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Economically Dependent Self-employment in the Context of Slovak's Legislation*

***Abstract.** The phenomena of people on the border between self-employment and employment, is getting more and more notable in Slovakia in recent years. In addition, this situation is recognised in many member states of the European Union and many of them legally regulate the position of such people in the labour market and the whole economy. In Slovakia, however, there is no legal regulation of the economically dependent self-employed people, neither from the labour market nor from the social protection and business sector point of view. The aim of this article is to analyse the legislative and economic situation of the economically dependent employees, economically independent self-employed persons (entrepreneurs), and the economically dependent self-employed persons in Slovakia.*

***Keywords:** employment, self-employment, economically dependent self-employment, labour market, Slovakia*

Introduction

Labour market in Slovakia is facing many changes in the last years. Some of them are strongly linked also with the changes in business and entrepreneurial sector. Interdisciplinary team of researchers from the Faculty of Economics, Matej Bel University in Banská Bystrica, focuses on the unusual features and forms of

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work within the Slovak economy, such as voluntary work and unpaid work of the households' members (VEGA no. 1/0935/13 "Unpaid work as a potential source of socio-economic development of society and the determinant of individual well-being"). Team has found out, that amount of the unpaid work depends also on the kind of the paid job and amount of hours spent by paid job. Mariana Považanová, Alena Kaščáková and Gabriela Nedelová¹ found out, that amount of unpaid work is influenced not only by the full time or part-time job, but also by the total income individual or household has.

Within atypical forms of work, that influence amount of unpaid work in households, also the status of economically dependent self-employed persons can be included. It is a specific group of persons on the border between paid employment and self-employment. The aim of this paper is to analyse economic and legal situation of particular group of persons, who are on the border between the employees and entrepreneurs in Slovakia. These persons represent more and more growing group of economically dependent self-employed workers. Slovak legislation does not recognise and regulate status of economically dependent self-employed persons. Legally, natural person could be either employed (and it means economically dependent on employer) or to be an entrepreneur, it means running economically independent business activity. To identify features of the economically dependent self-employed persons in Slovakia, we have to focus on features of dependent work regulated by act no. 311/2001 of Coll. Labour Code and features of independent entrepreneur according to acts no. 513/1991 of Coll. Business Code and no. 455/1991 of Coll. Small Businesses Act.

1. Economically dependent self-employment in European Union countries

Economically dependent self-employed work is relatively new term in all European Union countries. This term characterises person, whose job activities are on the border between dependent employment (which employee performs for employer under the working contract) and independent entrepreneurial activities (which natural person – entrepreneur performs on his own name and on his own responsibility according to the business or civil contract). This term includes those situations, when person performs de jure independent entrepreneurial activity but de facto he is dependent on one committer.

¹ A. Kaščáková, G. Nedelová, M. Považanová, *Determinants of the Unpaid Work in Slovakia*, in: *Applications of Mathematics and Statistics in Economy. The 15th International Scientific Conference*, Liberec 2012, p. 13.

According to the study *Social protection rights*,² there are only few countries in European Union, in which “hybrid” category of dependent self-employed persons is legally allowed. These countries are Austria (it is possible to work as a free service workers, new self-employed workers and contractor of work and services), Germany (free service contract workers) and Italy (contracts of continuous and coordinated collaboration and contracts for a project). In the United Kingdom, dependent self-employed workers are also legally recognised category. René Böheim and Ulrike Muehlberger³ stated, that in British legislation there is legally regulated status of employee (individual who is working under the contract of employment), status of employed person (individual who is working under any other contract personally to execute any work or labour) and status of the worker (individual who agrees to personally carry out work under the contract and without running a genuine business of their own). Another country, where status of economically dependent self-employed workers is legally recognised, is Spain.⁴

Features of economically dependent self-employed persons were summed up in the study *Economically dependent self-employed workers*.⁵ According to it, economically dependent self-employed workers:

- do not work for employer under the working contract,
- work mostly on their own and do not have employees,
- work for the same “employer” for more than 70% of their time,
- keep continued relation of collaboration with the employer,
- work in the framework or with the reference of a company or organisation

which depend on the employer.

Definition of dependent self-employed person was provided by the study *Social protection rights*.⁶ According to it, dependent self-employment is “a working relationship where the worker is formally self-employed yet under conditions of work similar to those of dependent employees.”

² W. Eichhorst et al., *Social protection rights of economically dependent self-employed workers*, Study of Policy Department, Economic and Scientific Policy, Brussels 2013, [www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507449/IPOL-EMPL_ET\(2013\)507449_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507449/IPOL-EMPL_ET(2013)507449_EN.pdf) [15.09.2014].

³ R. Böheim, U. Muehlberger, *Dependent Forms of Self-employment in the UK: Identifying Workers on the Border between Employment and Self-employment*, IZA Discussion Paper No. 1963/2006, <http://ftp.iza.org/dp1963.pdf> [15.09.2014].

⁴ C.A. García, C.N. Gonzáles, *The Regulation of Economically Dependent Self-employed Work in Spain: A Critical Analysis and a Comparison with Italy*, “E-Journal of International and Comparative Labour Studies” 2012, Vol. 1, No. 1-2, pp. 117-133, www.adapt.it/EJCLS/index.php/ejcls_adapt/article/view/22/68 [15.09.2014].

⁵ *Economically Dependent Self-employed Workers: Statistical measurement, challenges and opportunities*, Spain 2014, <http://tradeworkers.eu/wp-content/uploads/2014/06/Trade-Final-Report.pdf> [15.09.2014].

⁶ W. Eichhorst, op. cit.

Although not all European Union countries consider economically dependent self-employment as a serious problem that need to be legally regulated, European Economic and Social Committee reported in 2011 necessity to discuss economically dependent self-employed persons in whole European Union.⁷ In this report, Committee offered several suggestions to European Union member states how to cope with this phenomenon. It is necessary to focus mostly on the economic and social rights of the economically dependent self-employed workers. In most of European countries (including Slovakia), employees are specially protected under the working contract. In Slovakia, working contract must be always concluded in written; employee and employer are obliged to pay social and health insurance from the gross employee's earnings; information about gross wage must be included in the contract; working contract can be concluded for definite period of time only after fulfilling special conditions and only for two years etc. This kind of protection is not offered for persons performing work under the business contract (such as relationship between natural person – entrepreneur and company). Because natural person performing economically dependent self-employed work is on the border between the employee and independent entrepreneur, Committee recommended to protect such a person at least by part of rights that are standardly applied for employee. However, there is still problem, that there are only few countries in the European Union that legally accept status of economically dependent self-employed person (such as Italy, Germany, Austria, Spain, Portugal and Great Britain).

2. Dependent employees and independent entrepreneurs in Slovakia

To distinguish between dependent and independent work, it is necessary to consider legal features of both of them. In Slovakia, dependent work is regulated by the Labour Code⁸ and independent work (activities of entrepreneurs, including natural persons as entrepreneurs) is regulated by Business Code⁹. The § 1 of the Labour Code defines dependent work as a work performed by subordinated employee for superior employer, personally by employee for employer, according to the instructions of the employer, on the name of employer, during the working time pre-set by employer and for the wage or other earnings. Dependent work can be performed only according to the working contract (it is not allowed to perform

⁷ *Opinion of the European Economic and Social Committee of 19 January 2011 on "New trends in self-employed work: the specific case of economically dependent self-employed work"* (own-initiative opinion), Official Journal of the European Union No. 2011/C 18/08.

⁸ Act of 8 August 2001 on Labour Code, Collection of Acts No. 130, item 311, as later amended.

⁹ Act of 18 December 1991 on Business Code, Collection of Acts No. 98, item 513, as later amended.

dependent work under the business contract according to the Business Code or any other civil contract according to the Civil Code).

If work performed by individual person fulfil all the conditions stipulated in the § 1 of Labour Code, this work is always considered as dependent work. Even if the contact is named differently (not a working contact), it is necessary to regard it as relationship concluded according to Labour Code. If at least one criterion of the work performed by individual person set by Labour Code is not fulfilled, than work is not dependent and cannot be regulated by the Labour Code. In this case, work can be performed either under the business contract (as an independent work performed by independent entrepreneur) or under the Civil Code contract.

Independent work of the entrepreneur is regulated mostly by the Business Code. The § 2 defines business activity as permanent activity performed by entrepreneur, on his own name and under his own responsibility, with the aim to gain profit. In this legal definition, condition of independency is stressed. It means, entrepreneur cannot perform his activity according to the relationship regulated by Labour Code, according to the orders and instructions of other person (such as employer) and by using tools and material of other person (unless it is agreed in the business contract).

Another legal difference between employee (performing depending work for employer) and independent entrepreneur is in the age. According to the § 11 of the Labour Code, individual person has legal capacity to be an employee after reaching the age of 15 years. It is, however, not possible to conclude working contract with such person before finishing compulsory education (in Slovakia, compulsory education last 10 years). It means, any natural person after finishing compulsory education and reaching 15 years of age could be employed and performed dependent work under the working contact. On the other side, Small Business Act¹⁰ in § 6 stated, that one of the conditions for running independent business activity is reaching 18 years of age. It means, not every person that can be employed and performs dependent work could be also independent entrepreneur. This is linked mostly with the fact that even the non-adult person can work and be protected by the social and economic rights as an employee.

3. Economically dependent self-employed persons in Slovakia

To define economically dependent self-employed person in Slovakia we can refer to the definition of Werner Eichhorst, according to which economically dependent self-employed work is “a working relationship where the worker is for-

¹⁰ Act of 15 November 1991 on Small Businesses Act, Collection of Acts No. 87, item 455, as later amended.

mally self-employed yet under conditions of work similar to those of dependent employees.”¹¹ Considering this definition, economically dependent self-employed person in Slovakia is a person who formally and de jure performs activity as independent entrepreneur (for example runs business activity according to the business approval) but de facto performs activity under the same conditions as employee in the relationship regulated by the Labour Code.

Before 1st January 2013, when the previous version of Labour Code was valid, economically dependent self-employment started to occur. It was linked with the economic crisis (when employers pushed their employees to perform work under the business contract rather than working contract) and also with the legislation gap in the Labour Code. Labour Code did not stipulate exactly that dependent work can be performed only under the working contract and only as relationship regulated by the Labour Code. That is why it was relatively easy to substitute working contracts by business contracts. In this case, however, persons were pushed to perform work only for the previous employer, within the time set by their previous employer and under the conditions set by previous employer. These persons (even if formally independent entrepreneurs), became dependent only on one committer. This situation represent fundamental difference from the independent entrepreneurs performing their activities for unlimited number of committers (and thus persons economically independent).

To regulate legally this situation, amendment of the Labour Code no. 361/2012 of Coll. was issued and it was efficient from 1st January 2013. According to the amendment, legal definition of the dependent work was changed. It does not include any more features such as performing of work for the cost of employer; performing of work with the tools of employer; performing of work for the responsibility of the employer; performing of work that consists mostly of the repeating activities. This change points out that Slovak legislator reflected to changing situation on the labour market. At the present time, employee can perform work for employer even on his own costs, with his own tools and on his own responsibility. To consider work as a dependent one (comparing to independent one), only the criteria of performing work by subordinated employee for superior employer, personally by employee for employer, according to the instructions of the employer, on the name of employer, during the working time pre-set by employer and for the wage or other earnings must be fulfilled. According to that, also work performed by economically dependent self-employed workers could be considered as a dependent work (if this work is performed under the name of the committer, not under the name of performer).

Reasons, why employers in Slovakia push individuals to conclude business contract as “independent” entrepreneur rather than standard working contract are

¹¹ W. Eichhorst, op. cit.

various. One of the most reasonable reasons is linked with the fact that employers want to avoid concluding working contract for undefined period of time. According Labour Code, working contract can be concluded either for definite or indefinite period of time. In case of concluding working contract for definite period of time, it can be concluded for maximum two years. After passing two years, it must be changed for working contract for indefinite period of time. After 2008, when economic crisis started also in Slovakia, many employers considered risky to employ persons for indefinite period. Many employees were dismissed and standard working contracts were substituted by business contracts. This situation follows up to present time, although economic crisis is not so strong any more.

Another reason to replace working contract by business contract is linked with levies and payments for social insurance and health insurance. Employed person pays 13.4% from his gross earnings to the social and health insurance. In addition, insurance levies are paid also by employer. Employer must pay 35.2% from the gross earnings of the employee. Table 1 shows minimum and maximum assessed base for paying insurance by employee and employer, as well as ratio they pay for different types of insurance.

Table 1. Social and health insurance paid by employee and employer in Slovakia in 2014

Type of insurance	Minimum wage (assessed base) (in EUR)	Maximum assessed base (in EUR)	Payments of employee			Payments of employer		
			Ratio (in %)	Minimum payment (in EUR)	Maximum payment of (in EUR)	Ratio (in %)	Minimum payment of (in EUR)	Maximum payment of (in EUR)
Sickness insurance	352	4025	1.4	4.92	56.35	1.40	4.92	56.35
Retirement insurance	352	4025	4.0	14.08	161.00	14.00	48.28	563.50
Invalid insurance	352	4025	3.0	10.56	120.75	3.00	10.56	120.75
Unemployment insurance	352	4025	1.0	3.52	40.25	1.00	3.52	40.25
Injury insurance	352	no limit	–	–	–	0.80	2.81	no limit
Guarantee insurance	352	4025	–	–	–	0.25	0.88	10.06
Reserve fund of solidarity	352	4025	–	–	–	7.75	16.72	191.18
Health insurance	352	4025	4.0	14.08	161.00	10.00	35.20	402.50
Total	–	–	13.4	47.16	539.35	35.20	123.89	1416.79*

* Considering injury insurance for the assessed base of 4025 EUR.

Source: own elaboration according to valid legislation: Act of 27 November 2003 on Social Insurance, Collection of Acts No. 200, item 461, as later amended; Act of 11 January 2004 on Health Insurance, Collection of Acts No. 246, item 580, as later amended; Regulation of the Government of 18 October 2013 on Minimum Wage, Collection of Acts No. 75, item 321, as later amended.

Minimum assessed base for each insurance is set as minimum wage that is defined every year by Government. Maximum assessed base is set by Act on Social Insurance and by Act on Health Insurance (for year 2014 maximum assessed base is 4025 EUR). Sickness insurance, retirement insurance, invalid insurance and unemployment insurance are obligatory levies that are paid by employee from his gross salary. In addition, employee pays also health insurance. Employers pay the same types of insurance as employees but, on the other side, they obligatory pay also injury insurance, guarantee insurance and levy for reserve fund of solidarity.

By concluding working contract (it means standard labour relationship under which employee performs dependent work for employer), both employee as well as employer must obligatory pay levies for social and health insurance. On the other side, if individual performs work according to the Business Code, even if this work fulfil all the criteria for dependent work, employer (as committer) pays only invoiced amount to the individual. In this case, employer does not pay any levies or other payments for social and health insurance. All duties lies on the individual performing the work. This person is obliged to pay the same levies for insurance as any other independent entrepreneur. Table 2 shows minimum and maximum assessed base for paying insurance by natural person – entrepreneur, as well as ratio he pays for different types of insurance.

Table 2. Social and health insurance paid by natural person – entrepreneur in Slovakia in 2014

Type of insurance	Minimum assessed base (in EUR)	Maximum assessed base (in EUR)	Ratio (in %)	Minimum payment (in EUR)	Maximum payment of (in EUR)
Sickness insurance	402.50	4025	4.40	17.71	177.10
Retirement insurance	402.50	4025	18.00	72.45	724.50
Invalid insurance	402.50	4025	6.00	24.15	241.50
Reserve fund of solidarity	402.50	4025	4.75	19.11	191.18
Unemployment insurance	402.50	4025	2.00	8.05	80.50
Health insurance	402.50	4025	14.00	56.35	563.50
Total	–	–	49.15	197.82	1978.28

Source: own elaboration according to valid legislation: Act of 27 November 2003 on Social Insurance, Collection of Acts No. 200, item 461, as later amended; Act of 11 January 2004 on Health Insurance, Collection of Acts No. 246, item 580, as later amended.

In case of levies of the entrepreneur, assessed base depends on the incomes of this person two years ago. Even if the income was low, entrepreneur must pay levies for social and health insurance. Because Slovakia legislation does not regulate minimum monthly income of the entrepreneurs, it could be even zero. However, also in this case, entrepreneur must pay levies, based on the minimum assessed

base (402.50 EUR). In situation, when working contract is substituted by business contract, previous employer is decreasing his costs (reducing payments for social and health insurance). On the other side, previous employees (currently entrepreneur) is increasing costs (must pay at least 197.82 EUR for social and health insurance, comparing to 47.16 EUR as minimum payment in case he was employed).

There are also other reasons why employers try to replace working contracts by business contracts. They are, however, not as serious, as effort to avoid indefinite period contracts and reduction of social and health insurance payments.

Conclusion

Slovakia is one of the European countries, in which status of economically dependent self-employed persons is not legally accepted. However, it does not mean, that persons on the border between dependent work and independent entrepreneurship does not occur in Slovakia. Exactly opposite is the fact. Not only economic development, but also legal regulation of the labour relationships and business relationships caused that relevant part of natural persons – entrepreneurs performed their activities under the same conditions as employees in standard labour relationship. However, these entrepreneurs do not have the same social and economic protection as employees. It is evident mostly according to the payments for social and health insurance. Because status of economically dependent self-employed persons is not legally accepted in Slovakia, it is not possible to distinguish between those, who perform purely independent work and those, who perform work that is de facto economically dependent self-employed work. It is evident, that phenomenon of economically dependent self-employment needs to be consider as a serious fact also in Slovakia. Stressing the example of other European countries (such as Great Britain, Germany or Italy) it is inevitable to pass legislation regulating status of economically dependent self-employed persons, focusing mostly on their ability and obligation to pay social and health insurance levies and payments. Such as regulation will improve status of those persons, but on the other side, it will also increase stability on the whole Slovak labour market.

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Ekonomiczne zale  no  ci samozatrudnienia w kontek  cie prawa na S  wacji

Streszczenie. W ostatnich latach na S  wacji mo  na zauwa  y  c zwi  kszenie liczby os  b pracuj  cych w formie samozatrudnienia oraz zatarcie si   granicy mi  dzy prac   zale  zn   a prac   na w  asny rachunek (z uwagi na prace zlecane, outsourcing). Co wi  cej, sytuacja taka jest obserwowana w wielu krajach cz  łonkowskich Unii Europejskiej, gdzie doczeka  a si   prawnego uregulowania. Jednak na S  wacji samozatrudnienie nie ma jeszcze odpowiednich regulacji prawnych z punktu widzenia ekonomicznego, rynku pracy czy ochrony socjalnej. Celem artyku  u jest analiza sytuacji prawnej i ekonomicznej pracownik  w na S  wacji wykonuj  cych prac   w formie zatrudnienia na umow   o prac   oraz na w  asny rachunek (przedsi  biorc  w) z uwagi na wymuszenie tego przez pracodawc  .

S  wa kluczowe: zatrudnienie, samozatrudnienie, ekonomiczne zale  no  ci samozatrudnienia, rynek pracy, S  wacja