

# REDEFINING OF DEPENDENT WORK AND ITS SOCIO-LEGAL DIMENSION IN SLOVAK REPUBLIC<sup>6</sup>

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## Abstract

The dignity of the employees in the performance of dependent work must be the limiting factor that determines the present as well as the future trend of labor law in Slovak Republic. This article is focused on selected aspects of the defined development of dependent work and attention is also paid to the indicators of dependent work. The author refers in further points that the fact that current dependent work legislation of the Slovak Republic and its global peers must create a relative equal level for economic competition with the acceptance of the dignity of man as the executor of work.

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**Keywords:** Term dependent work, employee, indicators of dependent work, the dignity of employees

## Introduction

The role of labor law, among other things, is to protect and effectively enforce the inherent human dignity of workers against pressure and infringement from the owners of the capital (Olšovská, 2009). Labor law statutes seek to guarantee the protection of the employees as the weaker, more vulnerable contractual party, who could be (and we believe that at present is being) "forced" to adopt such working conditions that would even contradict generally socially recognized ideas on fair and reasonable circumstances of work performance or even bordering with human dignity. The rate of perception and acceptance of the boundaries of human dignity is a subjective category that, despite the legislative efforts, is currently a sensitive and politically-economically used issue for the promotion of

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various objectives under the blanket of the solutions of social securities of ordinary people who tend to ensure decent work for themselves and their families.

If the labor law should fulfill its protective function, it must guarantee that adequate protection will cover anyone for whom it is with regard to the content and nature of the relationship in which the work performed for another person is determined. The subject of our concern is the area of performance of dependent work as the fundamental source to meet the needs of individuals and their families. If the human dignity is restricted during its application, it would cause both an ineffectiveness of legal regulation of the rules of labor law and secondly, potential social dumping, social exclusion, labor market segmentation and other highly problematic phenomena. Therefore, the definition of dependent work is essential because the measure of labor law impact on work performance is important.

### **The development of the definition of dependent work**

The fact, that the majority of employed people ( not only in Europe but also worldwide) currently work with the legal status of an employee, is noteworthy. It shows that employment is strong, respected, proven and successful legal institution with historical tradition, exceeding the framework of Europe (Barancová, 2011). The conditions of its performance vary in many countries, but ultimately the motivation of work executors is still the same, i.e. to ensure a livelihood for themselves and their families and to have a dignified life, which in many countries of the world is not a certainty.<sup>7</sup> Štefko points out, that the legal definition of dependent work may be in the international context described as exceptional. Usually, on the contrary, dependent work is defined indirectly through the definition of the employees (Belgium, Estonia, Finland, etc.), the employer, or employment contract (Štefko, 2013). In this context, the definition of dependent work in Slovakia is rather exceptional. The conceptual definition of dependent work semantically affects not only labour law, this term has serious legal consequences for social security law, tax law, criminal law and so on. The marks of dependent work that with no doubts separate performing of dependent work form other independent forms, have the direct connection also with the social dimension of mentioned relations. This connection is based on one of the essential characteristics of building elements of social protection systems and which is binding participation (resp. participation) in general social system of social protection covering the constituent part of social events catalogue with the performance of employment. Dependent work is represented mainly by certain groups of employees according to

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<sup>7</sup> Available at: <http://www.euractiv.sk/podnikanie-v-eu/clanok/zneuzivanie-zamestnancov-je-v-eu-stale-bezne-023773>

criteria of the need to guarantee social protection (Lacko, 2012). For the present form of dependent work (de lege lata), there were three important milestones in time.

***The first milestone was the period until 2007***, in which Slovak law didn't recognise the definition of dependent work. By the historical excursion we can state that legislative term „dependent work“ had been anchored by the amendment of the Labour Code with effect from 1.9.2007. Until 31.08.2007 the legal status had not governed dependent work as an independent institute, but defined the employee who performed dependent work. (Considered was an employee as a natural person, who carrying out dependent work for the employer under an employment relationship or, insofar as a special regulation so provide, similar labour relationship under his instructions, for a wage or remuneration).

***The second milestone - the year 2007*** when there was a significant change (adoption of the amendment of the Labour Code, Act no. 348/2007 Collection of laws), under which the legislature defined dependent work. Dependent work required cumulatively fulfillment of eight identification marks. In accordance to § 1 article 4 of the Labour Code, dependent work had been considered „work carried out personally by the employee for the employer within a relationship of employer as superior and employee as subordinate, in accordance to instructions of the employer, in the employers name, for a wages or remuneration, during working time determined by the employer, on the employer's costs, his production resources and on behalf of the responsibility of the employer. It represents the work performance that consists mainly of repeating designated activities.“ The disadvantage of such number of identification marks of the concept of dependent work was, that it easily allowed the employer to create other law relations with natural person even during the performance of real dependent work. Experience has shown that defining such a large number of legal features of dependent work was not the right legislative solution because not all the legal characteristics of the concept of dependent work had the same legal importance. Some of the indicators of the term dependent work were significant and some of them had only minor significance (Barancová, 2012). Such a legal state with a high number of indicators of the term dependent work that had to be met cumulatively, caused considerable problems even in execution of the labour laws. In application practice, not every work, which had the essential characteristics of dependent work, was (according to slovak legal form of Labour ) considered as dependent work, for example if there was one legal character missing (for example work had not been carried out by production resources of the employer). For the reasons stated above, in the period of last few years, the employment of natural persons in the form of dependent work, not only in Slovakia but also in other countries has come under significant

pressure from employers because it was been associated with financial costs which did not occur at other legal forms of work performance. Therefore employers preferred other legal forms of work involvement of the employees, which did not create a burden of obligations to provide the relevant social funds for them. With Given requirement of cumulative fulfillment of all the features of dependent work a paradoxical situation occurred where it had been sufficient for the employers to demonstrate non-fulfillment of one single mark of dependent work and they could cover the performance of their activity by another contractual relation. These were *disguised employment relationships*, it means usage of contract types, for example commercial law or civil law for the performance of dependent work. The motivation of application of masked employment relationships is evident. Work performance in employment relationship is connected with higher economic costs than providing the same work under the regime of other civil law arrangements. Consequently, it is to some extent in the logical (but not legitimate) interest of the employers to ensure the need of work performance outside employment relation. (Dolobáč, 2015).

*This legal state lasted until 2013 (the third milestone).* The amendment of the Labour Code reduced the number of legal indicators of dependent work to six statutory indicators, which again had to be met cumulatively. Dependent work was a work carried out personally by the employee for the employer within a relationship of employer as superior and employee as subordinate, in accordance to instructions of the employer, in the employer's name, on the employer's costs, for a wages or remuneration, during working time determined by the employer. From the definition stated above arises, that it came to a narrowing of the indicator of work carried, which consists mainly of repetition of assigned activities and work performance with production resources of the employer. The current legal status (amendment of the Labour Code - Act no. 14/2015 Collection of laws with effect from 01.03.2015) once again narrowed the definition of dependent work: an indicator of wage or remuneration was excluded. The reason for this change is the fact, that application practice in some cases has shown, that employers did not negotiate the remuneration for executed work with employees. Currently, it will not be necessary to prove the reciprocation. The change stated, however, shall not relieve the employer's obligation to provide wage or remuneration for work performed, because such an obligation results from the article 36 a) of the Constitution of the Slovak republic as well as from the provisions of § 43, § 47 and §118 of the Labour Code.

From the sketch of the **redefinition of dependent work** above, we can see that when assessing whether it is dependent work in regime of labour law of Slovak republic or not, we will examine „presence“ only of remaining

features of dependent work. Out of initial ten characters there are only five left, which in terms of non-binding recommendations of International Labour Organisation no. 198 of 2006 concerning the employment relationship can be described as the most important for the identification of dependent work (Žulová, 2015). We may competently assume that this will prevent „the use of“ other contractual types for performance of dependent work. Conclusion of the employment contract shall commence employment. By doing this will give greater legal security to employees themselves, regarding their demands, not only in the field of labour law, but also in social security (Barancová,2012).

Legal status de lege lata defines (§1 art.2. of the Labour Code) dependent work as work which is carried (in case of the presence of all five characters cumulatively):

- in relation of employer superiority and employee subordinate,
- personally by the employee for the employer,
- in accordance with the employer's instruction,
- in the employer's name and
- during working time determined by the employer.

This is called „**positive allocation** of dependent work“. Subordination principle (relationship of employer superiority and employee subordinate) is considered as fundamental principle characterizing the employment relationship and distinguishing it from other legal relations. It is an unequal relation based on hierarchy. Unlike other private-law relationships the employee at performance of dependent work can not be substituted. Agreed work is exclusively linked to a specific employee. The employee is obliged to perform work according to the directions of the employer so that he is personally and economically dependent on the employer. The work that the employee executes is not in his name, but on the behalf of the employer who bears the risk of the performed work. Just by mentioning legal characteristics the dependent work differs from the enterprising under commercial law regulations. The employer as a bearer of the risk of work performance decides also on evaluating the operational performance of employee working on account of the employer. The term „employer's name“ or „name of the employer“ in labour regulations of the Slovak Republic is absent, the characteristics of the employer's name are derived from commercial and civil regulations. An employee performs dependent work in specific working time determined by the employer. Dependent work can not be carried out in contractual civil relations or commercial law contractual relationship - it is called **negative allocation** of dependent work. We may competently assume, that the reduction of number of indicators of the term „dependent work“ by the employer narrows legal

space for legal coverage of dependent work performance by contractual types of civil or commercial-law.

**A natural person, who carries dependent work must have legal status of an employee.** Slovak Labour Code considers an employee a natural person, who carrying out dependent work for the employer under an employment relationship or, insofar as a special regulation so provide, similar labour relationship. An employee in labour relation gives up not only his economical freedom to free disposal of his labour, but also his right to profit(Barancová,2012).

In the European Union law there is no legislative definition of term employee (stable definition is only for the purpose of „freedom of movement of person“, otherwise the concept of an employee is subject to national legislation). The European Union is based on a broader conceptual definition of the term worker, the content of which understands much wider than the content of the concept of the employee. Since the union law, whether primary or secondary, we will not find legislative definition of a worker, we must seek legal constraints of that term in judicative of the Court of Justice of the European Union (current judgement of 26. March 2015 in legal case C-316/13 Fenoll). In the legal case (C- 66/75) Lawrie Blum the Court of Justice of European Union stated, that the most important feature of an employment relationship consists, that the worker performs activities in benefit of other during certain time period and according to his directions, for which in return he receives remuneration (Dolobáč , 2012). Under current law of the Court of Justice of the European Union the employee is a natural person, who performs dependent work for other people and that within specific times and according his directions and receives remuneration as countervalue. The length of labour relation, actually for short-term employment relationships is not an obstacle for natural person performing dependent work not to have the legal status of the employee (C- 53/81 (Levin). Definition of employee allocation is in close correlate relation with the performance of dependent work, which we have mentioned above.

### **Dignity as a value orientation in labour law**

Labour law is in the context of its historical development perceived as a medium „ultima ratio“ to maintain the social rights of working people. The rate of consideration of the protective function in the individual labour institutes is at the same time also dependant on the orientation of national political representatives participating on employment legislation changes. Legislative intervention not only in the Slovak republic, but also in other European Union countries took the route of strengthening the flexibility of individual labour institutes with the goal to enable improved and faster adaptation of work processes to changing conditions on commercial market

(Švec, 2012). The question is whether adaptation to the economic situation is not sometimes at the expense of perceptions of social-law quality of the status of employed persons. Social risks to which the employees are currently exposed to on the job market affect their social status directly or indirectly. It comes to losing of the positive view of economically active persons, as uncertainty in retaining a job position and at the same time uncertainty of regular payment for performed work is so „strong“ that the interest in all-society solution of „serious economic issues“ is reduced. Through the prism of ideas about the correct economically efficient operation of the state it is clear, that young people, graduates, older people reaching retirement age and a number of other vulnerable categories of people have difficulties to perceive the whole society, as well as european dimension of solution of the social and economic issues, when every day they are exposed to the solution - how to satisfy their needs. Fear or anxiety of job loss, of remuneration for performed work, is weakening element within standardly functioning families.

As the majority of natural persons secure their subsistence by performance of dependent work in employment relations, the adjustment of labour relation has significant social-law aspects. In this context, we can not forget the European Union, which for decades is not only purely economic grouping, but its creation of regulations gains also a social dimension and directly affects the creation of employment relations (relationships) in national system (Dolobáč, 2015). Currently, dependent work in global rates must create a relatively equal conditions for economic competition, but on the other hand, with acceptance of the dignity of man as the executor of work. This fact points out the Charter of Fundamental Rights of the European Union, because (since) the protection of human dignity is ranked on first place in the catalog of all other human rights, including social rights.

The respect for the dignity of employees in the labour market must be a priority because of frequent forced claiming liberalization and flexibilization of employment relationships. Although the emergence of the european flexicurity concept was supposed to mean a necessary return to the discussion about the harmonization of human rights protection and employees freedom with the necessary modernization of labour relations, experience has shown that member states of European Union have focused on strenghtening the flexibility of labour relations. Barinková notes, that labour law can be made more flexible up to certain borders and in accordance with legal standards of human rights, while preserving human dignity (Barinková, 2011). By this we can conclude, that it is undisputable that by precisig of dependent work the legislator within the labour law of the Slovak republic tries to, in accordance with european standards, eliminate

the persistent disguise of dependent employment by legal forms of other legal sectors than labour law.

## **Conclusion**

We believe, that the dignity of employees in work performance must be the limiting factor, which determines the present and the future trend of labour law of Slovak Republic. Trying to choose between the work and family as well as negative situation on the labour market, which does not allow employees to choose working position according to their wishes, puts them in social uncertainty. Continuing enforcement of flexible efforts without adequate precautions in the area of labour law protection even deteriorates the situation where employees often find themselves at the end of physical and mental powers. Flexibilisation and differentiation of new social (labour) risks related to the performance of dependent work also deepened the dualization of the labour market when it comes to a significant increase in "non-standard" employment contracts connected with the uncertainty from repeated unemployment and social exclusion. Despite the legislative basis for the definition of dependent work, its precisation the contracts continue to be concluded on the basis of other legal sectors. Employers therefore pursue the economic indicators, they eliminate liability for work executors. Satisfaction of the life needs of individuals by performing the dependent work finds its expression in specific life of every human being. The justification of the solution to this problem rises from the basic role of the state, which is establishment of the basic assumptions for freedom of citizens, as well as from the role of the state to create the basic preconditions for humanly dignified life of citizens.

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