HUNGARIAN LABOUR LAW
E - J O U R N A L

The Scope of Labour Law Protecton in Slovenia or who are Employers Obliged to Grant the Labour Law Protection to

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1. Introduction

Companies and other entities and individuals, who wish to engage in a certain activity, need the capital as well as people, who will carry out the work for them. The most common way of providing work is a conclusion of a contract of employment with selected candidates. An employment contract establishes an employment relationship, in which employees perform the tasks that fall into the scope of employer's activity, on a more permanent basis, personally and in a subordinate relationship. This form of work enables the employers to have control over work and the permanent relationship with employees enhances productivity. The key characteristic of employment is unequal power of the contractual parties. Labour law neutralizes inequality and grants the employees, who are personally and economically dependent on the employer, minimum protection. This protection is granted to employees, who work on the basis of a typical indefinite duration, full-time employment contract, at the seat of the employer, as well as to employees, who work based on any of the atypical employment contracts (fixed-term, part-time, home-working and temporary agency work).

Beside the employment contract, which constitutes an employment relationship, the Slovenian law also regulates other forms of work that are normally intended to cover short-term and occasional work or work that is carried out by certain categories of individuals and in certain circumstances, which is why these are substantially limited and time limited. These individuals, that are otherwise not employees, are still granted a partial protection, which derives from labour legislation (only some provisions of labour legislation apply to them).

Employers can outsource certain tasks (especially those that do not fall into the scope of the main activity) to outside contractors (self-employed individuals), who carry out the work based on civil law contracts and commercial contracts (work contracts, agreements on business cooperation). Self-

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employed individuals, who perform the work independently, in the market, at their own risk, normally do not need labour law protection, since the rules of civil and commercial law apply to them. Only in cases when these individuals are economically dependent on the client, they are partially protected by labour legislation.

The article covers legally regulated forms of work in Slovenia, the scope of protection,that is granted to individuals, who work on their bases and some issues regarding enforcement of these forms of work in practice.

2. Employees (individuals in an employment relationship)

Slovenian labour law mostly protects employees (individuals, who carry out the work in an employment relationship) in a way, which guarantees them minimum rights and working conditions laid out by law, collective agreements and general acts of the employer.

The Employment Relationship Act (ZDR-1)[1] explicitly defines that it regulates employment relationships entered into on the basis of employment contracts between employees and employers (article 1 of ZDR-1). Other labour legislation (Minimum Wage Act,[2] Employee Participation in Management Act,[3] Collective Agreements Act[4] and others) and collective agreements also just determine the rights and obligations of employees (only the individuals, who conclude an employment contract).[5]

To define the scope of individuals, covered by labour law, it is essential to determine a definition of an employment relationship and of an employee.

Article 4 of ZDR-1 includes a definition of an employment relationship. It defines it as "a relationship between the employee and the employer, whereby the employee is voluntarily included in the employer's organized working process, in which he/she in return for remuneration continuously carries out work in person according to the instructions and under the control of the employer." The elements of an employment relationship, which can be inferred from the stated definition, are: bilateralism (a relationship between an employee and an employer), voluntarism, carrying out the work in return for remuneration, carrying out the work personally, continuous work, including the employee in an organized working process of the employer and work according to the instructions and under the supervision of the employer.

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1 Official gazette of the Republic of Slovenia, no. 21/2013. This act comprehensively covers individual employment relationships in the Republic of Slovenia.

2 Official gazette of the Republic of Slovenia, no. 13/10 with amendments.

3 Official gazette of the Republic of Slovenia, no. 42/07.

4 Official gazette of the Republic of Slovenia, no. 43/06.

5 The only exception is the Health and Safety at Work Act (Official gazette of the Republic of Slovenia, No. 43/2011, ZVZD-1), which stipulates that the worker in the sense of this act is not only the person, who carries out the work for the employer based on an employment contract, but also the person, who works for the employer based on any other legal ground, or the person, who carries out the work for the employer due to training. The term of an employer, who must ensure safe and healthy work to all persons, carrying out the work for him (regardless of the legal ground) is equally broad.

While some of the stated elements can also be found in other contractual relationships, in which the subject is performing the work for somebody else, [6] an employee can be differentiated from others, who carry out the work in other forms of relationships, especially by being "included in the employer's organized working process" and by carrying out the work "according to the instructions and under the control of the employer." An employee is included in the working process, which the employer organizes for the performance of his/her activity. An employer is the one who makes the decisions on performing the activity (on the working process) and also carries the responsibility for the success of the business. An employee is merely a part of this organized working process, in which he/she carries out the dependent work, work in subordination to the employer (work according to the instructions and under the supervision of the employer). In return for the subordination, the employee receives the labour law protection as a weaker party of the relationship.

The fundamental defining element of the employment relationship, as stated in ZDR-1, is therefore dependence of work, the subordination of employee to the employer. This definition is a similar to those found in other legislations.[7]

If there are elements of employment in a relationship between the employer and the person, who carries out the work for him, the contractual parties cannot freely choose a legal form of such a relationship. According to the established principle of primacy of fact,[8] such a relationship qualifies as an employment relationship. This also follows from article 13 of ZDR-1, which stipulates that in case of existence of the elements of an employment relationship, the work cannot be carried out based on civil law contracts, unless this is explicitly determined by law.[9]

An employee has the possibility to enforce an establishment of an employment relationship in a judicial proceeding and demands recognition of his rights on this basis. In case the parties have concluded a civil law contract despite the existence of employment relationship elements and are therefore in a disguised employment relationship,[10] the court will dismiss the expressed formal will of the parties and determine the existence of an employment relationship based on actual circumstances. In this respect, the employee will have to prove the existence of the elements of an employment relation-

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6 Bilateralism, voluntarism and carrying out the work in return for remuneration are also typical for a work contract under Obligations Code (Official gazette of the Republic of Slovenia, no. 97/07 with amendments), and furthermore, personal and continuous work can also be agreed upon with this contract.

7 See Darja S. Peček: Koga naj varuje delovna zakonodaja. *Podjetje in delo*, no. 6–7, 2011. 1162–1173. See also Luka Tičar: *Nove oblike dela*. Ljubljana, Pravna Fakulteta, 2012. 21 and the following pages.

8 The principle of the primacy of fact is established in most states' legal orders. See International Labour Organization: The Employment Relationship: An annotated guide to ILO Recommendation No. 198. 2007. 32. http://www.ilo.org/public/english/dialogue/ifpdial/downloads/guide-rec198.pdf.

9 Such an example is the provision in article 109.a of Organization and Financing of Education Act (Official gazette of the Republic of Slovenia, no. 16/07, with amendments), which allows that under certain conditions in order to ensure an undisturbed educational process, a work contract is concluded (that is a civil law contract), if all possibilities to conclude an employment contract, were exhausted.

10 A disguised employment relationship exists in case the relationship between the worker and the employer is displayed differently than it actually is, with the intention to nullify or reduce the protection, which is granted to workers and to avoid paying taxes and contributions. See International Labour Organization: Report V (1), International Labour Conference, 95 th Session. 2006. 12. http://www.ilo.org/public/english/standards/relm/ilc/ilc95/pdf/rep-v-1.pdf; International Labour Organization: Meeting of Experts, Basic technical document. 2000. 26–27. http://www.ilo.org/public/english/dialogue/ifpdial/pu bl/mewnp/index.htm.

ship, which is assumed to exist based on article 18 of ZDR-1, in case the elements of an employment relationship are indeed present.

The existence of disguised employment relationships in Slovenia is evident not only from a growing number of cases of enforcement of employment relationships in front of labour courts, but also from the findings of the labour inspectors.[11] While the cases of disguised employment relationships, where the employees carried out the work on the basis of work contracts or contracts for a copyrighted work and in the form of student work, have dominated in the past, there have recently been more cases of business cooperation with false self-employed individuals.[12]

False conclusion of civil law contracts and commercial contracts in relationships that have employment relationship elements is not only problematic for the worker, who is deprived of proper protection because of this, but also represents a risk for the employer, who, by doing this, commits an offense, punishable by a fine and in case the worker judicially enforces the establishment of an employment contract the employer will have to recognize all the rights that derive from an employment relationship retrospectively.[13]

3. Workers, assigned to the user by an agency

Employers (users) can also obtain workers with the help of special agencies – employers, who employ employees and provide their work to users.[14] The activity of providing work of employees to other employers (users) can only be performed by those individuals and entities, who fulfil strict conditions,[15] obtain permission for the carrying out of the activity and are enlisted in a special register of the Ministry of work, family, social affairs and equal possibilities.[16]

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11 The number of found breaches of paragraph 2 of article 13 of ZDR-1 is increasing. See Labour Inspectorate of the Republic of Slovenia: The work report of the Labour Inspectorate of the Republic of Slovenia for the year 2015. 65. http://www.id.gov.si/fileadmin/id.gov.si/pageuploads/Splosno/LETNA_POROCILA/lp_irsd_2015_www.pdf.

12 These are mostly the cases when the employer decides to outsource some activities or their part to outside contractors – ex employees, who do "their" work practically in the same way as before, only they are not employees anymore, but sole traders. There are also cases when the employer publishes a free working position and then does not conclude an employment contract with the selected candidate, but demands that he obtains a sole trader status instead.

13 The theory also warns about this. See Barbara Kresal: Prikrita delovna razmerja – nevarno izigravanje zakonodaje. *Delavci in delodajalci*, no. 2–3, 2014. 177.

14 ZDR-1 uses the expression "employer, who carries out the activity of providing work of employees for another user." The article uses the expression "agency".

15 These requirements are set forth by Labour Market Regulation Act (Official Gazette of the Republic of Slovenia, no. 80/10, with amendments; ZUTD). Besides the general requirements like fulfilling administrative, organizational and capacity requirements, there are also requirements, which wish to prevent abuses that have happened in the past in practice. Among these is also the provision, according to which an entity or an individual can only carry out the activity of providing work of employees to other employers (users) in case that they have not been penalized for breaching labour law provisions in the past two years, or that they have not had unpaid obligations towards employees and have not been on the tax defaulted obligor list. The duties to register the economic activity of providing work of workers as the main economic activity, to submit bank warranties in the sum of 30.000 EUR are also specified and for the entities and individuals who's seats are in another member state of EU, EEA or in the Swiss Confederation, there is also the duty to establish a branch. The agency and the user must also not be a group of undertakings (which means that the so called house agencies are not allowed).

16 On 5 October 2017 there have been 136 national registered entities and individuals, who carry out the activity of providing work and two foreign entities (foreign entities and individuals do not need to obtain a permission, but only need to enter a special record).

Slovenian labour legislation includes a number of provisions, which regulate relationships regarding provision of temporary agency work. In the past few years several legal changes have been implemented with the purpose to prevent the temporary agency work to supersede employment contracts,[17] properly regulate the labour law status of the employees by agency and to improve the position of the employee by the user (also by increasing the liability of the user).

The agency cannot provide employees to the user in case of substituting employees of the user who are on strike, in case when the user has dismissed a higher number of employees in the past year, in case of dangerous work positions and in other cases that can be specified in the branch collective agreement (paragraph 2 of article 59 of ZDR-1). The user is obliged to inform the agency about the existence of the listed circumstances in which the posting of employees is not allowed.

The user, by whom the need to carry out certain work arises, is in any case obliged to inform the agency of all the conditions for carrying out the work that the employee must fulfil, and submit a risk evaluation for injury and health problem occurrence.

The agency and the user then conclude a written agreement before the employee begins to work, in which they determine the rights and obligations of both parties and also the rights and obligations of the employee and the user. They are limited by the provisions of the ZDR-1, which explicitly define some obligations of the user (see article 62 of ZDR-1). The user must for example follow the regulations regarding ensuring occupational health and working hours, breaks and rest.[18]

Even though the agency worker and the user are not in a formal contractual relationship, they are in an actual relationship, similar to the one between an employer and a worker in the period when the worker is carrying out the work for the user, in regard to the rights and obligations tied to the carrying out the work.

The agency worker must carry out the work under the instructions of the user, and during this period, both user and the agency worker must respect the provisions of ZDR-1, collective agreements and general acts that the user is bound by, which means that the agency worker must have the same working and employment conditions as the employees of this user. This also applies to the benefits, which the user provides to his employees (for example the use of the cafeteria).

The agency workers are paid by the agency, but the amount of the wage is dependent on the actual work for the user and on the collective agreements and general acts that the user is bound by. The user is therefore responsible for the data on payment for work, which he forwards to the agency. Besides this, for the time period in which the agency worker works for the user, the latter is also subsidiary

17 ZDR-1 states that the number of agency workers assigned to a particular user cannot exceed 25% of all employees, employed by the user; this quota does not include those agency employees, who are permanently employed by the agency. A different specification of the stated quota can be defined in a collective agreement for a specific field and the quota does not apply to users who are smaller employers. The user must also inform the trade union or the work council (or the worker representative) of the number of agency workers and the reason for their assignment once per year, if they demand such information.

18 Considering that the employee actually carries out the work for the user and under his instructions, this kind of liability regulation is necessary.

liable for the payment of the wages and other work related receipts, which means that the worker can also recover them from the user, if he does not receive them from the agency (paragraphs 5 and 6 of article 62 of ZDR-1).

According to the above, the user must carefully choose the agency, which will provide him/her with workers, since he/she will have to take over its obligations in case the agency will breach them. The user must also grant the agency workers a number of rights in the same scope as he/she does to his/her own workers. If the agency and the user respect the legal provisions, the agency work is not essentially cheaper than the work of regularly employed workers. This is probably the reason for cases in which the employer (who does not fulfil the conditions to be an agency) concludes a false agreement with the user that he/she will provide the services with his/her employees, but indeed assigns his employees to this user. Because this is formally not providing work to users, the employer also does not provide the rights to the employees, which are in this relation stipulated by labour legislation. Such breaches are discovered by labour inspectors, who have the power to charge the employers as users with a fine.[19]

4. Individuals doing the work on the basis of other contracts

4.1. Voluntary trainees

Besides the traineeship, carried out based on the employment contract (in an employment relationship), Slovenian law also allows voluntary traineeship. If, pursuant to a special law, the traineeship is served "without concluding an employment contract between the employee and the employer", article 124 of ZDR-1 demands a conclusion of a written contract of a voluntary serving of the traineeship.

Special laws that allow voluntary traineeships only exist in the fields of the public sector. Voluntary traineeship is, therefore, for example carried out in the education field (based on article 110 of Organization and Financing of Education Act),[20] health care (based on article 65 of Health Services Act),[21] justice (based on article 3 of State Legal Exam Act),[22] and some others.

A voluntary trainee is subjected to the provisions of ZDR-1 regarding the duration and performance of traineeship, limitations of working hours, breaks and rests, liability for damages and to the regulations on safety and health at work. A novelty, implemented by ZDR-1 is that a voluntary trainee is also subjected to provisions of ZDR-1 regarding restitution of work-related expenses (as they apply to employees).

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19 The fine for the employer (the false provider of services) ranges from 10.000 to 50.000 EUR and from 10.000 to 30.000 EUR for the user, who accepts the appointed worker.

20 Official gazette of the Republic of Slovenia, no. 16/2007 with amendments.

21 Official gazette of the Republic of Slovenia, no. 23/2005 with amendments.

22 Official gazette of the Republic of Slovenia, no. 83/2003 with amendments.

Voluntary trainees are thus not in an employment relationship and they are also not included in compulsory social insurance, they are only entitled to reimbursement of travel expenses to and from work and expenses for meals during work.

Young graduates thus remain dependent on their parents during their voluntary traineeship, which is normally required for them to be able to pass the certification exam, or they are forced to do extra paid work in order to earn a living. Even the right to reimbursement of costs, related to work (which is otherwise a step forward), does not solve this issue.

4.2. Individuals, who work temporarily and occasionally

4.2.1. Temporary and occasional work of retired people

This is an atypical form of work, which can only be carried out by people that have a retirement status in the Republic of Slovenia.[23] The Slovenian legal order has implemented this form of work with legislative changes in 2013.

The work is carried out based on a contract of temporary and occasional work as a "special contractual relationship between an employer and a beneficiary, which can also have some elements of an employment relationship under ZDR-1" (article 27.a of ZUTD). The stated provision can be understood in a manner that this contract (taking into account legal requirements and restrictions) can also be concluded in cases, when the existence of employment relationship elements (stated in article 4 of ZDR-1) would otherwise dictate a conclusion of an employment contract.

Considering the temporary and occasional character of the work, which can be carried out based on this form of work, the law specifies its limitations both on the beneficiary's and the employer's end. The beneficiary can only carry out this work in the extent of 60 hours per calendar month [24] and the sum of the income cannot exceed 6.471,21 EUR in a single calendar year. The time limitations on employer's end regard the number of employees – the more employees the employer has, the higher number of hours of temporary or occasional work is possible to be carried out (from 60 hours per month in case when the employer has no employees, to 1.050 in case the employer has more than 100 employees).[25] Considering that temporary and occasional work is substantially unlimited and can also apply to work, which falls into the scope of employer's main economic activity, the time limitation of this form of work is necessary. This is the only way to prevent the substitutions of employment contracts with these contracts, which are otherwise less costly for the employers (due to lower tax

[23] It does not include persons who used the right to partial old-age or early pension (and are still included in the obligatory insurance for part-time work).

[24] This limitation applies regardless of whether he works for one employer or for several at a time (in which case the sum of working hours cannot exceed 60 hours). Unused hours cannot be transferred to the next calendar month.

[25] See paragraphs 4, 6 and 7 of article 27.b of ZUTD.

charges, since there is no duty to pay social contributions and other obligations that the employers normally have in regard to employees – such as reimbursement of work-related expenses, wage compensation during the annual leave *etc.*)

Even though the individuals, carrying out temporary and occasional work under the provisions of ZUTD (retired people) are not in an employment relationship, the provisions of ZDR-1 on discrimination prohibition, prohibition of sexual and other harassment and mobbing, equal treatment of men and women, limitation of working hours, breaks and rests and damage liability still apply to them, as well as the regulations regarding the safety and health at work. ZUTD also prescribes the minimum hour rate, which is 4,32 EUR and obliges the employer to ensure the beneficiary an income for the finished work by 18th day of the next month at the latest. Possible disputes between the employer and the beneficiary are to be settled by a labour court.

4.2.2. Temporary and occasional work of secondary school and university students

For some time now, Slovenia has had an established and broadly used form of work, the so-called student work. The law states[26] that this is temporary and occasional work, which can be carried out by secondary school students (who have reached the age of 15), university students and also participants of grown up education (who are younger than 26 and are studying in programs for primary, vocational, secondary or post-secondary vocational education).[27]

Student work can only be carried out by an employer based on a referral, which is prior to the beginning of work issued by intermediary – an organization that has concession for an economic activity of providing of temporary and occasional work of secondary school and university students, issued by the Ministry for work, family, social affairs and equal possibilities.[28]

As it is already evident from the name of this form of work – temporary and occasional work, the student work is supposed to be carried out in a smaller scope, to enable the students (whose primary obligation is studying) to earn extra money and obtain work experience and ensure the employers a simple way of satisfying their need for short term jobs. Student work cannot be used for the forms of work, which meet the elements of an employment relationship, since this is explicitly forbidden by the already mentioned paragraph 2 of article 13 of ZDR-1.

Regardless of the above stated student work is commonly used as a form of a regular, long-term employment (even for the work, which falls into the scope of main economic activity of the employ-

[26] The provisions of articles 5 to 8 of Employment and Insurance Against Unemployment Act (Official gazette of the Republic of Slovenia, no. 107/2006 with amendments), which are also applicable after the implementation of ZUTD up to the implementation of a special law, which will regulate student work.

[27] Secondary school and university students carry out temporary and occasional work only if they are not employed or entered into the register of unemployed people at the Employment Service of Slovenia.

[28] Currently there are 25 intermediaries with a concession, which they obtained by meeting the administrative, organizational and other requirements, stated by legal and executive acts.

er).[29] The reason for this is the cost competitiveness of student work (which has been less burdened by taxes and contributions in the past) and its flexibility (providing work through a referral), which both suit the employers and also in the fact that student work is neither time limited nor substantially limited. At the same time this form of work does not ensure students (even if the work is long term and in a subordinate relationship) labour law protection and they did not even have any social security rights in the past.

The issue of student work, which began to supersede the employment contracts, has been under the attention of the Ministry for work, family, social affairs and equal possibilities for a period of time now and it has prepared a comprehensive proposition of small work regulation in 2010 and a student work reform in 2014. Since the proposed reforms have not been adopted, several individual measures have been implemented to reduce the cost attractiveness of student work and to grant students more rights. Recently the law has established a minimum hourly rate for student work (which was 4,61 EUR in 2017) and the students, carrying out the student work are included in the compulsory pension and health insurance.[30]

Even though the student work is not an employment relationship and individuals carrying out the work based on student referral are not subjected to all the rights that labour legislation provides for, some of the provisions of ZDR-1 still apply to them. These are the provisions on prohibition of discrimination, equal treatment based on sex, limitation of working hours, breaks and rests, on the special protection of workers, who have not yet turned 18 and on damage liability, as well as the provisions, which regulate safety and health on work.[31]

4.3. Individuals, who carry out the work on the basis of any of the legal forms of work, regulated in the Prevention of Undeclared Work and Employment Act

The cases of individuals working for the employer without any legal ground (usually without concluding an employment contract despite the existence of employment relationship elements) and without the individuals being included in social insurance represent a specific issue. This is an issue of undeclared employment (as defined by Slovenian Prevention of Undeclared Work and Employment Act, ZPDZC-1).[32] Considering that undeclared employment has negative effects on the person doing the

[29] There have already been cases, where students, who formally carried out the work based on referrals (as student work), managed to prove elements of an employment relationship and therefore enforce an employee status. See the Supreme Court of the Republic of Slovenia judgments in cases VIII Ips 129/2006, VIII Ips 145/2014, VIII Ips 16/2015 and others.

[30] See Act Amending the Fiscal Balance Act (Official gazette of the Republic of Slovenia, no. 95/2014 with amendments).

[31] See paragraph 7 of article 211 of ZDR-1.

[32] Official gazette of the Republic of Slovenia, no. 32/2104 with amendments. Article 5 of ZPZDC-1 stipulates that undeclared employment is present if the employer allows an individual to work but fails to conclude an employment contract with him and does not register him for compulsory social insurance schemes or deregisters him from compulsory social insurance schemes during employment; allows an individual to work but fails to conclude a civil law contract on the basis of which work can be carried out or does not register him for compulsory social insurance schemes; fails to conclude a contract with a retired person for temporary or occasional work in accordance with ZUTD; illegally employs a third-country national.

work (who is not protected by labour law or included in the social insurance) and on the public budget (due to failure to pay the contributions and taxes), the authorities in Slovenia are also actively working on the measures to prevent and detect these anomalies.[33] Beside the penalty actions, intended to prevent the undeclared employment, the measures, which promote replacing the undeclared employment with regular employment, are also vital.[34] The measure to regulate some forms of work, which are not considered undeclared employment, must also be understood as such measure.

Among forms of work, which are carried out without a conclusion of a contract, but are nonetheless allowed under the explicit provision in article 7 of ZPDZC-1,[35] is also short-term work,[36] which is well established in practice.

Short-term work includes unpaid work in a micro company or in an institute that employs at least one and maximum 10 employees or with a self-employed person with 10 employees at the most, provided that the work it is carried out by:

- a spouse or a cohabiting partner or a partner in a registered same-sex partnership of the owner or co-owner of the micro company or institute or self-employed person;
- a spouse or a cohabiting partner or a partner in a registered same-sex partnership of a parent of the owner or co-owner of the micro company or institute or self-employed person;
- a relative to the first degree of the owner or co-owner of the micro company or institute or self-employed person;
- the parents and the children of a spouse or a cohabiting partner or a partner in a registered same-sex partnership of the owner or co-owner of the micro company or institute or self-employed person.

The work of previously stated persons cannot exceed 40 hours per month. The employer must keep a record of the carried out short-term work, which must include the data on when the person has carried out the work and how much of work they have carried out on a monthly basis. The record must also be signed by the person who carried out the short-term work and the employer must keep it for a period of two years.

Similar as in cases of already mentioned forms of temporary and occasional work, the provisions of ZDR-1 regarding the protection of workers, younger than 18, working hours, night time work, breaks and rests and the protection of some categories of employees and the provisions of regulations that regulate the safety and health at work, also apply in regard to the short-term work.

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33 The supervision over undeclared employment is the obligation of Financial Administration of the Republic of Slovenia and partially of labour inspectorate of the Republic of Slovenia.

34 See Polonca Končar: Tudi zaposlovanje na črno pomeni segmentacijo trga dela. *Delavci in delodajalci*, no. 2–3, 2013. 198–199.

35 Regardless of the definition of undeclared employment, the following are not considered as such: short term work, urgent work and humanitarian work, charity work, work for disabled people's organizations and voluntary work (paragraph 2 of article 7 of ZPDZC-1).

36 See article 17.

4.4. Children

Work of children younger than 15 is forbidden in the Republic of Slovenia (paragraph 1 of article 211 of ZDR-1).[37] It is only exceptionally allowed in particular cases and under certain circumstances, which are specified in article 211 of ZDR-1.

A child under the age of 15 may exceptionally participate against remuneration in shooting of films, in preparation and performance of artistic, scene and other works in the area of cultural, artistic, sporting and advertising activities.

A child, who has reached the age of 13, may also carry out light work in other activities, however, not longer than 30 days during school holidays in an individual calendar year, in the manner, to the extent and under the condition that the work, he/she will carry out, is not harmful to his/her safety, health, morals, education and development. The types of light work shall be defined by an executive regulation. The above listed work of children, younger than 15 and 13 years is only allowed on the basis of previously issued work inspector permission, which he can only issue based on a claim of the child's legal representative.

Secondary school and university students, who have reached the age of 14, may perform practical education within the framework of educational programs with the employer (paragraph 6 of article 211).

In cases work of children, secondary-school and university students, the provisions of ZDR-1 on the working time, breaks and rests, special protection of workers under the age of 18 and liability for damages also apply. The provisions of regulations on safety and health at work also apply to them.

5. Economically dependent persons

Persons who are not employees (self-employed) are generally not included in labour legislation and collective agreements. Their legal status is mostly dependent on the contract with the client.

There have been conclusions made in the European Union[38] and the International Labour Organization[39] years ago that there is a category of people who are not employees, but are economically dependent on one client, which is why they (similarly as employees) need certain protection.

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37 A person, younger than 15 cannot conclude an employment contract and if such a contract is concluded, it is null. See article 21 of ZDR-1.

38 In 1999, a distinct labour law theoretician Alain Supiot has warned in his report for the European Comission about a group of people, who are economically dependent on the client and therefore must be granted certain social rights. See European Commission: Transformation of labour law and future of labour law in Europe. 1999. 3.

39 The ILO material has drawn the attention to the phenomena of self-employed persons like electricians, installers, computer programmers, who in time transfer into a permanent relationship with only one client. See International Labour Organization: Report V (1), International Labour Conference, 95 th Session. 2006. 12 and International Labour Organization: Meeting of Experts on Workers in Situation Needing Protection (The employment relationship: Scope), Basic technical document. 2000. 27.

Several legal systems[40] already grant these economically dependent persons[41] – who are placed in the so-called grey area, which means they are neither self-employed nor employees, but somewhere in between[42] – a certain scope of labour law protection, normally by applying certain provisions of labour law to persons who meet the prescribed criteria.

The latest reform of labour law legislation (the implementation of ZDR-1) Slovenia has joined the countries, which regulate the legal status of economically dependent persons. For the time being this category of persons is regulated in articles 213 and 214 of ZDR-1,[43] which are supposed to be in use until the adoption of a law, which would regulate the work and the protection of economically dependent persons.

Economically dependent persons are individuals, who do not meet the conditions for an employee (in the sense of article 4 of ZDR-1), but independently (not according to instructions) carry out work on the basis of civil law contracts. Economically dependent person is only the self-employed person, who meets the legal conditions – he is in a long-term relationship with the client, he carries out the work in return for payment and personally (he does not employ other employees) in the economically dependent circumstances. Economic dependence in the sense of article 213 of ZDR-1 is given, if the person obtains at least 80% of his yearly income from the same client.

Economically dependent persons are not employees, which is why the complete labour law protection does not apply to them. But because, due to their economic dependence they need the protection similar as employees, the law grants them a certain extent of protection. Therefore, they are also subjected to provisions of ZDR-1 regarding discrimination prohibition, ensuring minimum notice pe-

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40 See European Network of Legal Experts in the field of Labour Law: Thematic Report 2009: Characteristics of the Employment Relationship. 2009. 34–37.

41 Despite different definition of this category in different states (*Arbeitnehmerähnliche Personen, parasubordinati*), this expression (economically dependent person) is commonly used.

42 See Adallberto Peruli: Economically dependent/quasi subordinate (parasubordinate) employment: legal, social and economic aspects. *A study for the European Commission*. 2003. 15.

43 Article 213 (Definition): (1) An economically dependent person is a self-employed person who on the basis of a civil law contract performs work in person, independently and for remuneration for a longer period of time in circumstances of economic dependency and does not employ employees. (2) Economic dependency means that a person obtains at least 80% of his or her annual income from the same contracting authority.

Article 2014 (Restricted labour law protection): (1) Under this Act, an economic dependant shall be provided with limited labour law protection.

(2) Unless otherwise stipulated by a special regulation, the following provisions of this Act shall apply to an economic dependent person:

– prohibition of discrimination,

– assurance of minimum notice periods,

– prohibition of cancellation of a contract in cases of unfounded reasons for cancellation,

– assurance of payment for contractually agreed work appropriate for the type, scope and quality of the undertaken work, taking into consideration the collective agreement and the general acts binding the contracting authority and the obligation of payment of taxes and contributions,

– enforcement of liability for damage.

(3) In order to be entitled to the limited labour law protection referred to in the two preceding paragraphs, an economically dependent person, after the termination of an individual calendar or business year, shall be obliged to notify the contracting authority on whom he is economically dependent of the conditions under which he operates by submitting to the contracting authority all evidence and information required for the assessment of the existence of economic dependency.

riods, prohibition to terminate employment contract due to unfounded reasons for termination, ensuring payment for contractually agreed work, comparable to the type, scope and quality of undertaken work (considering the collective agreement and the general acts, which the client is bound by and the obligation to pay taxes and contributions) and the damage liability provisions.

The protection in the stated areas actually means that the legislation limits the contractual party (the client), who could enforce unfair contractual conditions to the other party due to their economic dependence and then put him/her in a difficult position by an immediate termination of the contract. Considering the discussed provision, the client cannot treat the economically dependent person less favourably than comparable persons, carrying out the work, he/she must ensure standard payment,[44] he cannot terminate the contract based on unfounded reasons and without a period of notice, and he can only demand payment of damages if the economically dependent person causes the damage deliberately or by being grossly negligent.

The rights, granted to the economically dependent persons by law under the condition of fulfilling the prescribed conditions are, on the other hand, also the obligations of the client. The economically dependent person must therefore at the end of calendar or business year[45] inform the client on which he/she is dependent, of the conditions under which he/she is working (on the existence of economic dependence) and submit all the information and proofs, on the basis of which the client will be able to assess the existence of economic dependence himself (paragraph 3 of article 214 of ZDR-1).

In relation to the limited labour law protection, which the ZDR-1 grants to economically dependent persons, the theory[46] and practice have presented a number of questions, particularly in regard to its enforcement, possible sanctions for the breaches of the clients and the judicial authority for determining the rights of economically dependent persons. These are the issues, which are supposed to be resolved by a special law that has not (yet) been adopted. Perhaps the reason for this is that there are almost no cases in practice where the economically dependent persons would enforce recognition of the protection from the client under article 214 of ZDR-1.

Legal criteria significantly limit the scope of potential economically dependent persons, since it only includes persons, who work alone (without employees), and who work for practically only one client and at the same time independently.[47] In many cases of contractual relationships among the clients and self-employed in the Republic of Slovenia, the self-employed persons, by which the economic dependence exists, also meet the personal subordination criterion (which means the elements of an employment relationship are fulfilled and so these are disguised employment relationships). If these

44 Payment, which is normally given for comparable work.

45 Considering that one of the criterion of economic dependence is also "a longer term cooperation" with the client, such regulation in sensible. Before the end of one-year period (just after a few months) it would be hard to talk about meeting this requirement.

46 See Luka Tičar: Delovnopravno varstvo ekonomsko odvisnih oseb – novost ZDR-1. *Delavci in delodajalci,* no. 2–3, 2013. 151–167.; Irena Bečan et al.: Zakon o delovnih razmerjih s komentarjem. Ljubljana, IUS Software, GV Založba, 2016. 1124.

47 An example of such person could be a private entrepreneur who on the basis of the contract on business cooperation with one single client repairs electrical devices for the client's customers, whereby he works independently, with his own resources, on his own responsibility, and receives payment for work performed.

self-employed persons decide to demand their rights,[48] they can enforce the entire labour law protection as employees (and not just in the limited scope as economically dependent persons).

6. Conclusion

The employer must ensure the labour law protection, as guaranteed by Slovenian labour law legislation in line with the international documents and also the collective agreements and general acts of the employer mostly to persons with the employee status. To define a person as an employee, the contract, which this person has concluded, is not the only thing that matters, since the way of exercising of the contractual relationship must mostly be taken into account. The person, who works in a relationship that has the elements of an employment relationship, has the right to labour law protection. In case the employee carries out the work for the user, the employee's employer (the agency) and the user share the obligations of an employer.

The protection, guaranteed by labour law, is partially extended to other people, working for the employer. The employer must also grant the special protection, which the ZDR-1 grants to employees, younger than 18, to children, secondary school and university students, carrying out short-term work. The provisions of ZDR-1, which apply to working hours, breaks and rest, must also be granted by the employer to all the previously stated categories of persons and also to the retired people, who work temporarily and occasionally as well as to the voluntary trainees. All the categories of individuals, who work for the employer, are subjected to provisions of regulations, covering the safety and health at work as well, and most are also subjected to discrimination prohibition and the damage liability, as stated in ZDR-1. All these individuals carry out the work personally, are included in the work process of the employer, which also explains the need for their protection in these areas. The difference is with the economically dependent persons, who carry out the work independently (which is why they do not need the working hours limitation protection for example), but are economically dependent on their client (that is why they are granted the protection in regard to the payment for work and the termination of the contractual relationship).

[48] False self-employed (disguised employees) and economically dependent self-employed persons are often afraid to demand their rights, because they do not wish to threaten their contractual relationship with the client.