

Challenges for social policy and health policy in a shared economy

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Abstract. The rapid and unrestrained growth of the shared economy segment surprised the legislators, theorists and scientists in labour law. The enormous development of the shared economy and digital platforms surprised many areas of social science that were unable to respond proactively and provide reliable solutions to emerging problems, that arise from the absence of basic rules and at least in partial regulation of the modern economy. There is no quality psychological and sociological research that would pave the way for legislation. Available psychological studies of the behaviour of the upcoming generation of “millennials” suggest some incentives for change, but not as much as the solution to the problems would require. In the article I will try to outline the social and health aspects of the shared economy that entails the philosophy of not owning, but borrowing. We will also focus our attention on the criminal aspects of undeclared work, possible tax evasion and unbalanced competition as a result of the organic development of the shared economy and digital platforms.

1 Introduction

The principle of shared economy is joining demand and supply through a digital platform [1]. Goods and services are provided by households and ordinary people and not by entrepreneurs and companies. Digital Platforms bring these people together and allow them to make effective use of excess property that they share, exchange or lend [2]. Recent trend, however, modifies the sharing philosophy and sharing is not only carried out among ordinary people, but business companies slowly begin to use it as well.

Potential for development of shared economy as one market segment is still high. In fact, at present it is already possible to share practically everything. This can be seen in the transfer of sharing from tangible goods to intangible [3, 4].

The phenomenon of this segment is that it not only reduces prices, but also the consumption. At the same time creating new space for business has relevant benefit, it eliminates investments in marketing. Sellers can speak to their customers in various cities or countries by means of a digital platform.

Despite the fact that shared economy is experiencing enormous boom on a global scale, it is unprecedented that legal instruments to regulate its spontaneity were absent.

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In its Communication [5], the European Commission itself considers that, if shared economy is supported and developed responsibly, it can make a significant contribution to job creation. Development of shared economy, however, can be restricted by uncertainty of the rules in force, in particular in connection to the fragmentation of the regulatory area resulting from different regulatory approaches that are applied at national or local level. The European Commission identified the landmines of shared economy with surgical precision. These include questions on the application of existing legal frameworks and blurring the differences between the consumer and the provider, the employee and the self-employed or between professional and non-professional service provision. The key question is whether digital access platforms and service providers can be subject to market access requirements under the existing European Union legislation and, if so, to what extent. These requirements must include business licenses, licensing obligations or minimum quality requirements. At the same time, particular attention needs to be paid to taking into account the specific nature of the shared economy's business models [6] and instruments to protect the public interest.

2 Employment

In the area of employment it is necessary to pay increased attention to the development tendencies and their impact on the labour market in the Slovak Republic. The labour market is undergoing turbulent and fundamental changes brought about by digitization, automation and globalization.

The risk of automation in individual professions exerts pressure on job losses in which simple work operations are carried out while at the same time it creates pressure to create new jobs requiring technological and innovative skills. The development of digital technologies also brings new forms of work that operate in a legislative vacuum.

Both employees and employers have to adapt to these changes and new working conditions. It is more than desirable that the transition to the new forms of work is a fair solution for all. This means ensuring the protection of employees, their education and professional training. In order to achieve this objective, it is necessary to adopt legal instruments to regulate and promote fair and sustainable employment, as well as economic instruments in the form of social investments. In this context, the initiative of the European Commission to create a European Globalization Adjustment Fund [7] can be welcomed.

Without a doubt, the shared economy segment creates new job opportunities and new incomes that go beyond normal working relationships and allow people to work under flexible conditions. Thanks to these options, jobseekers for whom traditional forms of employment are not suitable or available, can also be economically active [5].

While welcoming the creation of new jobs, the European Commission is concerned that more flexible forms of work organization may not be as regular and stable as the standard employment relationship. This may create uncertainty in terms of applicable rights and levels of social protection. Working conditions are in many cases based on individual tasks carried out on an ad hoc basis, and not on tasks that are regularly carried out in a predetermined environment and in a given period of time.

The trend of gradual wiping of the borders between self-employed workers and employees can be observed with concern. There is an increase in temporary work and part-time work, as well as multiple jobs.

Unfortunately, these forms of work are often carried out by natural persons with the status of self-employed.

For this reason, it is more than desirable to set up not only the legislative environment for emerging forms of employment, but also to pay particular attention to the functionality of the control mechanisms for illegal work and illegal employment.

3 Social reality

Shared economy through digital platforms is a natural evolution of modern society. Today's young generation is characterized by experience, mobility, temporality, the need to live here and now, without restrictions, and freely. The vast majority of young people have no need for traditional property and accumulation of assets [8]. The need to own luxury and expensive items and to profile themselves through society is greatly eliminated [9]. Symbols of social status are becoming a rarity.

This lifestyle is also reflected in labour relations [9, 10, 11]. The young generation is not interested in an indefinite period of employment, they want more flexibility [12, 13]. As if the protective function of labour law was rather a burden. This lifestyle raises a number of questions in several branches of law, in particular labour law and social security law.

Against this backdrop, the European Commission has launched a public consultation with the ambition to find out how the need for better access to the labour market can be addressed in the best way possible, ensuring fair working conditions and adequate and sustainable social protection. In the public consultation, the European Commission was interested in seeking stakeholders' views on the current social acquis of the European Union, on the future of work and coverage under social security systems [14].

The aim of the public consultation was to discuss existing social rights, the changing reality in the world of work and society and the role of the European pillar of social rights as part of the social dimension of economic and monetary union. The most urgent identified priorities were:

- a) The social consequences of the financial crisis with increasing poverty, social exclusion, inequalities and unemployment, in particular long-term unemployment and among young people, as well as a long period of stagnation with low growth and competitiveness,
- b) technological advances and automation, the future of work, the emerging digital labour market, education and retraining,
- c) demographic developments with an ageing European population, modernization of social protection and social security systems; and
- d) economic differences between Member States [14,15].

In discussing its role and nature, the European pillar of social rights was generally seen as an opportunity to achieve a more social Europe, to balance economic policies with social considerations and to reunite with European citizens, while addressing general issues related to changes in the world of work and society. The consultation confirmed the expectation that economic, social and employment policies should work together in a coherent way. At the same time, the pillar was seen as a means of establishing the conditions for sustainable convergence towards better employees and social outcomes by establishing a common consensus on social objectives. The public debate underlined that national specificities should be respected and the pillar should not aim at harmonizing social policies across the European Union or creating a transnational European social union. The pillar should not focus on social rights as such, but on increased productivity and job creation as a primary means of ensuring a sustainable economic and social model.

4 Taxes

At the onset of a new phenomenon there was no legal regulation, which should be regulated by emerging social relations. Initially, general institutes governed by civil law rules were used, such as co-ownership, rental or lease contracts.

If one thing was shared, the absence of taxation did not cause problems.

These started when ordinary citizens without entrepreneurial status bought e.g. more properties that they leased through Airbnb. The inefficiency of taxation and the application of tax rules distorts a fair competitive environment.

In particular, income taxes, rental taxes and local taxes should be paid for accommodation sharing. Airbnb pays income tax in Slovakia and it also pays in other countries where it operates. A global company can optimize the amount of payment by taxing the money that passes through several states ultimately in a country with a lower tax rate, so called tax haven.

The Financial Administration of the Slovak Republic identified with the Financial Administration of the Czech Republic in that short-term rental of real estate is considered to be the provision of accommodation services and not as income from the rental of real estate.

5 Criminal aspects

The organic evolution of shared economy, without understanding the conditions in which it is implemented, without an appropriate legislative solution to the possible negative impacts and practical law enforcement to prevent them, allows for gradual degradation of society as a rule-based entity in which the basic principles of the protection of people in the rule of law will be compromised (illegal work, the absence of social security, illegal business and the absence of consumer rights), as well as the very economic foundations of the functioning of the state (tax evasion and failure to comply with the levy).

Although the boom in the shared economy is a relatively new phenomenon, we have appropriate criminal offences in the Slovak Republic (sufficiently general) that can address the above-mentioned basic problems of the shared economy. Illegal employment is penalized by Section 151a of the Act No. 300/2005 Coll. Criminal Code, as amended (hereinafter referred to as "CC"), § 214 CC failure to pay wages and severance pay, in turn, penalizes employers' behaviour in violation of social security; illegal business is penalized in § 151 CC, tax and levy evasion even several offences from § 276 to § 278a CC, and consumer rights are protected by crimes of consumer harm under § 269 CC, and unfair commercial practices against the consumer under § 269a CC.

Thus, substantive criminal legislation is sufficient to regulate shared economy, a far greater problem is in penalizing the illegal realization of a shared economy in criminal practice, because it is both technically demanding (proof that a particular person actually commits a crime through virtual space) and on the one hand, for the recruitment of experienced investigators, since there is a considerable number of such cases. At the same time, it is necessary not to act as an agent provocateur and in most cases also as an agent in the investigation - the current legislation has specific, rather strict requirements for the use of these institutes – de lege ferenda rather simplification of these institutes can be considered and allowing agents to carry out proof of purchase, for example, by purchasing from a particular site and then confronting that purchase with accounting.

Unless shared economy is pursued consistently, and there are no big financial turnovers (even for one thing), there are not many reasons to be more confronted with the law (unless it is dealing in prohibited or dangerous goods or goods that are subject to specific regulation, e.g. weapons, medicines, hazardous chemicals, nuclear material, etc. - a number of specific offences are penalized for the unauthorized disposition of such goods). For the punishment of illegal business it is important to know the content of the term "business", which is defined in § 2 par. 1 of the Act No. 513/1991 Coll. Commercial Code, as amended: *"Business means systematic activity carried out separately by the entrepreneur in their own name and on their own responsibility for the purpose of earning profits."* For our matter, key terms are consistently and for the purpose of earning profits. Consistency represents a certain regularity, even if it can be associated with breaks caused by whether seasonality or if business doesn't thrive. *"If any activity is to be regarded as business, it must have the profit*

element. This condition is also fulfilled if the entrepreneur doesn't reach profit in a specific period as a result of his subjectively unprofitable business decisions, but possibly because of objective circumstances (e.g. a negative development in the relevant market) - law, however, also in this case, in the case of an entrepreneur, presumes existence of the purpose of earning profits."(16) If these basic conditions are met and, of course, other conditions of the criminal offence of the illegal business, this is essentially a criminal offence in pursuing shared economy. As regards tax and levy offences, in order to meet the facts of tax and insurance reduction under § 276 para. 1 CC at least a small extent is required, so it affects cases where the concealed income from which taxes and levies together amount to at least EUR 266.01.

Of course, criminal law is in a state governed by the rule ultima ratio, i.e. there when other Community industry (or, where appropriate, other social standards) are not sufficient to resolve the situation. In the Slovak criminal legislation and practice, and in case of meeting the constituent elements of misdemeanour offences (not organized crimes), it should be considered whether, in the light of the seriousness of the offence, it is really a criminal offence. And here we are opening the space for the assessment of whether criminal sanction upon meeting of certain less serious constituent elements of criminal acts within the framework of shared economy is necessary.

6 Conclusion

The European Commission is aware that an absolute ban and quantitative limitation of business activities are usually extreme measures. Their application is possible only if less restrictive requirements cannot be used to achieve legitimate public interest objectives. And here we are coming to a question. Do we really think that in a virtually difficultly regulated virtual space where the young generation grows up believing that everything is allowed and that no rules need to be respected, business will be made in a way that ensures consumer protection and satisfies the necessary budgetary needs of the state? Excessive uncritical emphasis on freedom by younger Internet generation is a clear answer. Virtual space, well-functioning only on the basis of general social standards without legal regulation, including criminal law is utopia. And even if law cannot solve everything, best prevention for compliance with legal concepts is the faith of its addressees in their effective enforcement. Unfortunately. But we are people, not angels.

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