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

Legal Protection of Children carrying out Light Work in the Slovak Republic and the World of Social Media

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Abstract

Digital transformation of society is closely affecting children and young people. Using the internet and spending time on social media are among their favorite leisure activities. Examples from several countries show that children appearing on social networks is often more than just relaxation or entertainment. In this paper, the author focuses on identifying the legal status of the child in the process of creating video content shared on social media platforms, namely the background of the legal regulation of legally permissible child labour in the conditions of the Slovak Republic. The author concludes that this activity may in certain circumstances show signs of labour. The primary criterion for this assessment is doing work with the purpose of monetization, deriving income or reward. In the context of pondering future legislation, more detailed criteria and specific circumstances should be distinguished, depending on the entity for which the creation is carried out. The current legal regulation covers only a small part of the activities in question falling under light work. For the most part, especially when it comes to involvement of children in further shared video content created at the initiative of parents or guardians with the view of its monetizing or earning an income, the activity remains legally unregulated. We believe that if video content involving children is created on a regular basis (by the children themselves or their parents), in order to generate income, under de lege ferenda considerations, the activity in question should be subject to increased legal protection, as is the case of light work under the current Labour Code.

Keywords: light work, social media, YouTube, legal protection, parent or guardian

1. Introduction[1]

Living with technology has become a natural part of our daily activities both at work and in private. The population of children and young people consider regular use of technological devices an integral and natural part of their lives. The pandemic only encouraged increased use of digital devices, given the shift in education to the home environment and the limited opportunities for personal social contact. The widespread use of digital technologies increases the opportunities for children and young people to connect to the Internet, which not only serves as a tool for education and a source of information but is also a space for entertainment and social life.

The contribution of digital technologies to the life and future of the young population cannot be questioned. Working with digital technologies, digital literacy and digital skills are crucial for the employment of young people in the labour market, and it is therefore necessary to support acquisition of those skills and integrate them into educational processes. At the same time, the need for versatility of leisure activities, or the risks the digital society poses, cannot be ignored.[2] The risks are primarily associated with protection of privacy, health, and development of children. From the research of available scholarly articles and clinical studies on the effects of digital environment and in particular social media on young people's lives and health, it can generally be concluded that the consequences are associated with cyberbullying, inappropriate behavior and inappropriate content, exclusion of minorities or reduced image of oneself. In terms of the impact on health, mental health effects, such as depression, anxiety or isolation, are specifically identified.[3]

Particular attention should be paid to the creation and online sharing of content in which children play a "key role". These are activities mostly carried out within the limits of self-presentation of privacy, or as a game, talent development in online space. We do not question that. However, these may not be the only purpose. In particular, creation initiated by parents or guardians plays an important role. Making photos and videos of children by relatives public on social media already has a name, the so-called sharenting. In the professional community, this trend raises questions about legal protection of minors, especially in terms of their right to privacy, including their personal data protection.[4] The employment

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2 The risks for children in the digital space were comprehensively presented in the so-called revised risk typology document of the Organization for Economic Co-operation and Development of January 2021. See: OECD: Children in the Digital Enviroment. Revised Typology of Risks. *OECD digital economy papers,* Januar 2021, No. 302. 28. Available at: https://www.oecd-ilibrary.org/science-and-technology/children-in-the-digital-environment_9b8f222e-en.

3 Deborah Richards – Patrina H. Y. Caldwell – Henry Go: Impact of social media on the health of children an young people. *Journal of Paediatrics and Child Health*, Vol. 51. Iss. 12. (2015) 1154. DOI: 10.1111/jpc.13023.

4 Zuzana Bezáková – Adam Madleňák – Marek Švec: Security Risks of Sharing Content Based on Minors by Their Family Members on Social Media in Times of Technology Interference. *Media Literacy and Academic Research,* Vol. 4., No. 1. (2021) 53–69. Available at: https://www.mlar.sk/wp-content/uploads/2021/04/4_Bezakova_Madlenak_Svec.pdf.

aspect, namely the legal classification of the activity in which the children are either the creators of the video content shared online, or act out as the performers, does not remain unnoticed either.

Although the issues presented in the paper are examined in the context of YouTube, they also apply to other platforms (Instagram, TikTok, etc.) to the similar extent. The aim of the paper is to confirm or refute whether the activity of child "youtubers" can be defined as child labour in terms of labour law and to assign it a current legal status. If this is not the case, then it is necessary to establish whether the de lege ferenda activity in question should be subject to legal regulation.

2. Legal protection of children performing light work under the Slovak law

National legislation respects the prohibition of child labour resulting from the international obligations and European Union law sources. It is prohibited to persons under 15 years of age or persons who have reached the age of 15 but have not completed ten years of compulsory school attendance to perform work (§11 para. 4 of the Labour Code, Act no. 311/2001 Statutes, hereinafter referred to as the "Labour Code"). Persons who do not meet the above requirements are allowed to perform light work, and that subject to only i.) performing or co-performing at cultural and artistic events, ii.) sports events, iii.) advertising activities and iv.) other than previous activities in the case of a natural person older than 15 years before that person has completed their compulsory school attendance. The provisions represent application of exceptions to the prohibition of child labour under Art. 4 para. 2 of Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work (hereinafter the "94/33/EC Directive"). The general condition for the performance of all light work is that it does not jeopardize health, safety, further development or school attendance of children. Permitted child labour is carried out with the permission of the Labour Inspectorate. Issuance of such permit must be requested by the employer, not the child's parent or guardian. Permit issuance is subject to a prior agreement with the relevant regional public health authority, which shall assess whether the employer has created the conditions for the performance of child labour in terms of occupational health rules, including health risks. The permit specifies the number of hours and conditions under which light work will be performed. The Labour Inspectorate shall assess the fulfillment of the conditions for performance of light work and in the event that the conditions in the permit are not complied with, it is entrusted with the competence to withdraw the permit [§ 7 para. 3 (d) points 1 and 2 of Act no. 125/2005 Statutes on Labour Inspection].

We find imperfections in national child labour legislation at several levels:

i) characteristics of individual forms of light work;
ii) absence of criteria for the approval procedure and the legal definition of the scope of working conditions applicable to light work;

iii) absence of a light work-specific contract type and the legal nature of light work, which justifies the application of the Labour Code.

(i.) The national legislation does not contain a more detailed description of the definition of light work or, conversely, activities which no longer classify as light work. Ambiguity occurs especially in the first case, which is performing in artistic and cultural events. No legal regulation defines what is an artistic or cultural performance. In both cases, we can proceed from the common meaning of these words, which we derive from the subject matter, content, and objectives of other legislation. An example is an artistic performance, which is a performance, delivery or other creative expression of a work of art or a work of traditional folk culture through singing, acting, reciting, dancing or otherwise (§ 94 para. 1 of the Copyright Act, Act no. 185/2015 Statutes, hereinafter referred to as the "Copyright Act"). The legal regulation (Act No. 189/2015 Statutes on Cultural and Educational Activities) cites "only" the concept of cultural and educational activities as activities which, through their effects, contribute to respecting human rights and diversity of cultural expressions, to the formation of a cultural way of life, to increasing the cultural and educational level and to developing creativity. The Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005 defines cultural expressions as expressions resulting from the creativity of individuals, groups, and societies, and which have a cultural content (Art. 4 point 3). We do not find a more detailed definition of artistic or cultural performance in the above definitions, but we can deduce from their essence that these will be activities that would, in certain circumstances, fall under the provisions of the Copyright Act, but also activities of such nature that go beyond this law. Advertising activity is governed by the conditions of Act no. 147/2001 Statutes on Advertising (hereinafter referred to as the "Advertising Act") and, contrary to the previous case, its definition does not specifically raise legal issues. Advertising is a demonstration, a presentation or other communication in any form related to business, entrepreneurial or other gainful activity. Modeling, too, is included in advertising. Sports activities may fall within the scope of Act no. 440/2015 Statutes, the Sports Act, which relates to performance of sports in the position of a professional athlete, amateur athlete or as a non-organized athlete. As sports activity does not correspond to the objectives of this paper, we will not analyze it further. In addition, when applying the legislation of the Sports Act, the protection of children's athletes is ensured in the same way as it is ensured under the Labour Code, i.e., it is subject to prior permit issued by the Labour Inspectorate. In terms of the wording of § 11 para. 4 of the Labour Code, however, it may also be an activity that exceeds the scope of the mentioned special regulations.

(ii.) The Art. 5 para. 2 of 94/33/EC Directive imposes an obligation on Member States to adopt national provisions laying down working conditions for children as well as the requirements for the approval procedure by the competent authority. The Labour Code does not define criteria to be taken

into account by the Labour Inspectorate in determining the conditions for the performance of light work, nor does it refer to enumeration of labour law provisions governing the performance of light work and thus determine the limits on its performance. It should be noted that the 94/33/EC Directive does not lay down an obligation to set limits on working hours and rest periods in the case of cultural, sporting or advertising activities. Restrictions relating to precise limits on maximum daily and weekly working hours (Art. 8), night work (Art. 9), minimum rest period (Art. 10) or annual rest (Art. 11) apply to cases where Member States provide for exemptions from the ban on child labour under Art. 4 para. 2 (b) and (c), i.e., the work of children who are at least 14 years old and perform it as part of their theoretical or practical training or education or other light work (other than cultural and similar activities) limited by reaching the age of 14 (or 13 years of age). On the other hand, the 94/33/EC Directive sets out the employer's obligations in the field of occupational health and safety in relation to any work performed by young people, including children (Art. 6 and Art. 7 of the Directive). In our view, it would be wrong to accept an interpretation other than that children must be guaranteed at least the same level of legal protection as a juvenile employee (i.e., an employee under the age of 18 according § 40 para. 3 of the Labour Code) when performing light work, in terms of working hours limits, rest periods, and occupational health protection.[5] We also rely on the wording of international conventions, which impose the requirement to establish working hours or to determine the number of hours and conditions of employment under which the work of minors and children will be carried out (Art. 32 of the 1989 United Nations Convention on the Rights of the Child and Art. 7 and Art. 8 of the International Labour Organization Convention concerning the Minimum Age for Admission to Employment no. 138 of 1973). We consider it desirable that legal regulation be made more precise and specific in this respect, not only in relation to working[6] hours limits but in relation to rules for ensuring occupational health and safety.

(iii.) A natural person under 15 years of age lacks labour law capacity to enter into an employment contract or into any contract on work performed outside employment (hereinafter "work arrangements")[7] which are the only permissible types of contracts establishing employment relations under Slovak law. The parent's or guardian's conclusion of an employment contract or "work arrangement" on behalf of the child for it to perform light work is not permitted. As the child does not have the labour law capacity to enter into and establish employment relationships (under the employment contract or

5 For example, the working hours of a juvenile employee under 16 years of age may not exceed 30 hours per week, the working hours of a juvenile employee over 16 years of age may not exceed 37 and ½ hours per week, even if the juvenile works for several employers (§ 85 para. 7 of the Labour Code).

6 Jana Kakakščíková – Martina Kovalčíková: Three Investigators and the Concurrence of Gainful Activity. In: *Law in Art and Art in Law*: *an International Conference,* 11.9-13.9.2011, Hrubá Voda u Olomouce. Prague, Leges, 2011. 239–241.

7 We distinguish three types of work arrangement: an agreement on performance of work outside employment, an agreement on temporary job of student or an agreement on work activity (§ 223 et seq. of the Labour Code). Compared to an employment contract, their most typical feature is that they have to cover tasks and fulfill other than regular needs of the employer.

work arrangement regime) and the Labour Code does not provide a type of contract that would cover child labour, in practice, contracts are concluded under other branches of law.[8]

As we have noted, permitted light work is of such nature that enables it to overlap with activities that are the subject matter of specific legislation. For example, the Copyright Act will apply to an artistic performance at a cultural or artistic event. Just like an author, a performer can also be a natural person, regardless of whether or not they have full legal capacity under civil law, and it can, therefore, be a child or a person whose legal capacity has been restricted by the court.[9] Certain cases of advertising activities (e.g., an instance of artistic performance for advertising purposes) too, will be possibly subsumed under the Copyright Act.[10] A natural or legal person who distributes advertisement is considered to be the advertisement disseminator without the law determining the age limit of this natural person.

Thus in practice contracts are entered into under the Copyright Act or the Civil Code (Act no. 40/1964 Statutes, hereinafter the "Civil Code"), most often as unnamed contracts (§ 51 of the Civil Code).[11] In these cases, although the child has the capacity to have rights and obligations in a legal relationship (has the capacity to be an author, a performing artist, a participant or disseminator of advertising), until they come of age (18 years of age or 16 years of age if the minor enters into a court-approved marriage), legal acts on behalf of the child are carried out by their parent or guardian.[12] The unnamed contract according to the Civil Code are entered even in cases where the performance of children's activities does not fall within the scope of regulation of special legal regulations (e.g. the Copyright Act).

The reason for entering into contracts under other branches of law is not only a legitimate effort to clarify contractual obligations not covered by the Labour Code, but also the circumvention of the administrative procedure. Guaranteed legal protection of child labour subsequently loses its justification. In this context, labour law theory emphasizes the need to enshrine a separate type of contract – a light work contract.[13] A type of contract covering light work would provide a tool for a

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8 Marcel Dolobáč: *Limits on Contractual Freedom in Labour Law*. Košice, P.J. Šafárik University in Košice, 2017. 74.

9 Zuzana Adamová – Branislav Hazucha: *The Copyright Act. Commentary.*1st ed. Bratislava, C. H. Beck, 2018. 738.

10 See also: Dolobáč op. cit. 73.

11 A special law is the Sports Act containing its own types of contracts for the purposes of sports activities carried out thereunder (a professional athlete contract, an amateur athlete contract or a contract for coaching a talented athlete). The legal protection of child athletes under this Act is ensured in the same way as its protection in the case of light work under the Labour Code, through a permit from the Labour Inspectorate.

12 Pursuant to § 31 para. 1 of Act no. 36/2005 Statutes on Family (hereinafter referred to as the "Family Act"), a minor is legally represented by their parents in legal acts for which the minors lack capacity. If the minor child has no parents or parental rights and obligations of their parents have been revoked, performance of the same has been suspended and the minor child does not have a legal representative in the form of a guardian or caregiver, the court shall appoint the minor child a guardian ad litem (§ 31 para. 3 of the Family Act).

13 Andrea Olšovská: Possibilities of Some Changes in the Legal Regulation of the Labour Code. In: Andrea Olšovská – Miriam Laclavíková (eds.): *Labour Code and its Variations (selected institutes)*: Proceedings of a Scientific Conference. Bratislava, VEDA, 2016. 134–138.; Jana Žuľová et al.: *Reconceptualization of the Subject Matter of Labour Law Regulation*. Košice, P.J. Šafárik University in Košice, 2015. 118–120.

clear definition of rights and obligations and would not encourage the parties to a legal relationship to enter into contracts under other legislation.

Following this a question arises as to whether any light work of the child within the meaning of § 11 para. 4 of the Labour Code meets the features of dependent work[14], which justifies legal conclusion that permitted child labour should fall under the material scope of the Labour Code. Expert opinions conclude that the nature of light work fulfills the identifying features of dependent work, while the child is legally perceived as a specific subject of labour law and the legal relationship is of employment nature.[15] In our opinion, the issue of protecting children who carry out work needs to be placed at the level of the purpose of the legislation covering light child labour. We believe that the aim of the legislation should be to protect children carrying out any work that meets the definition of light work, whether it overlaps with activities under specific legislation or not.

In terms of de lege ferenda considerations, in addition to a new contractual type under the Labour Code, another solution bids to be explored, namely enshrining light work in a special legal regulation. Specific legislation could include a negative enumeration of activities that do not fall under this activities, while also guaranteeing children increased employment protection (by obtaining a permit and defining the delegated powers of the Labour Code).[16] By excluding light work and subsuming it under a separate legislation, we would avoid any dispute as to whether light work necessarily meets the characteristics of dependent work, as needed for the application of the labour law provisions of the Labour Code, and legal protection in carrying out any work that falls under the definition of light work would be thus provided.

3. YouTube – an online video sharing platform

In 2018, the YouTube platform was named the second most used search engine in the world (after Google).[17] It is a unique server whose features include not only the ability to watch and comment content online, but also to create, edit, and share such content.

The YouTube platform calls the creator of the shared content a "youtuber", which is a person who uploads and publishes videos on various topics that capture a wide range of trends and areas of interest

14 Pursuant to § 1 para. 2 of the Labour Code, dependent work is work performed in a relationship of superiority of the employer and subordination of the employee, personally by an employee for the employer, according to the instructions of the employer, on the employer's behalf, during working hours determined by the employer.

15 See: Helena Barancová: *Labour Code. Commentary.* 3rd ed. Bratislava, C. H. Beck, 2013. 172–173.; see also: Žuľová op. cit. 118–120.

16 This approach has been inspired by the Czech legal system, which concentrates the legal regulation of permitted child labour in Act no. 435/2004 Statutes on Employment (§ 121–124).

17 Andrea Olejárová: Reflection of selected aspects of new media with a focus on the YouTube platform. *Culturologica Slovaca*, No. 3., 2018. 182. Available at: http://www.culturologicaslovaca.ff.ukf.sk/images/No3/Olejarova_Youtube.pdf. See also: Lincolnshire Safeguarding Children Partnership. *What is YouTube*? Available at: https://www.lincolnshire.gov.uk/downloads/file/3846/what-is-youtube.

(e.g., video blogs – vlogs, let's player, unboxing videos, short humorous videos, etc.).[18] Some view this concept from a broader and some from a narrower point of view. On the one hand, the "youtuber" moniker identifies the creator of videos published on YouTube regardless of genre or quality, while in terms of the availability of opportunities, anyone can become one. From a narrower point of view, a youtuber is a person who has managed to pique interest demonstrated in a greater number of views or subscriptions of the videos shared.[19] For the purposes of this paper, a narrower definition will be used.

Use of YouTube must be governed by the established policies. The first prerequisite is to create your own Google Account. Creating a user account establishes a legal relationship between the user and the respective platform. By registering or creating an account on the social network, a contract is entered into by and between the user and the social network operator.[20] From the national point of view, although the use of the YouTube platform is free of charge, the legal relationships that arise from the use of the platform and its functions are standard legal relationships of provision of services between the service provider and the end user.[21] Creating your own account, as well as subsequent access to some of the platform's services, is subject to age restrictions in individual countries. For the Slovak Republic, setting up a Google Account and managing it independently is limited by reaching the age of 16. However, Google allows parents (or guardians) to create an account on behalf of younger children, or to give their consent to younger children having their own account, which they subsequently supervise (using Family Link). For parents of children, YouTube provides a special modes option ("YouTube Supervised Mode") where the account of the child under 16 years of age is linked to the parent's account (when activated by parents, YouTubeKids app is accessible to all younger children). The use of other YouTube functions, such as uploading a video, is subject to the existence of one's own Google Account. A YouTube channel must be created to use these functions. If the parent or guardian chooses to watch their child's account in a special mode; multiple YouTube features may not be available for children under the age of 16, such as uploading their own videos. For younger children, uploading their own work is more the initiative of their relatives, who then share these videos through their own accounts.

The motivation for video production does not only have to be self-presentation or acquisition of experience with audiovisual production, but also the possibility of monetizing the content created. The creative preparation and public sharing of that work's content on online platforms has become a

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18 For more details see: Erika Moravčíková: Children in Youtubers' web (analysis of selected sociocultural aspects of the Youtuber scene). *Marketing Identity*, Vol. 5., No. 1-2., 2017. 159–160. Available at: https://www.ceeol.com/search/viewpdf?id=693342 or René Szotkowski – Kamil Kopecký: E-Safety*: The Phenomenon of Youtubering and the Czech School (Study Guide). Academic text for the Modern trends in education in undergraduate training of future pedagogical staff project at Palacký University in Olomouc*. Olomouc, 2018. 12. Available at: https://www.pdf.upol.cz/fileadmin/userdata/PdF/VaV/2018/odborne_seminare/E-Bezpeci_-_Fenomen_Youtubering_a_ceska_skola.pdf.

19 Olejárová op. cit. 182.

20 Lukáš Jansa et al.: *Internet Law.* Brno, Computer Press, 2016. 352.

21 Ján Lazur: Facebook and YouTube in the context of intellectual property law. *Intellectual Property*, no. 2., 2012. 18. Available at: https://www.indprop.gov.sk/swift_data/source/pdf/casopis_dusevne_vlastnictvo/DV_1202web_opt.pdf

full-fledged job for some or plays a complementary role to their regular employment ("influencers"). Content can be monetized directly through the platform. There are several ways how this is done. Monetization of videos shared on YouTube is in principle subject to obtaining a membership in the so-called Affiliate Program. Specific criteria are set for the membership approval, one of which is the activation of AdSense, as a service that adds advertising to videos. Advertising or the revenue from published ads is indeed one of the basic ways to raise funds through this platform.[22] To be eligible for advertising revenue, one must be 18 years of age or, if a person is younger, they must have a parent or guardian over 18 to manage AdSense payments.

One of the many conditions for becoming a partner in the Affiliate Program that allows you to monetize your content is also crossing the threshold of more than 4,000 valid hours of watching public videos over the last 12 months, as well as gaining more than 1,000 subscribers. We emphasize this condition in particular because it demonstrates that complying with the hours of viewing, as well as the number of subscribers, encourages the creators with respect to the quantity or quality of the videos shared, with the aim of reaching a wide audience. Therefore, the value of advertising revenue also depends on the number of followers.

Creators of content shared online also enter into legal relationships with other businesses, for example, with the aim of creating a promotional video to promote a business's products or services. Reaching consumers by promoting products, brands or services through "influencers", including "YouTube influencers" who can credibly engage and attract customers, is proving to be a modern tool of business marketing strategies.

In addition to a number of rules concerning, in particular, the nature of the content, respect for copyright or privacy, the platform YouTube also provides information on best practices for content concerning children who are followers or performers. Given the platform's global reach, these are framework rules that invoke compliance with national rules. In particular, when users post content that contains minors, they must adhere to privacy policies and obtain the consent of a parent or guardian prior to the actual video shooting. It is also required to verify whether it is necessary to obtain a permission to work, to pay wages or other shares from the revenue, compliance with training requirements, safety of the working environment, including compliance with working hours limits and rest periods.[23]

22 *How to make money on YouTube*. Available at: https://support.google.com/youtube/answer/72857?hl=en&ref_topic =9257989.

23 YouTube, *Best Practices for Content with Children*. Available at: https://support.google.com/youtube/answer/9229229.

4. The child in the process of creating content shared online from the perspective of the legal regulation of legal child labour

In general, creation of digital content distributed online through video-sharing platforms has become a phenomenon that reveals many new legal aspects that must be taken into account in the implementation practice, whether that concerns the areas of personal data protection, privacy, advertising, copyright or liability for the content presented. Although young "youtubers" from Slovakia have become very popular not only in the Slovak environment, but there are also no known cases of "family" video creators ("youtubers" or "influencers") who would have become more widely known by recording their children and subsequent sharing of such content in the online space. We are aware that considerations involving legal protection of their performance in online production in the conditions of the Slovak Republic, therefore, predate a possible future reality. However, the above sample of video creators is sufficiently represented by foreign examples, and based on them, we consider it necessary to examine the legal protection of children under the Slovak legal status de lege lata. The content focus of this group of active contributors to social media platforms is at first glance similar to a game or a way of relaxing, using children's free time rather than what we might call work (for example, recording children at various games, unpacking objects, or normal daily activities). Therefore, we consider the need for legal regulation only in the case of activities which, in certain circumstances, can be identified as "work", which could, without setting boundaries, affect school obligations, health or safety of children. We do not aim at denying the venues for creativity or the way of using free time. The real reason for addressing this issue is, above all, exploring whether the pursuit of this activity does not have the potential to interfere with the basic principles of legal protection of children, such as the prohibition of economic exploitation or the pursuit of activities that would endanger their health, safety, development and school attendance. These concerns stemmed mainly from the examples of extremely successful online video creators, or, conversely, from negative examples in which videos with children included inappropriate content.[24]

The protection of the rights of the child is a key objective of the European Union, which is also reflected in the current European Union Strategy for the Protection of the Rights of the Child of 2021.[25] One of the important areas of this document is the digital and information society, which brings the benefits of digital technologies to children and young people, as well as reflections on the pitfalls of cyberspace in which children move (harmful content, sexual abuse, child exploitation, hate

[24] J. D. Neyza Guzman: The Children of YouTube: How an Entertainment Industry Goes Around Child Labour Laws. *Child and Family Law Journal,* Vol. 8., Iss. 1., (2020) Article 4, 101–105. Available at: https://lawpublications.barry.edu/cflj/vol8/iss1/4 or Marina A. Masterson: When Play Becomes Work: Child Labour Laws in the Era of „kidinfluencers". *University of Pennsylvania Law Review*, Vol. 169. (2020) 578–607. Available at: https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9726&context=penn_law_review.

[25] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions: EU Strategy on the Rights of the Child, Brussels, 24. 3. 2021 COM (2021) 142 final.

speech, misinformation or cyberbullying). Awareness of the risks of audiovisual content to minors in relation to the services of video-sharing platforms has been reflected in (EU) Directive 2018/1808 of the European Parliament and of the Council (Audiovisual Media Services Directive), which obliges those platforms to put in place appropriate measures to protect minors from content that could affect their development. The specific issue concerning the protection of children in their own online work, but in particular work in which children or people close to the age of children are portrayed by their relatives, has not yet received special attention.

France is an example of a country that has recently extended the protection of children performing activities in the digital space under the labour law. On 19 October 2020[26], the French Parliament passed a law under which the activity of producing images for profit and further dissemination on a video-sharing platform the main actor in which is a child under the age of 16 is regulated by the provisions of the French Labour Code, as are children's modeling activities, entertainment and advertising activities.[27] The parents of children to be recorded must apply for an administrative permit to be granted by competent authorities. At the same time, the parents have a new financial obligation, namely that part of the children's earnings must be transferred to a specific account (Caisse des dépôts et consignations), which manages the fund until the child becomes of age. The new legislation also applies to child influencers whose activities are not the subject of an employment relationship (a typical example is if they are recorded by their parents). Obtaining an administrative permit (if the child is the main actor in images distributed via online platforms) is subject to exceeding the number or length of videos provided by law or by earning a certain amount of income, the parameters of which are to be determined by secondary legislation. Parents have the same legal obligation to deposit a part of such income in a specific account. If they do not have the administrative authorization of the competent authorities, the case may be referred to a court.[28]

The introduction of new legislation in other countries is likely to depend on the initial acquisition of qualified data that would confirm the seriousness of this phenomenon and the need for it to be addressed by law.

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26 Law No. 2020-1266 of 19 October 2020 regulating the commercial exploitation of children under 16 on Internet platforms. Available at: https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042439054.

27 Law Office of Marie-Andrée Weiss, Pour les Enfants: *A New French Law Regulates Influencers Who Are Under the Age of 16.* 2021. Available at: https://www.maw-law.com/uncategorized/pour-les-enfants-a-new-french-law-regulates-influencers-who-are-under-the-age-of-16/.

28 Amélie Blocman: Law to protect child YouTubers and influencers. *IRIS newsletter (2020-10).* Strabourg, European Audiovisual Observatory, 2020. 37–38. Available at: http://merlin.obs.coe.int/article/9026.

5. (In)applicability of Slovak legislation and the need for legal regulation (?)

In identifying the legal status of the child in the process of creating online content shared on video platforms and considering the gaps in the legislation and the possible need to supplement it, it is first necessary to answer the question whether the activity meets the characteristics of labour that would justify the need for regulation.

We have mentioned that online creation on social media has generally become a relatively new and widespread way of gainful activity. On the one hand, content is monetized directly through the YouTube platform, with a legal relationship between the platform and the service user in place. For example, monetary remuneration of creators for sharing content may be a share in the revenue from the ads appearing on their videos or for selling their own promotional items through the platform. Another option is to earn money for the promotion (or review) of specific products and services, or for creating a promotional video for a specific company. For this purpose, various types of contracts are entered into in practice, such as employment contracts or agreements on work performed outside employment under the Labour Code, contract on work pursuant to § 631 et seq. of the Civil Code or an unnamed contract pursuant to § 51 of the Civil Code (or in the case of commercial relations between business entities, an unnamed contract pursuant to § 269 para. 2 of the Commercial Code, Act no. 513/1991 Statutes), or a license agreement under the Copyright Act. Expert opinions (although in connection with contracting processes of influencers in the social network Instagram) also point to the use of a donation contract in situations where the reward of product presentation is the provision of such product by the entrepreneur in return.[29] A brief clarification is due, namely that although the contractual model through which the cooperation described above is implemented appears, at first sight, to be a matter of choice, this is not entirely the case. Should the work carried out by the shared content creator contain the elements of *dependent work* (§ 1 para. 2 of the Labour Code), the parties are obliged to regulate this relationship under labour law. A relatively accepted conclusion on regulating an activity showing the signs of dependent labour by labour law undermines specific circumstances of certain professions (e.g., a complex legal status of performing artists).[30] Although the work of shared content creators may be characterized by the autonomy, independence of the video creator's practices, we do not think it is appropriate to express a general conclusion that the definition of dependent work has not been met without having taken into account the material conditions and individual circumstances in which the creator will find themselves in a particular legal relationship.

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29 Michal Radvan: Taxation of Instagram Influencers. *Studia Iuridica Lublinensia*, vol. 30., No. 2. (2021) 345–348. Available at: https://journals.umcs.pl/sil/article/view/12369.

30 For a more detailed study of the (employment) legal status of performers, see: Jan Horecký et al.: *Dependent Work and Performance of Artistic Activities*. 1. vyd. Brno, Masaryk University, 2020. 177. Available at: https://science.law.muni.cz/knihy/horecky_zavislaprace.pdf..

Based on these facts, we conclude that the activity of creators of content shared online, regardless of their age and position in the creation process, can be in some cases classified as a form of "work". It is then necessary to evaluate creative activities involving children on the same basis. If the purpose of online creation becomes an effort to achieve profit or remuneration (regardless of its form), then the activity acquires an economic purpose, in our opinion, it shows the signs of work. However, when monetizing content through the YouTube platform, advertising revenue does not reflect the legal nature of remuneration in terms of employment law, which again reveals the specificity of the issue and the need to pay special attention to it.

In the first part of the paper, we stated that legal protection of children in their performance of work should apply to any light work, even if, according to the legal status de lege lata, it is covered by contracts under special legislation, thus circumventing the increased labour protection provided by the Labour Code.If we accept that child video production can be a form of work, the nature of making and / or acting out in children's online videos implies that making and acting out in videos must be seen at the level of light work (not within the limits of an absolute ban on child labour), that is close or similar to cultural or analogous activities, in exceptional cases being exactly that. Given that permissible child labour is only work that falls under the enumeration of light work, in terms of the applicability of the legislation, it is necessary to find out whether we could subject child online video production to one of its permitted forms according to the legal status de lege lata.

In order to confirm whether it can be regulated by the current legal system or not, we must assess whether it corresponds to acting out or co-performing at cultural or artistic events, advertising or any other activity if it is a person who has reached 15 years of age before the end of compulsory school attendance [§ 11 para. 4 (a), (c) and (d) of the Labour Code].

Creating online shared image with children will often fall under advertising activities, such as creation of a promotional video. It is not decisive in which portfolio the advertising activity takes place (including internet). Legally disputed will be situations other than advertising activities. What can be assessed is whether the depiction of the child in the video meets the legal definition of acting out or co-performing in an artistic or cultural event. Such definition will be rarely met, for example if the subject matter of the activity is recording of a video clip or an artistic performance under the Copyright Act. However, it will be difficult for this legal definition to comply with typical "influencer" and "youtuber" activities with children, which involve parents recording videos of the children's normal activities or games. For these activities, only the exception according to § 11 par. 4(d) of the Labour Code remains in place, which includes any activities other than performing or co-performing at cultural or artistic events, advertising or sports activities. However, this is limited to situations involving the activities of a juvenile who has reached 15 years of age but has not yet completed compulsory school attendance.

It follows that if, according to the current legislation, we should subject the creation of and performance in digital video content to light work, the legal definition of the Slovak legislation covers

only part of the creation, while the typical activity of children or family "youtubers" remains legally unregulated under the de lege lata status.

However, in parallel with the above conclusions, the legal aspect also requires taking into account and emphasizing who the activity should be carried out for. If online creation with the participation of children is carried out for the purposes of another business entity that manages the activity, issues general or specific instructions for its creation, the situation is legally undisputed (for example, the creation of advertising videos). If we can subject it to the regime of § 11 par. 4 of the Labour Code, this business entity is obliged to obtain a permit from the Labour Inspectorate, which shall determine the conditions for the performance of activities. As the legislation on light work fails to cover different forms of digital video production with participation of children, activity in this area will also be covered by contracts under other legislation, which only proves that the current legislation requires additions or clarifications of these new realities.

A significant legal problem arises when children's participation in content shared online is initiated directly by or with the support of parents (foreign examples of popular YouTube channels in which children are the main performers), resulting in regularly added videos or specific video programs on their own YouTube channels. Parents or guardians instruct children to act in a specific manner for the purposes of video creation, they coordinate or direct their performance, give them instructions and in fact determine the time at which the video is recorded. All of this often indeed takes place only within the limits of entertainment. In our opinion, the boundaries are crossed if this activity is of a regular nature and is carried out in order to monetize the content. The problem arises in determining whether the relationship between parent and child allows this activity to be classified as work performed in a particular legal relationship.

Evaluating this relationship in terms of labour law (regulation of Labour Code) may be precluded by its factual circumstances. The relationship between parent and child, specificity of this work, which is often carried out from the child's home environment, in the course of their normal activities, does not add to the conviction that the parent will have the status of employer in these cases.

In general, the Labour Code does not preclude a parent from having the status of an employer towards their child. Although the question of the (non)existence of a sign of superiority and subordination is raised, we believe that its presence is not hindered by a family relationship. An employer may also be a natural person, provided that they employ another natural person under an employment relationship (§ 7 para. 1 of the Labour Code), regardless of whether the former has a license to do business.[31]

It needs to be added in this context that the employment of family members in private employment relationships is not precluded by Slovak law. At the same time, under certain conditions, it allows exceptions from standard obligations of the employer. Pursuant to § 2a of Act no. 82/2005 Statutes

[31] Marek Švec – Jozef Toman et al.: *Labour Code, Collective Bargaining Act. Commentary.* Vol. I. Bratislava, Wolters Kluwer SR s.r.o., 2019. 170.

on illegal work and illegal employment, illegal employment does not exist in the case of a natural person who is an entrepreneur (e.g., does business under a trade license) or in the case of a legal entity which is a limited liability company and which has no more than one shareholder who is a natural person, if work is performed by a relative in direct line, sibling or spouse of this natural person or this shareholder, if this relative in direct line, sibling or spouse is covered by a pension policy, is a pensioner according to special regulations or is a pupil or student up to 26 years of age. The condition is that the work is used by a relative who is a natural person – an entrepreneur (e.g., does business under a trade license) or is a legal entity, specifically a limited liability company, which has no more than one shareholder who is a natural person. Another condition is that (among other things) the work is done by a relative in direct line that the child undoubtedly is (§ 117 of the Civil Code), even in cases of adoption. In addition, the child meets the condition of being a pupil from the moment of primary school attendance (does not apply to a child in a day care center).[32] Assistance to family members falls under the derogation of Directive 94/33/EC, which allows Member States to exclude from its scope casual or short-term work, including work in a family business, if it is not considered to be detrimental, harmful or endangering young people (Art. 2 point 2 (b)). The national legislation does not impose any restrictions on the nature of work, its scope, record keeping[33], nor does it determine any minimum age limit for the performance of work by children. According to the Directive, family work must be short-term, occasional and without endangering children and adolescents. It does not directly follow from the legal regulation of the negative definition of illegal work whether in these cases it is required that the "entrepreneur – relative" obtain the permission of the Labour Inspectorate for the children to help in the entrepreneur's business pursuant to § 11 par. 4 of Labour Code. Although in these cases the "entrepreneur" is not subject to the obligation to establish an employment relationship and therefore probably neither to obtain a permit from the Labour Inspectorate, we think that the entrepreneur in the legal status of a relative must respect the prohibition of child labour and the fact that the child is only allowed to perform light work pursuant to § 11 par. 4 of Labour Code.

We think that it is the specificity of the parent-child relationship, together with the specificity of this activities that raises legal disputes. It seems more appropriate that the legislation of this activity de lege ferenda would not depend on the evaluation of this relationship as an employment relationship, but on whether it falls within the scope of light work, for example by being earmarked in a special piece of legislation. Even the exceptions to the Act on Illegal Work and Illegal Employment (e.g. for a parents with a trade license) for the employment of family members do not correspond to the nature of the creation of digital content shared online. Moreover, if the parents were also to use the child within their business activities in their video production, thus invoking the exceptions mentioned,

[32] Pursuant to § 2 of Act no. 245/2008 Statutes on upbringing and education (School Act), pupil is a natural person who participates in the educational process in primary school, secondary school, school for children and pupils with special educational needs and primary art school.

[33] Kakakščíková–Kovalčíková op. cit. 240.

it would have to be only a short-term and occasional performance. However, the aim is not to cover work involving children, which should only be short-term, but an activity where the video program is primary based on the child, as well as an activity that for the earning purposes, becomes regular.

If the child is close to the age of a juvenile worker (e.g., 14 years old) and wants to monetize their videos shared online of their own, the child can only do so with the help of their parents (or guardians), who under YouTube policy not only activate the child's account but also manage the related payments. The child's legal position in the system of these relations remains equally ambiguous. The parent does not directly participate in the video production and independent business activity of minors is not allowed in the conditions of the Slovak Republic.

For example, in the case of the basic form of business activity, i.e., doing business under a trade license, the general condition for such operation is becoming 18 years of age [§ 6 para. 1 (a) of Act no. 455/1991 Statutes on Trade Licensing]. Pursuant to § 12 of the Trade Licensing Act, in the name and on behalf of a natural person who, due to lack of age or court decision, does not have full legal capacity, the trade may be operated with the consent of the court, if so petitioned by a parent or guardian. The operation will be carried out through a responsible representative appointed by the parent or guardian with the consent of the court. It is not clear from the legislation how the court would take into account the age of the child and the fact that the said activity does not interfere with their school attendance, endanger their health and development. If this option is not used, parents (guardians) will play a decisive role in the relatively independent production of online videos by children, regardless of whether they coordinate the activity or instruct the child.

We lean toward the conclusion that the production of videos shared on online platforms at the initiative of parents or with their support should be subject to enhanced legal protection of children, unless it is merely an occasional entertainment (e.g., sharing a video of a child at play), i.e., when it involves regular creation of video programs with children, carried out in order to monetize this content. We believe that regular and time-consuming activities of this nature can also have consequences for the fulfillment of school obligations and, last but not least, health and development of the child, whose leisure activities should be diverse. Of course, the parent or guardian must be aware that abuse, neglect or other ill - treatment of a minor child, which may lead to revocation of their parental rights and obligations by the court, is prohibited (§ 38 para. 4 of the Family Act). The legal status de lege lata does not fully correspond to the specific circumstances of this activity and does not comprehensively fit the rubric of its legal regulation. An extension of the scope of light work is required (and the interpretation what should be considered as light work), as well as a more specific adjustment of situations, if the creation of child videos is carried out by parents, regularly, in order to monetize or achieve income.

It is also necessary to add to the analysis that according to the Family Act, the child's property is administered by the child's parent or guardian, who passes it over to the child after the child has

come of age (18 years of age or 16 years of age if a court-approved marriage has taken place). If the interests of the minor child related to the management of their property are endangered and the parents themselves have not taken or are unable to take appropriate measures to protect the property, the court may appoint an estate trustee on behalf of the minor child (§ 33 of the Family Act).

6. Conclusion

It turns out that the world of social media and its possibilities has introduced new phenomena that will require consideration in the near future in addition to resolving the shortcomings of the current legal situation. From the submitted legal analysis, we conclude that the activity of children in the process of creating content shared on online video platforms fulfills the characteristics of work when it is performed for the purpose of monetization, profit or reward. In our opinion, the form of remuneration has no legal relevance. The current legal regulation of permitted child labour in itself is not optimal, which has long been pointed out in labour law theory. New challenges in the form of digital creation only underline the traditional shortcomings of the legal status de lege lata. An example lies in the ambiguity of the legal definition of certain light work or the circumvention of the labour law regime of child labour due to the lack of a separate type of contract for performance of light work. We believe that the creation and children's acting out in video production tends to be of light labour nature and, therefore, is necessary to be assessed within these limits in future legislation. In certain cases, the current legal situation makes it possible, for example in advertising. However, the current scope of light labour does not correspond to children's video production in most cases. We also believe that the need to obtain a permit to perform this work will not pose a problem if the activity is performed for a person other than the parent or guardian of the child (for example, other business entities). If video content shared on online platforms is initiated by or supported by parents for monetization or profit, the application of the current legislation does not appear to remain uncontested for several reasons. One of them is the scope of legally defined light work ond the legal nature of the parent-child relationship in actively involving children in income-generating video production. The aim of these considerations is not to prevent children's creative activities or to regulate online presentation of the family doing its normal activities. However, if the activity in question goes beyond the occasional leisure activity and aims to produce this content on a regular basis for the purposes of deriving income, it should, in the light of de lege ferenda considerations, be subject to legal regulation to the same extent as other light work.