

## **Subordinate Labour Relationship and Shareholders of Private Companies**

**[Σχέση Εξαρτημένης Εργασίας και Μέτοχοι Ιδιωτικών Εταιρειών]**

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A new book by Nikos Panagiou, which is related to the subordinate labour relationship has recently been published. It is titled *Subordinate Labour Relationship and Shareholders of Private Companies*, it is written in Greek and was published by Hippasus Publications in 2019. The monograph examines the concept of subordination in Labour Law and analyses the provisions of the Cypriot legal order regarding the shareholders of private companies. The book is prefaced by Judge Iosif Chadjitziovanes, Head of the Court of Labour Disputes, and Professor Achilles C. Emilianides, Dean of the School of Law of the University of Nicosia.

The book is divided into two parts; (1) the rule of protection of Labour Law exclusively for those working under a subordinate labour relationship and (2) the provisions of the Cypriot Labour Law with respect to the shareholders of private companies offering independent services to their companies. The book is completed with the author's conclusions and is accompanied by the list of court decisions that are invoked, as well as the list of the relative legislation (Cypriot --Greek --European).

The first part of the book ('The Rule of Protection by Labour Law Exclusively for Subordinate Work') (pp. 19-55) introduces us to the concept of subordination, which is a prerequisite for the recognition of labour rights and privileges in the Cypriot legal system. Initially, the rule that Labour Law regulates only employment contracts is analysed: Labour Law aims to intervene drastically at the level of the employment relationship's bargaining power of the parties and establish regulations that will shield the employee as the weak member in the employment relationship (pp. 19-21).

The concept of subordination is examined and delimited comparatively with reference to continental law (pp. 22-25), common law (pp. 25-32) and European law (pp. 32-37).

The courts of the countries that apply continental law have concluded that there can be no legal definition of the concept of subordination, but that the employment relationship arises according to the facts of each case. Special reference is made to Greece, where the theory of personal subordination has prevailed; there, subordination arises mainly through the commitment of the employee to follow the instructions of the employer regarding the execution of his work within the managerial right of the employer.

Courts that apply common law determine the existence of subordination — when control is exercised by the employer to the employee — and carry out certain tests to identify the subordination between them. The main tests are the control test (p 26), the integration test (p 27), and the economic reality test (p 27), while special reference is made to the multifactorial approach, which supports the global analysis of the data of each case.

The concept of subordination in the European legal order is approached through the invocation of several judgments of the European Court of Justice (ECJ), where it is emphasised that it is up to the national courts to judge whether there is a subordinate labour relationship.

The main section of the first part of the book refers to the approach of the concept of subordination in the Cypriot legal order through rich reference to Cypriot courts' decisions (pp. 37-51). The concept of subordination in the Cypriot legal order has been shaped mainly through the English approach, which focuses on the criterion of control, while the Greek approach of the personal subordination has been seriously taken into account as well. The book analyses the findings of the Cypriot case law on the concept of subordination and makes special reference to the criterion of financial subordination, the characterisation of the contract by the parties, the payment of benefits as an indication of an employer-employee relationship, the analysis of the control criterion, as well as other criteria for diagnosing an employment relationship. The book emphasises the main points of each court decision to clarify the basic criteria, upon which the existence of an employment relationship is identified and labour legislation is implemented. Overall, the author manages to provide a critical and comparative overview of the evolution of the Cypriot case law regarding the concept of subordination.

The third section of the first part of the book (pp. 51-55) deals with the exceptions to the rule that Labour Law protection is granted only to employment contracts. The author divides the exceptions into two main categories: firstly, cases where specific

provisions of Labour Law do not apply to certain employment contracts, and secondly, cases where specific provisions of Labour Law apply to persons who do not work under employment contracts, He then further analyses an example of each exception: the example of executives and the example of dependent self-employed individuals respectively.

The second part of the book ("The Application of the Provisions of Cypriot Labour Law Regarding the Shareholders of Private Companies that Offer Independent Services to their Companies") (pp. 57-98) analyses the definition of the term 'employee' in the Cypriot Labour Law. The definition of employee is given in Article 2 of Law 24/1967, and the author defines the employee as the one who provides subordinate work to his employer under a private-law employment relationship and who therefore enjoys the protection offered by the provisions of the Cypriot Labour Law. The Cypriot legal order provides exceptions to the rule that Labour Law protection is provided to those who work under an employment contract. The book focuses on the exception provided in Law 24/1967, as amended by Law 52(I)/1994, according to which the protective provisions of the law apply to the shareholders of private companies that provide their services to their companies. The author clarifies, by invoking relevant case law, that the law does not intend to provide equal protection to shareholders in relation to employees but intends to grant a right of payment when dismissed because of redundancy.

Plenty of crucial issues are analysed in this part of the book. Indicatively, we may mention the following: (1) the prerequisites for the implementation of the protective legal framework of Law 24/1967 in favour of shareholders of private companies (pp. 71-72), (2) issues arising from the distinction between employers and employees by creature of law (p 72 -78), (3) issues that arise regarding the continuation of employment in case of transfer of a company (pp. 78-80), (4) the issue of application of the provisions of Law 24/1967 to employees by creature of law (pp. 80-83), (5) the case law approach regarding the criteria that determine the distinction between employees and shareholders who offer independent services (pp. 83-93) and (6) the question of the existence of a kinship between the shareholder and the person who manages the company (pp. 94-98). The author places special emphasis on the element of control of the company by the shareholder and interprets it through specific criteria. He has managed to argue the views he supports by invoking a number of court decisions of the Court of Labour Disputes, which he analyses with a critical disposition to draw important conclusions from his research.

The book is completed with the citation of the conclusions of the author's research, where special reference is made to the need to address the phenomenon of false self-employment.

*Subordinate Labour Relationship and Shareholders of Private Companies* manages to examine and analyse the general context regarding subordination, which is a basic condition for the implementation of Labour Law. The author provides a completely integrated view of the issue of the protection of the shareholders of private companies based on Law 24/1967 by constant references to the Cypriot case law. In conclusion, the book is characterised by clarity and completeness and can be extremely useful to legal practitioners and scholars on the concept of subordination in Labour Law.

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