

THE SPECIAL LEGAL CAPACITY FOR ESTABLISHING AN EMPLOYMENT RELATIONSHIP (LABOR-LAW CAPACITY)

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Abstract

The special legal capacity represents a subcategory of general legal capacity, which itself forms part of the fundamental institute of civil law known as legal subjectivity.

The capacity to establish an employment relationship (labor-legal capacity) is acquired by a natural person upon fulfillment of the conditions prescribed by law, thereby constituting a distinct form of legal capacity. This paper examines the special legal capacity for establishing employment relationship (labor-law capacity) pursuant to the labor law of the Republic of North Macedonia.

This capacity reflects the individual's ability to enter into a legally valid employment contract once the statutory general and special conditions are fulfilled. The purpose of this paper is to analyze the general and special conditions required under the labor legislation of the Republic of North Macedonia for the establishment of an employment relationship. As the paper will demonstrate, the cumulative fulfillment of the two general conditions, the attainment of the minimum age (18) and the possession of general health ability, constitutes what is defined in labor law theory as labor-legal capacity.

Through an analytical and comparative approach, the study examines how the Macedonian Labor Relations Act regulates this capacity, particularly regarding minimum age, general health ability and professional capacity. It further explores the extent to which these provisions are harmonized with international and European labor standards, including the ILO Minimum Age Convention (Geneva, 1973), the International Covenant on Economic, Social and Cultural Rights, Declaration of the Rights of the Child, and Charter of Fundamental Rights of the European Union.

Keywords: *legal subjectivity, special legal capacity, labor-law capacity, professional capacity.*

1. Introduction

Special legal capacity, as a component of legal subjectivity and a derivative of general legal capacity, constitutes a key concept within both civil and labour law. In the context of labour relations, it takes the form of labour-law capacity, representing the specific legal ability of a natural person to enter into an employment relationship upon fulfilling the conditions prescribed by law.

Within the legal framework of the Republic of North Macedonia, labour-law capacity represents a necessary prerequisite for entering into an employment relationship and reflects the practical dimension of legal subjectivity in the field of labour relations. Its regulation is grounded in statutory provisions, further elaborated in labour law doctrine, and complemented by relevant international standards.

This paper aims to provide a systematic and comprehensive analysis of labour-law capacity as a prerequisite for establishing an employment relationship. It focuses on the distinction between general and special conditions for employment, the legal characterization of the employment relationship, and the mechanisms regulating its suspension and termination. Particular attention is devoted to the employment of minors, reflecting both constitutional principles and the influence of international labour standards. By examining both the normative framework and doctrinal interpretations, the paper highlights the balance between contractual freedom and

social protection, as well as the need for continuous harmonization of domestic legislation with evolving international and European labour standards.

2. The special legal capacity for establishing an employment relationship

The capacity to establish an employment relationship (labour-law capacity) is acquired by a natural person upon fulfilling the legally prescribed conditions, therefore, it represents a specific legal capacity.

Professors T. Kalamatiev and A. Ristovski point out that the employment contract is not explicitly defined in Macedonian labour legislation (Каламатиев & Ристовски, 2015, pp. 21). However, the definition, i.e. the conceptual determination of the employment contract in the Macedonian labour law system, derives from domestic legal doctrine. In this regard, Professors G. Starova and T. Beličanec define the employment contract as *a contract by means of which one person undertakes to work for another person in exchange for a certain remuneration* (Старова & Беличанец, 1996, pp. 129-130). With regard to the employment relationship, the Law on Labour Relations (2005) of the Republic of North Macedonia defines the employment relationship as *“a contractual relationship between the employee and the employer, in which the employee voluntarily enters into the organized work process of the employer, for a salary and other benefits, personally and continuously performs the work in accordance with the instructions and under the supervision of the employer”* (Article 5(1)).

Labour law scholars first address the conditions for establishing an employment relationship and then classify them into general and special conditions (Живковска & Пржеска, 2021, pp. 84). Professor G. Starova, in this respect, points out that *the general conditions for establishing an employment relationship are those conditions that must be fulfilled by every person entering into an employment relationship, regardless of the specific job position* (Старова, 2009, pp. 219). In contrast, according to the Professor, special conditions for establishing an employment relationship are those determined by law, collective agreement, or by an act of the employer, i.e. conditions required by the employer, which relate to the performance of specific tasks or to certain categories of workers (Старова, 2009, pp. 219).

According to the Law on Labour Relations, an employment contract¹ may be concluded by a young person under 18 years of age, provided that they possess general health ability (Article 18(1)). Furthermore, paragraph 2 establishes a strict prohibition on the employment of children under the age of 15 and those who have not completed compulsory education. At the same time, it provides narrowly defined exceptions, allowing their participation only in specific activities permitted by law, subject to strict limitations on working time and the overriding obligation to protect their health, safety, and educational development. With these two legal conditions, Professor G. Starova considers that the Law on Labour Relations, in fact, expresses firstly the constitutional principle of equality of all persons in the establishment of an employment relationship, and secondly the principle of freedom of choice of employment (Старова, 2009, pp. 220), as determined by the Constitution of the Republic of North Macedonia (Article 32, Constitution, 1991), as some of the fundamental principles of employment. These two principles (the principle of equality of all persons in the establishment of an employment

¹ In Slovenia the term “pogodba o zaposlitvi” is concluded. “A contract of employment may be concluded by persons who have reached the age of 15 years. An employment contract concluded with a person under the age of 15 is null and void” (Article 21, Zakon o delovnih razmerjih, Ur. list R Slovenije, Uradni list RS, št. 21/13, 78/13 – popr., 47/15 – ZZSDT, 33/16 – PZ-F, 52/16, 15/17 – odl. US, 22/19 – ZPosS, 81/19, 203/20 – ZIUPOPDVE, 119/21 – ZČmIS-A, 202/21 – odl. US, 15/22, 54/22 – ZUPŠ-1, 114/23, 136/23 – ZIUZDS in 70/25 – ZUTD-I. Available at: <https://pisrs.si/pregledPredpisa?id=ZAKO5944>.

In the Serbian Labour Act, the term “radni odnos” is used. “An employment relationship may be established with a person who is at least 15 years of age and meets other conditions for work in specific positions as prescribed by law. An employment relationship with a person under the age of 18 may be established only with the written consent of the parents, adoptive parents or guardians, provided that such work does not endanger their health, morals or education, and provided that such work is not prohibited by law” (Article 24(1) and Article 25(1), Zakon o radu, Sl. glasnik R Srbije, “Sl. glasnik RS”, br. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 - odluka US, 113/2017, 95/2018 - autentično tumačenje i 109/2025 - dr. zakon. Available at: https://www.paragraf.rs/propisi/zakon_o_radu.html.

relationship and the principle of freedom of choice of employment) imply the right of the worker, by their own will, to establish an employment relationship, as well as the right of access to any workplace for every person regardless of national, religious, or gender affiliation, provided that they fulfill the general conditions for establishing an employment relationship as determined by law (Старова, 2009, pp. 220).

The first general condition is age, which is proven by an extract from the birth register (Живковска & Пржеска, 2021, pp. 84). This condition is also provided by the Constitution of the Republic of North Macedonia in Article 42: “*a person under 15 years of age cannot be employed*”.

In establishing age as a general condition for employment, the Macedonian legislator has also taken into account the international obligations arising from the Declaration of the Rights of the Child (Principle 9(2), 1959). This provides that: “*the child shall not be admitted to employment before an appropriate minimum age, he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development*”.

In this context, it is also important to mention the International Covenant on Economic, Social and Cultural Rights ((ICESCR), 1966) which proclaims that: “*...children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law*”. (Article 10(3)). States are also required to establish age limits below which the paid employment of children is prohibited and punishable by law. This highlights the obligation of states to ensure effective legal protection of children and young persons through the prohibition of harmful work and the establishment of minimum age thresholds.

With regard to the age for employment, a comparative overview shows a general convergence across the region. Thus, the Croatian Law on Labour Relations (Article 19, 2014) provides that: “*a person who has not reached the age of fifteen may not be employed, nor a person who has reached the age of fifteen and is under eighteen if they are attending compulsory primary education*”.

The Albanian Labour Code (Article 20, 1995), with regard to employment, provides that the right to conclude an employment contract belongs to: 1. persons with full legal capacity to act, in accordance with the provisions of the Civil Code, and 2. persons with limited legal capacity to act, who are expressly or tacitly authorized by their legal representative to perform work. According to this Code, the employment of children under the age of 16 is prohibited, with the exception that children aged 15 to 16 may be employed during school holidays and only in light work. Children aged 15 to 16 may also be subject to vocational guidance or training. Children under the age of 15, or children attending compulsory regular education, may be employed in cultural or similar activities (Article. 98, Albanian Labour Code, 1995). Overall, this comparative overview demonstrates a general convergence in regulating minimum working age and ensuring enhanced protection of minors, in line with international labour standards.

According to Article 32 of the Charter of Fundamental Rights of the European Union (2000), child labour is prohibited. The minimum age for admission to employment must not be lower than the minimum school-leaving age, without prejudice to more favorable rules for young people and except for limited derogations. Young people admitted to work must have working conditions that are appropriate to their age and must be protected from economic exploitation and from work likely to harm their safety, health, or physical, mental, moral or social development, or to interfere with their education.

The Minimum Age Convention (No. 138), adopted by the General Conference of the International Labour Organization (ILO) in Geneva on 6 June 1973, establishes a framework for regulating the minimum age for admission to employment. Each Member for which the

Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to progressively raise the minimum age for admission to employment to a level consistent with the fullest physical and mental development of young persons (Article 1, of the Minimum Age Convention, 1973).

According to the Convention, a Member whose economy and educational facilities are insufficiently developed may, after consultation with employers and workers organizations, initially specify a minimum age of 14 years (Article 2(4) of the Minimum Age Convention, 1973). The minimum age for admission to any type of employment or work which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of young persons shall not be less than 18 years (Article 3(1), of the Minimum Age Convention, 1973). However, national laws or competent authorities may authorize employment or work from the age of 16 years, provided that the health, safety and morals of young persons are fully protected and that they have received adequate instruction or vocational training (Article 3(3), of the Minimum Age Convention, 1973).

According to Professors R. Zhivkovska and T. Pržeska, the second general condition for acquiring work capacity is general health capability, which is determined through a medical examination conducted in a health institution (Живковска & Пржезка, 2021, pp. 84-85). The institution issues a certificate confirming the overall health, psychological, and physical capability of the worker.

According to the Regulation on the content and manner of medical examinations for determining general health capability, as well as the content, issuance, and validity of the medical certificate (Article 2, 1995), medical examinations for determining general health capability are carried out by healthcare institutions at the level of primary healthcare that perform occupational medicine activities. The Regulation stipulates that such medical examinations are conducted by a medical doctor, specialist in occupational medicine. The person is issued a medical certificate confirming their general health capability, as a general condition for establishing an employment relationship (Article 3, 6, 1995). The Regulation further provides that the assessment of general health capability (Article 8, 1995), as a general condition for establishing an employment relationship, may be: fit for work, temporarily unfit for work, or fit for work with certain limitations.

According to the Regulation, the overall health, psychological, and physical condition of the worker for performing specific work, for which there is a need to establish an employment relationship, i.e. for concluding an employment contract, is determined through a medical examination. If the person fulfills this second condition in addition to the first one, i.e. the *cumulative existence of both general conditions*, they acquire the so-called “labour-legal capacity” as referred to in labour law doctrine (Живковска & Пржезка, 2021, pp. 85).

Professors R. Zhivkovska and T. Pržeska consider that general or full work capacity is acquired by all natural persons upon reaching a certain age. With full work capacity, all types of work may be performed, and it is possessed by all natural persons who, in addition to the required age, also have general health ability. In contrast, partial work capacity is found in persons with impaired health and in persons with disabilities who do not have general health capability, i.e. who are not able to perform all types of physical work.

In addition to the general conditions for establishing an employment relationship, for performing certain tasks, as well as for work under specific conditions, special conditions for establishing an employment relationship are also required. In fact, by fulfilling these conditions, one acquires the so-called professional capacity as a special legal capacity for performing certain professions (Живковска & Пржезка, 2021, pp. 85). Such are, for example, the legal profession (lawyers), notarial profession, medical profession, and others. In acquiring this professional capacity, in addition to the general conditions (age and general health capability), professional and technical conditions are also required, such as: professional qualifications (for

a lawyer – bar exam, for an enforcement agent – enforcement exam, etc.), experience (at least three years for a notary, five years for an enforcement agent, etc.), specific health capability, and others (Живковска & Пржезка, 2021, pp. 85). Professor Starova considers professional qualifications, specific knowledge and abilities for performing relevant tasks, work experience, and similar requirements as special conditions for establishing an employment relationship (Старова, 2009, pp. 222). Often, such conditions may also include some of the general conditions, for example, a higher age than that prescribed by law, or specific health capability, specific psychophysical abilities, and other particular conditions, if this is of special importance for performing certain tasks which, by their nature, require a more detailed determination of the conditions for establishing an employment relationship and for performing those tasks.

Among the numerous definitions of professional work capacity, it is appropriate to mention the broader definition given by Professor E. Stikova, according to which *professional work capacity represents the orientation of energy towards specific professional work tasks that require a higher level of integration of complex functions of the central nervous system, as well as appropriate knowledge, experience, and skills of the worker*². It would not be incorrect to conclude that professional work capacity represents a reciprocal relationship between the psychophysical and functional capacities of the worker, their competencies, knowledge and skills, and the requirements of the workplace.

According to the Law on Labour Relations, foreign nationals or stateless persons may also conclude an employment contract, provided that they fulfill the conditions prescribed by the Law on Labour Relations and by another special law regulating the employment of foreigners (Article 20, Law on Labour Relations, 2005). Pursuant to Article 29 of the Constitution of the Republic of North Macedonia, foreigners in the Republic of North Macedonia enjoy the freedoms and rights guaranteed by the Constitution, under conditions determined by law and international agreements. Furthermore, paragraph 3 of Article 54 of the Constitution provides that restrictions of freedoms and rights may not be discriminatory on the grounds of sex, race, colour of skin, language, religion, national or social origin, property, or social status. The Law on Employment and Work of Foreigners (Article 1(1), 2021), as a special law, regulates the conditions and procedures under which foreign nationals may be employed or work in the Republic of North Macedonia. It should be noted that these conditions apply unless otherwise provided by a ratified international agreement.

3. Suspension of Rights and Obligations Arising from the Employment Contract

The Law on Labour Relations, within the framework of the employment contract, also contains specific provisions relating to the suspension of rights and obligations arising from the employment contract. Thus, pursuant to Article 45 of the Law, in cases where the employee, due to serving a sentence or an imposed educational or protective measure, is unable to perform work for a period shorter than six months, or due to military service or the performance of alternative civilian service with compensation, detention, or in other cases prescribed by law, temporarily ceases to perform work, the employment contract does not terminate. In such cases, the employer may not terminate the employment of the employee, unless proceedings for the termination of the employment have been initiated, during this period, the contract is suspended. During this time, the contractual and other rights, as well as the obligations arising from the employment relationship that are directly related to the performance of work, are suspended. In the case of suspension of the employment relationship, Professor G. Starova rightly emphasizes that, *despite the fact that during the suspension the employee is not at work and does not exercise their rights or fulfill their obligations, this does not mean that the employment*

² For further details, see: Е. Стикова, Оценка на работната способност (Assessment of Work Capacity). Available at: <http://medf.ukim.edu.mk/> (03.11.2025).

relationship has ceased (Старова, 2009, pp. 278). This means that the employee continues to remain in an employment relationship, but their rights and obligations arising from that relationship do not run, i.e. they are neither exercised nor performed.

With regard to an employee who is elected or appointed to a state or public function established by law, the performance of which requires them to temporarily cease working for the employer, the Law provides that the employment relationship is suspended for the duration of the function, and that the employee has the right, within 15 days after the termination of the function, to return to work with the employer and perform tasks corresponding to their level of professional qualifications (Article 151, Law on Labour Relations, 2005).

The Law also provides for other categories of persons whose employment relationship is subject to suspension (Article 152, Law on Labour Relations, 2005). Thus, an employee who is assigned to work abroad within the framework of international technical cooperation, educational, cultural, or scientific cooperation, in diplomatic and consular missions, or for professional training or education with the consent and for the needs of the employer, shall have their employment relationship suspended and shall have the right, within 15 days from the day of termination of the work abroad, to return to work with the employer and perform tasks corresponding to their level of professional qualifications. Likewise, healthcare workers and healthcare associates employed in healthcare institutions, who are deployed in humanitarian or peacekeeping operations in medical teams outside the territory of the Republic of North Macedonia, as well as reservists of the Army of the Republic of North Macedonia, shall have their employment relationship suspended for the duration of their deployment or engagement. They have the right, within 15 days after the termination of such deployment or engagement, to return to the employer and perform tasks corresponding to their level of professional qualifications. Overall, these provisions demonstrate that the suspension of the employment relationship extends to specific categories of employees, ensuring both the continuity of the employment relationship and the preservation of the employee's right to return to work.

4. Modes of Termination of the Validity of the Employment Contract

The complexity of the legal mechanism governing the termination of the employment relationship, i.e. the termination of the validity of the employment contract, according to Professor G. Starova, consists of several elements, namely actions whose undertaking and realization determine and condition its legal validity. According to the Professor, these include: the determination of the occurrence of one of the legal grounds for termination of the employment relationship, the adoption of a decision on the termination of the employment relationship, and the execution of that decision (Старова, 2009, pp. 324). This means that the termination of the employment relationship may be based only on the cumulative fulfillment of these actions, otherwise, its legality is called into question.

With regard to the termination of the validity of the employment contract, the Law on Labour Relations expressly provides that the employment contract shall cease to be valid: 1) upon the expiry of the period for which it was concluded (Article 64) upon the death of the employee or the employer (natural person) (Article 65) due to the termination of the employer in accordance with the law (Article 66) termination by mutual agreement (Article 69(1)); 5) by termination (notice) (Article 71(1)); 6) by a court judgment (Article 102); and 7) in other cases provided by law.

5. Conclusion

The analysis confirms that labour-law capacity, as a specific legal capacity, constitutes the essential legal foundation for establishing an employment relationship in the Republic of North Macedonia. The legislative framework, supported by labour law doctrine, clearly distinguishes between general conditions such as minimum age and general health ability and special conditions related to the nature and requirements of particular professions. This structured approach ensures that access to employment is both legally regulated and functionally aligned with the demands of the labour market.

A significant aspect of the system is the protection of minors, where domestic legislation reflects constitutional principles and is harmonized with international labour standards, particularly regarding minimum working age and the prohibition of harmful child labour. This demonstrates a clear commitment to safeguarding human dignity and ensuring the proper development of young individuals. Furthermore, the regulation of employment relationships extends beyond their establishment, encompassing mechanisms such as the suspension of rights and obligations and the legally defined modes of termination. These elements underline the complexity and coherence of the legal framework, which seeks to balance contractual autonomy with the need for social protection and legal certainty.

In conclusion, the Macedonian labour law system provides a comprehensive and well-structured regulation of employment relationships. However, continuous alignment with international standards and evolving labour practices remains essential for strengthening the protection of workers' rights and ensuring the effective functioning of modern labour relations.

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