

May contract for services be reclassified as contract of employment at claimant's request?

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Entering into contracts for services is an inevitable part of business, but this cannot be undertaken without fully assessing inherent risks. Over the years the courts have developed sufficient case law allowing us to make conclusions about how they approach situations that involve assessing the nature of a legal relationship to determine whether the contract is one for services or one of employment. This article explores some of the case law that prescribes the conduct of parties entering into either type of contract.

Attributes that distinguish a contract for services from one of employment are readily available from various online sources, yet there are not many descriptions of how the courts approach this distinction. Choosing the right type of contract will always be a moot point because according to the Supreme Court¹ we need to respect the will of persons establishing a legal relationship and choosing a suitable contract, while the state has an obligation to monitor whether this is an employment relationship in disguise.

In 2006 the court² examined whether [section 41 of the Labour Act](#) permits a worker to demand that an employment contract be expressed in writing if the contract they have signed is one for services. The court found an employment relationship because the parties had agreed on all key elements of an employment contract, including pay and actual expenses. The ruling implies that a worker having entered into a contract for services may ask for a written employment contract.

In 2013 the court³ ruled that a person has no right to demand the recognition of an employment relationship leading to a written employment contract if the subject matter is a specified result rather than work in general.

In a 2017 ruling⁴ the court examined the burden of proof in such disputes. The court ruled that the claimant (contractor) must be able to prove that the contract she truly sought was one of employment and that she did not wish to enter into a contract for services, describing the circumstances that forced her to act against her will. As a key indication that an employment relationship does not exist, the court observed that the vacation entitlement had not been claimed over a period of 14 months and the fee level was determined on each occasion according to the scope of services rendered.

This ruling also examined other attributes:

- Subordination
- Economic dependence
- The existence of a specified place of work
- Use of the employer's tools and equipment

The ruling stated that in finding an employment relationship we need to examine attributes prescribed by the [ILO's recommendation No. 198](#) and [section 8\(2.2\) of the Personal Income Tax Act](#).⁵ So it is clear that when it comes to hearing a civil dispute to find an employment relationship, tax attributes may be

examined in addition to labour attributes.

Here we should mention, for instance, a dispute the administrative court heard in 2011⁶ over the State Revenue Service's decision to assess additional national insurance contributions and a penalty. The ruling emphasises that we need to obtain direct or indirect evidence that the parties have agreed on the key elements of an employment contract. The court finds that some other attributes examined in aggregate may indicate the existence of an employment relationship, for instance:

- The process of work is more important than only the result of work.
- The worker is subject to specified working procedures and the employer's instructions.
- The legal relationship continues for a long time and is not established for a single performance of work.

In summary, the following key aspects should be considered in disputes involving a contractor's demand that their contract for services be recognised as one of employment:

- The court may reclassify the contract for services as an employment contract on finding that an employment relationship exists between the parties.
- In adjudicating such disputes we need to consider the will of the persons in establishing a legal relationship and choosing the type of contract.
- The contractor must prove that he did not wish to enter into a contract for services and describe circumstances that forced him to act against his will.
- To find an employment relationship, each contract must be analysed on its merits, and a labour law dispute may involve examining tax attributes as well as labour attributes.

¹ Ruling A420125216/SKA-64/2020 of 4 November 2020

² Supreme Court Senate Ruling SKC-60 of 8 February 2006

³ Supreme Court Ruling SKC-1945/2013 (C30511312) of 28 December 2013, paragraphs 8.2 and 9

⁴ Supreme Court Civil Division Ruling C30693015/SKC-658/2017 of 10 March 2017

⁵ An individual (taxpayer) is considered to gain income that is subject to wage tax if at least one of the following characteristics is present:

- 1) The taxpayer is economically dependent on the person to which he provides his services.
- 2) The taxpayer does not take financial risk in the event of doing unprofitable work or incurring bad debts.
- 3) The taxpayer is integrated in the company to which he provides his services. Integration in the company within the meaning of this section is the existence of a place of work or rest, an obligation to follow the company's internal rules, and other similar characteristics.
- 4) The taxpayer actually takes days off and vacations and the procedure for taking those is linked to the company's internal working procedures or the working schedule of other individuals employed by the company.
- 5) The taxpayer's activities are performed under another person's management or control, and the taxpayer is unable to engage their own workers or subcontractors in performing the work.
- 6) The taxpayer does not own the fixed assets, materials or any other assets used in business (this does not apply to private vehicles or certain personal tools used in performing work tasks)

⁶ Ruling A42540707/SKA-36/2011 of 3 February 2011