RECENT DEVELOPMENTS OF LABOUR LEGISLATION IN SLOVENIA WITHIN THE CONTEXT OF ECONOMIC CRISIS

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As many countries in Europe that have been affected by the economic crisis Slovenia made some reforms of the legislation regulating the labour market as well. Since 2008 when the crisis started, the Slovenian parliament enacted legislative changes of the Employment Relationships Act (ERA) and Labour Market Regulation Act as well. The ERA was adopted as wholly new law in March 2013[1]; the second law which was enacted in September 2010 has, until now, been changed three times already.[2] It also has to be noted that the recently enacted Prevention of Undeclared Work and Employment Act (Official Gazette of the Republic of Slovenia, No. 32/2014) and the new Labour Inspection Act (Official Gazette of the Republic of Slovenia, No.19/2014), which tighten the states' relationship towards offenders in the labour market. Slovenia has been facing problems of high unemployment and law enforcement for quite some time. Labour rights violations and equally, unemployment rates increased during the evolution of the crisis. Therefore, the State wanted to liberalise labour legislation on one and improve its enforcement on the other hand.

For a number of years, the Slovenian labour market has been described as inflexible and unable to adapt to the changing circumstances in the macroeconomic situation and consequentially poor competitiveness of the Slovenian economy. The changes in the ERA were purposed to upgrade the flexicurity system via providing better workers' rights protection, lowering labour costs, simplification of layoff procedures for employers, and more efficient supervision and judicial protection. Some provisions in the Labour Market Regulation Act have also been envisioned in order to achieve greater flexicurity.

In addition to insufficient flexicurity, some other challenges of the Slovenian labour market in adopting changes also included: great labour market segmentation, reduction in employment rates and rise in unemployment, high unemployment among young people and low employment rates of older workers. The European Commission repeatedly cautioned Slovenia regarding its powerful protection of indefinite employment, i.e. significant differences between fixed-term and indefinite employment (great labour market

[1] Published in Official Gazette of the Republic of Slovenia, No. 21/2013.

[2] The Act and its three changes have been published in Official Gazette of Republic of Slovenia, No. 80/2010, 21/2013, 63/2013, 100/2013.

segmentation) in its recommendations concerning the national reform programme. Slovenia also ranks low in global competitiveness indexes, which also include assessments of labour market regulations. Frequently, employment relationships in the Republic of Slovenia have been deemed inflexible.

The objective of this report is to demonstrate some of the key legislative solutions within the scope of the labour market. An adequate evaluation of their effects after such a short time of their validation has not yet been possible.[3] The legislator followed the next four key objectives:

- Decrease of labour market segmentation,
- Increase of flexicurity,
- Increase of labour protection and prevention of misuse of law,
- Increased role of collective bargaining

In addition to changes enforced by the basic act, regulating individual employment relationships (ERA), **other legal regulations were to contribute to resolution of problems concerning the labour market**. The pension scheme reform was adopted with a view to increase employment of the elderly population (The Pension and Disability Insurance Act -ZPIZ-2). The same might also be achieved with a modification to the Labour Market Regulation Act which introduced the option of temporary and occasional employment of pensioners. This would enable pensioners to re-enter the labour market and enable their social and individual participation, as well as provide them with additional income.

I. Decreasing Labour Market Segmentation

In Slovenia, segmentation has been a severe problem of the labour market for several years. In the initial stages after the onset of the economic crisis an increase in the share of indefinite employment was observed in the joint number of employees of all types of employment contracts. The employers' first reaction to decreasing economic activity was not to resign employees on fixed-term contracts. The share of indefinite contract employees began to decrease towards the end of 2009, when, on further drop in economic activity rates, companies had been forced to begin restructuring processes. Parallel with the relatively well protected indefinite employment, a gradual increase was observed in fixed-term employment, since employers saw fixed-term employment as a more flexible employment type. First employment seekers (mostly young) were particularly

[3] However in order to follow and evaluate effects of the new legislation Slovene government established a working group of experts and public officials, which work was among others based also on survey fulfilled by different employers. For more dependable results of such a evaluation some more time of the validation of the law is needed.

likely to be offered this type of employment contract. In this way, the labour marked had become further segmented with a decreasing number of employees on safer, indefinite contracts on one hand, and an increasing number of employees on more flexible and cost-efficient employment forms, much riskier for the employees, on the other.

This is the reason why the 2013 labour market regulation changes included several legal provisions intended to decrease segmentation in regard to the employment contract type, as well as age-related labour market segmentation. The majority of the changes addressed the:

- Decrease in employment cost for the employer in regard to fixed-term and indefinite employment contracts (introduction of severance pay for fixed-term employment and decrease in severance pay amounts and shorter period of notice for indefinite employment, increase of contributions for unemployment social insurance in case of fixed-term employment),
- Simplification of dismissal procedures in fixed term employment contracts,
- Limitations concerning signing successive fixed-term employment contracts.

The new ERA introduced a great majority of changes. The key changes contained are:

1. **Introduction of severance pay in case of termination of fixed term employment contracts.** A key change of the ERA, regulating fixed term employment contracts, is the introduction of severance pay in case of termination of such employment contract. In case of termination of fixed term employment contract in the duration of one year or for a shorter period, the Act provides a right to severance pay in the amount of 1/5 of average monthly salary for full time employment in the last three months or from the period of work before the termination of the fixed term employment contract. In cases of termination of fixed term contracts for over one year of duration, the worker is entitled to receive a severance pay for the first year of employment and a proportionate share of severance pay for each month of service (1/5 basic salary + 1/12 of 1/5 of basic salary for each month of service over 1 year of employment).

2. **Introduction of additional restrictions in concluding successive fixed-term contracts for the same work with a legal definition of the term same work (Article 55 of the ERA).** The Act restricts the signing of fixed-term employment contracts by forbidding the signing of one or

several successive fixed-term employment contracts for the same work, the uninterrupted duration of which would be longer than two years (except in specifically stipulated cases). A fixed-term employment contract for reasons of handing over of working tasks may be concluded for a maximum period of one month.

3. **Introduction of restrictions concerning concluding fixed term employment contracts in case of employer providing work for a user undertaking**: the ERA introduces restrictions concerning the number of workers assigned to users, which may not exceed 25 per cent of the number of workers employed with the user undertaking (Article 59 of the ERA).

4. **Decrease in amount of severance pay (Article 108 of the ERA) and shorter notice of cancellation periods** (Article 92 of the ERA) **in case of termination of indefinite employment contract**. In case of cancellation of an employment contract for a business reason or for a reason of incompetence on the part of the worker shall be obliged to pay the worker severance pay in the amount of 1/5 of the wage basis for the period of employment from one to ten years, 1/4 of the wage basis for an employment period from ten to twenty years with the employer (previous ERA: 1/5 of wage basis for a period from one to five years,1/4 of wage basis for a period of five to fifteen years, 1/3 of wage basis for employment in the duration of over 15 years). The basis for the calculation of severance pay shall be the average monthly salary which the worker received or which the worker would have received if working during the last three months before cancellation.

5. **Simplification of notice of cancellation procedures in indefinite term employment contracts**, in which the new legal regulations refer to: cancellation of informing the employee of intended notice, cancellation of employment with offer of new suitable employment (Article 91of the ERA), simplification of the employee defence procedure (Article 85 of the ERA), regulation of serving notices of cancellation of employment (Article 88 of the ERA) and the option of suspension of employment contract cancellation only for workers' representatives (Article 88 of the ERA).

II. Increase in labour market flexicurity

In view of increasing labour market flexicurity, the following **changes had been made to lower employment safety protection.** Labour market flexicurity as a combination of factors which determine the adaptation options of employers to changes in demand has become a sizeable hindrance of economic competitiveness in the period of economic crisis. This was also exemplified in less favourable results in global competitiveness reports in this field.[4] On one hand, this shows that Slovenia addressed the issue of increasing flexicurity later than other countries. The efficacy and flexicurity of the labour market in such reports is not only assessed merely through elements, altered last year.[5] Here, one must point out that some of the changes made have either not been included in the assessment or the period has been too short to change the perception of employers about them on the other. Slovenia's low rankings in the field of labour market compared to other countries are still influenced by the lack of tax incentives and high labour taxation. Compared to other countries, the OECD devised employment protection legislation index for 2013 (before the changes), also showed considerable rigidity of the employment protection legislation.
In addition to decreasing severance pay amounts, shortening periods of notice cancellations and simplification of notice of cancellation of indefinite employment contract procedures contained in ERA, the following changes enforced may also contribute to decreasing segmentation:

1. **Option of other work:** the ERA (Article 33) introduces the option of assigning employees to other work in the course of employment relationship, if this option is not otherwise regulated with a special act or collective agreement. The Act stipulates cases (with the purpose of maintaining employment or assuring uninterrupted course of the labour process) and conditions (suitability of other work, temporal limitation to a three month period, retention of more favourable pay for the work performed), in which such obligations may be assigned to employees in written form. Smaller employers are also provided greater internal flexicurity, since they are allowed to temporarily assign workers other, suitable work.

2. **Institute of temporary lay-off:** the ERA (Article 138) introduces the institute of »temporary lay-off« In the event of temporary lay-off; the worker is entitled to wage compensation in the amount of 80% of the wage

[4] In accordance with the labour market flexicurity assessment of the WEF (World Economic Forum), Slovenia dropped by 13 places in the 2008–-2013 period, while it dropped another 15 places on the IMD (International Management Development) Global Competitiveness Index in assessment of labour market efficacy.

[5] Last year's changes, for example, thus brought about changes only in three out of seven elements assessed by the WEF concerning labour market efficacy, in which one of the assessed categories used 2012 data.

basis. The employer may issue an invitation for temporary lay-off for a period not exceeding six months per calendar year.

3. **Option of temporary and occasional work of retired persons**: the Labour Market Regulation Act (Article 27.a, 27.b) allows for the option of temporary and occasional work of retired persons. Temporary or occasional work may be performed on the basis of a temporary or occasional work contract as a special civil-law contractual relationship between the employer and the beneficiary (retired person), which may include some employment relationship elements as are stipulated by legislation regulating employment relationships.

4. **Decrease in labour protection of elderly employees**– age of workers with ensured special lay-off protection has been increasing gradually. The ERA namely accounts for the rise in retirement age foreseen by the retirement legislation. Special protection against lay-offs has been granted to workers over 58 years of age or workers, who have not yet achieved retirement age, but will achieve retirement age within five or less years of pensionable service. In order to increase employment options of older employees, lay-off protection is not granted to workers who already satisfy the criteria for special lay-off protection prior to signature of a new contract of employment. Workers who sign a new contract of employment based on offer of a new contract with the same or other employer do not lose the right to special lay-off protection.

5. **Inclusion of workers in suitable active policy measures at the labour market during the notice period:** in accordance with Article 97 of the ERA, an employer is required, within the notice period, to enable the worker to be absent from work for at least one day per week to integrate into activities in the labour market in accordance with labour market regulations. The employer is obliged to pay wage compensation for the time of such absence from work in the amount of 70 per cent of the wage basis, and is later remunerated by the Employment Service of the Republic of Slovenia (Article 13 of the Labour Market Regulation Act).

6. **Financial compensation instead of reintegration:** in accordance with Article 118 of the ERA a labour court may, upon a proposal made by the worker or employer, rule in favour of financial compensation instead of reintegration (return to work) after deeming the termination of employment contract illegal, in cases where with regard to the circumstances and the interests of both contracting parties a continuation of the employment relationship would no longer be possible. The Act also

provides for the circumstances which the court is obliged to account for in establishing the compensation amount (a maximum of 18 monthly salaries of the worker).

III. Effect on legal protection of workers

To increase legal protection of workers, legal changes have been made particularly in the following fields: (i) regulation of fixed-term employment, (i) regulation of employment through employment services, (iii) regulation of ensuring financial and social security of workers and (iv) the option of pre-court mediation, judicial protection and sanctioning of offences.

III.1. FIXED-TERM employment contract

Changes of the ERA pertaining to the regulation of fixed-term employment, pursue, from the labour market perspective, the goal of decreasing its segmentation i.e. motivation of employers for hiring workers on an indefinite basis. From the perspective of individual workers, some changes were made towards improving their legal status and protection. To emphasise:

- Legally altered **regulation of formal reasons and restrictions for fixed-term employment, such as the obligation to include the reason for fixed-term employment in the employment contract** and a change in the regulation of temporal restrictions concerning fixed-term employment (two years), which is, according to the new regulation normally related to the temporary nature of the reason rather than on individual workers. As a legal consequence of an illegally signed fixed-term employment contract, there is a legal presumption that the employment contract was signed for an indefinite duration.

- Additional actions for improvement of legal status of workers on fixed-term employment contracts towards that of workers working on indefinite employment contracts, such legal entitlement to severance-pay for workers, whose fixed-term employment contract expires. Workers are not entitled to receive severance pay in the event that, in the course of duration or after the expiry of a fixed-term employment contract, they sign an indefinite-term employment contract with the employer and continue work, or refuse to sign a suitable indefinite-term contract offered by the employer. The right to severance pay is, in accordance with ERA binding for fixed-term employment contracts signed after the enforcement of ERA.

- Other actions regarding the use of the institute of fixed-term employment for employers, provided for in other legal acts, such as an increase in the employer's contribution towards unemployment social insurance, partial exemption from payment for older workers, first employment duty drawback and incentives for employment of young unemployed persons.

III.2. Work through employment agencies

Changes contained in the ERA pertaining to regulation of work through employment agencies who specialise in providing workers to other employers - users, pursue the goal of labour market flexicurity, not, however, at the expense of legal protection of persons thus employed (hereinafter: temporary agency workers). In regard to the field regulated by ERA as a general legal labour act governing individual employer – worker relations and fundamental general labour legislation standards, the changes which improve individual workers' legal status and security, mostly refer to:

- Regulation introducing the rule of indefinite-term employment with the agency and the option of fixed-term employment more clearly tied to the existence of conditions – the temporary reason for signing a fixed-term employment contract with the user. Also to be accounted for is the regulation stating that the temporary constrictions concerning the performance of the same work tasks for the same user based on a fixed-term employment contract also includes the working time of temporary agency workers.

- From the point of view of the use of temporary agency workers by users, employment agencies are motivated for indefinite employment of such workers by the agencies is also motivated by the regulation excluding workers employed by the agencies based on indefinite-term employment contracts from the legally defined quota of agency workers, which may work for the same user. The maximum number of temporary agency workers with the same individual user is limited to 25 % of all employed workers. This limitation can also be otherwise arranged by branch collective agreements. Equally, legal limitations are not applicable for users employing ten or less workers. The legal limitations regulating the maximum number of temporary agency workers with one employer, becomes applicable, in accordance with a transitional rule contained in ERA, one year after the enforcement of the Act, that is in April 2014.

III.3. Financial and social security of workers

The changes outlined in the ERA also enforce, those concerning various labour legislation related institutes (legal nature of payroll, extraordinary termination of employment contract by the worker, persons subject to payment of wage compensation in cases of medical incapacity for work). Their common intent is the **provision of greater financial and social security of workers:**

1. **Extraordinary termination of employment contract, which may be handed in by the worker to the employer**, is foreseen for cases of serious violations of contractual and other obligations of the employer, which are expressly provided for by the Act. These include (according to the new ERA) expressly provided for failure to pay wages or a considerably limited amount of such wages, delays in payment or irregular payment thereof to workers, and also, which is a novelty, the failure of payment of the workers' social security contributions, either for three consecutive months or within a period of six months. A preliminary procedure of cautioning the employer to fulfil his contractual obligations and informing the Labour Inspectorate of the Republic of Slovenia is provided for prior to the intended extraordinary termination of employment contract. A legally submitted termination is effective immediately. In this case, the worker is entitled to severance pay as he would have received in the event of termination of contract of employment for business reasons, and is entitled to receive compensation minimally in the amount of income lost during the period of notice. In the case of the employer's failure to honour the rights stated, the worker is obliged to seek legal intervention at a competent labour court.

2. **In regular payment intervals which must not be long and normally last one month, employers are obliged to pay workers for the work accomplished, on a previously agreed upon or determined day.** At the same time, employers are legally obliged to issue to workers a written statement containing clearly stated details of wages, wage compensation, reimbursement of work-related and other benefits to which the worker is entitled under law, collective agreements, general acts of the employers or employment contract, calculations, payment of taxes and contributions, complete with a stated payment date. Such written accounts of payment must also state details about workers as well as employers. A written statement of payment (payroll) is an authentic document under which employees may propose judicial enforcement.

3. I**n cases of workers' inability to work due to health reasons, employers are obliged to pay** wage compensation from own resources (for a period up to 30 working days for individual absence and a period no longer that 120 working days per calendar year), and wage compensation which will be covered by

health insurance if the absence from work exceeds this number (Paragraph 3 of Article 137 of the ERA). In such cases, employers are required to calculate and pay workers wage compensation and demand recovery of such amounts from the Health Insurance Institute of Slovenia. In accordance with Article 137 and Item 29 of Article 217 of the ERA, failure to provide such wage compensations to workers is sanctioned as violation of the employers' and fined.

In cases of the employers failure to secure payment of wages and wage compensations, also wage compensations covered by the Health Institute of the Republic of Slovenia but payable by employers, the jurisprudence of labour courts and the Higher Court of the Republic of Slovenia, based on the decision of the Constitutional Court of the Republic of Slovenia in the matter Up-794/11 from 21 February 2013, already accounted for previously valid legislation, ruled in favour of the worker's intent to claim wage compensation directly from the Health Institute of Slovenia.

However, clear and detailed legal foundations have been included in the solutions contained in the ERA. The new solution, in accordance with a transitional provision in effect since July 2013, envisages payment of compensations, payable by health insurance, directly by the Health Institute of the Republic of Slovenia, in cases where employers fail to fulfil their contractual obligations of payment of wages and wage compensations within the legally prescribed or contractually agreed upon period. The Health Institute pays workers on employers' demand, which the latter are obliged to submit within eight days following the month in which the wage compensation was due, or on workers' demand, which the latter may submit if they do not receive written information of submitting such demand from the employers.

III.4. Pre-judicial mediation and judicial protection, sanctions of violations

In view of providing better legal protection of workers and more expeditious conflict resolution, the following changes have been introduced:

1. In cases of failure to comply with obligations arising from employment relationships or employers' violations of workers' rights, the workers first seek legal protection firstly with a request addressed to the employer to remedy the violations and comply with agreed upon obligations. If the employer fails to remedy the violations and fails to comply with his obligations within eight of days of receipt of such worker's request, workers' may seek legal protection with a competent court of labour within the following 30 days.

2. To ascertain illegality of termination of employment contract or other types of employment relationships cessation, workers may turn directly to a competent labour court within a legally prescribed period of 30 days.
3. Equally, workers may state their financial claims to employers directly in labour court, within a limitation period of five years. In addition to arbitration, the new ERA expressly states the option of non-judicial mediation in addition to other possibilities of alternative and pre-trial mediation for resolution of conflicts between workers and employers. The parties are required to agree upon resolution of conflicts through mediation. Mediation in labour-related conflicts is regulated by a special act – Mediation in Civil and Commercial Matters Act. In general labour acts (such as ERA) the option of resolving conflicts arising from labour law needed inclusion on the list of other legally available means of enforcing judicial protection.
4. Failures of employers to comply with their obligations arising from their employment relationship or workers' rights violations are defined as offences and fines are prescribed. The new ERA sanctions more severely the violations pertaining to workers' financial entitlements, and sanctions, more consistently and clearly violations concerning the prohibition of discrimination, harassment and bullying, violating the workers' dignity, as well as legal violations by users to the detriment of temporary agency workers. Additionally, the law also allows the minor offence authority (Labour Inspectorate) to impose ranging penalties, accounting for actual circumstances in which the violation was committed to determine the amount of the fine imposed.

IV. Greater role of social partners in autonomous regulation of employment relationships in collective agreements

To increase the role of social partners in regulating employment relationships, Paragraph 3 of Article 9 of the ERA permits that certain workers' rights are determined otherwise (in some cases even less favourably for workers) in collective agreements, as is prescribed by law. The ERA permits these instances in the following areas:

1. Temporary assignment to other suitable or adequate work (Article 33),
2. Stipulation of other examples of fixed-term employment contracts (Article 54),
3. Stipulation of quotas concerning temporary agency workers (Article 59),
4. Stipulation of longer notice period if workers demand termination of employment contract (Article 59),

5. Introduction of traineeship (Article 120),
6. Stipulation of conditions for entitlement to severance pay on retirement and its amount (Article 132),
7. Stipulation of average limitation of overtime work (Article 144),
8. Different arrangement concerning working hours (Article 158),
9. Stipulation of disciplinary sanctions (Article 172),
10. Stipulation of seniority bonus (Article 222)