THE EMPLOYMENT RELATIONSHIP
(Scope)

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[2]. Introduction

1. Brief description of the labour market in Bulgaria

For the last ten years the development of the labour market in Bulgaria follows the basic tendencies and processes in the development of the economy in the country – restructuring of branches and productions, privatization, liquidation of inefficient productions and activities, setting up of new activities. Since 1990 each year there is a decrease of the total number of population resulting from the negative natural growth and the influence of migration processes. The average annual number of population in the country in 1999 is 8 210 624. The relative number of active age population during the period under review increased and reached in 1999 about 58.1%. This results from the entry into the active age group of persons born in the years of high birth rates. In the period 1990 – 1999 the relative share of population under the active age decreased to 17.2% as a result from the decrease of birth rates in the country. Following these processes, in the years to come the number of people entering the active age group will continuously decrease.

The transition to market economy is characterized with a significant decrease of labour force demand.

In 1999 the average annual number of employed persons in the country is 3 081 190. Compared to 1998 the number is lower by 2,3% because of the processes related to the structural reform in the economic and social sphere /closure of loss making enterprises and activities, staff cuts in restructuring enterprises, in the budgetary sphere, etc./ and the insufficient investments in the country. Compared to 1990 the number of employed persons is by 1 006 000 persons lower.

There is a firm tendency for increasing the number of employed persons in the private sector and decreasing it in the public sector. It is necessary to point out that the decrease of the number of employed persons in the public sector is not compensated by the increase of that number in the private sector.

The unemployment rate for 2000 is 18.1%, by 4,4 points higher than that reported in the preceding year. According to data on labour force in December 2000 the unemployment rate in Bulgaria is 16.4%, average for the EU it is 8.1%, while the minimum rate is 2.1% /Luxembourg/, and the maximum is 13.7% /Spain/.

In 2000 about 64 persons average for the country apply for one job and the average monthly number of unemployed persons is 693 461 /by 31.6% higher compared to the same period of the preceding year/. The increase of unemployment rates results from the structural reform, the closure of inefficient productions and activities, the dismissals of workers due to liquidation, the reforms in the state administration and social security system.

2. Employment relationship characteristics according to Bulgarian labour law

The employment relationship is the main pillar around which the overall Bulgarian labour law is constructed and it represents its basic bearing construction. In fact the labour law regulates the employment relationship – its present, future or past existence – the occurrence, contents, implementation, amendment, termination or other issues related to it. In that sense the prominent Bulgarian lawyer professor Vassil Mruchkov states that labour law can be named “law of and for the employment relationship”.

The most important feature of the employment relationship is its subject. The “subject of the employment relationship” according to the Bulgarian labour law doctrine is what gives the reason and occasion for establishing the employment relationship as a judicial relation between legal subjects. This is the letting of labour of the worker to be used by the employer.

This relation is characterized by a legal dependence. It means that the worker is obliged to obey the orders of the employer, to comply with, follow and implement them. The worker depends on them, concerning them the

worker is not independent. In this regard the employment relationship is very much different from the independent and autonomous work of persons who work and carry out a professional activity on their own account. In the case of independent work the workers on their own organize their work, its order, forms and conditions, impose duties to their own selves and implement them. This is the work exercised by persons from the liberal professions – lawyers, artists, architects, writers or from an independent craft, trade, etc.

The letting of labour of the worker in order to get against it a remuneration from the employer as well as the placement of the worker into a legal dependence and subordination to the employer are circumstances which turn the worker economically and socially into the weaker and more disadvantaged party in the employment relationship.

The employer is economically stronger because of having at his/her disposal the material conditions for work. The employer also has much broader legal capacity because of having the right to give orders which are obligatory for the worker as well as to control the implementation of the work already assigned.

According to the Bulgarian labour law the employment relationship is the relationship between a worker and an employer by virtue of which:

- The worker is obliged to provide to the employer his/her labour force for the implementation of a certain work function or à position agreed upon as well as to observe the labour discipline;
- The employer is obliged to provide to the worker conditions for implementing the work and remuneration for the work done. The obligation of the employer to provide conditions for the work performance includes all necessary conditions – material, organizational and others. These conditions must be healthy and safe for the health and life of the worker.

Also an important feature of the employment relationship is that the result from the work belongs not to the worker but to the employer. So the worker does not bear the risk from the activity. The employer bears the risk.

3. The legal figures of the employer and worker according to the Bulgarian labour law

What is the legal statute of the worker and the employer? In the current Bulgarian legislation there is no legal definition of "worker". The lawmakers have assumed that the Labour Code itself provides the necessary regulation from which the respective characteristics can be extracted. There is no doubt that the worker is that party in the individual employment relationship, which brings the labour force. The worker is always and only a natural person. This is determined by the character of the prestation "labour force" which can be brought only by a natural person, not by a collective formation, legal person or others.

The employer is the other party in the employment relationship. Without an employer there is no an individual employment relationship. The legal figure "employer" has two basic features:

- first – the employer is a natural or a legal person which is given the labour force and which disposes of and manages the tools and subjects of labour. The employer is the person to whom the worker provides his/her own labour force and seeks the right to remuneration, leaves, etc.;
- second – the employer hires under an employment relationship someone else's labour force in order to use it for the implementation of his/her own activity.

Along with this the employer is also the person who "gives" the work. This feature is also very well expressed in Bulgarian by the term "rabotodatel /employer/", i.e. a person who gives work. This is the employer's legal capacity. It includes the following elements provided by the law:

- the right to establish employment relationships;
- the opportunity to acquire rights and obligations under these employment relationships, as well as
- the right to terminate these relationships in cases provided by the law

The employer's capacity is also expressed by the employer's power, which includes the following basic rights of the employer:

- right to manage the working process /this is the employer's managerial power/;
- right to establish the internal order for the implementation of the working process /this is the employer's power to establish norms/;
- right to exercise disciplinary power towards the workers /this is the employer's "disciplinary" power/.

À. DEPENDENT WORK

By virtue of the amendment to the Labour Code in December 1995 the lawmakers established a new provision /Art.1, para. 2/ according to which "the relations when providing labour force shall be regulated only as labour relations".

The basic practical objective of this amendment was to prevent from circumvention of the employment relationship and disguising it with other forms of non-labour contracts. The aim of disguising it by the employers most often is:

- to avoid the implementation of the protective norms of labour law towards the persons hired under these contracts;
- to deprive hired persons of the legal quality of workers;
- to ensure that they are free to terminate it whenever they wish so, etc. ;
- to avoid payment of social security contributions

The harmful consequences for persons hired under these contracts are many-sided. The time during which they work under these contracts is not recognized as a length of service. They are not entitled to paid annual leave; continuity and regime of working hours and rest periods; other paid and unpaid leaves fixed for the workers. The remuneration they get is not a labour remuneration, it is a kind of civil income and due to this it is not entitled to the legal protection which the existing legislation provides for the labour remuneration. There are harmful consequences also for the public interests because in this way the insurance contributions due and expected in labour relationships are not provided for the different social funds.

The amendment to Art.1, para.2 of the Labour Code has broader meaning for the general study on employment relationship.

Through it the lawmaker envisages that the provision of labour force may only have the legal form of the employment relationship. Thus the law puts a ban on disguising the provision of labour force with other relationships and requires only the use of the respective form of the employment relationship. The idea is – the legislation shall provide protection of labour and along with this – protection to persons who perform it, while ensuring the real exercise of their rights. And the protection of the hired labour also when it is

disguised with forms not corresponding to its nature requires relations to be settled clearly and legally

[22].DISGUISED WORK

1.Work without employment contract

The Bulgarian legislation requires for the employment contract to be concluded in a written form. Not observing this requirement is the violation most often made. The work without a contract whatsoever is turning into a mass phenomenon on the Bulgarian labour market. The scope of this practice is already replacing from the top the recent "leader" – disguising real employment relationships trough civil contracts.

These workers are paid cash, insurance contributions are not paid and naturally the time worked off is not recognized as a length of service. On the other side – the lack of employment contract excludes the application of labour law provisions and this is bringing unfavorable consequences for both parties particularly in cases of accidents. Persons working under these conditions can not certify even through the court that they have worked /because of the lack of whatever written evidence/ and in many cases they are removed from the work without payment.

In order to avoid this situation and with the hope that this practice can be stopped the lawmakers assigned the Labour Inspectorate with the powers stipulated by Art.405à of the Labour Code. These powers aim at the following:

1. the control bodies shall establish the factual work performed by a person under an employment relationship, and
2. to establish a regulation by virtue of which to oblige the employer to conclude an employment contract with the person.

However the practice for the last years on the implementation of these powers has shown that almost in all cases when the Inspectorate intervened and exercised its right to give instructions to the employer the result was a conclusion of a fixed-term contract for a month or less after which the worker could not go back to work with the same employer. Usually the employment contracts stated the minimum wage. Another disadvantage of the provision was that it could be implemented only when the person is

actually at work. If the person has worked for some time and after that the employer has removed him from work there is no possibility for the control body to intervene because the person is not working anymore and while making the check it is not possible to establish the factual work performance.
The amendment to Art.405à of the Labour Code /March 2001/ tried to remove some of the disadvantages extracted from the practice.

Currently the control bodies have the powers to state whether the labour force is provided in violation of the principle formulated in Art.1, para.2 of the Labour Code. According to this provision the relations when providing labour force are regulated only as in employment relationships. The lawmaker does not specify types of violations in these cases, i.e. these could be different forms of disguised or ambiguous work as well as cases when work is performed without any contract. In the cases when the Inspectorate finds performance of work in violation of Art.1, para.2 of the Labour Code it has the right to declare the existence of an employment relationship between the respective employer and worker. This "declaration" is carried out by a decree by the Inspectorate which is submitted to the parties to the employment relationship.

Along with this the control body, after it has stated by the decree that labour force is provided under the conditions of the employment relationship, has the right to give instructions to the employer by virtue of which he is obliged to offer the worker the conclusion of an employment contract. However, if regardless of the reason the employer and the worker do not agree upon the conditions for the contract in a written form the decree by the Inspectorate by virtue of law will replace the missing employment contract. In these cases the "replaced" employment contract will be assumed concluded under the following conditions set by the law:

- parties to the employment relationship are those stated by the decree of the Inspectorate;
- the employment relationship is assumed concluded for an indefinite period of time;
- the employment relationship is performed under the conditions of 8-hours working day and 5-days working week.

These are the minimum requirements established by the lawmakers and obligatory for the parties to comply with. However if the parties to the

employment relationship follow the instructions of the Inspectorate and conclude a written employment contract they are free to fix other conditions allowed in principle by the law – for example a fixed-term contract, part-time work, etc.
The meaning of this administrative intervention of the Inspectorate is twofold.

On the one hand – in this way it is being created a legal mechanism for protection of the worker against the wish of some employers to use "hidden" or illegal employment. Objectivity requires to point out that this power in some cases protects the rights of the worker even from his "self-damaging actions". Because under the conditions of high unemployment many workers are ready due to economic reasons to sacrifice labour standards in the name of the income so necessary to survive. The contents of protection itself is the legal fact stated by an authorized by law body – existence of work performance under the conditions of employment relationship. This circumstance reflected by the decree of the Inspectorate, then given to the worker plays the role of a perfect written certificate regarding the existence at that moment of an employment relationship between the parties stated. The possession of this document creates a real opportunity for the worker to turn to the competent court in order to get and exercise his constitutional right to legal protection under the "hard" conditions of the employment relationship determined by law.

On the other hand, the power of the Labour Inspectorate aims at motivating the employer not to circumvent the requirements of the labour legislation. The public expectations are that after facing the risk to become "by force" a party to an employment relationship under conditions which are not acceptable for him as well as in addition to be imposed a pecuniary sanction for the violation the employer voluntarily and intentionally will take the side of the law. The dangerous consequences from this enlarging tendency of disguised or ambiguous work including work without a contract gave grounds to the Bulgarian Government and social partners to propose and the Parliament adopted in March 2001 some other important amendments to the Labour Code which broaden the powers of the Labour Inspectorate.

The compulsory administrative measures which can be applied by the Inspectorate in cases of violation of the labour legislation were supplemented with one more. In cases when after a check it is stated for a second time that the employer uses the labour force without written contracts

with the workers the Inspectorate has the right to terminate the activity of the enterprise until the violation is removed, i.e. till the written employment contract is concluded.

Â.DISGUISED OR AMBIGUOUS WORK

1.Tendencies in the development of the phenomenon "disguised or ambiguous work" and reasons for its enlargement.

The activities implemented through disguised or ambiguous work have enlarged significantly, in some cases even dramatically and cover countries in transition as well as developing countries and big cities of the USA and Western Europe. The study on the size of unregulated employment in the EU gives reasons to suggest that it represents 7-19% of the legal employment.

In the last ten years persons working on their account and risk including those performing disguised or ambiguous work were about 25% of economically active people in Poland, 10% in the Check Republic, Hungary, Slovenia. The data on Bulgaria shows that between 500000 and 800000 persons work through different forms of unregulated employment, including the cases of disguised or ambiguous work.

The phenomenon is known in Bulgaria with different names - "hidden", "not declared", "black", "unregulated" employment. Its nature is related to three main characteristics:

- there is an employment relationship concerning its elements;
- the contractual relation between the employer and worker is not declared;
- in its essence the working activity under such relationship is not illegal but it's hidden.

2.The hidden economy or the informal sector in Bulgaria as a country in transition to market economy has its specific pre-history. It stems from the several decades practice of over-regulation and the lack of liberal economic paradigms which was the basic prerequisite for the occurrence of a reverse effect – the creation and redistribution of income outside the public control. The lack of suitable legislation in the first years of transition, of clear "rules of the play", the existence of zones of unclear relations between the state and society are in the base of "the boom" of informal economy in the first years of transition and the tolerance towards its negative consequences in industrial relations.

3.The basic motivation when using this approach is completely economic.
The analysis shows that violators can found among:

- the employers;
- self-employed;
- hired workers and employees.

Having in mind the last group we can see use of unregulated employment by:

- people having more than one job of which only one is declared;
- active age persons who officially have been registered as unemployed;
- economically not active – pensioners, children, students, housewives and others;
- immigrants/emigrants.

4.The existence of this phenomenon and its enlargement leads to many serious risks in the sphere of social security which can be grouped in the following way:

- personal – for the persons who perform work under the conditions of unregulated employment and who are deprived of social security for the different risks;
- public – concerning the social funds, because the principle of solidarity is destructed as well as the principle of loyal and free competition on the market of goods and services.

5.Among the main reasons leading to this phenomenon in Bulgaria are:

- the several years lack or decline of the economic growth;
- decline in production and problems in the social security system;
- new technologies and decentralization of production and the working process.

Among factors which provoke the occurrence and enlargement of the phenomenon an important place is occupied by:

-the existence of significant shadow economy which is a result from the high tax and insurance burden;

-the structure of industry and economy – the small economic units are most often the environment in which the unregulated employment is developed;

-the low competitiveness of a great part of economic subjects – in these cases the violators aim at "raising" their competitiveness by saving a number of expenses including those for social security, for the provision of health and safety at work, etc.;
-easy "jump over" the rules – the legislation still does not contain mechanisms reliable enough for the prevention of violations; the control exercised by the different state institutions is insufficient in scope concerning the number of checked subjects and it is not flexible enough having in mind the great "creativeness" of violators;
-the formation of civil and legal culture – there is a high degree of tolerance towards these violations.

When studying the phenomenon a particular attention is deserved by the continuously decreasing borders between the formal and informal economy expressed by:

- forms of management and organization of work;
- the status and conditions of work;
- orientation not only to activities related to life support but also to dynamic, modern activities with a large scope based on chains of subcontracting units /a typical example – the activity of tailoring industry oriented to export /.

6.In the Bulgarian society there are different, very often opposite viewpoints concerning the place and the significance of that "strange" way of performing work.

There are advocates of the thesis that the legal form under which work is performed is not always a matter of choice but very often is subordinated to the necessity to survive. The followers of the disguised or ambiguous work state that it contributes to the creation of new jobs and generates incomes. These arguments are supported not only by the majority officially registered unemployed persons but also by the so called "working poor" for whom the work under the existing employment contracts does not provide enough for ensuring a normal life.

Not a small group of employers also accepts the disguised or ambiguous work as a generator of employment and incubator for entrepreneural development. According to them the real, extreme poverty originates when

exactly this form of work is missing. The main reason for the development of this practice they see in the normative "over-regulation".

It's completely natural for the trade unions to have diametrically opposite viewpoint. They are firm in not sharing the tendency for enlarging the public tolerance towards the so called "dualistic approach" towards the rights at work. According to them the burden from limiting the application field of this phenomenon must be endured by the executive power and the employers.

Within the large circles of Bulgarian society there is no common position yet about whether to accept the hard standing of total transformation of all forms of work with disguised or ambiguous character or to pursue policy of certain tolerance.

III.LEGAL ENVIRONMENT FOR THE DEVELOPMENT OF DISGUISED WORK

1.The analysis of the phenomenon "disguised" employment relationships must give us the answer to the question – which is the "nest" where they occur? The observation of the Bulgarian economy and industrial relations shows with no doubt that the basic environment for existence and development of employment relations of disguised or ambiguous character first of all are the small and medium-sized enterprises.

Up to now in the world there is no common definition about the term "small" or "medium-sized" enterprise. When determining the size of the enterprise differences between branches are not reflected as well as differences between the level of economic development of the countries. Small and medium-sized enterprises usually are defined depending on different criteria such as:

- number of employed persons;
- volume of sales or wage bill;
- volume of assets;
- quantity of energy used, etc.

The Organization for Economic Cooperation and Development /OECD/ defines enterprises of up to 19 employees as "very small", from 20 to 99 employees as "small", from 100 to 499 employees as "medium-sized" and over 500 employees as "big". However it is considered that many of the

"medium-sized" enterprises under the classification of the OECD in the developed countries represent comparatively big firms so the definition must be made more precise depending on the conditions of each country. Still more, concerning the right to safety at work the law protects categories /which in general can be treated by the labour inspection as small and medium-sized enterprises/ like the following:

- not registered workers;
- persons employed in the informal sector;
- house workers;
- persons employed in the family business /children, elderly people/;
- self-employed;
- persons exercising individual activity /actors, craftsmen/;
- enterprises in which only owner works;
- "micro" enterprises / with 1 to 9 employees/.

In Bulgaria /by virtue of Council of Ministers Decree [1] 314 of 31.07.1997 for the establishment of the Agency for small and medium-sized enterprises/ "small " and "medium-sized" are the enterprises which have total staff number of up to 50 and up to 100 respectively.

The statistic data shows that more than 1 billion workers in the world /out of 2,7 billion/ are employed in SME. About one more billion workers are self-employed in the agriculture. The total number of enterprises in the world is about 100 million of which only 37 million are big multinational companies. The rest are SME. In the EU there are over 18 million SME which occupy a share of 66,2 % of the total employment or over 88 million workers and employees work in them.

2.The big number of SME as well as the fact that in many of them the working conditions do not correspond to standards challenge the Labour Inspectorate to succeed in including in its scope of activity these enterprises. Unfortunately, still in many cases adequate protection for workers and the application of legislation in the field of labour standards as well as safety and hygiene of work can not be provided.

The methods of Labour Inspectorate in Bulgaria for reaction to these challenges are different but the successful strategies are based on:

- raising the awareness of workers about related to the activity health hazards and strengthening their participation in the

solving of problems concerning the working environment safety;
- establishment of clear and accessible for the small and medium-sized entrepreneurs regulatory mechanisms and systems for risk assessment and internal self-control;
- implementation of information strategies to make the communication between the Labour Ispectorate and SME more efficient.

3.Of course the implementation of a special approach to the SME does not mean that the employers are not responsible for the working conditions and life and health of workers. The differences in the approach concern only the practice of the different national labour inspections – the ways in which they perform the function of a "adviser" – the meaning provided by the ILO Convention 81/; the channels by which the messages of the inspections reach the small and medium-sized entrepreneurs. The participation of workers in the solving of problems related to safety at work in many countries is stipulated by legislation /some differences exist only in the lowest limit of staff number above which it is obligatory to establish committees on safety and which varies from 4 to 25 workers/ whereas in the field of risk management and assessment systems and information strategies each one of the inspections is following its own more or less efficient way.

4.The emphasis in the activity with the SME of the state inspection on health and safety at work in the Federal Republic of Germany is put on the implementation of the Bavarian model for risk management at work / Model on Occupational Health and Risk Management / and the system ASCA, elaborated in Hessen province in increasing number of enterprises. A new moment is the creation of the method for "self-control" on working conditions by the worker.

5.In Norway the prevailing type of enterprises are the small ones with less than 10 employees. The number of big enterprises is insignificant. The geographical dispersion of enterprises and the limited resources of the labour inspection have influenced the approach of the inspection. In 1992 by virtue of the amendment to the Act on the working environment the concept for "internal control" was introduced as a basis for the management of activities on safety and hygiene at work. The internal control is defined as undertaking of systematic measures, which guarantee that the activity of the enterprise is planned, organized, implemented and controlled in accordance with the

requirements of legislation in the field of safety and hygiene at work and protection of the environment. The person who manages the enterprise is obliged to provide the introduction of the internal control in cooperation with the representatives of the workers. The workers on their part participate in the introduction and implementation of the internal control.

6.The executive agency on safety and hygiene at work of the Great Britain in the last several years applies a systematic approach it the work with SME, which allowed to improve the quality of communications with these enterprises. The most often used channels for communications are:

- *inspection of enterprises* – for more than 20 years the Agency implements its control activity in accordance with the national priorities so that the enterprises where there is a high risk as well as the enterprises where the risk is managed not satisfactorily are inspected more often than the others. This principle is applied to all enterprises irrespective of their size. The inspection activity is considered as one of the most successful forms for communication with SME. Annually about 80% of the checks /out of about 80 000/ are carried out in small firms of up to 50 employees. Under the conditions of exceptional increase in number of SME the agency, although the commitments to do more about the small and medium-sized business, recognized that it is not able to visit all SME particularly those in which the risk and dangers are low;
- *additional instruments* – organization of seminars and sending of letters; joint work with other organizations which have well developed regional structures /for example the Chamber of commerce/; use of own specially trained "officers for contacts with the work places".

The latter mechanism is applied in the Great Britain since 1991 and it is paid exceptional attention. The role of those "officers for contacts" is to provide advice to SME, to raise awareness and transmit the culture of prevention to the work places. The tasks of these officers are:

- establishment of contacts with the new firms – it is considered exceptionally important for meeting the commitments of the agency – all new firms to be visited two months at the latest after starting their activity;
- pre-inspection activity – for example it is checked whether the firm still exists before the visit of the inspector;

- work with external organizations;
- transmission of messages of the executive agency to the largest circle of representatives of employers and workers.

It is important to note that these officers visit the enterprises not as inspectors but as agents in order to render assistance for complying with normative health and safety requirements.

7.There is similar experience for many decades in Japan where the system for instructors on prevention of occupational accidents has been introduced. These are officers working under full-time labour contract in medium-sized and even big firms; qualified trade unionists and sometimes directors for personnel management who work voluntarily as consultants and instructors in the small firms. This scheme was organized by the Bureau for labour standards /the inspection in Japan/ which asked the employers and trade unions to appoint suitable specialists to be trained for instructors and to work in cooperation with the local inspectors. The instructors have no formal right to visit enterprises as well as the enterprises are not obliged to receive such instructor. But the refusal to do so may cause a check by the inspector from the Bureau.

8.Meeting the needs of the SME from clear and easy to fulfill instructions for complying with the legal provisions in the field of working conditions, the Danish agency on working environment applies a new information strategy and new approach for public relations. Especially for SME there have been elaborated practical guides for prevention of occupational accidents and diseases. The guides are to be used by the managers and representatives of workers in committees on safety in 48 branches of economy. They contain the answers of questions like:

- Which technological processes in the branch represent higher danger?
- Which are the most serious problems related to safety?
- How to prevent accidents and health hazards for workers?
- What are the basic requirements of normative documents for the provision of safety at work?

The guides reach the respective audience through national campaigns and active strategies for media popularity of the Agency.

The strategy for public relations of the Executive agency of the Great Britain was elaborated in 1990. One of the objectives formulated in the Strategy is to meet the information needs of small firms. The relations with small firms represent the key priority for the Agency. When planning these relations it is noted the fact that:

- Small business is an independent business where very often the function for safety management is not developed;
- Many of the owners and managers in the small business are not acquainted enough with the problems of safety and hygiene at work;
- There are just few small firms which know where and how to get advice and practical guidance on safety and hygiene at work.

9.The key for solving the problems is maintaining the communication with the small firms including the creation of new communication channels.
The diversity of methods which the labour inspections in the different countries apply in the work with SME is so big that it is not possible to list them. The main priorities are:

- Reduction and simplification of the legislation in the field of hygiene and safety at work / the so called – deregulation/;
- Strengthening the adviser's function of the labour inspection;
- Broad implementation of the models for internal control and self-control;
- Meeting the needs of managers and workers in SME from information and training on hygiene and safety at work;
- Implementation of new information strategies and transparency in the inspection activities.

IV.THE MOST WIDE-SPREAD CASES OF DISGUISED WORK

1.One of the most wide-spread cases in Bulgaria of disguising the character of work is the mass performance of work under a contract not by virtue of labour law but by virtue of civil law. Circumventing in this way the standards of labour law the employers point out in their defence the striving for achieving greater flexibility in using labour. They consider that the wide-spread practice of replacing labour contracts with negotiating of specific results from an activity or service / the so called contract of manufacture as well as procurement contract/ must be assessed from another point of view – as enlarging the possibility for compromise between the flexibility necessary

from the viewpoint of the market and the legal protection of people's right to decent work.

What is typical for this case of disguised work?

The civil contract is a bilateral agreement between a contractor and an executor – legal figures very close to the figures of the employer and the worker. Work is performed against defined remuneration under both contracts - the civil and the labour contract. Between them however there are several very important differences.

What are the main differences between the labour contract and contract of manufacture according to the provisions of Bulgarian labour and civil legislation:

à/ They have a different subject. The contract of manufacture is concluded for achieving a definite result, for manufacturing a product – tailoring an article of clothing, making an expert assessment and provision of opinion on a given matter and others. While the labour contract has as its subject the process of performing certain work – work with the machine for producing objects and details, carrying out an office, clerk's and secretary's activities, safeguarding and others.

b/ The internal relations between the parties to the two types of contracts are also different. In the case of contract of manufacture the executor is independent from the contractor who requires the provision of the result from the work. The contractor is not interested in the organization of work. The executor organizes the work and achieves the result. While in the case of the labour contract the "executor", i.e. the worker is subordinated to and dependent on the employer. He works under the control, instructions, orders given by the employer and is obliged to observe the rules established by the employer.

c/The contract of manufacture suggests a single performance of a definite task after which its meaning is exhausted and it is terminated. This type of contract is shorter in duration. The labour contract is a contract for continuous performance of working operations, which follow one after another, many times are repeated and are never exhausted.

d/The allocation of the risk is also different in the two cases. In the case of contract of manufacture the risk is taken by the executor. He is obliged to achieve and provide a definite result from the work and if not the risk is taken by him and he has not a right to remuneration from the contractor. In the case of labour contract the situation is just the opposite: the worker is obliged under the contract to provide his force that's why the risk of not achieving the result from its use due to reasons outside of him is taken by the

employer. The worker has the right to remuneration from the employer even when he has not performed the work due to idle time and other reasons. What is more important, due to social reasons the lawmaker in number of cases shifts to a third party – the public social security – the risk from not providing the work force because of disease, occupational accident, and other similar reasons. Similar solutions do not exist under the contract of manufacture.

e/ The place of contract implementation is also different for the two cases. The place for contract of manufacture implementation is determined by the executor – his home, workshop, atelier and others. While the labour contract is implemented at the place of the work which is determined by the agreement of the parties, represents one of the important and necessary elements of the labour contract and in principle is situated at the seat of the employer. The employer may not unilaterally change the place for the implementation of the labour contract except in cases explicitly provided by law and only temporary /idle time, necessity caused by production, reasons which can not be overcome/.

f/ The contract of manufacture in principle is implemented with materials provided by the executor but it could be done also with materials by the contractor. While the labour contract is implemented with materials and tools provided by the employer. The use of hired labour is done always under the material conditions created by the employer who is also their owner.

What are the main differences between the labour contract and the procurement contract:

à/ The basic difference between them is their subject. Under the procurement contract the person who performs the work is obliged to carry out only definite legal actions while under the labour contract the worker is obliged to provide his labour force and implement defined work /working function/ which may include performance of work of different character, including the implementation of material actions.

b/ There are substantial differences in internal relations between the parties. In the case of procurement contract there are no obligations and requirements between the parties concerning the procedure for the implementation of the respective legal actions, no subordination, while such relations exist between the worker and the employer as the worker is obliged to comply with the instructions of the employer.

c/ The person who performs the work may assign the implementation of the respective legal actions agreed upon to another person if he is authorized by

the person who assigns the work or it is necessary for the protection of his interests, or finally, if the person who assigns the work could suffer damages from not implementing these legal actions. The person who performs the work is only obliged to inform the person who assigns the work immediately. Such replacement is not possible at all under the labour contract because of its strictly personal character.
d/ The procurement contract is in principle gratuitous but it can be concluded as an onerous one. The labour contract is always and only onerous one.

When exploring the differences between labour and civil contracts it is obligatory to note one of the most important differences. The work under an employment relationship provides certain legal protection concerning the working time, rest periods, leaves, benefits, mandatory social and health insurance by the employer, the mandatory insurance against the risk of unemployment and others. While the civil contract does not suggest any rights for the executor concerning his protection by labour law.

All these differences and particularly those which reduce the employer's responsibility represent a strong motive for circumventing the labour contracts and disguising them with civil ones including the cases when there is permanent and repeated implementation of working functions by the worker-executor.

2.The alarm from the enlargement of the application field of the disguised or ambiguous work increases when we stop our attention on the situation in construction. In this particularly dangerous activity the employment which is not regulated has too negative consequences.

Many cases of circumventing the labour standards happen on the territory of the so called unregulated building sites – in the implementation of repairs, separate building and communal services, etc. In these cases most often it is stated that:

- There are no measures for providing safe working environment;
- There are no personal protective means;
- There are no instructions on safety rules;
- There is no control;
- Very often the workers do not hold the respective qualification for work with dangerous machines and equipment.

Here exactly in this unregulated building activity we can find ourselves "on the other side" of the law – from the disguised work to completely illegal work, which threatens life and health of many people there is less than one step.

3.Within the framework of disguised or ambiguous work we can also consider the enlarging practice for the actors to work under a labour contract more and more seldom. In many theatres, orchestras, dancing groups the relations are regulated as between contractor and person exercising liberal profession, not as between employer and worker. This requires from the actor to gain a statute of individually registered tax subject. In the implementation of these "economic" contracts the executor gains remuneration not for the creative work for the preparation of the role but for each performance. In practice this type of contracts do not establish labour relations between the actor and the theatre/orchestra. Instead of this there are relations of dependence on the producer who chooses the actor and de facto decides whether and who has the chance to work. In this type of relations there is no place for a big part of worker's classical obligations – observing working time, internal rules established by the worker, a number of requirements of labour discipline.

Of course this "freedom" has its cost – these contracts do not provide leaves, bonuses stipulated by the collective labour agreement, additional remuneration related to family status or length of service.

4.The wish to present one employment relationship for something else sometimes is oriented only to some of its elements behind which there are serious employer's obligations. In this respect the most popular are examples of trying to hide part of the work remuneration. The meaning of this "exercise" is to circumvent or minimize the employer's commitment to pay high insurance contributions. In these cases the word is not about methods from the "grey" economy – for the so called payment under the table. It is just the opposite – payment is done through a legal contract which is not a labour contract but for example a lease contract. This model is used most often in activities where the work needs personal technical equipment. For example the musicians – the respective musical instrument; the taxi drivers – the cars; the guards – the guns; those who process data base – the hardware, and others. In these cases it is wide-spread to conclude two contracts with the worker.

The first one – a labour contract under which it is paid the minimum wage for the country including minimum social insurance contributions.
The second – a lease contract according to which the employer pays monthly because the worker uses equipment which is his own property when implementing the labour contract. In situations when the labour functions fully or partially will be carried out in premises owned by the worker /for example his home/ part of the real remuneration is paid in the form of a lease for these premises or the home phone which is used for fulfilling the obligations under the contract. In these cases the lease sum is much higher then the sum the worker gets under the contract. At the same time the employer does not owe insurance contributions for the lease sum.

V.DISGUISING LABOUR RELATIONS THROUGH REPLACING THEM WITH COOPERATIVE RELATIONS

1.The complex situation on the labour market for the recent years gave birth to another way of circumventing the rules of labour relations. In these cases we witnessed a withdrawal from the Labour Code and its replacement with the Act on cooperatives, i.e. replacement of labour contracts between workers and employers with also lawful labour relationships between production cooperatives and their members.

What are the peculiarities of labour relationships of cooperatives' members as part of their complex cooperative relationships according to the Bulgarian legislation on cooperatives?

The cooperatives which have the production of goods for sale as their subject have the right to use the labour of their members for the implementation of their economic activity while the members have the right to get a job within the cooperative according to their qualification and age.

One of the basic rights of cooperatives' members is "getting a job" within the production cooperative. When exercising this right labour relationships are established between the members and the cooperative. These labour relationships have important peculiarities.

First – employment relationships of cooperatives' members are not independently existing /as the employment relationships of workers under the Labour Code are/. In parallel with them in the composition of cooperative relationships there are also other relationships:

- Membership relationships – in relation to membership in cooperatives – entry, termination of membership and others;
- Co-management relationships - in relation to the participation in cooperative management the members have the right to elect and to be elected in the cooperative management bodies;
- Property relationships - in relation to contributions of cooperatives' members, receiving dividends, etc.

Second – this "encirclement" of employment relationships with other types of relationships influences their occurrence, development and contents.
A particular attention is deserved by the issues relating to the regulation of labour relations of members of production cooperatives. According to the current legislation these relationships are regulated by three sources:

- The Act on cooperatives;
- The Statute of the separate production cooperative, and
- The Labour Code.

The peculiarity here is that the implementation of each of them is done in certain sequence – firstly the Act on cooperatives, after that the Statute of the respective production cooperative and finally the Labour Code. It means that for solving of each labour law issue in the production cooperative it is started with the Act on the cooperatives. If it is not regulated by the Act the "search" continues in the Statute of the respective cooperative. And after it is found that the issue is not regulated by the two sources – the Act and the Statute of the cooperative the answer is searched in the Labour Code. In that sense the application of the Labour Code to the employment relationships of cooperatives' members is an auxiliary, additional or "subsidiary" application.

Third – here exactly we can find the motive for replacing the employment relationships under the Labour Code with such relationships under the Act on the cooperatives.

The Act on the cooperatives regulates first of all the basic and most general issues of employment relationships of cooperatives' members. It makes especially important the role, which is played by the Statute of the production cooperative in regulating the employment relationships of its members. The Statute namely can provide and very often formulate special provisions on employment relationships concerning the provision of jobs to cooperatives' members; concerning their rights and obligations, the

procedure for distributing the general income, profits and loses, etc. Again the Statute of production cooperative can regulate in a way different from that provided by the Labour Code important issues as the following:

- Compensations in case of terminating the employment relationship;
- Compensations for not used leaves;
- Compensations at retirement due to reaching pensionable age and others.

Along with these peculiarities we must add several important characteristics which make the employment relationships of cooperatives' members more flexible and cheaper than the employment relationships under the Labour Code.

- First – all issues regulated by the Statute of the cooperative can be very quickly and many times amended by virtue of the general meeting decision in a way that complies with the possibilities and interests of the cooperative. Such flexibility is unthinkable with regard to the Labour Code norms.
  - Second – the special character of membership relations does not encourage the establishment of trade union organizations in the cooperatives because the rights of cooperatives' members in the direct management of the cooperative are much broader than the trade union rights.
- Third – the Act does not require mandatory insurance against unemployment for the employment relationships of cooperatives' members in contrast to the employment relationships under the Labour Code.

V². PRACTICAL EFFICIENCY OF LABOUR INSPECTORATE INSTRUMENTS FOR GUARANTEEING THE IMPLEMENTATION OF LABOUR LEGISLATION IN CASES OF DISGUISING LABOUR RELATIONS

1. In implementing its activity the Labour Inspectorate finds several main reasons for violations made which lead to "hidden", unregulated and even illegal employment:

- Ignorance of labour law by the employers and their officials as well as by the workers;
- Lack of motivation and will of employers for observing the legislation;

- Unwillingness of workers to give the necessary information to the labour inspector during the check;
- Lack of written documentation kept by the employer to serve as evidence and others.

During the control exercised over the unregulated employment the inspectors face the following problems, which are met very often:

- Identification of employer.

When the inspector visits the enterprise very often the employer is absent without having an authorized official to represent him. Having in mind that according to the domestic legislation the employer is the person who takes the responsibility, in these cases it is difficult for the inspector to exercise his powers for removing the violation – he can not submit the protocol with the results from the check, which contains the instructions to be implemented obligatorily; it is not possible to submit documents by virtue of which other coercive administrative measures are applied such as acts for declaring the existing employment relationship, acts for removing workers from work, acts for stopping the exploitation of unsafe machines and others. This is a particularly hard problem when the owner-employer is a citizen of another country almost all the time is abroad.

- Inability to make an act for establishing the violation of the labour legislation – there is a law requirement for the act for violation made to the employer to be signed by a witness to the violation.

But almost always the workers refuse to be witnesses. This leads to checks made by two inspectors which decreases the number of enterprises checked as well as the efficiency of inspection activity.

- Not presenting to inspectors the documents related to employment relationships of workers.

Many of enterprises, especially the small ones, are serviced by accounting firms due to which during the check the employer is not able to present the records of workers as well as other documents. This makes the inspector wait for several days in order to get the documents required which creates the opportunity for the employer to prepare them. It happens most often during checks on the availability of written labour contracts which are prepared and signed after the check with a backdate. When the documents required are not presented the inspector makes an act for the violation established but afterwards there is a real danger of abrogating the penal act by the court. Before the court the employer presents the missing during the check documents including the labour contracts.

- Identification of workers.

The worker being afraid of losing his job very often declares that he is in the enterprise by chance without making an assessment of future negative consequences for his own self because of the lack of formulated employment relationship including cases of occupational accidents. Usually this assessment is made after the worker is suddenly and unilaterally removed from work.

2.The experience gained from the so many cases of violations established gives grounds to the Labour Inspectorate for making a number of proposals with the aim of achieving greater effect of control exercised:

- Abrogation of Labour Code provisions which provide opportunities for establishing employment relationships without concluding written labour contracts;
- Elaborating employer's obligation for keeping records for registration of all labour contracts concluded in the enterprise;
- Raising the size of fines imposed on employers including sanctions for legal persons when labour force is used without a labour contract;
- Fine for the worker in cases of unregulated employment;
- Expenses made by the Inspectorate for the checks which detect unregulated employment to be covered by the employer;
- Establishment of a new sanction according to which the systematic violation of labour law including hidden employment entitles the Inspectorate to ask for the exclusion of a tradesman from the trade registers;
- Introduction of a special procedure which gives the opportunity to the inspector to impose coercive administrative measures irrespective of the absence of the employer or the fact that he is impeded from being able to receive personally the protocol from the check;
- Amendment to the existing procedure which could give the opportunity to make an act for violation of labour legislation and issuing a penal act without requiring a witness;
- Establishing a significantly higher size of the non-appealable fine.

V[22]. "TRIANGULAR" RELATIONSHIPS

1.In the last decades we witnessed one more phenomenon in the striving of part of entrepreneurs to get qualified labour àt a lower price. The so called

"triangular" relationships occurred between the worker, employer and user. Although a little less-spread than the disguised or ambiguous work, the "triangular" relationships have their application in Bulgaria too.

2.One of the typical consequences of the transition in all CEE countries is the significant increase of criminal acts. This general insecurity created conditions for large spread of the necessity to guard the enterprises. The firms which need protection of their property quickly understood that professional protection by their own workers is very expensive or almost impossible. Thus one of the first cases of "triangular" relationships occurred and almost immediately became a mass practice.

The enlarging demand of the service "guard" caused a boom of newly created firms which provided the service under the form of security guards. In these cases the security firm concludes a contract with the firm needing protection while taking the commitment to provide the service by its own workers under labour contracts. At the same time the implementation of working functions is completely on the territory of the enterprise which asked for the service.

Under such contracts the "user" does not take any commitments concerning the working conditions, working hours, leaves, remuneration, insurance contributions and so on. The problem becomes more complicated because of the circumstance that part of these requirements provided by law can not be met by the real employer – the security firm. For example, the provision of anti-toxins, special supplements to the remuneration for work in dangerous for health working environment envisaged by the collective labour agreement of the given enterprise.

At the same time the worker is obliged to comply with the working conditions and the rules followed by the security firm and the firm, which is protected. Thus the worker under the 'triangular" relationship standing at the crossroads between two employers finds himself in a very unfavorable situation without having real legal mechanisms for the protection of his rights.

3.Most often through "triangular" relationships it is achieved a circumvention of commitments taken by virtue of a collective labour agreement. The profit of the user comes from the circumstance that he is

obliged to fulfill obligations under the current collective agreement only towards the workers with whom he has signed labour contracts.

In these cases attention is deserved by the question – is there unfair competition and conflict of interests between the workers who have classical labour contracts with their employers and the workers who work under a "triangular" relationship, when they are performing one and the same work in one and the same enterprise. It is not an exception when the enlargement of the application field of the "triangular" relationships in a given enterprise may be used by the employer as a tool for exercising pressure during collective bargaining with the aim to force trade unions to mitigate their position.

4.Another typical case of "triangular" relationships /though less-spread/ is found in companies for which the increase of the staff number, i.e. of the workers employed under a labour contract is a too complicated and bureaucratic process. Most often it happens so in companies the general management of which is outside the country while the operative powers of the local structures are limited.

In these cases there is conclusion of tripartite contracts through which de facto an "employer" is "hired". These contracts are concluded between the following parties:

- contractor – this is the "hidden", real employer or the employer de facto on the territory of which the respective worker performs work;
- executor – this is the "straw" employer or the employer de jure who takes the commitment to conclude a labour contract with a worker determined by the contractor. The labour contract defines the work place, functions, worker's obligations and remuneration defined by the contractor. For this "intermediary" activity the fictitious employer gets his "share" – a remuneration under the tripartite contract;
- worker – he can be defined under the tripartite contract in different ways – for example consultant, expert and others. He carries out his obligations under the operational leadership of the contractor although not having legal relationship with him.

5.In that complex and at first sight deprived of sense legal figure we can see the logic and interest of the contractor if we imagine that the word is about

dangerous for health and life activities and professions. In these cases very sharply increases the danger from occupational accidents, while the contractor, i.e. the "hidden" employer because of number of reasons does not wish to relate to them /especially sensitive in this regard are the multinational companies/. In case of such tripartite contract all possible negative consequences from the work performed are for the "straw" employer – executor who is most often a small and unknown firm which insists on the payment for the "role" much more than the good name. In this way the contractor not only circumvents the barriers of his own bureaucracy / this is the top of the "iceberg"/ but he can save significant resources which should be invested in safety and hygiene at work if that work is performed by his workers.

Thus we become witnesses of how the responsibilities of the employer during the working process are separated from the profit which the worker provides with his work performance.

6.This approach to a significant extent is an obstacle also to the implementation of the control activity concerning the availability of the necessary working conditions. The problem comes from the circumstance that the law imposes the obligations in this respect to the formal employer, not to the factual one.

In their own defence the contractors under the tripartite contracts state it is better when good professionals work under a labour contract with a good remuneration /though with fictitious employer/ than being a party to a civil contract for some services. The subjectivity requires to point out that this logic is shared by the workers themselves.

This is the precise place to note that in Bulgaria the practice where the role of the "straw" employer mentioned above is played by a intermediary agency providing labour force for ishleme is not spread yet.

VIII. CONCLUSIONS

1.The new legal framework of the labour market established in Bulgaria in the last decade in practice covers more or less all economically active persons. Its implementation causes new challenges and burdens for the Government and most of all responsibilities for the implementation of legislation and collection of taxes and insurance contributions. From this

point of view there must be very careful assessment of the risk that the new tax and insurance burdens may increase the number of the "working poor" and marginalize another part of population. The idea is not to cause a reverse effect from the excessive "care" for the strict implementation of legislation and additional "low tide" from the classical labour contracts to disguised or ambiguous work.

The analysis of labour market practices in Bulgaria shows two interesting characteristics of disguised or ambiguous work.

First – the disguised or ambiguous work is not always low paid, even less it is a synonym of poverty. Just the opposite – in many cases this form of work brings income which is much higher the prevailing minimum and even average incomes in the formal sector.

Second – it is not true that in all cases the disguised or ambiguous work is illegal. The practice shows that a big part of the workers working in this way can go beyond the law due to elementary, not intentional ignorance of the provisions on the one hand or their practical inapplicability for some of the cases on the other. Another important reason due to which many of the micro enterprises function at the confines of the law is the high cost of legal requirements who test their survival.

This makes the issues which worry the ILO experts topical also in Bulgaria:

- To what extent the disguised or ambiguous work is an adequate way for employment promotion?
- To what extent the disguised or ambiguous work can absorb the surplus of labour force?
- Whether the disguised or ambiguous work is a key to the economic growth and the creation of new jobs?
- Whether the disguised or ambiguous work is a favorable field for cheap labour force?

2.As a reaction to these challenges there is a discussion arising in the Bulgarian society on the following topic – isn't that the time to change the direction from enlarging the restrictive measures to greater tolerance and support with the aim to gradually integrate contractors and executors of disguised and ambiguous work at the side of the law? Along with this it can be clearly seen that there is raising of concerns for the vulnerability of workers performing work under such conditions as well as recognizing the

need of enlarging the coverage of social protection so that they can be covered. The debates are oriented towards reforming the legislative and administrative frameworks, the elaboration of simpler "rules of the play", stricter implementation of law.

At the same time there is some development in attitudes reflecting the available barriers for the business which in their turn cause costly and complex legislative and administrative reforms.

3.The analysis of the situation in Bulgaria points to a necessity from clear division between two groups of rules:

- Provisions which protect the public interest and the risk groups of society have the absolute need from these norms, and
- Provisions which regulate activities leading to great administrative and financial burdens.

In the division there should be reflected the impermanent forms of work, used in:

- Activities requiring increased labour mobility;
- Activities caused by the necessity to survive, or
- Cases of inapplicability of legislation.

However the discussion does not question the axiom that paid labour must be protected in all cases through enlarging application of labour standards while not discrediting the fundamental human rights because of excessively "flexible" forms of work.

4.On this occasion the representative trade unions in Bulgaria – the Confederation of Independent Trade Unions in Bulgaria /CITUB/ and the Confederation of Labour "Podkrepa" which are members of the European Confederation of Trade Unions express their anxiety from the danger of turning the Bulgarian labour market into a field for social dumping. Under the difficult economic conditions in most of the Eastern Europe countries it can be found that what is social dumping for Western Europe, can be attractive motive for others to attract the attention of investors. According to the biggest Bulgarian trade union CITUB there is a real danger of attempts to oppose on this basis trade unions from Eastern and Western Europe in the interest of multinational companies and international financial institutions. The trade union suggests to oppose to this tendency fast and efficient integration and consolidation of the European trade union movement within the framework of the European Confederation of Trade Unions. The CITUB finds that a strong and authoritative European Confederation of Trade

Unions which has adopted solidarity as its basic principle can prevent the attempts for social dumping as well as promote the investments in Eastern Europe without harming the interests of hired labour in Western Europe.
Along with this there is a clearer need from promoting social dialogue which can allow:

- Defining society groups largely using disguised or ambiguous work through exploring the spheres and activities where these forms of work are used, their productivity and the statute of workers.
- To improve understanding for the nature and character of the temporary employment relationships;
- To study and define the role of the family business which, through the SME, is the basic environment where these unidentified labour relations are developed.

5.Despite of the limited resources and possibilities for manoeuvres the Bulgarian Government has taken the commitment and has the will to continue implementing clear "rules of play", in particular to protect the freedom of enterprises and consumption. At the same time it must be recognized that in Bulgaria there is a shortage of expert potential and knowledge for observation, research and elaboration of adequate measures and policies on the part of administration. That is why the research and technical cooperation with the ILO, the discussions on problems and particularly recommendations proposed by the ILO are very suitable, timely and useful.

FINAL

Among the German employers there is a popular joke saying that it is easier to get a divorce than part a worker under a permanent labour contract. Probably, this is shared by their Bulgarian colleagues.

The basic employer's motive for that striving to "invent" new forms of disguised or ambiguous work or to "triangular"relationships is to get maximum labour against minimum cost not at the expense of the wage but through circumventing other obligations towards the worker, the social funds, the fiscal sphere.

The efforts in that direction get the solid support by the world tendency of increasing individualization of labour and increasing independence at the work place of the availability of classical working collective. It is suggested

that about 20 million people working worldwide telecommunicate with their work places from their homes; other millions irregularly work at their homes.

The new technologies increased not only the productivity but also the freedom of the separate worker, which is very attractive for the new generations. Namely the young people felt their strength and value as a "new autonomous labour force" and they are ready to turn their back to the traditional industrial relations. The dilemma "security or freedom" concerning labour receives a different generational answer by employers as well as workers.

When we explore the basic elements of the different cases of disguised or ambiguous work as well as the characteristic features of the "triangular" relations we see everywhere a substantial autonomy in regard with the employer /contractor/ as well as the worker /executor/. The careful analysis shows that we are facing an "undressed" employment relationship where dozens of commitments of the parties have been removed and first of all employers' commitments. There is only the final left – one of the parties gets labour and its result, the other one – the respective cost.

Irrespective of whether we reject or accept the practice of moving away from the classical forms of work under a labour contract the subjectivity requires to have the courage to see the reality and ask the following questions in a loud voice:

- Why there is such work which decreases the quality of employment expressed by security at the work place; productive jobs; guarantees for the worker's rights according to the ILO conventions and recommendations?;
- What are the more advantageous characteristics of these forms for performing labour for the employer /contractor/ and the worker /executor/?
- Is that the next "flexible" mechanism for decreasing the taxes and insurance contributions due under a labour contract?
- If there has been provided by law /or allowed by the "silence" of the law/ a difference between the volumes of rights of those working under labour contracts and those working under "triangular' relationships, then aren't we forcing the employer to make a "notified" choice?

- Isn't it a must for the insurance and tax regime of such untraditional jobs to be the same /or very close/ to that of the classical jobs in order not to tempt the employer?

"The picture" becomes more complicated because of the circumstance that very often the short-term interests of the employer and the worker coincide in the striving to preserve the job; to get higher /according to Bulgarian standards/ remuneration today at the expense of insurance contributions which are to provide income in the years to come.

The main sharp issue, which the Bulgarian politicians, researchers and practitioners face in the sphere of labour is how to decrease formalizing of hired labour and at the same time to minimize the negative consequences from the globalization and liberalization of market relations. The approach, which is to be adopted, shall be based on a political decision on whether to direct the road mainly to restriction or to transformation of unidentified forms of work.

In that relation a forum for the Balkan region countries or Eastern Europe under the auspices of the ILO would be exceptionally useful. That forum could help in explaining the phenomenon, finding the typical forms of employment, clarifying the social partners' positions and their priorities, as well as discussing viewpoints on the feasible extent of "strictness" of law implementation and the necessary amendments.

APPENDIX
1. Bibliography