longer than one year.[140] The agency may not hire out a worker to perform the same work activity at the same user undertaking with or without interruption for more than a year.[141] In practice, the statutory limitations deriving from the legal regime of temporary agency work are hardly respected. The temporary work agencies and user undertakings do not always take into account the 'objective reasons' that de jure limit their legal space for concluding contracts for hiring out workers. An even more apparent 'circumvention' of the legislation occurs when an illegal and fictional 'change' of the job position occupied by the hired temporary agency worker takes place following the expiration of the maximum term of one year, which limits him/her from being hired at the user undertaking for the performance of the 'same' work activities. All legal provisions relating to the justified limitations when concluding contracts for hiring out workers are supplemented by two additional provisions. The contract for hiring out workers, inter alia, cannot be concluded if the user undertaking requires temporary agency workers to work on the same tasks that were performed by other workers who were dismissed for business reasons, during the previous six months. Finally, the contract for hiring out workers also cannot be concluded for the purpose of further transferral of the worker to another temporary work agency, or from one user undertaking to another.[142]

F. Rights and Status of Temporary Agency Worker

(i) Equal Treatment

De jure, the temporary agency worker enjoys equal treatment in terms of the 'basic conditions of work and employment' with workers who perform the same work activities and are directly employed by the user undertaking.[143] By 'basic conditions of work and employment', the Law on Temporary Work Agencies subsumes the conditions determined by Laws and other regulations, collective agreements and internal acts of the user undertaking, referring to the duration of the working hours, overtime work, breaks, rest periods, night work, holidays and allowances.[144] Formally and legally, the hired out agency worker shall be entitled to equal treatment in terms of pay

[140] See in Закон за агенциите за привремени вработувања, член 4, став 3.
[141] Закон за агенциите за привремени вработувања, член 4, став 4.
[142] Закон за агенциите за привремени вработувања, член 11, став 4, алинеа 2 и 3.
[143] See in Закон за агенциите за привремени вработувања, член 3-б, став 1.
[144] Закон за агенциите за привремени вработувања, член 3-а, став 1, точка 7.

as well. In this regard, the Law stipulates that the salary of the hired out worker cannot be lower than the salary of the employee working for the user undertaking in the same job, and if there is no such employee, the salary of an employee in a similar job within the same business activity.[145] The equal treatment of temporary agency workers with regard to salaries shall not only apply to the 'basic salary', but to the other components of remuneration (such as the part of the salary for job performance and job-related allowances) as well as other allowances for work-related costs. Additionally, the Law on Temporary Work Agencies prohibits discrimination in employment on grounds of race, colour, gender, age, health condition, disability, religious, political or other belief, membership of unions, national or social origin, family status, property status, sexual orientation, or other personal circumstances.[146] Despite the general principle of equal treatment and prohibition of discrimination, the rights of the temporary agency worker in the Republic of North Macedonia are subject to frequent abuse for business reasons. Such abuses are evident, especially in relation to the payment for their work. Very often, temporary agency workers receive lower net salaries compared to employees directly employed by the user undertaking, and the temporary work agencies pay the salaries and compulsory social insurance contributions for the hired out workers late. Temporary agency workers also face a situation of multiannual engagement at the same user undertaking without being employed on a direct and permanent basis by that employer. Under such circumstances, they encounter many difficulties in applying for loans and mortgages or getting a visa to visit a foreign country.

(ii) Other Matters

Macedonian labour legislation does not make other provisions for temporary agency workers that can be treated as supplementary rights.

G. Information and Consultation/Representation of Temporary Agency Worker

According to the Law on Temporary Work Agencies, the temporary agency worker shall have the right to be represented in the bodies that represent the workers employed at the user undertaking in the same manner as if s/he were directly employed by the employer for the same period.[147] It means that s/he could de jure be represented by both the representative bodies

[145] Закон за агенциите за привремени вработувања, член 14.
[146] See in Закон за агенциите за привремени вработувања, член 3-б, став 3.
[147] Закон за агенциите за привремени вработувања, член 3-ѓ.

(ie trade unions) at the user undertakings or the temporary work agency, but is not de facto represented by either of them. User undertakings, in turn, do not have any specific obligations to inform employee representatives about the number or share of temporary agency workers who are temporarily employed by them.

H. Strikes

Formally and legally, based on the principle of equal treatment, temporary agency workers are entitled to collective employment rights as are the workers directly employed by the user undertaking. As an addendum to the overall exercise of the right to strike, the Law on Temporary Work Agencies prohibits the conclusion of contracts for hiring out workers between the agency and the user undertaking with the purpose of replacing an employee at the user undertaking during a strike.[148] If the agency provides temporary employment to an employee contrary to the prohibition on employment to replace an employee during a strike, it will be held responsible and required to pay a fine in the amount of EUR 3,000.[149]

I. Collective Bargaining Agreements Deviating from Statutory Provisions

The Macedonian labour law system is not an adequate legal framework for enabling the practical implementation of social dialogue and collective bargaining in the field of temporary agency work. This is attributable to the very nature of this atypical form of employment and the presumption that temporary work agencies (which in the Republic of North Macedonia are organised by a national federation of temporary work agencies with a status of social partner) do not have a proper social partner on the other side, ie on the side of the temporary agency worker.

In the Macedonian labour law system, there is no legal obstacle to trade union association and organisation of temporary agency workers, and there is no such obstacle to the application of the relevant general, special or individual collective agreements for these workers in terms of sector, branch, ie department or employer they are hired out to.

[148] See in Закон за агенциите за привремени вработувања, член 11, став 4, алинеа 1.
[149] See in Закон за агенциите за привремени вработувања, член 18, став 1, точка 5.

12

Atypical Employment Relationships: The Position in Germany

BERND WAAS

I. INTRODUCTION

IN GERMANY, FIXED-TERM and part-time work are regulated in the Fixed-term and Part-time Contracts Act (*Teilzeit- und Befristungsgesetz*, TzBfG).[1] Temporary agency work is regulated in the Act on Temporary Agency Work (*Arbeitnehmerüberlassungsgesetz*, AÜG). The case law of the courts is highly relevant, however.

II. FIXED-TERM WORK

A. Legal Definitions/Formal Requirements

Section 3(1) TzBfG contains a legal definition of fixed-term employment.[2] According to section 3(1) sentence 1 TzBfG, a person works under a fixed-term contract if the duration of the contract is limited. According to section 3(1) sentence 2 TzBfG, the duration of the contract is limited if either the term is fixed according to the calendar (employment contract with a term fixed according to the calendar)[3] or the term is dependent on the nature, purpose, or quality of the work to be provided (employment contract with a term limited by purpose).[4] In addition to that, section 21 TzBfG states that an employment contract can be concluded under a condition subsequent

[1] The Act was recently amended by the so-called Bridge Part-Time Introductory Act (*Brückenteilzeit-Einführungsgesetz)* of 11 December 2018, Federal Gazette I, p. 2384.
[2] Cf also B Waas, in R Blanpain/H Nakakubo/T Araki (eds), *Regulation of Fixed-Term Employment Contracts* (Alphen aan den Rijn, Kluwer Law, 2010) p 23 et seq.
[3] So-called *Zeitbefristung*.
[4] So-called *Zweckbefristung*. Seasonal workers, for instance, fall into the former category; see Federal Labour Court (*Bundesarbeitsgericht*) judgment of 2 October 1967—3 AZR 467/66.