

Self-employment in the legal systems of the Baltic states

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1. Legal regulations concerning self-employment in the law of the Republic of Lithuania

1.1. Introductory remarks

According to the data of the Lithuanian statistical office, the number of self-employed persons in the country in 2018 amounted to 150,000. While the analysed group expanded to 152 550 in 2019, the following year saw a certain, albeit minor downward trend, with the number of the self-employed falling to 150 500.¹ Based on the data of the OECD and the applied definition of self-employment, the number of self-employed workers amounted to 11.8% of all working persons.² It is noted that the reasons for the popularity of this form of providing work in Lithuania are chiefly: financial facilities that began to be applied to persons who start their business activity as well as new forms of providing work, i.e. work via digital platforms. In practice, it is common for self-employed persons to combine this form of work with work under an employment relationship. Those who derive their income exclusively from self-employed activity make up for between 8.8% and 9% of all self-employed.³

When analysing the circumstances of choosing self-employed activity in a study conducted in Lithuania in 2017,⁴ 57% of the respondents said it had been their own

1 Department of Statistics of the Republic of Lithuania, <https://osp.stat.gov.lt/lt/statistiniu-rodikliu-analize?hash=61d4d5df-b701-4ace-95c9-a90637b733c4#> (accessed: 17.07.2024).

2 *Self-employment rate (indicator)*, OECD, 2021, <https://doi.org/10.1787/fb58715e-en>

3 Department of Statistics of the Republic of Lithuania...

4 *Exploring self-employment in the European Union*, Eurofound, Publications Office of the European Union, Luxembourg 2017, <https://www.european-microfinance.org/sites/default/>

decision, 23% pointed to economic pressure, and 19% answered it had been a combination of those two reasons.⁵ Interestingly, as many as 89% of the respondents stated they were satisfied with being their “own employers”,⁶ which is equal to the EU average, although as many as 58% of the study participants viewed running their own business as involving a high liability risk (a percentage well above the EU average of 26%).⁷ Asked about the level of difficulty in terms of financial burdens and losses in the face of a prolonged illness, 48% of the respondents estimated their situation as difficult (which corresponds to the EU average).⁸

1.2. Definitions of self-employment

The status of the self-employed in Lithuania is to some extent regulated by insurance provisions: Sickness and maternity law; Social Insurance Act; Health insurance law⁹ Under Article 2(9) of the Social Insurance Act,¹⁰ the concept of persons who carry out self-employed business activity (“savarankiškai dirbantys asmenys”¹¹) covers owners of individual (sole trader) enterprises, members in small partnerships, shareholders (in Lithuanian literally “full members”) of companies and limited partnerships, as well as persons who run individual business activity within the meaning of the Income Tax Act (attorneys-at-law, attorney-at-law assistants, notaries, bailiffs, persons licensed to carry out business activity, and others), persons who carry out individual agricultural business activity, as well as persons who earn their income under a copyright contract or based on their sporting activity or activity carried out by performers (with the exception of persons who work under an employment contract).¹² Individual concepts concerning the self-employed are additionally specified under the Income Tax Act.¹³ According to its provisions, individual activity is

files/document/file/exploring-self-employment-in-the-european-union.pdf (accessed 19.07.2021).

5 *Ibidem*, p. 11.

6 *Ibidem*.

7 *Ibidem*, p. 12.

8 *Ibidem*, p. 13.

9 Lietuvos Respublikos ligos ir motinystės socialinio draudimo įstatymas, “Valstybės žinios”, 19.12.2000, no. 111–3574. New edition from 1.01.2017: no. XII-2501, 28.06.2016, published TAR 15.07.2016. Lietuvos Respublikos valstybinio socialinio draudimo įstatymas, “Lietuvos aidas”, 31.05.1991, no. 107–0. New edition from 1.01.2017: no. XII-2508, 29.06.2016, published TAR 15.07.2016. Lietuvos Respublikos sveikatos draudimo įstatymas, “Valstybės žinios”, 12.06.1996, no. 55–1287.

10 Lietuvos Respublikos valstybinio socialinio draudimo įstatymas, “Lietuvos aidas”, 31.05.1991, no. 107–0. New edition from 1.01.2017: no. XII-2508, 29.06.2016, published TAR 15.07.2016.

11 This expression is translated as “self-employed person”.

12 Article 9 of the Act. Lietuvos Respublikos gyventojų pajamų mokesčio įstatymas, “Valstybės žinios”, 19.07.2002, no. 73–3085.

13 Article 2(7), (8) and (9) of the Act.

construed as “independent activity”¹⁴ aimed at generating income or other economic benefits over a continuous (uninterrupted) period. This includes any independent trade or production activity, with the exception of trading in real estate and transactions involving financial instruments. In addition, it includes independent creative, scientific, and professional activities and other independent activities of a similar nature, as well as independent sporting activities and independent activities of performers. Subsequent provisions of the article in question add clarifications regarding sporting activities and the activity of performers. The latter is defined as the activity of a performer, i.e. an actor, singer, conductor, musician, or dancer, including other similar activities involving preparation for and participation in public performances. However, the term “performer” does not include persons who take part in the process of preparing and creating a work, but do not participate in its public performance.

As for the definition of self-employed activity, another thing worth noting is the Employment Act (employment law).¹⁵ It should be added that before the law was passed, self-employed persons were mentioned in the Support for the Unemployed Act¹⁶ in the context of encouraging them to set up one-person businesses. The law was replaced with the Employment of Residents Act, although in fact, it was not clear how a self-employed person should be perceived – due to the lack of clarifying criteria – until 2009, when the Employment Support Act came into force.¹⁷ This regulation defines: the main forms of employment, the system of employment support for jobseekers, the purpose and tasks of entities that implement employment support policies, the organization and financing of labour market services and employment support measures, as well as responsibility for illegal work, undeclared work, and undeclared self-employment (Article 1(1) of the Act). The law introduces the concept of “employment”, which means a paid or unpaid independent, semi-independent or dependent activity of an individual through which they obtain a livelihood, as well as an activity that a person undertakes in order to acquire work or professional skills or to perform other continual activities subject to the rules laid down in legal provisions. In turn, an “employed person” (“užimtas asmuo”) is understood to mean a person involved in at least one of the following forms of employment: provides work on the basis of an employment contract or on the basis of a legal relationship

14 Literal translation from Lithuanian. The concept appears to be identical or closest to the concept of independent activity and activity as a self-employed person.

15 See Lietuvos Respublikos užimtumo įstatymas, 21.06.2016, TAR, 5.07.2016, no. 18825, no. XII-2470, <https://e-seimas.lrs.lt/portal/legalact/lt/TAD/b9ca8ad03de611e68f278e2f1841c088?Positioninsearchresults=30&searchmodeluud=c41da021-d897-416e-9712-16b8d7d9154e> (accessed 19.07.2021).

16 Lietuvos Respublikos bedarbių rėmimo įstatymas, “Lietuvos aidas”, 29.12.1990, no. 153–0.

17 Lietuvos Respublikos užimtumo rėmimo įstatymas, “Valstybės žinios”, 30.06.2006, no. 73–2762, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.279173?jfwid=-1cefbq4aru> (accessed: 19.10.2023). Under its Article 32, subsidies were provided for the self-employed, including start-ups.

equivalent to an employment relationship; performs self-employed activity (self-employed); or has performed unpaid contract work. Self-employment is one of the forms of employment within the meaning of the Act to which its provisions apply.¹⁸ Meanwhile, under Article 4 of the Act, a “working person” (“asmuo yra laikomas dirbančiu”) is understood to be a person who is employed under the provisions of the Lithuanian Labour Code or has a status equivalent to employment under an employment relationship.¹⁹ Furthermore, the above provision lists the categories of persons treated equally to those working under an employment relationship. However, self-employed persons are not included on the list.²⁰ Thus, there are certain negative characteristics of the self-employed which exclude the legal qualification of those providing work as self-employed.

Subsequent provisions of the Employment Support Act offer also a definition of the self-employed person. Pursuant to Article 5, an independent self-employed worker (“savarankiškai dirbantis asmuo” in Lithuanian) is defined as a natural person carrying out an activity which, by its nature and content, is not an employment relationship or a legal relationship equivalent to an employment relationship, i.e. characterized by the subordination of the person performing the work to the person for whom the work is performed, but which is characterized by continuity or repetition and by the possibility of carrying out such activities in the future. The following types of activities are expressly listed in the regulation: “individual activity”, activity related to establishing a legal person or another organizational structure, or other activity carried out in connection with the activity of a legal person, as well as activity on the basis of a receipt for the provision of agricultural and forestry services in accordance with the procedure established by the Provision of Agricultural and Forestry Services of the Republic of Lithuania Act.²¹ It is noted that the concepts of “independence” and “self-reliance” in individual activity are key to distinguish this type of activity from work under an employment relationship or similar relationships. In essence, legal relations with the other party to the contract do not entail features that are characteristic and constitutive to employment relationships, i.e. agreement as to: remuneration for work, workplace, scope of activities, annual leave, and provision of working tools.

However, when analysing the features of independence and self-reliance that characterize the activities of self-employed persons, attention is drawn to the fact that, actually, the characteristics of the employment relationship and employment

18 *Ibidem*, Article 3(2) of the Act.

19 *Ibidem*.

20 See more extensively on the subject in I. Mačernytė-Panomariovienė, T. Wrocławska, *The Right to Annual Leave as a Basic Guarantee for Safe and Healthy Conditions at Work. Remarks Based on Lithuanian and Polish Legal Regulations*, “Employee Responsibilities and Rights Journal” 2021, vol. 33, pp. 143 et seq.

21 *Ibidem*.

equivalent to the employment relationship²² – which include consideration for work, carrying out the instructions of the employing entity, and the provision of work on a continual and not on a one-off basis – are difficult to distinguish from the characteristics of individual activity in the sense presented above. It is emphasized that additional difficulties in this respect are exacerbated by the increasing possibilities for flexible working arrangements under the employment relationship. For this reason, when deciding whether we are dealing with an individual activity of a self-employed person or with employment on the basis of an employment relationship, it is advisable to pay attention to the following considerations: the right of the party that orders work to give instructions concerning the place, time, and order in which work is to be performed; the right to give instructions as to how the work is to be performed; and the right to supervise the performance of the work at any working time. In addition, the right to paid time off for rest is likewise taken into account, similarly as the right to additional benefits in connection with business trips etc.²³ It is therefore possible to distinguish the work of self-employed persons from work under an employment relationship only on the basis of an assessment of all the above circumstances. It is highlighted, however, that it is the subordination to the instructions of the person ordering the work that makes it possible, in principle, to distinguish an employment relationship from similar paid employment under a civil law contract.²⁴ Another important point is that the 2016 amendments to the Lithuanian Labour Code clarify that an employment contract is a contract under which an employee undertakes, in a relationship of subordination, to provide work for the employer, and the employer undertakes to remunerate the employee in return (Article 32 of the Labour Code).²⁵ The Lithuanian provisions specify that subordination to the employer means the provision of work under conditions in which the employer has the right to supervise or direct both the whole and a part of the process of work provision by the employee, and the employee is obliged to comply with the employer's instructions and the workplace procedures. In such a relationship, it is the employer who bears the financial, economic, and production risks (Article 32(3) of the Labour Code).²⁶

To go on, it should be noted that Article 6 of the law in question likewise contains a definition of individual activity, which, by the way, differs from the definition of individual activity provided in tax legislation.²⁷ The following types of “independent activity” carried out by a natural person are listed under the notion

22 Pursuant to the Employment Act. Lietuvos Respublikos užimtumo įstatymas, TAR, 5.07.2016, no. 18825.

23 T. Davulis, *Lietuvos Respublikos darbo kodekso komentaras*, Vilnius 2018, p. 133.

24 T. Davulis, *Darbo teisė: Europos Sąjunga ir Lietuva*, Vilnius 2004, p. 180.

25 Article 32.

26 T. Davulis, *Darbo teisės rekodifikavimas Lietuvoje 2016–2017 m. Teisė 104*, Vilnius 2017, p. 13, <https://www.zurnalai.vu.lt/teise/article/view/10842/8977> (accessed: 19.10.2023).

27 Lietuvos Respublikos gyventojų pajamų mokesčio įstatymas, “Valstybės žinios”, 19.07.2002, no. 73–3085, <https://www.e-tar.lt/portal/lt/legalAct/TAR.C677663D2202/asr> (accessed: 18.07.2024).

of “individual activity”: independent creative activity consisting in the creation of works that may be the subject of copyright and the transfer or assignment of the author’s economic rights to the works created by them; activities carried out as a liberal profession, in which individuals with the requisite qualifications exercise personal, responsible, and professional independence through the provision of intellectual services to clients and the public, including the professions of lawyer, accountant, statutory auditor, lobbyist, financial advisor, tax advisor, architect, engineer, designer, psychologist, journalist, broker, bankruptcy receiver, corporate restructuring trustee, and similar activities; independent self-employed sporting activity, which consists in the performance of specific physical or mental activities based on established rules and organized in a specific form, as well as preparation for and participation in competitions, with the exception of sporting activities under an employment contract in the field of sporting activity; and independent activity of a performer, which is related to their activities concerning preparation for and participation in a public performance. However, the term “performer” does not include persons who take part in the process of preparing and creating a work, but do not participate in its public performance.

Moreover, Lithuanian law construes “individual activity” to cover: an independent activity of a coach when the coach has not concluded a coaching contract with an organization conducting physical education and sports training; scientific and other independent activities of a similar nature not classified as a liberal profession; other independent trade or production activities, with the exception of activities involving the sale or lease of real estate by nature and transactions in financial instruments; and agricultural activity. At this point, it is also worth mentioning laws that regulate the legal status of certain groups of persons who perform work, in particular: the Civil Code as regards entrepreneurs, the Notaries Act,²⁸ the Bailiffs Act,²⁹ the Legal Profession Act,³⁰ the Copyright and Related Rights Act,³¹ the Private Detective Activities Act,³² the Agriculture and Forestry Services on the Basis of a Receipt Act,³³ and the Families Act.³⁴ With regard to members of the liberal professions, there are separate statutory regulations on: health care,

28 Lietuvos Respublikos notariato įstatymas, “Lietuvos aidas” 1992, no. 192–0; Žin. 1992, no. 28–810. Consolidated version from 1.01.2021 until 30.06.2021.

29 Lietuvos Respublikos antstolių įstatymas, “Valstybės žinios”, 29.05.2002, no. 53–2042. Consolidated version from 1.01.2021.

30 Lietuvos Respublikos advokatūros įstatymas, “Valstybės žinios”, 6.04.2004, no. 50–1632, Consolidated version from 1.07.2020.

31 Lietuvos Respublikos autorių teisių ir gretutinių teisių įstatymas, “Valstybės žinios”, 9.06.1999, no. 50–1598.

32 Lietuvos Respublikos privačios detektyvinės veiklos įstatymas, TAR, 30.04.2015, no. 6577.

33 Lietuvos Respublikos žemės ūkio ir miškininkystės paslaugų teikimo pagal paslaugų kvitą įstatymas, “Valstybės žinios”, 24.11.2012, no. 136–6965. Consolidated version from 10.06.2017 until 31.08.2021.

34 Lietuvos Respublikos šeimynų įstatymas, “Valstybės žinios”, 2.03.2010, no. 25–1176. Consolidated version from 1.01.2019.

the public burden of paying tax, and social and health insurance contributions. Therefore, it is noted that the legislation pertaining to the so-called liberal professions is characterized by a separate subject of regulation, and the categories of subjects listed there are for the most part assessed as being outside the area of discussion on the extension of social guarantees.³⁵

To go on, pursuant to Article 6(2) of the Employment Act, a natural person carries out “individual activity” according to the principles laid down in tax regulations. Under Article 2(7) of the Personal Income Tax Act,³⁶ “individual activity” is independent (self-employed) activity aimed at generating income or other economic benefits over a continual period. It can take the form of: independent trading or manufacturing activity with the exception of trade in real estate and transactions involving financial instruments; independent creative, scientific, professional, and other similar independent activity; independent sporting activity; and independent performing activity. When assessing whether an activity can be classified as individual activity, the principles of: self-reliance (independence); economic purpose (entrepreneurship); continuity; and attribution to specific types of activity, including the pursuit of the objective of profit and economic benefits (as combined with the element of entrepreneurship³⁷), must be taken into account.³⁸ As regards the notion of “continuity”, it is worth noting the position of the Lithuanian Supreme Administrative Court, which points to the following elements to be analysed: recurrent, consistent, and repeated conclusion of transactions, and the number of concluded transactions.³⁹ Bearing previous judgments of this court in mind, it can be concluded that the feature of continuity of activity is considered to be essential and attributive to individual activity.⁴⁰

1.3. The scope of rights of the self-employed

Under the Constitution of the Republic of Lithuania of 2 October 1992,⁴¹ every person (literally “each human being”) has the right to freely choose a job or business and

35 E. Kavoliūnaitė-Ragauskienė, D. Pūraitė-Andrikienė, *Valstybės pareiga užtikrinti notary paslaugų prieinamumą visuomenei ir notary ekonominį nepriklausomumą ir nešališkumą: galimos priemonės ir jų privalumai bei trūkumai*, Vilnius 2020.

36 Lietuvos Respublikos gyventojų pajamų mokesčio įstatymas, “Valstybės žinios”, 19.07.2002, no. 73–3085, <https://www.e-tar.lt/portal/lt/legalAct/TAR.C677663D2202/asr> (accessed: 18.07.2024).

37 Remark by I. Mačernytė-Panomariovienė.

38 The Supreme Administrative Court of Lithuania. Decision in an administrative case 19.10.2009, no. A-438–1270–09.

39 The Supreme Administrative Court of Lithuania. 20.10.2006 decision in an administrative case, no. A14–916/2006.

40 See remark by I. Mačernytė-Panomariovienė.

41 Constitution of the Republic of Lithuania of 2 October 1992, “Lietuvos Aidas”, 1992, no. 220 (10.11.1992); “Valstybės žinios” 1992, no. 33–10140 (30.11.1992), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.1890/asr?positionInSearchResults=0&searchModelUUID=c41da021-d897-416e-9712-16b8d7d9154e> (accessed: 18.07.2024).

the right to have proper, safe, and healthy conditions at work, including to receive fair pay for work and to have social security in case of unemployment. Moreover, under Article 49 of the Constitution, all working people (literally, “each working human being”) should have the right to rest and leisure, including the right to an annual paid leave.⁴² The essential differences between the concepts of “everyone” and “each working person” are emphasized in subject literature. The latter term refers to employment under an employment relationship as well as to other forms of professional activity. As for the constitutional guarantee of the right to paid maternity leave (Article 39(2)), it should be underlined that it refers to working women, that is – according to the position of the Constitutional Tribunal – not only women who work under an employment contract or in civil service, but also women who carry out other forms of professional activity, including self-employed activity.⁴³ The issue of the rights of self-employed women to paid maternity leave has been analysed also based on previous legislation.⁴⁴

Under general Lithuanian legislation, the scope of protection of rights related to the work a person performs is unfavourable to self-employed workers, since the law fails to recognize the distinctness of the legal status of some groups of the self-employed. Noteworthy in this respect are also the provisions of the Lithuanian Civil Code containing the definition of an entrepreneur.⁴⁵ They are referred to in order to emphasize that natural persons carrying out business activities are entrepreneurs, and any person who carries out business or professional activity is obliged to take care of their own property and other matters related to the type of activity carried out.

As regards the provisions of the Lithuanian Labour Code, the labour rights it guarantees with regard to the legal regulation of working time, protection of the permanence of employment, provision of work tools, as well as the right to annual leave and parental leave are enjoyed by persons employed on the basis of employment contracts and persons in legal relationships equivalent to the employment relationship.⁴⁶ Thus, emphasizing the aspect of self-reliance and independence (lack of subordination), it is noted that the self-employed person decides on matters relating to work organization, holidays, business-related costs, and work tools by themselves.⁴⁷

42 Articles 48 and 49 of the Constitution of the Republic of Lithuania; more in I. Mačernytė-Panomariovienė, T. Wrocławska, *The Right to Annual Leave...*

43 Persons who obtain their income from sporting activity are likewise treated as self-employed and covered by insurance. Decision of the Constitutional Court of the Republic of Lithuania of 19 December 2018 case no. KT23-N13/2018 <https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta1885/content> (accessed: 18.07.2024).

44 Decision of the Constitutional Court of the Republic of Lithuania of 26 September 2007, case no. 35/04–37/04–72/06 <https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta564/content> (accessed: 18.07.2024).

45 Article 2(4) of the Act.

46 See earlier remarks.

47 State Tax Inspectorate under the Ministry of Finance in 2019 January 1 Commentary on the Personal Income Tax Law of the Republic of Lithuania (1.01.2019 redakcija).

It is worth noting at this point that the occupational health and safety regulations in force under the Lithuanian Labour Code contain a reference to the provisions of the Health and Safety Act.⁴⁸ Its *de lege lata* rules apply only to persons working under employment contracts. That is why the self-employed are treated as responsible in their own right for safety in the process of providing work. It is emphasized that *de lege lata*, self-employed workers can, however, voluntarily take out private accident insurance.⁴⁹ The problem of the lack of protection of the self-employed in the area of occupational health and safety was highlighted in the proposals for amendments to Lithuanian law, where the need to extend occupational health and safety protection to self-employed workers with regard to work on construction sites was emphasized.⁵⁰

As for the issue of equal treatment and non-discrimination, pursuant to the Equal Pay for Men and Women Act,⁵¹ the prohibition of discrimination on grounds of sex applies to all working persons, including the self-employed.⁵² Provisions concerning self-employed workers in the area of non-discrimination (especially on grounds of sex) can be found in the Health and Maternity Insurance Act. They set the rules for determining insurance seniority⁵³ as well as the amount of sickness benefit and benefits granted in connection with maternity or childcare.⁵⁴

The Lithuanian provisions in force contain no guarantees with regard to the self-employed workers' right to minimum wage.⁵⁵ This type of protection covers

48 Lietuvos Respublikos darbuotojų saugos ir sveikatos įstatymas, "Valstybės žinios", 16.07.2003, no. 70–3170, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.215253/asr?positionInSearchResults=0&searchModelUUID=c41da021-d897-416e-9712-16b8d7d9154e> (accessed: 18.07.2024).

49 Social protection for the self-employed, Lithuania, July 2020, p. 14, https://www.missoc.org/documents/self-employed/2020_07/self_2007_lt_en.pdf (accessed: 18.07.2024).

50 Resolution no. 155 of the Government of the Republic of Lithuania of 10 March 2021 on the approval of the plan for the implementation of the provisions of the Programme of the Eighteenth Government of the Republic of Lithuania, TAR, 17.03.2021, no. 5318, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/bef7d43286fe11eb998483d0ae31615c/asr?positionInSearchResults=0&searchModelUUID=a6841f19-a282-4996-8e67-74930dc51718>, <https://www.e-tar.lt/portal/lt/legalAct/d698ded086fe11eb9fecb5ecd3bd711c> (accessed: 18.07.2024). It has been recommended to adopt appropriate provisions and to amend the regulations of the Health and Safety Protection Act, the National Labour Inspectorate Act, and the Code of Administrative Offences.

51 Lietuvos Respublikos moterų ir vyrų lygių galimybių įstatymas, "Valstybės žinios", 23.12.1998, no. 112–3100.

52 Article 3 of the Act. The personal scope of the prohibition of discrimination on grounds of sex was also extended to the area of social security (Article 9 of the Act).

53 Article 5(3) of the Act.

54 Articles 14, 18, 21(3) and 24(4) of the Act.

55 See Article 141 of the Labour Code and the authorization for the Council of Ministers to determine the amount of the minimum wage.

exclusively employees within the meaning of the Labour Code.⁵⁶ However, an indirect incentive for the self-employed to receive at least the minimum wage is provided by the rules on insurance seniority and rules that render pensions dependent on the length of service, under which income amounting to at least the minimum wage is levied.

In terms of collective rights, and in particular freedom of association of the self-employed, we should note Article 50 of the Constitution. Pursuant to this provision, trade unions defend the professional, economic, and social rights and interests of employees. According to Article 51 of the Constitution, in defending their economic and social interests, employees have the right to strike, and the limitations of this right as well as the conditions and procedure for its implementation are established by the Trade Unions in the Republic of Lithuania Act.⁵⁷ Under Article 1 of said law, natural persons who possess capacity for work and legal capacity to act in law may establish and join trade unions. Pursuant to Article 2, members of trade unions who work legally under employment contracts or on other grounds stipulated by law in the territory of the Republic of Lithuania have all the rights and obligations of members of trade unions as set forth in the statutes of those organizations. Other trade union members, on the other hand, have all the rights and obligations of members under the terms of the trade union's statutes, with the exception of the right to vote on the decision to strike, the conclusion and implementation of collective bargaining agreements, and matters that may affect the rights and obligations of employees or persons employed on other legal bases. In light of the above provisions, it should therefore be assumed that, in principle, self-employed persons are not prohibited from joining trade unions; however, they are not covered by certain collective rights. The granting of freedom of association not only to employees, but also to other working persons (including the self-employed) is apparent also from Article 6 of the cited law, which refers to the conditions for the formation of a trade union. Lithuanian law, in addition to employees, provides in this article for a separate legal category – union founders – among the entities entitled to form a trade union.

However, according to T. Davulis, the legal regulation of the status of the self-employed as essentially subjects of tax and social security law places them, so to speak, in the area of collective labour law in the so-called grey zone. The problem seems to be, first of all, that the provisions of the Labour Code do not apply to them and, moreover, that they are not treated in this area on an equal footing with persons who provide work under an employment relationship. This is why self-employed workers are outside the scope of collective bargaining and have no possibility of

56 The minimum wage in Lithuania since 1.01.2021 has been EUR 642 per month and EUR 3.93 per hour worked. See order of the Council of Ministers of 14 October 2021, no. 1114 Dėl 2021 metais taikomo minimaliojo darbo užmokesčio, TAR, 15.10.2020, no. 21462, <https://www.e-tar.lt/portal/lt/legalAct/b5aa4aa0ec311ebb74de75171d26d52> (accessed: 18.07.2024).

57 Lietuvos Respublikos profesinių sąjungų įstatymas, "Lietuvos aidas", 30.11.1991, no. 240–0, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.2293/asr> (accessed: 18.07.2024).

applying pressure measures in the form of a strike. However, there are concerns regarding the fact that the Trade Union Act is not consistent with the provisions of the Employment Act (employment law) and the Labour Code. For this reason, there is no strict obligation to establish only trade union organizations of employees. However, even if trade unions of self-employed persons are accepted in Lithuania, they have no possibility to collectively negotiate and conclude agreements on the conditions of work and employment with regard to those persons from a practical point of view.⁵⁸ Another problem is the instability of the income earned by the self-employed and the fact that the sum of their income may be lower than the minimum wage, which is the basis for establishing the obligation to be insured and to pay compulsory social insurance contributions, especially for health and maternity insurance.⁵⁹

The recognition of the self-employed as subjects of tax and social security law is confirmed by insurance regulations, which characteristically apply different solutions to separate categories of working persons.⁶⁰ Some of them include a much smaller range of social guarantees.⁶¹ The obligation to pay pension as well as sickness and maternity insurance contributions (which cover the insured and the policyholder) pertains to persons covered by copyright, creators, performers, and persons who carry out sporting activity, except when such income is derived from individual activity.⁶²

Among the solutions applicable to the self-employed in relation to the epidemiological situation, the rules concerning the application of special parental leave

58 T. Davulis, *Savarankiškai dirbančių asmenų teisė į kolektyvines derybas ir teisė į streiką. Darbo teisės iššūkiai besikeičiančiame pasaulyje*, Vilnius 2020.

59 *Ibidem*, p. 591.

60 It should be noted that from 1 January 2009, self-employed persons have been covered by the compulsory social insurance system (until then they had been insured on a voluntary basis). Lietuvos Respublikos valstybinio socialinio draudimo įstatymo 2, 3, 4, 5, 7, 8, 9, 29, 31 straipsnių pakeitimo ir papildymo įstatymas, "Valstybės žinios" 2008, no. 149–6019; Lietuvos Respublikos sveikatos draudimo įstatymo 2, 6, 8, 15, 16, 17, 18, 19 straipsnių pakeitimo ir papildymo įstatymas, "Valstybės žinios" 2008, no. 149–6022.

61 However, it is a condition that contributions are paid and that a certain income ceiling is reached. *Exploring self-employment...*, p. 49. See S. Spasova, D. Bouget, D. Ghailani, B. Vanhercke, *Access to social protection for people working on non-standard contracts and as self-employed in Europe. A study of national policies*, European Social Policy Network (ESPN), European Commission, Brussels 2017, pp. 76–81. This applies to income taxation, health insurance, and social security for copyright holders and performers. R. Birštonas, N.J. Matulevičienė, J. Usonienė, *Atlikėjo samprata intelektualinės nuosavybės ir mokesčių bei valstybinio socialinio draudimo įstatymuose*, "Socialinių mokslų studijos" 2011, vol. 3(1), p. 239.

62 It should be noted that from 1 January 2009, self-employed persons have been covered by the compulsory social insurance system (until then they had been insured on a voluntary basis). Lietuvos Respublikos valstybinio socialinio draudimo įstatymo 2, 3, 4, 5, 7, 8, 9, 29, 31 straipsnių pakeitimo ir papildymo įstatymas, "Valstybės žinios" 2008, no. 149–6019; Lietuvos Respublikos sveikatos draudimo įstatymo 2, 6, 8, 15, 16, 17, 18, 19 straipsnių pakeitimo ir papildymo įstatymas, "Valstybės žinios" 2008, no. 149–6022.

are worthy of attention.⁶³ In this context, many EU Member States have introduced special leave provisions, often referred to as the “corona leave”. Twenty EU Member States,⁶⁴ including Lithuania, guaranteed parental support arrangements in situations where neither parent was able to provide care for the child due to the need to work. This special parental leave varies according to eligibility conditions (e.g. age of the child), payment conditions (e.g. percentage of previous earnings, lump sum), and the parents’ work situation.⁶⁵ Likewise noteworthy among the solutions addressed to the self-employed during the pandemic period are those relating to sickness benefits.⁶⁶ From 1 January 2021, self-employed persons could claim an unemployment benefit of EUR 260 for a whole month, but special conditions had to be met in order to receive it.⁶⁷ As from 1 July 2022, these benefits are no longer paid after the end of the quarantine.

1.4. Conclusion

To sum up the analysis of the legal status of the self-employed, the main problem of Lithuanian legislation appears to be not only the terminological diversity and the conceptual superstructure found in the various laws regulating the legal situation of the self-employed, but also the fact that, despite the extensive casuistry of the regulations relating to the various groups of the self-employed, the labour provisions do not reflect the need to extend employment rights to this category of working persons.⁶⁸ Despite the various forms of self-employment and the differences between various groups of self-employed persons, insurance and tax regulations and the Employment Act generally view the self-employed as individuals who organize their work, working time, rest, and working tools, bear the risks of their activities independently, and can privately insure themselves against accidents.⁶⁹ It is true that the self-employed are not prohibited from joining trade unions. However, under Lithuanian law, making use of freedom of association seems to be unjustified. The need for changes extending the scope of rights in the area of working time, health

63 S. Spasova, D. Ghailani, S. Sabato, S. Coster, B. Fronteddu, B. Vanhercke, *Non-standard workers and the self-employed in the EU: social protection during the Covid-19 pandemic*, Brussels 2021, p. 39, https://www.etui.org/sites/default/files/2021-03/Non-standard%20workers%20and%20the%20self-employed%20in%20the%20EU%20social%20protection%20during%20the%20Covid-19%20pandemic-2021_0.pdf (accessed: 18.07.2024).

64 See *ibidem*.

65 *Ibidem*.

66 *Ibidem*, p. 31.

67 See *Socialinė apsauga: kas keičiasi nuo liepos 1 dienos?*, 28.06.2021, <https://www.sodra.lt/lt/situacijos/svarbi-informacija-draudejams-covid-19/ismokos-savarankiskai-dirbantiems-asmenims> (accessed: 18.07.2024). Cf. also S. Spasova, D. Ghailani, S. Sabato, S. Coster, B. Fronteddu, B. Vanhercke, *Non-standard workers...*, pp. 16–18.

68 T. Davulis, *Savarankiškai dirbančių asmenų...*, pp. 39–78.

69 Lietuvos Respublikos Vyriausybės 2021 m. kovo 10 d. nutarimas no. 155.

protection, and occupational health and safety is addressed only to specific groups of working persons. These include, in particular, those working on construction sites and through digital platforms.

2. Legal regulations concerning self-employment in the law of the Republic of Latvia

2.1. Introductory Remarks

According to OECD data and the definition of self-employment, the number of self-employed workers in the Republic of Latvia in 2021 constituted 11.6% of the total workforce.⁷⁰ Meanwhile, according to ILO data, this rate oscillated at 11.3% in 2020. Moreover, ILO's statistics include an analysis of trends over the past 20 years (1991–2019).⁷¹ The chart shows a sharp acceleration in the growth of self-employment in 1996 and the highest ceiling ever reached – at 19.43% of the total workforce in 1997. In contrast, according to World Bank data covering the period from 2010 to 2020, the scale of self-employment followed a similar developmental trend, i.e. remaining on average at around 11.5% of the total workforce. An exception in the form of a significant increase in self-employment was recorded in 2016, to a level of 12.5–13.0%.⁷² In terms of national data and the definition of self-employment, the development trends of self-employment were also analysed taking into account the group of entities with no employees.⁷³

Among the reasons for choosing self-employment in Latvia, 49% of the respondents in a 2017 survey⁷⁴ answered it had been their own decision, while 26% pointed to necessity due to a lack of alternative work opportunities. A combination of both circumstances was mentioned by 22% of the respondents.⁷⁵ As regards the level of satisfaction with being self-employed, as many as 88% of the respondents (slightly below the EU average) reported satisfaction with being their own boss,⁷⁶ while only

70 *Self-employment rate (indicator)...*

71 *Self-employed, total (% of total employment) (modeled ILO estimate) – Latvia*, International Labour Organization, ILOSTAT database. Data retrieved on 29.01.2021, <https://data.worldbank.org/indicator/SL.EMP.SELF.ZS?locations=LV> (accessed: 18.07.2024).

72 See also the percentage of the self-employed by sex: *Latvia – Self-employed; Total (% of total employed)*, <https://tradingeconomics.com/latvia/self-employed-total-percent-of-total-employed-wb-data.html> (accessed: 18.07.2024).

73 R. Karnite, *Latvia: Self-employed workers*, Observatory: EurWORKTopic, 22.02.2009, <https://www.eurofound.europa.eu/publications/report/2009/latvia-self-employed-workers> (accessed: 18.07.2024).

74 *Exploring self-employment...*

75 *Ibidem*, p. 11.

76 *Ibidem*.

22% rated being self-employed as involving a high liability risk (slightly below the EU average of 26%). The rate of self-employed workers who considered their situation to be difficult in terms of the financial burden in the case of prolonged illness was 53% (slightly above the EU average of 48%).⁷⁷

2.2. Definitions of self-employment

It is noted that the Social Insurance Act in the Republic of Latvia contains a definition of self-employment,⁷⁸ although the distinction between employees and self-employed persons in the Latvian legal system is laid down in tax legislation.⁷⁹ The presence of at least one of six criteria set out in the Income Tax Act determines when a working person should be considered an employee rather than a self-employed.⁸⁰ First and foremost, the source of income is decisive in qualifying a person as a self-employed worker, who is not covered by labour law provisions. Then, under Article 1(3) of the Social Insurance Act, which was amended in 2017, a self-employed person is an individual who earns income (or revenue) as: a person with a permanent residence in the Republic of Latvia who receives royalty (remuneration for copyright or related rights), with the exception of individuals to whom copyright has been transferred; a sworn: notary, attorney-at-law, accountant (auditor), bailiff; a practising: physician, pharmacist, veterinarian, optician; another natural person with a permanent

⁷⁷ *Ibidem*, p. 13.

⁷⁸ State Social Insurance Act, 1.10.1997, https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=59891&p_lang=. See also the text of the law available at: <https://likumi.lv/ta/en/en/id/45466-on-state-social-insurance> (accessed: 18.07.2024).

⁷⁹ Personal Income Tax Act, <https://likumi.lv/ta/en/en/id/56880-on-personal-income-tax> (accessed: 18.07.2024).

⁸⁰ *Exploring self-employment...*, p. 41. They are listed in Article 8(2)(2) of the Personal Income Tax Act. Pursuant to the provision, it is deemed that a natural person (payer) gains revenue on which a payroll tax is due if at least one of the following characteristics apply to them:

- 1) the payer is economically dependent on the persons for whom they provide services;
- 2) the payer bears financial risk in connection with performing non-commercial work or in the event of loss of the debtor's debt;
- 3) the payer is integrated into the business for which they provide their services. Integration into the business within the meaning of the relevant chapter means the existence of areas of work or recreation, the obligation to follow the business's internal procedural provisions, and other similar characteristics;
- 4) the payer can take actual annual leaves and holidays following relevant procedures in connection with the business's internal procedural provisions or the work schedule of other natural persons employed in the business;
- 5) the payer's work is performed under the supervision or instruction of another person and the payer cannot engage their own staff or subcontractors to carry out their work;
- 6) the payer does not own fixed assets, materials, or any other assets used in the business activity (the criterion does not cover passenger cars or separate personal instruments used to carry out work duties).

residence in the Republic of Latvia and who has registered as a payer of income tax on business activity; an owner (owners) of a farm (fishery) who manages such farm (fishery) without being in an employment relationship with their farm's (fishery's) administrative authority, if no manager (director) has been appointed (elected) in such a farm (fishery) in compliance with the procedures laid down in law; a person with a permanent residence in the Republic of Latvia whose work is remunerated from foreign technical assistance funds and loans from international financial institutions granted to the Republic of Latvia; an individual entrepreneur, including an individual entrepreneur operating a taxi or a passenger car for the purpose of commercial passenger transport; a micro-enterprise taxpayer.⁸¹

Individuals who wish to carry out self-employed activity in Latvia have to register at the competent tax office. A self-employed person, just as an employer, is considered a payer of advance personal income tax. They have the right to choose the type of income rate, which depends on the kind of business activity.⁸²

Moreover, legal scholars emphasize that the criterion of economic dependence (submission, subordination, lack of independence) is taken into account in order to reveal abuse in the form of the so called bogus self-employment and to counteract

81 3) **self-employed person** – a person who earns income (or revenue) as:

- a) [3 April 2019];
- b) [25 November 1999];
- c) a person whose permanent place of residence is in the Republic of Latvia and who earns income from intellectual property, except for an heir to copyright and another successor in title of copyright, and who has registered as an economic activity income taxpayer;
- d) a sworn notary;
- e) a sworn advocate;
- f) a sworn auditor;
- g) a doctor in practice, a pharmacist in practice, a veterinary practitioner, an optometrist in practice;
- h) another natural person whose permanent place of residence is in the Republic of Latvia and who has registered as an economic activity income tax payer;
- i) an owner (owners) of a farm (fishing undertaking) who, not being in legal employment relationship with an administrative authority of his or her farm (fishing undertaking), performs the management function of such a farm (fishing undertaking) if, in accordance with the procedures laid down in law, a manager (director) has not been appointed (elected) in such a farm (fishing undertaking);
- j) a person whose permanent place of residence is in the Republic of Latvia and whose work is remunerated from foreign technical assistance resources and loans from international financial institutions granted to the Republic of Latvia;
- k) a sworn bailiff;
- l) an individual economic operator, including an individual economic operator who is driving a taxi or passenger car for the commercial carriage of passengers;
- m) a micro-enterprise taxpayer.

82 Section 13. Registration of Persons and Employers Subject to Social Insurance (1) Employers and self-employed persons shall be registered with the Taxpayer Register of the State Revenue Service in accordance with the procedures stipulated by the Cabinet.

fictitious self-employment.⁸³ Still, there are no other laws containing provisions that would define or specify the concept of a self-employed person, although the expression “self-employment” appears in the texts of various normative acts, which will be discussed further on.

2.3. The scope of rights of the self-employed

Pursuant to Article 91 of the Constitution of the Republic of Latvia, all human beings are equal before the law and the courts. Moreover, human rights should be realized without discrimination of any kind. Another noteworthy law in this context is the Act of 20/06/2001 – Labour Law.⁸⁴ Despite containing an open list of anti-discrimination criteria, it applies exclusively to employment relationships and employees. Nevertheless, the principle of non-discrimination against self-employed workers is governed by the provisions of the Law of 19 December 2012 on Prohibition of Discrimination of Natural Persons – Economic Operators.⁸⁵ Rules concerning self-employed activity are covered in this law next to provisions concerning business activity. Non-discrimination under the act refers, among others, to: access to self-employment, and access to goods and services of self-employed persons; and with regard to business activity, it refers to: accessing, starting, and running business activity, and starting or running other activities in relation to self-employment activities, and covers all types of professions that are not carried out under an employment relationship, including, for example, the legal professions and artists.⁸⁶ Legal scholars point out certain regulatory shortcomings. They stress that equal access to vocational training, upgrading or acquiring new vocational qualifications, which is strongly emphasized vis-à-vis persons employed on the basis of employment relationships, does not appear in the provisions of the anti-discrimination law in question.⁸⁷

Pursuant to Article 107 of the Constitution of the Republic of Latvia, every employed person has the right to receive commensurate remuneration for work done, which may not be less than the minimum wage established by the state, and has

⁸³ *Exploring self-employment...*, pp. 39, 41.

⁸⁴ Latvia Labour Law, <http://likumi.lv/doc.php?id=26019> (accessed: 19.10.2023).

⁸⁵ Law on Prohibition of Discrimination of Natural Persons – Economic Operators [Fizisko personu – saimnieciskās darbības veicēju diskriminācijas aizlieguma likums], <https://likumi.lv/ta/en/en/id/253547> (accessed: 18.07.2024); A. Dimitrovs, *Equality Law in Latvia: Current Trends and Challenges*, “The Equal Rights Review” 2012, vol. 9, https://www.equalrightstrust.org/ertdocumentbank/err9_Dimitrovs.pdf (accessed: 18.07.2024).

⁸⁶ A. Kamenska, *Country Report: Non-discrimination, Transposition and implementation at national level of Council Directives 2000/43 and 2000/78. Latvia*, European Network of legal experts in gender equality and non-discrimination, European Commission, Luxembourg 2020, p. 35, <https://www.equalitylaw.eu/downloads/5274-latvia-country-report-non-discrimination-2020-1-97-mb> (accessed: 18.07.2024).

⁸⁷ *Ibidem*, p. 36.

the right to weekly holidays and a paid annual leave.⁸⁸ The Constitution omits to expressly restrict the above privileges to employees in the statutory sense only. However, it is noted that the self-employed enjoy no minimum wage guarantee. The desire to reduce employment costs paired with the lack of minimum wage protection give rise to a tendency on the part of those commissioning work to force their economic subordinates to switch to self-employment as sole proprietors. This is why ascertaining economic dependency is identified as a key element in counter-acting forced self-employment.⁸⁹ The above has more far-reaching consequences, including the exercise of other rights under employment, as self-employed persons do not enjoy the benefit of regulations on working time, accidents at work, and occupational diseases.

With regard to collective rights, the constitutional provisions on freedom of association and the right to collective bargaining ensure that everyone has the right to form and join associations, political parties, and other public organizations (Article 102 of the Constitution). Employed persons have the right to conclude collective agreements and the right to strike (Article 108 of the Constitution).⁹⁰ On the other hand, the Latvian Law on Trade Unions,⁹¹ with regard to the regulation of the right of coalition, emphasizes the aspect of non-discrimination, understanding by this term the right of everyone to establish and join a trade union without any discrimination. Furthermore, under the provisions of this act, a person's membership of a trade union and the desire to join or not to join that organization may not constitute grounds for restricting that person's rights (Article 4).⁹² Although the law does not prohibit the self-employed from exercising freedom of association, in practice these persons are not covered by collective representation or collective bargaining. It is stressed that, with regard to self-employed workers, the most questionable issues are: the subject of the negotiations, the party with whom the negotiations would be conducted, and the fact that the relationship with the self-employed is based on civil law contracts.⁹³ The above means that the self-employed are excluded *de lege lata* from one of the fundamental elements of collective bargaining at company level.⁹⁴ That is why Latvian legal scholars claim that it is not possible for gainfully self-employed workers to join trade unions operating at workplace level. That said,

88 Constitution of the Republic of Latvia of 15 February 1922, <https://likumi.lv/ta/en/en/id/57980> (accessed: 18.07.2024).

89 *Exploring self-employment...*, p. 39.

90 Constitution of the Republic of Latvia of 15 February 1922 [consolidated version] (Art. 102 & 108)...

91 Law on Trade Unions (*Arodbiedrību likums*), 6.03.2014, <http://likumi.lv/doc.php?id=265207> (accessed: 18.07.2024).

92 A. Kamenska, *Country Report: Non-discrimination...*, p. 36.

93 R. Karnite, *Latvia: Self-employed workers...*, p. 59. See also Table 10: Organizations open to the self-employed in different countries, p. 56.

94 *Exploring self-employment...*, p. 59.

they emphasize that there are no legal obstacles to the self-employed joining sectoral trade unions and employers' organizations.

The regulation of the definition of a self-employed person through tax provisions based on the type of activity has the result that the status is relevant also to the scope of insurance cover under insurance provisions.⁹⁵ Self-employed persons earning a certain income are obliged to pay social insurance contributions,⁹⁶ in which case their rights in the area of insurance benefits are similar to those of employees. According to the Latvian Law On State Social Insurance, self-employed workers whose income reaches a minimum amount relative to the base set by the Council of Ministers are subject to pension, disability, maternity and sickness insurance, health insurance, and parental insurance.⁹⁷ The differences in the contributions paid in this respect, compared to those paid for employees, depend on the amount of income earned and the type of activity carried out. Moreover, Latvian insurance legislation distinguishes between the self-employed who are employers and those who are employed by several employers or who are simultaneously an employee and a self-employed person.⁹⁸ The self-employed, unlike employees, are not covered by insurance for accidents at work and occupational diseases, and are not subject to unemployment insurance.⁹⁹ As regards sickness benefits, the self-employed are covered by the general insurance scheme.¹⁰⁰ When comparing the situation of the self-employed to employees, differences are present also in terms of the contribution base.¹⁰¹

2.4. Conclusion

In the Latvian legal system, the criteria verifying the economic dependence of the self-employed are found in the tax law. The above is decisive also for the remaining

95 *Living and Working*, State Employment Agency Republic of Latvia, 2.03.2020, <https://www.nva.gov.lv/en/living-and-working-conditions> (accessed: 18.07.2024). Article 5(3)(2) of the Law On State Social Insurance [Likums par sociālo drošību], 7.09.1995, <https://likumi.lv/ta/en/en/id/36850> (accessed: 18.07.2024).

96 *Exploring self-employment...*, p. 50. Compare report: S. Spasova, D. Bouget, D. Ghailani, B. Vanhercke, *Access to social...*, pp. 76–81.

97 Law On State Social Insurance, 1.10.1997, <https://likumi.lv/ta/en/en/id/45466-on-state-social-insurance> (accessed: 18.07.2024). See: *Exploring self-employment...*, p. 52.

98 *I am self-employed*, State Revenue Service, <https://www.vid.gov.lv/en/i-am-self-employed> (accessed: 18.07.2024).

99 *Social protection for the self-employed. Latvia, July 2020*, MISSOC – Mutual Information System on Social Protection, https://www.missoc.org/documents/self-employed/2020_07/self_2007_lv_en.pdf (accessed: 18.07.2024).

100 *Exploring self-employment...*, p. 51; S. Spasova, D. Bouget, D. Ghailani, B. Vanhercke, *Access to social...*, p. 71.

101 *Social protection for the self-employed. Latvia...*, pp. 5–6.

particularities of the status and rights of the various groups of self-employed workers, which is particularly evident in the social security system.

With regard to the protection of the self-employed, special attention should be paid to the provisions of the Latvian law concerning the prohibition of discrimination against natural persons who are entrepreneurs. Unfortunately, the labour legislation lacks solutions extending rights to certain categories of the self-employed. Moreover, given the lack of statutory minimum wage guarantees for the self-employed, the decision to switch to self-employment is in practice often forced.

3. Legal regulations concerning self-employment in the law of the Republic of Estonia

3.1. Introductory Remarks

According to ILO data for the period 1991–2019, Estonia experienced a significant increase in self-employment in 1999, 2004, and 2007.¹⁰² This form of professional activity reached its lowest point in the analysed period in 2002. Importantly, a steady upward trend has been recorded since another significant decline in self-employment in 2008. The number of self-employed workers reached 10.99% of the total workforce in 2019.¹⁰³ Noteworthy among the statistics presented are those for the period 2000–2007 that concern the self-employed who employ no workers.¹⁰⁴ They show that the number of these people is far greater than the number of entities with employees.¹⁰⁵ On the other hand, according to ILO estimates presented by the World Bank, based on the adopted definition of self-employment, the number of gainfully self-employed people in Estonia amounted to 10.48% of the total workforce in 2020.¹⁰⁶

When analysing the circumstances accompanying the decision to become self-employed in Estonia in a 2017 survey,¹⁰⁷ up to 57% of the respondents pointed to self-employment as a consequence of their own choice, while 22% – of compulsion

102 *Self-employed, total (% of total employment) (modeled ILO estimate) – Estonia*, International Labour Organization, ILOSTAT database. Data retrieved on 29.01.2021, <https://data.world-bank.org/indicator/SL.EMP.SELF.ZS?locations=EE> (accessed: 18.07.2024).

103 *Latvia – Self-employed; Total (% of total employed)*... See also the percentage of self-employed persons by sex.

104 Also data by sector of business activity are provided.

105 See the sources, studies, and data presented in the work: L. Roosaar, K. Nurmela, *Estonia: Self-employed workers*, Observatory: EurWORKTopic, 2.02.2009.

106 *Estonia – Self-employed; Total (% of total employed)*, <https://tradingeconomics.com/estonia/self-employed-total-percent-of-total-employed-wb-data.html> (accessed: 18.07.2024).

107 *Exploring self-employment...*, p. 13.

due to the lack of alternatives to work. A combination of both circumstances was the reason in the case of 13% of the respondents.¹⁰⁸ As many as 92% of the respondents reported satisfaction with being their own employer,¹⁰⁹ a percentage slightly above the EU average of 89%. Interestingly, only 12% rated being self-employed as involving a high liability risk (well below the EU average of 26%). The rate of self-employed workers who considered their situation to be difficult in terms of the financial burden in the case of prolonged illness was as high as 51% (slightly above the EU average of 48%).¹¹⁰

3.2. Definitions of self-employment

Self-employment in Estonian law is legally defined as sole proprietorship. A sole proprietor can be any natural person provided that they apply for registration with the register of businesses.¹¹¹ Legal scholars note that a self-employed worker can be any natural person who offers goods or services for sale on their own behalf and as part of their regular activity. It is emphasized that a self-employed person or a business entity of which that person is the owner is not a legal person within the meaning of the law.¹¹²

Sources of Estonian law regulating the situation of the self-employed include tax acts: the Income Tax Act¹¹³ and the Social Taxes Act.¹¹⁴ The former law contains a definition of economic activity. According to § 14(2) of the Income Tax Act, it is an independent economic or professional activity of a person (including the professional activity of a notary or bailiff and the creative activity of a creator) whose purpose is to obtain income from the production, sale, or intermediation of goods, the provision of services, or other activities, including creative or scientific activities.¹¹⁵ By the 2020 amendment, the cited law gained a section 22, which refers expressly to self-employed workers.¹¹⁶

108 *Ibidem*, p. 11.

109 *Ibidem*.

110 *Ibidem*, p. 13.

111 *Definition of self-employment*, [in:] *Social protection for the self-employed. Estonia, July 2020*, MISSOC – Mutual Information System on Social Protection, p. 3, https://www.missoc.org/documents/self-employed/2020_07/self_2007_ee_en.pdf (accessed: 18.07.2024).

112 See the sources, studies, and data presented in the work: L. Roosaar, K. Nurmela, *Estonia: Self-employed...*

113 Income Tax Act, Passed 15.12.1999, RT I 1999, 101, 903, Entry into force 1.01.2000, <https://www.riigiteataja.ee/en/eli/530012014003/consolide> (accessed: 18.07.2024).

114 Social Tax Act Passed 13.12.2000, RT I 2000, 102, 675, Entry into force 1.01.2001, partially 1.01.2002, <https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/530042021006/consolide> (accessed: 18.07.2024).

115 RT I, 23/12/2013, 1 – entry into force 1.01.2014.

116 RT I, 21/04/2020, 1 – entry into force 1.07.2020.

Sources of Estonian law that enable a comparison of the status of the self-employed and those employed under an employment relationship include the Commercial Code, the Employment Contracts Act, and the Contract Law Act.¹¹⁷ The Contract Law Act defines five different service contracts: the authorization contract, the service contract, the intermediation contract, the agency contract, and the mandate contract. Any person, including a self-employed worker, may enter into a specific type of contract. Consequently, the legal relations of the parties to such a contract are governed by the provisions of contract law. However, it is noted in subject literature that service contracts are often used also instead of an employment contract. The purpose of such practice is to conceal the employment relationship (so-called “bogus self-employment”). If abuse is found, it must be assumed that the income of self-employed persons will be treated as income from an employment relationship and not as business profit, with consequences in terms of insurance and tax law, as well as in the area of social protection and collective representation (“bogus self-employment”).¹¹⁸

The growing flexibilization of forms of employment and the development of labour activity through digital platforms renders it more difficult to distinguish between self-employment and the employment relationship. Estonia lacks legislation regulating the provision of work in new forms such as platform work. Nor is there case law confirming that persons working through platforms are treated equally to those who provide work under an employment contract. As a result, if platform workers do not meet the legal conditions that prejudice their recognition as employees under labour law, they are excluded from the protection guaranteed by labour law.¹¹⁹

3.3. The scope of rights of the self-employed

The 1992 Constitution of the Republic of Estonia¹²⁰ contains a number of general guarantees on non-discrimination, health protection, freedom to choose employment and to engage in economic activity, state supervision of working conditions, and freedom to form and join trade unions. While the above guarantees are phrased

117 *Exploring self-employment...*, p. 50.

118 L. Roosaar, K. Nurmela, *Estonia: Self-employed...*

119 I. Mačernytė-Panomariovienė, R. Krasauskas, V. Mačiulaitis, G. Tavits, M. Ericson, A. Kārkliņa, *Some Aspects of Improving the Legal Regulation of Labor Relations: Thirty-Years' Experience of The Baltic States*, “International Social Science Journal” 2022, vol. 72, issue 246 (special issues), pp. 1237–1253, <https://doi.org/10.1111/issj.12385>

120 The Constitution of the Republic of Estonia, 30.12.2020 (revised translation), passed 28.06.1992, RT 1992, 26, 349, Entry into force 3.07.1992, <https://www.riigiteataja.ee/en/eli/ee/rhvv/act/530122020003/consolide> (accessed: 18.07.2024).

broadly as the rights of “every citizen”,¹²¹ the conditions and modalities for the exercise of individual rights are determined by separate laws. According to § 12 of the basic law, everyone is equal before the law. No one may be discriminated against on the grounds of nationality, race, colour, sex, language, origin, religion, political or other views, property or social status, or on other grounds. Under § 28 of the Constitution of the Republic of Estonia, everyone is entitled to protection of their health. Furthermore, Estonian citizens are entitled to state assistance in the case of old age, incapacity for work, loss of provider, or need. Under § 29 of the basic law, they are entitled to freely choose their area of activity, profession, and position of employment, and the working conditions are subject to state supervision. Moreover, everyone is free to belong to unions and federations of employees and employers. These organizations may assert their rights and lawful interests by means which are not legally prohibited, and the procedure for resolution of labour disputes is provided by law. Pursuant to § 31 of the Estonian Constitution, Estonian citizens have the right to engage in entrepreneurial activity and to form commercial associations and federations.

Provisions that are likewise noteworthy in this regard are regulations on equal treatment and prohibition of discrimination, which apply to the self-employed. Pursuant to § 2(1) of the Equal Treatment Act from 2008,¹²² it is prohibited to discriminate against persons on the grounds of nationality, ethnic origin, race, or colour, as well as in the determination of conditions for access to employment, self-employment, or occupation, selection criteria and conditions for recruitment as well as promotion and membership of an employee or employer organization, including a professional organization, and the granting of benefits by such organizations. In turn, under § 2(2) of the law, discrimination against persons on the grounds of religion or other beliefs, age, disability, and sexual orientation is prohibited, among others, in the context of setting conditions for access to employment, self-employment, or occupation, including selection criteria and recruitment conditions as well as promotion and membership in an organization of employees or employers. The self-employed may join trade unions if the union’s statutory provisions provide for this possibility,¹²³ or they may be represented by certain employers’ organizations, including certain agricultural organizations.¹²⁴ This position is asserted by the provisions of the Estonian Trade Unions Act.¹²⁵ In terms of the collective rights of the self-employed, however, the lack of trade union representation of their rights is highlighted, despite the fact that, with regard to the self-employed who do not use

121 In principle, however, citizens of foreign states and stateless persons in Estonian territory enjoy this right equally with citizens of Estonia, unless the law provides otherwise.

122 Equal Treatment Act, Passed 11.12.2008, RT I 2008, 56, 315, Entry into force 1.01.2009, <https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/503052017002/consolide> (accessed: 18.07.2024).

123 *Ibidem*.

124 *Ibidem*.

125 Trade Unions Act, Passed 14.06.2000, RT I 2000, 57, 372, Entry into force 23.07.2000, <https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/528122020008/consolide> (accessed: 18.07.2024).

the labour of others, the need for such representation is explicitly noted due to their status, which is characterized by many features typical of the employment relationship.¹²⁶ Recognizing the problems that arise in this area, including in the context of collective bargaining regulations, the development of specific forms of representation dedicated to the self-employed is proposed as an alternative solution.¹²⁷

When it comes to the status of self-employed persons in terms of work-related guarantees, it should be noted that in Estonia, the laws regulating the conditions for the provision of work by employees do not apply to the self-employed. This is in particular true for the Employment Contracts Act (*Töölepingu seadus*), the Holidays Act (*Puhkuseseadus*), and the Working Time and Rest Act (*Töö- ja puhkeaja seadus*). The same applies to the law on minimum wage. Under the Employment Contracts Act,¹²⁸ it is full-time employees who are guaranteed a minimum wage.¹²⁹ Meanwhile, the self-employed organize their own working hours and the extent of their leave entitlement, and may introduce related provisions in their service contracts. With regard to the guarantees on the right to maternity and parental leave, it is emphasized that self-employed workers organize their working time themselves and, in order to receive relevant benefits, they must be interested in doing so.¹³⁰

At this point, it is important to mention the amendments made to the Occupational Health and Safety Act, which have been in force since March 2021.¹³¹ This law – pursuant to § 1(3)(4) – applies also to natural persons working under a service contract (hereinafter referred to as service provider) to the extent provided for in § 12(4) to (9) and § 24(2) of the law. By virtue of the provisions of § 12 defining general health and safety requirements, it is indicated that the service provider ensures the responsible and correct use of work equipment, personal protective equipment, and other equipment owned by the service provider in any case related to the work performed. If employees of two or more employers work at the workplace at the same time, these entities should coordinate their actions to prevent hazardous situations. Employers must inform each other and their employees or representatives of labour of any hazards occurring at the joint workplace and of measures to avoid them, as well as of the organization of rescue and first aid (prevention and information duties). Furthermore, if, in addition to the employees of one or more employers,

126 L. Roosaar, K. Nurmela, *Estonia: Self-employed...*

127 *Ibidem*.

128 See § 29–32 of the Employment Contracts Act 17/12/2008; RT I 2009, 5, 35 <https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/502062021007/consolide> (accessed: 18.07.2024).

129 S. Laukineitis, *Minimali mēnesio alga Estijoje išaugo daugiau nei 8 proc.*, 2.01.2020, Lrytas, <https://www.lrytas.lt/verslas/rinkos-pulsas/2020/01/02/news/minimali-menesio-alga-estijoje-isaugo-daugiau-nei-8-proc--13111298> (accessed: 18.07.2024).

130 L. Roosaar, K. Nurmela, *Estonia: Self-employed...*

131 Occupational Health and Safety Act Passed 16/06/1999, RT I 1999, 60, 616 Entry into force 26.07.1999, <https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/522042021002/consolide> (accessed: 18.07.2024) [RT I, 29.12.2020, 2 – entry into force 1.03.2021], § 1(1)(4) of the Act [RT I, 29.12.2020, 2 – entry into force 1.03.2021].

a service contractor also works at the workplace, the employer should, if necessary, inform them of the aforementioned circumstances. In such cases, the employers may agree on the manner in which the aforementioned obligation will be fulfilled or appoint a person to organize the work to fulfil the aforementioned obligations.¹³² In such a situation, the service contractor informs the person organizing the work or, in their absence, the employer of the risks involved in the activity and ensures that their actions do not endanger the workers. Service contractors working in the same working environment inform each other of the hazards of their activities and ensure that they do not endanger the persons performing the work.¹³³ The provisions of § 24 of the Occupational Health and Safety Act concerning the handling and registration of accidents at work and occupational diseases are relevant, as well. Pursuant to § 24(2), if a service contractor suffers an occupational accident in a situation provided for in § 12(6) of the cited law, all the activities relating to the event provided for in this chapter will be carried out by the person organizing the work or, in their absence, by the employer.¹³⁴

In terms of social protection, the rights of the self-employed are largely shaped in a similar way to those of employees in an employment relationship.¹³⁵ It is pointed out that in Estonia, self-employed persons are covered by a number of systemic arrangements including family benefits, health care, sickness, maternity, disability, and pension benefits. Exceptions (in the form of partial availability) relate to maternity/paternity benefits, unemployment benefits, social assistance, and benefits for accidents at work and occupational diseases.¹³⁶ Unemployment insurance is voluntary. This seems to mean that self-employed persons can make use of private insurance schemes. The definition of a jobseeker contained in the Labour Market Services and Benefits Act likewise may be useful in the area in question.¹³⁷ However, by virtue of the Unemployment Insurance Act's¹³⁸ definition of an insured person, persons who:

132 If employers fail to sign such an agreement and appoint an appropriate person, they are jointly and severally liable for failing to fulfil their prevention and information duties.

133 RT I, 29.12.2020, 2 – entry into force 1.03.2021.

134 *Ibidem*.

135 *Social protection for the self-employed. Estonia...*, pp. 4–21. Full access to the social protection system through compulsory insurance, universal benefits, or means-tested benefits is independent of the employment status. Compare report: S. Spasova, D. Bouget, D. Ghailani, B. Vanhercke, *Access to social...*, pp. 76–81.

136 This means that (a) self-employed workers have only partial access to benefits due to the statutory differentiation of eligibility conditions and duration of benefits compared to dependent employment, and (b) if insurance-based benefits and non-contributory benefits coexist, they only have access to the latter. See S. Spasova, D. Bouget, D. Ghailani, B. Vanhercke, *Access to social...*, p. 76.

137 Labour Market Services and Benefits Act passed 28.09.2005, RT I 2005, 54, 430; entry into force 1.01.2006, <https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/511062021003/consolide> (accessed: 18.07.2024).

138 Unemployment Insurance Act passed 13.06.2001, RT I 2001, 59, 329; entry into force 1.01.2002, <https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/522122020002/consolide> (accessed: 18.07.2024).

are sole proprietors or notaries, bailiffs, or other independent public professionals or freelance artists within the meaning of § 3 of the Artists and Artistic Associations Act who are considered sole proprietors for tax purposes, or are members of the managing or controlling body of a legal person within the meaning of § 9 of the Income Tax Act to whom the Employment Contracts Act does not apply, are excluded from the scope of the concept. Nevertheless, the lump-sum unemployment benefit provided for in the Estonian legal system is described as universal.¹³⁹ The above unemployment benefit is paid according to rules common to both employees and the self-employed.¹⁴⁰ However, the self-employed are not subject to insurance for accidents at work and occupational diseases.¹⁴¹

When it comes to the legal solutions applied during the pandemic period, it should be emphasized that Estonia did not provide for access to unemployment benefits for the self-employed. However, it was among the countries that abolished or shortened waiting periods for sickness benefits.¹⁴² In addition, paid sick leave regardless of the cause of illness was available to working people in Estonia who cared for a sick child, a family member, or a dependent person. Still, unlike in many other countries, Estonia did not provide working parents with special parental leave during the pandemic.¹⁴³

3.4. Conclusion

Changes that affected the situation of the self-employed in the Estonian legal system concerned tax law, sickness insurance (the waiting period for sickness benefit was shortened), pension law (the possibility to join the second pillar of pension insurance was introduced), and occupational health and safety.¹⁴⁴ It is noteworthy that Estonian law provides for no specific criterion based on which it would be possible to treat self-employed workers who are also employers and those who do not employ others differently. This is a questionable solution, as the latter category of individuals is in a situation most similar to employees, which speaks in favour of granting them additional guarantees similar to those enjoyed by persons who provide work under an employment relationship.¹⁴⁵ A 2021 study on the epidemiological situation and Estonian unemployment regulations highlighted the exclusion of this category of

139 *Exploring self-employment...*, p. 50.

140 *Ibidem*.

141 *Accidents at work and occupational diseases*, [w:] *Social protection for the self-employed. Estonia...*, p. 13.

142 S. Spasova, D. Ghailani, S. Sabato, S. Coster, B. Fronteddu, B. Vanhercke, *Non-standard workers...*, pp. 26, 29.

143 *Ibidem*, pp. 41, 42.

144 *Ibidem*.

145 L. Roosaar, K. Nurmela, *Estonia: Self-employed...*

people's right to unemployment benefits as one of the relevant points relating to the status of the self-employed.¹⁴⁶

Closing remarks

1. The status of self-employed persons in the Baltic states varies considerably. Although each of these countries has a definition of self-employment, some of those definitions are very casuistic, covering various categories of self-employed (Latvia), others are detailed definitions of various legal aspects relating to self-employment (Lithuania), and others still propose a rather general concept of self-employment, which results in blurring the boundaries between various categories of self-employed workers (Estonia). Sometimes, the criterion of economic dependence is exposed as a rationale for distinguishing self-employment from employment relationship in order to prevent abuse (Latvia, Estonia), and sometimes a broader view of subordination and dependence in the employment relationship, which contrasts the broad features of independent, individual and self-employed activities, is used for that purpose (Lithuania).
2. In all the analysed states, significant changes in the legal status of the self-employed have taken place in recent decades. The consequence of the reforms introduced, either extending social guarantees or providing for the facilitation of economic activity, has been an increase in the number of self-employed persons. Currently, in the legislation of the Baltic states, with exceptions relating to the issue of accidents at work and occupational diseases and unemployment insurance, the self-employed are entitled to most of the insurance benefits guaranteed to employees. However, their right depends on the income earned and the contributions paid. For this reason, there is a serious risk of a complete lack of social protection for the self-employed in some Baltic states (Lithuania). The need to address accidents at work, occupational diseases, and the risk of unemployment is quite uniformly emphasized in each of the countries studied, and this is particularly true for certain categories of self-employed persons. Areas of activity and industries are mentioned in subject literature (platform work, construction sector) where the protection of the self-employed in terms of health and safety – including especially as regards working time, breaks, and rest – should be similar to that guaranteed by the law to employees.
3. In all the Baltic states, the need to take firm steps to counter bogus self-employment and to force people who are economically dependent on the employing entity into self-employment is recognized. Counter-measures include: the characteristics of self-employed activity developed in case law and doctrine, enabling

146 S. Spasova, D. Ghailani, S. Sabato, S. Coster, B. Fronteddu, B. Vanhercke, *Non-standard workers...*, p. 16.

- it to be distinguished from the relations in force in the employment relationship (Lithuania); the examination of the existence of economic dependency criteria under insurance laws (Latvia); and the analysis of cases concerning forced transition to self-employment (Estonia).
4. The need to enhance the collective rights of self-employed workers, especially those who are not employees, given that they perform work in conditions similar to employees, is fairly uniformly emphasized in all the Baltic states. However, despite the fact that the self-employed are not prohibited by law from joining trade unions in the countries studied, trade union representation of their collective rights and interests is seen as meaningless due to their inability to exercise most of the rights enjoyed by employees (including in the areas of working time, health and safety at work, and minimum wage). Consequently, it is pointless for self-employed workers to participate in collective bargaining and collective agreements.
 5. One of the main problems concerning the legal protective guarantees for the self-employed seems to be that, despite their great diversity in terms of their legal situation, they are often quite collectively perceived as economic entities organizing their own work and bearing the risk of their own activity (being their own employers). At the same time, however, it should be noted that in all the states analysed, it is increasingly emphasized that the development of new forms of employment (e.g. platform work) as well as work in the construction sector show many similarities in terms of the way work is provided to conditions typical of the employment relationship. In light of the above, the announcement of legal steps aimed at increasing the protection of certain categories of self-employed persons in the areas of working time and health and safety (Lithuania) and attempts to extend protection in case of unemployment (Estonia) should be viewed as positive.

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