

APPLICATION OF DIFFERENT TYPES OF EMPLOYMENT CONTRACTS IN LITHUANIA – RELATED THEORETICAL AND PRACTICAL PROBLEMS

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Abstract. *The article discusses theoretical and practical issues one may face when applying various types of employment contracts, refers to specific legal relations governed by Labour Code standards, and raises issues that would help to solve the existing troubles.*

Last decades as globalization processes were gaining pace, and market economy conditions changed, labour and production organization models were undergoing transformation. The more complex people's social relationships are, the greater is the need to regulate these relationships, i. e. to adopt legislation that would create pre-conditions for addressing social interest conflicts¹. Thus a need has arisen for a new legal regulation because new activity models do not fit into traditional relationships governed by labour law. Along standard employment relationship, non-standard relationships occur in the market. In 2003 the Ministry of Social Security and Labour of the Republic of Lithuania issued recommendations for employers on flexible work organisation forms and indicated reasons for the organisation of flexible work forms: the nature of work and employee's demographic and social characteristics; fulfilment

1 Dambrauskienė, G. Konstitucinės teisės į darbą garantijos ir Lietuvos Respublikos naujasis Darbo kodeksas [Constitutional right to work and new Labour code]. *Jurisprudencija*. 2002, 30(22): 82.

of family duties; health condition; unfavourable work environment; employee's age; studying and studies².

Keywords: types of employment contracts, employment contract types, employer, employee, non-standard labour relations, social security.

Introduction

When speaking about the labor law, we normally emphasize the key Article 48 of the Constitution of the Republic of Lithuania that establishes the human right to work, and employment contracts are the fundamental form of realization of this right. By the way, it should be pointed out that both lawyers and general public could see how types of employment contracts changed along with the changes in the labor market.

Article 108 of the Labour Code of the Republic of Lithuania (hereinafter referred to as 'LC') emphasizes that employment contracts may be of indefinite duration, fixed-term, short-term (before amendments of Labour Code – temporary), seasonal, on secondary job, teleworking, servanthood (on the supply of services), other³. We already seem to have been accustomed to a sufficient number of contracts, however, such contracts as contract with homeworkers (now – distance employment contracts) and servanthood contracts were a novelty to us. It should be noted that in order to apply these (i.e. non-standard) labour contracts in practice, the Republic of Lithuania Government adopted a separate resolution⁴. Such need is quite obvious as we increasingly highlight the flexible forms of work organization.

Thus, with emergence of various non-standard labour contracts uncertainties emerge concerning the practical application of appropriate standards. The existing legal regulation does not provide any concrete answers.

En passant, there are no law cases, which could be at least partially helpful when qualifying the existing problems related to the application of the rules and regulations of such contracts.

In our opinion, the goal of this article is revealing the concept of labour contracts and their application objects, purpose and practical problems, which may at least partially serve to improve the application of these standards.

2 Lietuvos Respublikos socialinės apsaugos ir darbo ministro 2003 m. spalio 17 d. įsakymas Nr. A1-160 „Dėl rekomendacijų darbdaviams ir darbuotojams jų susitarimu taikyti lanksčias darbo organizavimo formas patvirtinimo“ [Order of Ministry of Social Security and Labour on Recommendations for organisation of flexible work forms]. *Official Gazette*. 2003, No. 101-4573.

3 Lietuvos Respublikos darbo kodeksas [The Republic of Lithuania Labour Code]. Vilnius: Teisingumo ministerija VĮ Registrų centras, 2010.

4 Lietuvos Respublikos Vyriausybės 2003 m. rugpjūčio 19 d. nutarimas Nr. 1043 „Dėl atskirų darbo sutarčių ypatumų patvirtinimo“ [Government resolution on approval of individual characteristics of labour contracts]. *Official Gazette*. 2003, No. 81(1)-3690.

By means of comparative analysis (i.e. comparing different types of employment contracts) and through the opinions of other authors, we shall attempt to find the existing gaps and make recommendations on what measures are required to improve application of these standards.

The lawyer Jarulaitis M. defines the non-standard labour as labour similar to the standard labour relations; this may be a part-time job, permanent job, etc.⁵ As we can see, the word ‘non-standard’ may mean departure from the formal terms and conditions of labour contract as well as actual non-standard working conditions. According to Jarulaitis M., non-standard labour may include both employees with non-standard contracts and those with no labour contracts.

On the other hand, persons with standard contracts, who actually work in not at all standard mode may be assigned to the non-standard labour group as well. Therefore, one should pay attention to the flexible labour type, i.e. the situation when the employee is not limited to the traditional forty weekly work hours established by LC Article 144. Job stability is one of the essential conditions of the labour contract (LC Article 95), though today we can see that not all workers are employed by their own organizations only. Instead, they may carry out their work at home, in other firms and, finally, on the road. Deviations from the statutory social obligations between the employer and employee are also possible. It should also be noted that in this aspect the RL Labour and Social Security Minister Order No. A1-160 ‘On approval of recommendations for employers and employees to apply flexible work organization forms by agreement’ adopted in 2003 is important to us, because it specifies the reasons determining application of the flexible forms of work organization, such as:

- the nature of work and employee’s demographic and social characteristics;
- implementation of family responsibilities;
- health condition;
- unfavorable work environment;
- employee’s age;
- learning and studies.⁶

It is understandable that flexible forms of work organization are to help individuals to realistically implement their right to work as well as increase their employment opportunities, favourably adapt work and family responsibilities, time for education, labour and leisure. For employers, flexible work organization means reducing labour costs, adapting to structural changes and coordinating their own interests and those of their employees.

An open-ended contract no longer ensures a guarantee of job security – various crises show that even the ‘secure’ permanent contract can be threatened, due in particular

5 Jarulaitis, M. Nestandartiniai darbo santykiai ir jų reglamentavimas [Non-standard labour relations and their regulation]. *Jurisprudencija*. 2008, 8(110): 83.

6 Lietuvos Respublikos socialinės apsaugos ir darbo ministro 2003 m. spalio 17 d. įsakymas Nr. A1-160 „Dėl rekomendacijų darbdaviams ir darbuotojams jų susitarimu taikyti lanksčias darbo organizavimo formas patvirtinimo“ [Order of Ministry of Social Security and Labour on Recommendations for organisation of flexible work forms]. *Official Gazette*. 2003, No. 101-4573.

to the processes of globalisation and the ‘financialisation’ of the economy, leading to considerable company restructuring help to improve provisions of the Labour Code giving recommendations for the changes to be made⁷.

As mentioned, employment contracts with people working outside employer’s business place (teleworking) and contracts for service work (servanthood) are new to us. The Government of the Republic of Lithuania has adopted a separate resolution⁸ for the application of these non-standard employment contracts into practice.

To reach the selected aim we shall analyse and discuss existing legal regulation of different types of employment contracts and their practical application suggesting possible problem solutions.

Current topic was selected because types of employment contract are important tools for Lithuanian employment policy and implementing of flexicurity.

1. Fixed-Term Contract

Changes of work organisation during globalisation process issued the rise of various types of employment changing the traditional rules of labour law. On EU level Directive established general legal backgrounds⁹ for concluding fixed-term contracts as should have been source for Lithuanian legislation.

There are two stages of legislation in Lithuania concerning fixed-term employment contracts: 1) from 1991 to 2003 under Law on Employment Contract¹⁰, and 2) from 2003 to present under the Labour code.

Until year 2003 Law on Employment Contract Article 9 provided that an employment contract may be concluded for an either an indefinite or a fixed period of time, but the duration may not exceed five years unless laws provide otherwise. It was prohibited to conclude a contract for a fixed period of time, if the employment was of a permanent nature, except in cases where such contract is concluded at the employee’s request or when it is provided for in other laws. So there was option to conclude a contract for a fixed period at the employee’s request. The court practice shows that there were a lot of cases when employers were forcing employees to conclude fixed-term contracts time by time. These complaints were the background to change regulation of fixed-term work.

Since 2003 the essential conditions for conclusion of a fixed-term employment contract were introduced: 1) the term of an employment contract and 2) the sufficient circumstances allowing to conclude it. According to Lithuanian Supreme Court there is a breach of employee’s rights when fixed-term contract is concluded without sufficient

7 *Flexible forms of work: ‘very atypical’ contractual arrangements*. Eurofound study 2010.

8 Lietuvos Respublikos Vyriausybės 2003 m. rugpjūčio 19 d. nutarimas Nr. 1043 „Dėl atskirų darbo sutarčių ypatumų patvirtinimo“ [Government resolution on approval of individual characteristics of labour contracts]. *Official Gazette*. 2003, No. 81(1)-3690.

9 Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP. OJ L 175, 1999, p. 43–48.

10 Law on Employment Contract. *Parliamentary record*. 1991, No. 36-973.

background provided by the Law¹¹. Traditionally the fixed-term employment contracts were treated as worsening employees' rights in Lithuania therefore it was decided to regulate it by laws or collective agreements. The Court practice is maintaining the same opinion and explaining that the restriction to conclude fix-term contract just on will of the parties is based on security of employee in order to prevail from abuse of employee's rights¹².

There are some additional guarantees implemented for employees working under fixed-term employment contract. The employer must inform the employees about vacancies and ensure that they have the same opportunity to secure permanent employment as other employees. In respect of employment conditions or in-service training and promotion opportunities, employees working under fixed-term employment contracts may not be treated in a less favourable manner than employees working under employment contracts of indefinite duration. If the term of an employment contract has expired, whereas employment relationships are actually continued and neither of the parties has, prior to the expiry of the term, requested to terminate the contract, it shall be considered extended for an indefinite period of time. If an employment contract, upon the expiry of its term, is not extended or is terminated, but within one month from the day of its termination another fixed-term employment contract is concluded with the dismissed employee for the same work, then, at the request of the employee, such a contract shall be recognised as concluded for an indefinite period of time.

Starting from the 1st of August 2010 there were few “anti-crisis” changes in Labour Laws¹³. Comparing to previously adopted regulations it is now possible to conclude a fixed-term employment contract if work is of a permanent nature and an employee is employed to a new position which was created since the 1st of August. So, the Labour Code amendments opened way for fixed-term employment contracts at newly established positions without sufficient background. However, companies that wish to use this possibility must also comply with the requirement that the number of such fixed-term employment contracts cannot exceed 50% of all positions in the company. Fixed-term employment contracts cannot be made with former employees dismissed by mutual termination agreement or on the employer's initiative without employee's fault. Fixed-term employment contracts for newly established positions are of temporary nature and may be up to a maximum of two years ending no later than 31st July 2012. Of course, such amendments add to Lithuanian labour law some flexibility in the field of fixed-term contracts, but it is of temporary nature.

We should also mention that part-time work is allowed under mutual agreement, or for certain categories of the employees at their request: employees due to their health

11 Lietuvos aukščiausiojo teismo Civilinių bylų skyriaus 2003 m. sausio 16 d. nutartis *V.K. v. AB „Vilma“*, c.b. Nr. 3K-7-4/2003 [Case of the Supreme Court of Lithuania No. 3K-7-4/2003].

12 Lietuvos aukščiausiojo teismo Civilinių bylų skyriaus 2006 m. sausio 30 d. nutartis *J.B. v. Panevėžio moksleivių rūmai*, c.b. Nr. 3K-3-74/2006 [Case of the Supreme Court of Lithuania No. 3K-3-74/2006].

13 Lietuvos Respublikos darbo kodekso 76, 77, 80, 107, 108, 109, 115, 127, 147, 149, 150, 151, 202, 293, 294 straipsnių pakeitimo ir papildymo bei kodekso papildymo 123(1) straipsniu įstatymas įstatymas [Law on amendment of Labour code]. *Official Gazette*. 2010, No. 81-4221.

status (official attestation required), pregnant women, women, who have recently given birth, women who are breast-feeding, employees raising a child under three years of age, employees alone raising a child under fourteen or disabled child under 18 years of age, employees under 18 years of age, disabled employees or, employees tending a sick family member. The part-time work situation should be defined in the employment contract when it is concluded or as an amendment to the contract. Part-time work is paid for pro-rata to the actual working time. Part-time workers are entitled to the same employment conditions and benefits as full-time employees.

In conclusion, basic principle as prohibition to conclude a contract for a fixed period of time, if the employment is of a permanent nature (with exception to temporary “anti-crisis” changes in Labour Law), should be treated as implementing *flexicurity* idea.

2. Seasonal Employment Contract and Short-Term Employment Contract

There are other two types of employment contract related with fixed-term: *seasonal employment contract and short-term (before amendments –temporary) employment contract* provided in Labour code.

A seasonal employment contract shall be concluded for the performance of seasonal work. Seasonal work shall be such work, which due to natural and climatic conditions is performed not all year round, but in certain periods (seasons) not exceeding eight months (in a period of twelve successive months). A list of exact cases when the seasonal work is allowed is approved by the Government¹⁴. This was needed in soviet time because there should have been a clear justification for the periods (months) of unemployment for employees because the remuneration for that period was not paid. Nowadays this kind of flexibility is still needed in certain sectors of industry such as road building etc.

Short-term employment contracts are concluded when necessary for urgent or short-term works, or for the substitution of temporarily absent employees (due to illness, vacations etc.). These contracts may also be concluded with students, during their vacations. The length of this contract must be a maximum of two months. Employees working under short-term employment contracts may be subject to the summary accounting of the working time, but will not be subject to a trial period nor granted vacations. They do receive severance pay, if the temporary contract is terminated. If the valid term of a short-term employment contract has expired but the employment relationship actually continues and neither party has requested to terminate prior to expiration of the term, the contract will be deemed extended for an indefinite term.

The list of grounds for the conclusion of a short-term and seasonal employment contracts (circumstances under which these employment contracts may be concluded),

14 Lietuvos Respublikos Vyriausybės 1994 m. kovo 7 d. nutarimas Nr. 154 „Dėl sezoninio darbo“ [The Republic of Lithuania Government resolution No. 154 ‘On seasonal work’]. *Official Gazette*. 1994, No. 19-313.

the characteristics of the conclusion, change and termination of a seasonal and a short-term employment contract, as well as of working time, rest time and pay for work are established by the Government pursuant to Labour Code¹⁵.

Despite special regulation these two types of employment contracts (*seasonal employment contract and short-term employment contract*) do not solve important legislation problems or create particular flexibility. Rules, applied for fixed-term contract, are enough for flexibility regarding arrangements related flexible working time.

3. Secondary Job

It is possible for an employee to do a second job at another workplace. An employee wishing to take on another job must, prior to the conclusion of the second employment contract, provide the new employer (of the second job) a certificate received from the principal employer specifying the time when the daily work starts and ends in the principal working place. It is also possible for an employee to have two or more employment contracts with the same employer. The aggregate work day cannot exceed 12 hours for individuals employed in more than one undertaking or employed under two or more employment contracts with a single employer.

In Lithuania working time may not exceed 40 hours per week. Labour code provides strict rules regarding overtime: four hours over two consecutive days and 120 hours per year. A different annual limit may be established by collective agreement but may not exceed 180 hours per year. Maximum working time, including overtime, must not exceed 48 hours per 7 days. So, in practise, an employers sometimes is signing two or more employment contracts with the same employee in order to hide overtime. Despite this, another problem arises and there is no answer in legislation regarding how many hours are available to work without overtime if having two employment contracts: 48 or 60 per week. This question must be answered by Labour code.

4. Temporary Work (Agency Work) Employment Contract

There was no such phenomena as temporary agency work in Lithuania during soviet time because there were no private employers. There was no importance of equal treatment at that time because the principal of non discrimination was widely applied and even system of remuneration for work was regulated centrally by state. After 1990-ies agency work was recognised from the ILO Private Employment Agencies

15 Lietuvos Respublikos Vyriausybės 2003 m. rugpjūčio 19 d. nutarimas Nr. 1043 „Dėl atskirų darbo sutarčių ypatumų patvirtinimo“ [Government resolution on approval of individual characteristics of labor contracts]. *Official Gazette*. 2003, No. 81(1)-3690.

Convention¹⁶, EU Directive on the Posting of Workers¹⁷, Directive 2008/104/EC¹⁸ on temporary agency work etc.

There was no legislation governing temporary agency work until 2011 in Lithuania. This form of work had not been neither forbidden nor allowed. There were no restrictions, no licensing, no limitations of the use of temporary agency work¹⁹. Due to this, opinions have been voiced in public debates that temporary agency employment in Lithuania is illegal. Nevertheless the *temporary work agencies* appeared in Lithuania in 2003. Employees who worked in temporary agencies were applied the same regulatory framework as any other employee working under employment contracts.

Drafting of law to regulate temporary agency work was started in 2004. During discussions social partners had been failing to reach an agreement as to the strictness of regulations imposed by the law: employers seek more liberal regulation of temporary agency work, while trade unions prefer stricter regulation thereof²⁰. During discussions on the law on temporary agency work it was stressed that if an inadequate means of safety will be applied the idea of agency work will be rejected by the industry. We are sure that there should be reasonable balance of rights and obligations created aiming to encourage people and industry to choose this flexible form of employment and create normal competition in the labour market. If inadequate or improper means are adopted businesses would choose alternatives of service provision or other contractual relations (possibly even undeclared work). Unfortunately the Lithuanian Law on Temporary Agency Employment lays few inadequate requirements such as remuneration for temporary agency workers during idle periods between employment; responsibility for the damage caused etc.

The Law on Temporary Agency Employment has entered into force on 1 December, 2011²¹. In general terms the adoption of the law shall ensure more transparent and better business conditions; businesses will be able to use labour force more flexibly and at the same time to ensure the competitiveness of the Lithuanian economy. In addition, this should ensure safety to temporary workers themselves who sometimes used to look at this form of employment with distrust.

According to the new Law ‘Temporary work contract’ means the contract of employment between a temporary employment agency and temporary worker, under which the temporary worker undertakes to perform the functions stipulated in the

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- 16 ILO Convention concerning Private Employment Agencies No. 181 [interactive]. [accessed 11-02-2012]. <<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C181>>.
- 17 Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services. Official Journal L 018, 1997. P. 0001-0006.
- 18 Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work. Official Journal L 327. 2008. p. 9–14.
- 19 Bagdanskis, T.; Usonis, J. Darbo nuoma ir jos teisinio reguliavimo perspektyvos Lietuvoje [Perspectives of regulation of Temporary Agency work in Lithuania]. *Jurisprudencija*. 2008, 8(110): 65–72.
- 20 Blažienė, I., Lithuania: Temporary agency work and collective bargaining in the EU. Institute of the Labour and Social Research [interactive]. [accessed 11-02-2012]. <<http://www.eurofound.europa.eu/eiro/studies/tm0807019s/lt0807019q.htm>>.
- 21 Lietuvos Respublikos įdarbinimo per laikinojo įdarbinimo įmones įstatymas [Law on Temporary Agency Employment]. *Official Gazette*. 2011, No. 69-3287.

contract of employment for the user undertaking specified by the temporary employment agency, in accordance with the rules of procedure set by the user undertaking, and temporary employment agency undertakes to pay the worker the agreed pay and to fulfil other obligations under the Labour Code, this Law, other regulations, and collective and temporary work contract of employment.

It is important to mention that the Law provides that apart from the necessary conditions of contract of employment laid down by the Labour Code, a contract of temporary employment must provide for the following necessary conditions of contract of employment:

- 1) the procedure of call and assignment of temporary worker to work for the user undertaking and withdrawal from the work for the user undertaking;
- 2) the procedure of notification about the start and end of work for the user undertaking;
- 3) the amount of pay and procedure of payment for the time periods between assignments to work for the user undertaking. The pay of a temporary worker during the time of work for the user undertaking must be such as it would be if the temporary worker was hired directly by the user undertaking, except for the cases when temporary workers having signed contracts of employment of indefinite time period receive equal pay between the assignments and during the assignments;
- 4) work time regimen of a temporary worker.

The basic working and employment conditions of temporary agency workers must be, for the duration of their assignment at a user undertaking, at least those that would apply if they had been recruited directly by that undertaking to occupy the same job. One of the key targets of the Law and the Directive is the application of equal pay principle. The Parties seeking to implement the provisions of the Law will have to work together to assess the conditions of payment conditions, size and possibilities of its changing for permanent employees of user undertaking and temporary workers, as the pay of a temporary worker during the time of work for the user undertaking must be such as it would be if the temporary worker was hired directly by the user undertaking, except for the cases when temporary workers having signed contracts of employment of indefinite time period receive equal pay between the assignments and during the assignments. In order to avoid violation of the Law, the parties should define their responsibilities in the contract (sharing information, information type, provided guarantees) to ensure the application of the principle of non-discrimination. Part 1 of Article 6 of the Law is an imperative provision that the relations of employment agency and user undertaking are based on a written contract of temporary employment between them. This contract must stipulate the qualification of a temporary worker(s), work functions, work regimen, and the procedure of training, assignment and withdrawal from work for the user undertaking of temporary worker(s). It is noteworthy that the *employment contract with the temporary worker* must provide for the following necessary conditions: 1) the procedure of call and assignment of temporary worker to work for the user undertaking and withdrawal from the work for the user undertaking; 2) the procedure of notification about the start and

end of work for the user undertaking; 3) the amount of pay and procedure of payment for the time periods between assignments to work for the user undertaking. The pay of a temporary worker during the time of work for the user undertaking must be such as it would be if the temporary worker was hired directly by the user undertaking, except for the cases when temporary workers having signed contracts of employment of indefinite time period receive equal pay between the assignments and during the assignments; 4) work time regimen of a temporary worker. Prior to starting work, the user undertaking must familiarize the temporary worker against a signature with working conditions, collective agreement, rules of procedure, and other legal acts regulating his work for user undertaking, as well as applicable requirements of occupational safety and health regulations.

With new legislation regarding temporary work (agency work) contract very important problem is solved. Labour code stipulates that if an employment contract, upon the expiry of its term, is not extended or is terminated, but within one month from the day of its termination another fixed-term employment contract is concluded with the dismissed employee for the same work, then, at the request of the employee, such a contract shall be recognised as concluded for an indefinite period of time, unless this is provided for by laws or collective agreements. The Law on Temporary Agency Employment provides that contract of temporary employment may be for fixed and indefinite time period.

5. Servanthood Contract

According to the abovementioned Government resolution, servanthood contract is a contract whereby the employee undertakes to provide household services to persons, and employer is a natural person, whose legal capacity shall be governed by the Republic of Lithuania Civil Code and who is to pay the employee's wages, provide safe and healthy working conditions, and fulfill other contractual obligations²². Of course, the employer may only be a natural person because of the personal nature of services provided under such contract. Thus, no legal entities are allowed to hire employees to render such services. It is the key distinguishing feature of this type of contract. The specifics of work performed is important as well. The resolution also provides definition of the personal household services. Those are services of car drivers, guards, housework and other helpers, such as laundrypersons, cooks and house maids performing various tasks in private households; children's and care workers and nannies, such as maids, nurses, gardeners (gardening services); computer system specialists (services rendered in the employer's private household or at employee's own place); and other personal household services provided to the employer. Also, we would like to note that the list of services mentioned in the resolution is not exhaustive since the range of private

22 Lietuvos Respublikos Vyriausybės 2003 m. rugpjūčio 19 d. nutarimas Nr. 1043 „Dėl atskirų darbo sutarčių ypatumų patvirtinimo“ [Government resolution on approval of individual characteristics of labor contracts]. *Official Gazette*. 2003, No. 81(1)-3690.

household services is fairly wide and it is impossible to name all of them. In addition, the mentioned Government resolution contains exceptions, which single the servanthood contract out from other contracts and agreements: although such employees are to be hired for job in accordance with the general procedure, neither issuing of employment certificate nor registration of employment contract shall be obligatory to the employer. Regardless of the fact that the beginning and end of the working time are to be indicated in each labour contract in accordance with the company's rules, the working day under the servanthood contract may be interrupted. On the other hand, the servanthood contract may contain an employer-employee agreement concerning further conditions, e.g. trips, accommodation, provision of special clothing or even feeding (particularly in relation to the services of a nanny, nurse or maid). Theoretically, it would seem that everything is indeed set and fixed. Unfortunately, quite different tendencies emerge in practice. First, in Lithuania servanthood contracts are rarely concluded. Thus, it is understandable that an emphasis should be placed on the problem of illegal labour or regulatory issue itself.

In Lithuania, the main aspect is finding such workers via acquaintances and interviews. In particular, nannies are often 'passed over' to the family friends and close acquaintances after the employer's own children become older. In such cases it is recommendations, not contracts. Everything is based upon the mutual verbal agreement, i.e. payment and other work-related conditions are discussed verbally. Thus, taxes are out of question if the payment is received in cash.

It should be noted that in the Western countries the private nature of servanthood contract is being taken into consideration (i.e. the fact that such contract is concluded to provide household services) and non-discrimination principle is not applied when concluding servanthood contracts²³. Inapplicability of this principle is also mentioned by the lawyer V. Tiažkijus. This means that the employer has the right not to hire the employee solely because the employee belongs to different race, nationality, sex, religion, or speaks different language²⁴. We believe that it would be illogical to oppose this view as it is intrinsically linked to the very concept of servanthood contract and employer's personality. The employer and employee enter into a very close relationship; therefore, the employer must ensure that the selected employee fully complies with his or her beliefs and attitudes. It is this that often leads to non-observance of the labour law subject non-discrimination principle. Who could hire a nanny and ignore her mother tongue, religious beliefs and other aspects, i.e. things that are particularly important because the person hired must be able to properly nurse and educate the employer's child. Regardless of the fact that all EU countries are bound by the principle of non-discrimination, in our case we clearly can see contradiction between the labour law acknowledged principles underpinning the development of labor relations. However, when concluding the servanthood contract the employer has the right to break the non-discrimination principle and, as has already been mentioned above, this issues from the

23 Kiselev, I. J. *Sravnitelnoe i mezhdunarodnoe trudovoe pravo* [Comparative and international labour law]. Moskva, 1999, p. 105.

24 Tiažkijus, V. *Darbo teisė. Teorija ir praktika. I tomas* [Labour law. Theory and practice. Volume I]. Vilnius: Justitia, 2005, p. 392.

servanthood contract itself, since this type of contract implies mutual understanding, trust and respect. We believe that the parties' scale of values, political and cultural views acquire extra significance under such contract. Trust should be emphasized particularly because the employee carries out his or her work at the employer's house with the property, jewelry and other valuable things in it. Therefore, the employer should feel safe and secure entrusting his or her home to a stranger.

As can be seen from the above, when generalizing the concept of servanthood contract, it could be stated that such contract stands out due to its work specifics. Plus, cases frequently occur in practice, where not only the employer him- or herself but also his or her family members and guests (e.g., butlers and maids) may become direct recipients of employee's services.

The abovementioned Government resolution mentions personal household services of continuing nature, which have no tangible end result. Hence, the servanthood contract subject is a specific labour function. By the way, the question may arise whether relations in which, for example, an employer hires an employee to carry out specific short-term task (to weed out flower bed, clean up apartment, etc.), should be regulated in practice.

Thus, the servanthood contract creates specific legal relations, which, in our opinion, should be regulated separately, taking into account peculiarities of this type of contract, otherwise relations between two persons will receive incorrect legal assessment. So, what kind of regulation is applied nowadays? The LC intended Article 116 by no means discloses the contract peculiarities, though, according to the Government, it was to regulate them. As previously mentioned, in Lithuania servanthood contracts are neither concluded nor registered. If this would happen, the state budget could receive additional taxes paid by both the employer and employee. To provide personal services or pursuit individual activities in Lithuania without establishing a legal entity, one may acquire a business certificate or inform tax authorities about such services or activities. In this case, one should submit to the tax administrator the registration to the Taxpayers' Register application form filled by a permanent resident of Lithuania, who is engaged in individual activities. The fact that an employee, who wishes to work under the servanthood contract, must acquire a business certificate and contact administrator, prevents him or her from doing so, because in this case the employee will have to pay for the certificate as well as pay health and social security contributions. Unfortunately, the people of Lithuania are can not get used to it. They think that all of the above is the employer's prerogative. In their opinion, the solution is to perform various jobs without officially concluding a servanthood contract despite the fact that these actions are illegal. The employee security problem remains in limbo. It is not at all clear how such employee could be, for example, disciplined and whether the employer has the right to immediately terminate employment given the least attempt at violation, or because the employer did not like the employee (or the employee failed to please the employer), etc.

The Russian state and legal theory scientist S.A. Komarov defines guarantees as the totality of methods, terms and conditions, which allows to freely implement legal rules, access individual rights and fulfill legal obligations²⁵.

Another Russian scientist E. A. Kordec views guarantees as a means to ensure citizens' access to their rights and freedoms²⁶.

That said, the lawyer I. Mačernytė-Panomariovienė in her doctoral dissertation "Labour guarantees in the case of employer insolvency" defines guarantees in the following manner: guarantees are a system of appropriate (legal, economic, etc.) conditions, means, methods, techniques, and principles, which grants everyone equal opportunities to exercise their rights and freedoms in various fields of legal relations²⁷.

Thus the conclusions – absence of social security. The person remains overboard, i.e. without their rights and freedoms, which are to be secured by both the state and employer. In this regard we are most interested in social security that generally arises from the legal employment relations and work-related duties. It should be emphasized that after breaching employee's rights the law requires them to restore them, i.e. to remove violations in one way or the other.

Adequate clearance of servanthood contract would allow to secure employees' social security and guarantees, while the employer would be entitled to demand from the employee to properly fulfill his or her duties. On the other hand, in such case we will not be able to state that this is illegal labour and neither the employer nor the employee will be sanctioned for it. This would indeed be beneficial to both parties. Besides, when analyzing provisions of the servanthood contract, the following problem related to the social security system arises: first, employees that did not pay subscriptions will not receive retirement benefits; and second, social security fund contribution losses will increase the risk of social insurance fund deficit (which has been quite evident in recent years).

Analyzing disciplinary or material liability related problems as a part of the servanthood contract is inexpedient because, as we have previously argued, they are illegal, i.e. even though the work is actually performed, no contracts are concluded and, therefore, registered.

Thus, problems of qualifying relationships arise: should the activity of a person who provides household services being neither employed under an employment contract nor holding a business licence or self-employment certificate, be treated as undeclared work or improper fulfilment of tax obligations and failure to inform authorities about the activity pursued? Another question is to be answered: can we say that a person has freedom of choice, i.e. to choose whether he/she will be subject to the regulation

25 Komarov, S. A. *Obschaja teorija gosudarstva i prava. Ucebnik* [General theory of state and law. Textbook]. Moskva: Jurist, 1998, p. 375.

26 Ananjeva, K. J.; Grigorjev, V. A.; Zanin, A. V., et al. *Osnovy gosudarstva i prava. Ucebnoe posobie* [Fundamentals of state and law. Study guide]. Moskva: Russkoje slovo: Maruskript, 1977, p. 122.

27 Mačernytė-Panomariovienė, I. *Garantijos darbuotojams darbdaviui tapus nemokiam*. Daktaro disertacija. Socialiniai mokslai, teisė [Labour guarantees in the case of employer insolvency. Doctoral dissertation. Social Sciences, Law]. Vilnius: LTU, 2002, p. 119.

of labour law or civil law? According to the practice of state institutions, in this case, everything depends on whether a person provides household services to the legal or natural person, i.e.:

- If a person is hired to work for a legal person and an employment contract is not concluded with him/her, their relationship is qualified as undeclared work;
- If a person who does not hold a business licence or self-employment certificate works for a natural person, their relationship is qualified as improper fulfilment of tax obligations pursuant to Code of Administrative Infringements.

The lack of servanthood contract regulation causes concern and problems that may be related to both safety and revenue (mainly because unskilled labor is being performed under the servanthood contracts), threat of poverty, discrimination, exploitation, and so on.

We think that currently persons, working under the servanthood contracts, could be added to the high-risk groups of individuals because they are deprived of adequate protection in both social and economic fields.

Basically, this suggests the following conclusions: first, in practice, the servanthood contract is invalid and amiss as it reduces employees' social security. If this type of contract remains, the number of people not entitled to the state social insurance pension will only increase, because such people do not pay their subscriptions. Second, it will only stimulate the spread of illegal employment in Lithuania. And third, it will contribute to the growth of shadow economy. In this case, we should either eliminate the employment contract for personal service as a special type of employment contract or create a really flexible mechanism for this contract that would be attractive to the labour market.

6. Teleworking Contract

No special statutory and/or collectively agreed definition of *teleworking* existed in Lithuania until 2010. Lithuanian legislation had known a definition of *homeworking*. Homework was defined as 'work done by an individual at home for a wage agreed on with the employer'²⁸. It was stipulated that job implements used by a homemaker should be in conformity with the statutory requirements of safety and health at work. Working time of a homemaker could not exceed 40 hours a week but the flexibility was given to allocate their working hours at their own discretion. Homeworkers were granted possibility to account and record the working hours by themselves (anyway a model working-time accounting sheet was obligatory). Rules of operation of a company were not applied to homeworkers. Homeworkers were the subject to general provisions laid down in the Labour Code.

28 Lietuvos Respublikos Vyriausybės 2003 m. rugpjūčio 19 d. nutarimas Nr. 1043 „Dėl atskirų darbo sutarčių ypatumų patvirtinimo“ [Government resolution on approval of individual characteristics of labor contracts]. *Official Gazette*. 2003, No. 81(1)-3690.

The amendment of Labour Code in August 2010 replaced homeworking introducing a new type of employment contract – telework. Under a telework employment contract an employee may perform working duties in places other than the employer’s office.

Telework coverage is not large but appears to be gradually increasing in Lithuania. The new legal environment is going to encourage the development of telework especially for individuals who use in their work computers and internet²⁹.

In fact, teleworkers in Lithuania may be divided into two groups. The first group are employees – individuals employed under regular employment contracts at the employer’s premises, but who in fact spend part of their work hours working outside office (such work is not formally reflected in any accounts). The second group are formally self-employed individuals, who usually conclude a civil contract (copyright or service agreement) instead of an employment contract. It shall be stressed that employment contracts with teleworkers are not popular in Lithuania due to the lack of organisational flexibility provided. The main problem remains with the distribution of health and safety at work guarantees between the parties of employment relationship. According to Labour code article 260 it is the responsibility of an employer to ensure safety and health at work even if the employee is performing work at home.

Teleworkers (with employment contract) enjoy the same social guarantees as those employed at the employer’s premises. They have the same access to training as workers at the employers’ premises, are protected with regard to health and safety in the same way and have the same collective rights.

Despite new regulation, there are no visible changes in the market due to increasing of such flexible employment form.

Conclusions

1. Last decades as globalization processes were gaining pace, and market economy conditions changed, labour and production organization models were undergoing transformation. Thus a need has arisen for a new legal regulation because new activity models do not fit into traditional relationships governed by labour law. The terms and conditions of employment in Lithuania are generally established by the Labour Code and individual employment contracts.

2. As reaction in order to implement flexible work organisation forms Article 108 of the Labour Code of the Republic of Lithuania emphasizes that employment contracts may be fixed-term, short-term, seasonal, on secondary job, teleworking, servanthood or others as temporary work (agency work) employment contract according to the Law on Temporary Agency Employment.

3. Thus, with emergence of various non-standard employment contracts uncertainties emerge concerning the practical application of appropriate standards. The existing legal regulation does not achieve the aim, because of not flexible or unnecessary rules.

29 Blažienė, I. Telework in Lithuania. Institute of Labour and Social Research [interactive]. [accessed 11-02-2012]. <<http://www.eurofound.europa.eu/eiro/2007/12/articles/lt0712019i.htm>>.

4. Basic principle as prohibition to conclude a contract for a fixed period of time, if the employment is of a permanent nature (with exception to temporary “anti-crisis” changes in Labour Law), should be treated as implementing *flexicurity* idea.

5. Despite special regulation these two types of employment contracts (*seasonal employment contract and short-term employment contract*) do not solve important legislation problems or create particular flexibility. Rules, applied for fixed-term contract, are enough for flexibility regarding arrangements related flexible working time.

6. Using Secondary job employers sometimes are signing two or more employment contracts with the same employee in order to hide overtime. Despite this, another problem arises and there is no answer in legislation regarding how many hours are available to work without overtime if having two employment contracts: 48 or 60 per week. This question must be answered by Labour code.

7. With new legislation regarding temporary work (agency work) contract very important problems are solved. In example, the Law on Temporary Agency Employment provides that contract of temporary employment may be for fixed and indefinite time period.

8. There are two options regarding servanthood contract: overall elimination of servanthood contract from the Lithuanian Labour Code or more specific and detailed regulation of the contract and its application, including recruitment, dismissal, disciplinary and material liability, searching and elimination of gaps for further spread and toleration of illegal work.

9. Telework coverage is not large in Lithuania. The new legal environment is going to encourage the development of telework, especially for individuals who use in their work information technologies.

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ATSKIRŲ DARBO SUTARČIŲ TAIKYMAS LIETUVOJE – TEORINĖS IR PRAKTINĖS PROBLEMOS

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Santrauka. Lietuvos Respublikos Konstitucijos 48 straipsnis įtvirtina žmogaus teisę į darbą, o darbo sutartis ir yra pagrindinė teisės į darbą realizavimo forma. Sparti technologijų kaita, įmonių gebėjimas prisitaikyti prie sparčiai besikeičiančios aplinkos, darbuotojų poreikis derinti darbinę veiklą su asmenine veikla lemia lanksčių darbo formų taikymo poreikį. Keičiantis darbo rinkai keitėsi ir darbo sutarčių rūšys. 2003 m. išgaliojus Lietuvos Respublikos darbo kodeksui, jis įtvirtino, kad darbo sutartys gali būti neterminuotos, terminuotos, laikinosios, sezoninės, dėl papildomo darbo, dėl antraeilių pareigų, su namudininkais, patarnavimo darbams ir kitos. Darbo sutartys su namudininkais bei patarnavimo darbams mums tada buvo naujovė. Praėjus beveik dešimtmečiui, dabartiniai darbo įstatymai įtvirtina daugelį naujų darbo sutarčių rūšių: laikinoji sutartis pakeista į trumpalaikę, namudinio darbo sutartis pakeista į nuotolinio darbo, panaikinta papildomo darbo sutartis kaip atskira darbo sutarties rūšis, priėmus įdarbinimo per laikino įdarbinimo įmones įstatymą įteisinta nauja darbo sutarties rūšis – laikinojo darbo sutartis. Taigi atsiradus įvairioms nestandartinėms darbo sutarčių rūšims, kyla neaiškumų, kaip praktiškai reikėtų taikyti naujas normas, nes esamas teisinis reguliavimas konkretesnio atsakymo mums nepateikia. Minėti klausimai ir aptariami šiame straipsnyje, didesnę dėmesį skiriant darbo sutarčiai patarnavimo darbams, kurios analizės mokslo darbuose nėra, bei laikinojo darbo sutarčiai, kuri įtvirtinta visai neseniai. Temos aktualumą lemia tai, kad lanksčioms darbo formoms, kurios pasižymi didele įvairove, skiriamas vis didesnis dėmesys, o tai susiję su specialiųjų darbo sutarčių sudarymu. Lankstaus darbo organizavimo formos darbuotojams suteikia galimybę derinti profesinius, šeimos išpareigojimus, tenkinti individualius poreikius. Darbdaviams – mažinti darbo sąnaudas ir didinti darbo našumą, lanksčiau prisitaikyti prie vartotojų poreikių ir rinkos pokyčių. Pažymėtina, kad tiek teorijoje, tiek praktikoje kyla klausimų dėl tam tikrų darbo sutarčių rūšių, pavyzdžiui, sezoninių darbo sutarčių, reglamentavimo tikslingumo.

Reikšminiai žodžiai: darbo sutartis, darbo sutartis patarnavimo darbams, terminuota darbo sutartis, laikinojo darbo sutartis, nuotolinio darbo sutartis, trumpalaikė darbo sutartis, darbo sutartis dėl antraeilių pareigų, darbo sutarčių rūšys, lanksti darbo forma, lankstumo ir saugumo principas.

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