
Challenges and Opportunities of Self-Employment in the Contemporary Labour Market: An Examination of Legal Frameworks ¹

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Abstract: *The contemporary labour market is experiencing a notable transition towards self-employment, primarily driven by technological advancements. As a diverse range of employment opportunities arises, there is an escalating necessity for a comprehensive legal framework to accommodate these novel work arrangements. This article examines the intricate legal practices surrounding self-employment across various jurisdictions, emphasising potential transformations within the labour market. It scrutinises existing methodologies through the prism of legal precedents and judicial determinations. Furthermore, the article delves into the complex legal definition of self-employed individuals, contrasting traditional and emerging trends within the employment sector. The principal objective of this study is to clarify the legal status, entitlements, and protections afforded to self-employed workers within this evolving employment landscape.*

Keywords: *Labour Law; Development; Labour Market; Self-Employment; Freelancing.*

I. INTRODUCTION

Embracing The Self-Employment Status

The rapid and significant changes in modern society herald the onset of a technological revolution. Advancements in technology are reshaping our societal landscape and paving the way for innovative lifestyles. This transformative period is often referred to as the Fourth Industrial Revolution, characterised by the integration of technology, artificial intelligence, and automation. In this era, humans primarily bear the responsibility of supervising the effective management of processes related to the development and refinement of artificial intelligence.²

In the modern era, automation is progressing across all sectors. For example, robotic lawyers are now capable of drafting lawsuits, while artificial intelligence is helping courts.³ Technological advancements have created numerous opportunities in the labour market, but they also present specific challenges. One of the most pressing global issues is the recruitment and retention of qualified employees.⁴

In the past decade, many developing countries have experienced intellectual migration due to their open economies and the abundance of available human potential.⁵ This migration encompasses virtual migration, which involves self-employment and outsourcing. However, this process can

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² Asghar, S., Rextina, G., Tanveer, A., & Illahi Tamimy, M. 2020. *The fourth industrial revolution in the developing nations: Challenges and road map*. Commission on Science and Technology for Sustainable Development in the South (COMSATS). 5.

³ McGowan, R. 2018. *Judge v robot? Artificial intelligence and judicial decision-making*. UNSW Law Journal, 41(4), 1114.

⁴ Stropoli, R. 2024. *Which workers will benefit from AI?* Chicago Book Review.

⁵World Migration. 2023. General section. *An overview of international migration*. [Online] Available at: https://publications.iom.int/system/files/pdf/wmr_2003_1.pdf; [Accessed 10.11. 2024].

result in a "brain drain" effect.⁶ The migration of individuals from one location to another can impact a country's financial well-being by potentially reducing tax revenues and leading to substantial government deficits. Nevertheless, it's important to acknowledge that migration can also drive innovation and create a vibrant environment for self-employed individuals within the nation.

Many companies nowadays are implementing employer branding strategies to attract and retain highly talented individuals.⁷ As a result, there has been a decline in candidates' willingness to pursue traditional job opportunities, while employee loyalty towards employers has increased.

For instance, according to *Shadow Policies*, a manager allows certain employees to work remotely despite the lack of a formal remote work policy within the organisation. This strategy is employed to retain critical talent. The *2023 State of Hybrid Work* report indicates that 42% of employees would contemplate changing jobs if their employer were to eliminate the option for remote or hybrid work.⁸ Also, the Research conducted by *StyleRemote* indicates that 67% of American companies have encountered employee turnover to competitors that provide remote or hybrid work arrangements. This phenomenon is similarly observed among 73% of significant employers globally, including those in the United Kingdom, Germany, and Japan. For instance, *Royle (2024)* highlights that Amazon is facing retention risks due to its new return-to-office mandate, despite an executive's claim that 90% of employees are satisfied with the policy.⁹ The *KPMG* report highlights a growing divide in opinions regarding the complete elimination of remote work models between employers and employees, which could have detrimental consequences for organisations. Successful leaders must recognise that employees today have transitioned from merely expressing preferences to forming expectations. There is an increasing anticipation for more flexible work arrangements and an improved work-life balance. Eighty-seven per cent of managers aged 60–90 anticipate a full return to the office, in contrast to 83% of those aged 50–59 and 75% of those aged 40–49. Furthermore, a greater proportion of male managers (84%) predict a return to in-office work than their female counterparts (78%). The mandated adoption of remote work during the pandemic presented numerous challenges for organisations, including the necessity to adapt to new work models and secure appropriate resources and funding.¹⁰

Considering all the aforementioned facts, it is evident that new styles of employment and opportunities are becoming increasingly popular. Freelancing, often referred to in this context, is one of the most widespread forms of employment globally, including in Georgia.

One of the most common forms of employment today is self-employment, often referred to as freelancing.¹¹ Freelancers undertake specific tasks for various organisations instead of being tied to a single employer.¹²

⁶ Smirnova, E., Okhrimenko, I., & Zakharova, A. 2022. *Review of best practices in self-employment taxation*. Public Organization Review, 24(1), 8-9.

⁷ Illic, B., Krušković, T., & Anđelić, S. 2023. *Attracting and retaining employees as a result of effective employer brand management*. International Journal for Quality Research, 17(4), 197.

⁸ McGovern, M. 2024, May 7. *4 new #WorkTok trends you need to know*. *HR Morning*. [Online] Available at: <https://www.hrmorning.com/articles/worktok-trends/> [Accessed 10.11.2024].

⁹ Royle, O. R. 2024, October 24. *Research reveals that Amazon employees are a flight risk after the new return-to-office mandate even though one executive insists 90% of employees are happy about it*. Retrieved from *Fortune*. [Online] Available at: <https://fortune.com/.../amazon-exec-workers-rto-happy...> [Accessed 10.11.2024]

¹⁰ Sadovi, M. W. 2024, September 23. *Most chief executive officers anticipate a complete return to the office within three years: KPMG*. *HR Dive*. [Online] Available at: <https://www.hrdiver.com/.../ceos-expect-full.../727816/> [Accessed 10.11.2024].

¹¹ Freelancers Union, 2017. *An independent, annual study commissioned by Freelancers Union & Upwork*. [Online] Available at: <https://freelancersunion.org/wp-content/uploads/2023/03/FreelancingInAmericaReport-2017.pdf> [Accessed 10.11.2024].

¹² Fudge, J., McCrystal, S., & Sankaran, K. 2012. *Challenging the legal boundaries of work regulation*. Bloomsbury Publishing, 175.

Given the mentioned factors, it is essential to thoroughly examine the emerging employment opportunities and their characteristics to establish a robust legal framework. The defining features of self-employment's legal structure ensure the constitutional right to pursue one's ambitions while enjoying the freedom to work independently for a specified duration.

This article explores key legal practices related to self-employment in various jurisdictions, emphasising the potential for change in the labour market.

It discusses the legal status of self-employed persons from contemporary perspectives and assesses the impact of existing legal regulations on their rights and obligations.

The study seeks to assist self-employed individuals in understanding and establishing suitable value propositions, ensuring adherence to international safety and ethical standards.

Moreover, the study's implications may extend to the job market and economic development by potentially reducing labour migration through the sectoral enhancement of the job market worldwide. A coherent and well-targeted self-employment strategy could attract and retain talented individuals while increasing employee motivation and productivity.

II. SELF-EMPLOYMENT WITHIN THE GEORGIAN INSTITUTIONAL FRAMEWORK

The Constitution of Georgia contains several provisions that demonstrate the nation's commitment to protecting the rights of its citizens and promoting a fair and inclusive community. Article 12 explicitly states that every individual has the right to develop their personality without restrictions.¹³ Article 6(2) affirms the state's commitment to fostering a free and open economy, promoting entrepreneurship, ensuring fair competition, and safeguarding the universal right to private property.¹⁴ Article 12 guarantees the right to personal development, while Article 6 highlights the importance of a free economy, entrepreneurship, fair competition, and the protection of private property. Furthermore, Article 26(1) of the Georgian Constitution ensures that every individual has the freedom to choose their profession.¹⁵ Article 5 (1) of the Constitution of Georgia declares that the country is a social state, requiring the state to uphold social justice, equality, and solidarity among its people.¹⁶ The government is dedicated to ensuring that all citizens have access to essential resources, opportunities, and protections for dignified lives, regardless of socioeconomic status. It also highlights the importance of fostering a fair and equitable society. Article 26(1) of the Georgian Constitution stands as the supreme law, safeguarding the freedom to choose one's profession, that promotes social justice, equality, and solidarity.¹⁷ In addition, in 2014, the Association Agreement was signed between Georgia and the European Union.¹⁸ Establishing strong connections, it maintained the shared principles outlined in the Partnership Agreement between the European Communities, their Member States, and Georgia.¹⁹ These connections reinforce the Eastern Partnership, a unique element of the European Neighbourhood Policy. The Parties recognise their

¹³ Article 12 of the Constitution of Georgia. [Online] available at: <https://matsne.gov.ge/en/document/view/30346?publication=36> [Accessed 10.11.2024].

¹⁴ Ibid. Article 6 (2)

¹⁵ Ibid. Article 26 (1)

¹⁶ Ibid. Article 5 (1)

¹⁷ Shvelidze, Z., In the book: *Georgian Judicial Practice on Labour Disputes (Collection of Reprints)*, 2nd Edition, 2024. 15-16.

¹⁸ *Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part*. 2014. Official Journal of the European Union. [Online] Available at: https://eur-lex.europa.eu/eli/agree_internation/2014/494/oj [Accessed 10.11.2024].

¹⁹ European Commission. 1997. *Proposal for a Council and Commission Decision on the conclusion of a Protocol to the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part (COM(97) 557 final)*. [Online] Available at: [http://aei-dev.library.pitt.edu/47272/1/COM_\(97\)_557_final.pdf](http://aei-dev.library.pitt.edu/47272/1/COM_(97)_557_final.pdf); [Accessed 10.11.2024].

mutual ambition to strengthen and expand their relations. They also acknowledge Georgia's aspirations to integrate more closely with Europe.

Article 228 of the agreement affirms that each Party has the right to establish its sustainable development policies and priorities while shaping domestic environmental and labour protection measures. Countries are encouraged to align their laws and policies with globally accepted standards. As long as these amendments adhere to these standards, they are free to adopt approaches that best suit their specific contexts, all while maintaining a commitment to universal principles.²⁰ Each party in this agreement should ensure that their laws and policies promote and support environmental and labour protection. They must enhance their policies while implementing robust protective measures.

It is an important pathway to European society while protecting constitutional rights to address contemporary public needs.

A primary challenge within the legal framework regulating self-employment is the distinction between independent contractors and employees.

Self-employed individuals come from various professions, such as writers, designers, consultants, and tradespeople. While self-employment can offer considerable freedom and independence, it also includes challenges such as financial management and maintaining a consistent work stream.²¹

According to Article 2(1) of the Law of Georgia on Entrepreneurs, an entrepreneur is defined as either a natural person or a legal entity engaged in an undertaking.²² Article 2(5) specifies that an individual entrepreneur is not regarded as a legal entity; instead, they operate as a natural person. This means that individual entrepreneurs exercise their rights and fulfil their obligations, making them personally responsible and accountable for their business activities.²³ When an individual entrepreneur engages in business activities, they are personally liable for all obligations to creditors, utilising their entire asset base, unless a prior agreement exists between the entrepreneur and the creditor. This liability is subject to the standard contractual conditions in the Civil Code of Georgia. Typically, self-employed individuals render services within the confines of contractual relationships as defined by the Civil Code of Georgia. (Types of commonly utilised contract forms, including but not limited to, the Contract for Work²⁴ and Contract on Mandate²⁵)²⁶

On the other hand, an individual entrepreneur is not deemed a separate legal entity but possesses the status of a natural person duly registered under the Law of Georgia on Entrepreneurs. A sole proprietorship is a one-person entity that operates independently within business relations, with restrictions on engaging business partners. Under Article 36 (1)(a) of the Georgia Tax Code, an entrepreneur is defined as a natural person who engages in business activities and is registered as an

²⁰ Labedzka, A., 2018. *The European Union and shaping of its neighborhood: in pursuit of stability, security and prosperity*. Doctoral thesis, City University of London. [Online] Available at: <https://openaccess.city.ac.uk/id/eprint/22196/https://core.ac.uk/download/200199714.pdf> [Accessed 10.11.2024].

²¹ International Labour Organization. *Non-standard forms of employment. Disguised-employment-dependent-self-employment*. [Online] Available at: <https://www.ilo.org/resource/other/disguised-employment-dependent-self-employment> [Accessed 10.11.2024].

²² Article 2(1) Law of Georgia on Entrepreneurs. [Online] Available at: <https://matsne.gov.ge/en/document/view/5230186?publication=6> [Accessed 10.11.2024].

²³ Ibid. Article 2(5)

²⁴ According to The Civil Code of Georgia, Article 629 (1) - *According to a contract for services, the contractor shall be obligated to execute the work delineated within the agreement, whilst the client shall incur a duty to remit the stipulated remuneration to the contractor*. [Online] Available at: <https://matsne.gov.ge/en/document/view> [Accessed 10.11.2024].

²⁵ According to The Civil Code of Georgia, Article 709 - *Under the contract of mandate, the mandatary shall be required to execute one or more acts as instructed (entrusted) by the mandator, on behalf of and at the expense of the mandator*. [Online] Available at: <https://matsne.gov.ge/en/document/view/> [Accessed 10.11.2024].

²⁶ Shvelidze, Z., In the book: *Georgian Judicial Practice on Labour Disputes (Collection of Reprints)*, 2nd Edition, 2024. 4.

individual entrepreneur under the Law of Georgia on Entrepreneurs.²⁷ Furthermore, following Article 36 (1)(b), a natural person who undertakes activities as specified in Article 3(1) of the Law of Georgia on Entrepreneurs shall also be acknowledged as an entrepreneur. Individual entrepreneurs bear personal liability to creditors for all obligations arising from their entrepreneurial activities, encompassing all their assets.²⁸

When considering the engagement of a self-employed individual, it is essential to evaluate their work performance through a comprehensive assessment of their overall workload rather than focusing on a single task. A systematic workload enables self-employed individuals to manage their responsibilities effectively and efficiently, ensuring timely completion and adherence to the requisite quality standards. The legal framework governing self-employment in Georgia is characterised by simplicity, transparency, and minimal bureaucratic impediments. The jurisdiction provides a uniform tax rate for individuals and enterprises and procedures for business registration and licensing. This framework fosters a conducive investment environment that promotes entrepreneurship.

Distinction Between Self-Employment and Employment Relationship

To differentiate self-employment from an employment relationship, the term "employee" should be reserved for natural persons who work "under conditions of organisational order." This distinction is one of the key factors that separates the employment relationship from other forms of work, such as "independent contractor" or "self-employed."²⁹ The executor shall be tasked with the organisation and management of the work process and shall not be obligated to accommodate the employer's evolving requirements during this process. In instances with an organisational framework and a hierarchy of authority, an individual's work performance may constitute an adequate basis for the classification of the relationship as an employment relationship between the employee and the employer. Consequently, in fulfilling the duties and obligations stipulated in the contract, there exists no requirement for periodic agreement on individual performance specifics with the client. Therefore, irrespective of their profession, all natural persons who perform following the requisite criteria—"under conditions of organisational order"³⁰ — are deemed to be in an employment relationship under labour law.³¹ In the present matter, the characteristics above constitute a critical determinant in differentiating the employment relationship from that of an independent contractor, owing to the absence of organisational direction and subordinate elements. The employment contract is distinguishable from a standard contractual agreement under its adherence to the principle of "subordination." This principle necessitates that the employee adhere to the directives of the employer, who, in turn, is obligated to provide remuneration to the employee. Employees are

²⁷ Article 36 (1)(a) of The Tax Code of Georgia.[Online] Available at: [Online] Available at: <https://matsne.gov.ge/en/document/view/> [Accessed 10.11.2024].

²⁸ Article 36 (2) of *The Tax Code of Georgia provides that the failure to register, obtain licences, or secure permits by a natural person referred to in the first paragraph who engages in economic activities does not preclude the recognition of the said individual as an entrepreneur for tax purposes.* [Online] Available at: <https://matsne.gov.ge/en/document/view/> [Accessed 10.11.2024].

²⁹ Zaalishvili, V., In the book: Kereselidze, D. and others, 2023. *Commentary on the Labour Code of Georgia*, Article 3. Tbilisi: p.13.

³⁰ The decision of the Supreme Court of Georgia (05 June, 2020 case No-as- 934-2018); The decision of the Supreme Court of Georgia (16 March, 20218, case No-as-1432-1352-2017).

³¹ Shvelidze, Z., In the book: Shvelidze, Z. and others, 2017. *Georgian Labor Law and International Labor Standards*. International Labour Organization, p. 33.

required to execute their responsibilities personally and in a subordinate capacity, in compliance with the instructions of the employer and applicable labour regulations.³²

The primary distinguishing feature of the labour contract is its “subordination” status.³³ In other words, the employee consents to work under the employer's guidance in return for compensation. This subordination is a key feature of the employee-employment relationship that distinguishes it from other contractual arrangements.

Self-employment is a form of independent work arrangement, with its characteristics and implications for workers' rights, and offers individuals greater autonomy and flexibility; however, it also comes with legal and regulatory challenges related to labour rights, social protection, and other socioeconomic benefits. Self-employment constitutes a modality of entrepreneurship wherein an individual engages in the operation and management of their business or trade independent of any employment contract. It embodies a category of work in which the individual bears full accountability for all facets of the business operation.³⁴

Currently, freelancers in Georgia predominantly specialise in digital technology, internet technology, and computer engineering. However, there is an emerging trend of self-employment in these domains within the current labour market. With the ongoing advancements in technology, professionals across various industries will be allowed to engage in freelance work.³⁵

III. ANALYSIS OF JUDICIAL PRECEDENTS ON LEGAL FRAMEWORK OF SELF-EMPLOYMENT UNDER EUROPEAN UNION STANDARDS

The freelance economy is experiencing significant growth, with more professionals engaging in independent work. Freelancing provides numerous advantages, including distinctive opportunities and flexible work arrangements. However, many freelancers face financial constraints that hinder their ability to initiate legal proceedings against contracting parties who violate their contractual obligations. Regrettably, certain contracting parties may perceive it to be beneficial to breach their agreements placing the latter in a precarious position. Freelancers may be disadvantaged due to a lack of legal expertise and resources to pursue litigation against the contracting parties. This susceptibility within the freelance economy has resulted in the emergence of the term "naked economy."³⁶ While freelancing offers many benefits, it also presents challenges. Freelancers must be cautious when entering contracts and ensure the terms are legally binding.

The emergence of the gig economy has precipitated extensive discourse concerning the classification of gig workers. The most pivotal case, **Uber B.V. v. Autorité des transports publics de Paris (2019)**, in which the **European Court of Justice (ECJ)** classified Uber drivers as workers rather than self-employed individuals. The ECJ underscored *Uber's* exertion of control over essential

³² The decision of the Supreme Court of Georgia (10 October 2011, case No-as- 1129-1156-2011).

³³ The decision of the Supreme Court of Georgia (17 February 2017, case No as-1132-1088- 2016).

³⁴ International Labour Organization. 2016. *Disguised employment/Dependent self-employment*. [Online] Available at: International Labour Organization on Non-standard forms of employment> [Accessed 10.11.2024].

³⁵ The world's largest companies and digital platforms for freelancers: [Online] Available at: <https://www.freelancer.com/>; <https://www.upwork.com/> [Accessed 10.11.2024].

In Georgia, the primary area of employment through digital platforms is in the form of short-term, hourly projects. - [Online] Available at: <<https://ido.ge/> [Accessed 10.11.2024].

In the United States, there exists a prominent platform that grants access to esteemed developers and companies across the globe. The core operational framework focuses on extended, full-time projects. This platform provides avenues for individuals with a solid track record and exceptional employer evaluations. Accomplished professionals affiliated with this platform stand the opportunity to land positions at some of the biggest global corporations at competitive remuneration rates. [Online] Available at <https://www.turing.com> [Accessed 10.11.2024].

³⁶ Miller, R. M. (2015). *Getting paid in the naked economy*. Touro Law Center Legal Studies Research Paper Series, No.16-13, 279.

facets of the drivers' activities, including fare determination, ride allocation, and performance monitoring. The court further evaluated the drivers' constrained autonomy regarding their working hours and income, accentuating their economic dependence on *Uber*. In this significant case, *The European Court of Justice (ECJ)* ruled that *Uber* functions as a transportation service rather than merely an information society service. The *ECJ* observed that *Uber's* digital platform is inherently linked to the provision of transportation. In contrast to platforms that facilitate peer-to-peer transactions with minimal involvement, *Uber* actively managed the entire transaction chain.³⁷ Given that *Uber's* primary function revolved around managing transportation services, it was outside the ambit of the *E-Commerce Directive*.³⁸

This ruling established a precedent for platforms both digital and physical capacities under EU law. The classification of platform services hinges on their substantive role in the service chain, rather than solely on their digital interface. It underscored the necessity of balancing the promotion of digital innovation with the assurance of fair competition and consumer protection.

In a similar case, the *ECJ's ruling in Foodora GmbH v. Koerfer (2021)* established a *Foodora* courier as a worker, highlighting the platform company's control over the courier's activities and their limited autonomy in determining their working hours and earnings. In these cases, gig workers were categorised as employees based on the level of control exerted by platform companies and the workers' financial reliance.³⁹ The court's ruling reaffirmed the huge importance of assessing the substantive nature of the working relationship as opposed to the formal classification of the worker. The classification criteria are as, **Control** - The degree to which *Foodora* exercised authority over the methods of work; **Integration** - The extent to which the rider was assimilated into *Foodora's* organisational framework, as demonstrated by the use of branding and app-based directives; **Dependence** - The economic and operational reliance of the rider on *Foodora's* platform. The ruling is consonant with the overarching policy objectives of the European Union, notably including the proposed *Platform Work Directive*, which establishes a rebuttable presumption of employment for platform workers who are subject to a degree of control.⁴⁰ The directive serves to fortify the legal principles pertinent to the matter at hand, thereby promoting enhanced consistency in the classification of employment across Member States. This case constitutes a seminal judgement in labour law, illustrating the complexities inherent in regulating platform work within traditional employment paradigms. By categorising the rider as an employee, the court reaffirmed the primacy of substance over form in employment relationships. This case not only sets a precedent for analogous disputes but also highlights the imperative for more definitive regulatory frameworks to address the dynamic nature of work within the gig economy. As platform work continues to proliferate as a novel mode of livelihood and employment, the challenge of reconciling flexibility, innovation, and worker protections will persist for the judiciary, policymakers, and enterprises in determining whether platform workers are classified as self-employed individuals or employees under labour law.

³⁷European Court of Justice. 2019. *Uber B.V. v. Autorité des transports publics de Paris*. (C-434/17).

³⁸Directive 2000/31/EC (*E-Commerce Directive*) [Online] Available at <https://eur-lex.europa.eu/legal-content> [Accessed 10.11.2024].

³⁹European Court of Justice. 2021. *Foodora GmbH v. Koerfer* (C-55/20).

⁴⁰ Directive (EU) 2024/2831 on *Improving Working Conditions in Platform Work*. [Online] Available at: <https://www.europeansources.info/record/proposal-for-a-directive-on-improving-working-conditions-> [Accessed 10.11.2024].

CONCLUSION

This article examines the legal status of self-employed individuals and the challenges associated with the classification of independent contractors and employees. As self-employment gains prominence in contemporary workplaces, the regulations governing this area have significant implications for the rights, responsibilities, and overall success of independent work.

It is essential to remain informed about legal developments and to advocate for appropriate policies. The classifications presented have significant implications for defining self-employed individuals, including their entitlements to minimum wage, overtime pay, and social security benefits. Platform companies may argue for the independent contractor status of their workers. The changing landscape of the gig economy and the emergence of new platforms and business models may require innovative legal frameworks for worker classification. In the contemporary global environment, freelancers worldwide are increasingly endeavouring to cultivate a robust presence on the international platform as self-employed individuals. Nevertheless, for a successful career, it is imperative to possess a lucid vision, a strategic framework, and a sound legal foundation.

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