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ILLEGAL EMPLOYMENT

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Abstract

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Since 2007 Labour Code contains the definition of dependent work, which can be carried out only in labour-law relations. The Amendment to Labour Code from 2012 makes the definition more precise, when it stipulates essential elements of dependent work and designates the others as conditions, under which dependent work should be carried out.
The Amendment to Employment Act changes the definition of illegal work. Illegal work is a performance of dependent work by natural person except for labour-law relation, or if natural person – foreigner carries out work in conflict with issued permission to employment or without this permission.
Since 2012 sanctions for illegal work were increased. Labour inspection is entitled to impose sanctions, in case of foreigners it is Customs Office. For control purposes employer is obliged to have copies of documents at the workplace proving the existence of labour-law relation. Goal of controls and high fines is to limit illegal employment of citizens of Czech Republic and foreigners as well.
Illegal work has unfavourable economic impact on state budget. It comes to extensive tax evasions and also to evasions within health insurance and social security. If a concluded commercial-law relation meets the attributes of dependent work, then it stands for a concealed legal relationship. Tax Office can subsequently assess an income tax to businessman. Labour-law relationship enjoys a higher legal protection than commercial-law relationship; nonetheless it is not suitable to limit liberty of contract in cases when it is not unambiguously a dependent activity.

dependent work, illegal work, Labour Code, Employment Act, "Svarcsystem"

Making term "dependent work" more accurate comes from the Recommendation No. 198 about Employment of the International Labour Organization from 2006. This recommendation mentions that national policy should involve measures which combat with concealed employments.

Last amendment to Labour Code[1] with effect from 1. 1. 2012 made the definition of dependent work more accurate. Simultaneously the amendment to Employment Act[2] altered the definition of illegal work, increased rates of fines for illegal work as for natural as for juridical persons. Fines can be imposed by various administrative bodies.

In contrast to other contracts basic sign of employment contracts is a regulation of dependent work. The "Svarcsystem" is not allowed, but it is not forbidden by law either. Recruitment of pseudo-tradesmen for usual work appears mostly in building industry, entertainment and other services.

The goal of this contribution is to analyse a valid definition of term "dependent work" and legal regulation of illegal work and to refer to its economical impact. Furthermore to point out to imposed sanctions for breach of legal duties in this field, to evaluate positives and negatives of present legal regulation.

Sources for this contribution are valid legal regulations and expert literature.

1 Act No. 365/2011 Coll., amandment to the Act No. 262/2006 Coll. Labour Code
2 Act No. 367/2011 Coll. amandment to the Act No. 435/2004 Coll. Employment Act

RESULTS

I. Dependent work

The key sign of dependent work (non-independent work) is personal dependence of employee on a person of payer. Employer's binding commands and employee integration into employer's organizational structure rank among the most important attributes of personal dependency of an employee. Employee enters into certain subordination towards employer by conclusion of employment contract, and this subordination is based on the fact that employee does not bind himself to provide some result of his work, but he binds himself to the work in itself.[3] Integration into organizational structure manifests itself with cooperation with other employees, which leads to certain common goal. Employees use equipment and tools for their work, which are owned by employer. Employee is under control, he can be sanctioned.

Labour Code determines the signs of dependent work.[4] As a dependent work is the work, which is done:

- in relation of employer's superiority and employee's subordination. Main criterion of dependent work is superiority of employer, who is entitled to control what employee does, alternatively in which way employee the work does. Conclusion of labour-law relation binds employee to carry out work in given extent in the sake of employer.
- on the behalf of employer. Work is done in favor of employer, which comes into being by activity of employee. Employer does the work by his name and on his own account, he has right to the work of employee, who created the work as fulfillment of his duties resulting from labour-law relation.[5]
- according to instructions of employer. It is the way how employer realizes his superiority. Employee gets commands in person or by means of electronic devices, through the command he comes to know working operation, which should be reached and employee is obliged to follow these commands.
- as a personal work performance of employee. Employee is obliged to work personally for employer and during this performance he is not entitled to be substituted by other person.

Furthermore conditions for performance of dependent work are stipulated. This is the work, which must be done:[6]

- in return for wage, salary or remuneration. Right of employee to fair remuneration is considered as an important social right.[7] If no remuneration is paid, employer breaches stipulations of Labour Code. The question is, if a consideration here should not be taken as an essential sign and not only as a condition.
- at employer's expenses and responsibility. Work of employer is done at the expense of employer. Employer is not entitled to delegate risk from the performance of dependent work, and that's why employee is not obliged to participate financially in risk of employer's business. Employer is obliged to provide employee with compensation of costs, which arise him in connection with work performance (e.g. travel costs). Employees are not responsible to other persons during the work performance, even though their responsibility according to labour-law regulations is not concerned, but it is different from civil responsibility. Employer is directly responsible for the damage caused to the damaged person.
- in working time at the workplace of employer, alternatively at other agreed place. Working time can be agreed. If employee does the work in other agreed place and mostly in working time, which he lays out by himself, it is not a classical subordination of employer.[8] A place, where employee fulfills his working operations, can be understood as a workplace.

To be able to speak about dependent work, all definition signs must be fulfilled at the same time. Conditions of work performance, formerly involved under the signs, create labour-law relation of employer and employee. Dependent work is usually done in the long run, but Labour Code does not define a requirement of continuousness. With regard to diversity of employments it is difficult to apply these general criteria to all employments, it is important to make allowances for circumstances of the case. Employment contracts, in contrast to other private law contracts, regulate dependent work.[9]

II. Illegal work

Dependent work can be done exclusively in basic labour-law relation, if it is not regulated by special of legal regulations. [10] Basic labour-law relations are employment relationship and legal relations based on agreements on performed outside employment relationship.[11]

3 BIČÁKOVÁ, O., "Svarcsystem", *vs. illegal work*. Mzdová účetní, 2012, No. 9, p. 14
4 Section 2 paragraph 1 of Labour Code
5 ŠTEFKO, M., *Labour law in context to civil law*. Praha: Auditorium, 2012, p. 37
6 Section 2 clause 2 of Labour Code
7 Section 28 *Charter of fundamental rights and freedo*ms
8 Section 313 Labour Code (domestic workers)
9 BĚLINA, M. and col., *Labour Law*. 5. vydání, Praha: C. H. Beck, 2010, p. 10
10 E.g. Act No. 218/2002 Coll., *Service Law*
11 Section 3 of Labour Code

The "Svarcsystem" is called after Miroslav Švarc, who started with the system of employing the tradesmen after 1990. He used the way, which our law did not restrict at that time. All his employees were changed into individual gainfully employed persons, who worked on the basis of trade license and he concluded supply contracts with them. Thanks to this system he could provide his employees with higher remunerations and put forward cheaper offers, because he did not pay any transfers for health and social security for them. State became to fight back this evasion of financial means in such a way that it regulated the restriction for natural and juridical persons to ensure the performance of their activity by other way than by employers in labour-law relations (so-called prohibition of the "Svarcsystem").

Contemporary valid Employment Act does not involve such a restriction, but replaced it with prohibition of illegal work. As illegal work can be understood[12]:

- performance of dependent work by natural person except the labour-law relation (so-called the "Svarcsystem")
- if a natural person – foreigner does the work in conflict with issued permission to employment or without this permission, alternatively if this person does the work without permission to stay on the territory of Czech Republic (so-called illicit work).

As illegal work becomes besides so-called "illicit work" (it means on a non-contractual basis) also the "Svarcsystem". The "Svarcsystem" means the replacing of classical labour-law relation in company by business-law relation between two businessmen. Natural persons (foreigners from third countries) can do the work in Czech Republic only on the basis of permission to employment.

It is not excluded that employer concludes a business-law relation with a person or with his employee, and this all in case that this person will do a certain activity on the basis of trade license or without it, but with the signs of business. If this person does the activity as individual gainfully employed person, but work should have signs of dependent work, it would be so-called concealed labour relation. The requirement of independence at the most differs business activity from activity in labour-law relation, where tradesman decides his activity individually, he organizes it, he is not bound to commands of the superiors. Businessman is liable for his obligations with all his property and he bears business risk.

With consistent manifestation of will it is possible to give up in advance certain rights of employee and to regulate mutual relation in compliance with their will. If the work is done independently on the superiors, employee lays out his working time by himself, it is possible to carry it out as a self-employed person (sale representatives, IT workers and others). Also sport clubs can conclude gaming contracts with sportsmen, which are not employment contracts and do not follow the Labour Code, because they rank among the innominate contracts.[13]

It should not lead to concealing of dependent work, but business can be concerned. It is not possible to exclude the conclusion of business relations, which are not the "Svarcsystem", because they involve only some signs of dependent work. First of all it depends on the content of contracts, when lump-sum performance is concerned, integrated work delivered in certain time, tradesman will not follow commands of work consumer, and performance of his work will not run in direct determined working time at the workplace designated by employer.

Problems with abatement of illegal work are in all the countries of European Union, I present some of them just for comparison:[14]

- German Social law defines dependent work as non independent gainful activity, which is realized first of all in employment. Signs determining dependent activity represent limitedness of employer's commands and including into his organizational structure, further duty to give reports and existence of controls. If persons figure as tradesmen, however they carry out dependent work, they are regarded as persons performing dependent work and law provides them with protection before notice, paid leave and other occupational advantages.
- Austrian legislation regulates besides employment contract, distinguishing itself with personal dependency on employer, and contract for work (with obligation of factual working result), also free employment contract, which is a mixture between stated contracts, where employer is not personally dependent, only economically. It depends on the content of contract, not on its designation. Contract can be overqualified for proper employment contract and employer is obliged to pay additionally all the fees for social security. If signs of personal dependency of employee outweigh during the real fulfillment of contractual relation from the whole view, we speak about real employment contract, even if parties wanted to conclude contract about free provision of services.[15]

12 Section 5 e) of Employment Act
13 Judicial Decision of Supreme Administrative Court from 29. 11. 2011, tr. No. Afs 16/2011
14 RECHBERGER,T., *Resources for the "Svarcsystem" across the borders or how do we stay in it in Czech Republic?* Právní rádce, 2012, č. 7, p. 10
15 Judicial Decision of Supreme Judicial Court from 26. 7. 2012, Tr. No. 8 ObA 56/11 k

- Slovak Republic has regulation of dependent work with similar signs as Czech Republic has and moreover stipulation that dependent work can be carried out neither in civil-law nor in commercial-law relation.[16]
- French regulation distinguishes so-called concealed work, when performance of activity is concerned, which is not announced at appropriate register or authority (illicit work) and further wrongful employment of foreign workers from countries out of European Union, who do not have permission to employment or to stay. A big importance is attached to fight against illicit work in France.[17]
- In some other European countries (e.g. Poland, Hungary) there are more rigid regulations, where is permissible to replace employment contract by other legal relation.

III. Sanctions

Control activity in employment section is done by work inspectorate and Employment Office, in case of foreigners by Customs Office as well. According to Employment Act natural persons, who do illegal work, are threatened to be fined up to 100.000 Czech crowns, and for making performance of illegal work possible up to 5.000.000 Czech crowns.[18] In case of juridical person up to 10.000.000 Czech crowns, however at least 250.000 Czech crowns.[19] High extents of fines are to have deterrent effect. Lower a quarter of one million limit for juridical persons seems to be liquidating, especially for small tradesmen and smaller businessmen.[20]

Juridical or natural person is obliged to have copies of documents proving the existence of labour-law relation and documents proving reasonability of foreigner's movement on the territory of Czech Republic.[21] State office of work inspection published out methodical instruction to ensure uniform procedure during the realization of controls of illegal employment, according to which inspectors consider no submission of documents by employer immediately during the control at the workplace as illegal work. Additional submission of required documents does not influence evaluation, despite the fact that administrative authority must prove administrative delict or infraction. Moreover applicant for employment is threatened to be excluded from the registration at Employment Office and he loses a possibility to get an unemployment benefit. Wrongful employment of foreigners is criminal act[22] and juridical persons are responsible according to Criminal Liability of Juridical Persons Act.

With regard to the fact that employers usually keep documents centrally at one place, it is not quite suitable to have them at all workplaces, especially if company has more dislocated places determined for performance of activity. It is obvious that if there would be possibility to submit documents to control also additionally, though it gives space for machinations, it could be proved e.g. with employer's duty of reporting to public health and social insurance.[23] I understand that legal stipulations should benefit to solve constantly increasing negative phenomenon at the labour market, but I assume that it would be enough to prove these facts subsequently by credible way.

IV. Economic and other consequences of illegal work

a) Tax area

Dependent work according to the Labour Code is always also dependent activity for tax purpose,[24] but on the contrary the term "dependent activity" within the meaning of Law of Income Tax is not the same as the term "dependent work". Even though persons conclude legal relation according to private law, income is always taxed according to Law of Income Tax. One does not speak about dependent activity for example in case of specialized activity, which is done only in the short term or non-systematically.[25]

To apply tax law in a right way it is important to correct considering of factual relations concluded among the individual gainfully employed persons and ordering party, and also the fact that remuneration from this relation can be taxed as income from individual gainful activity or it is income from dependent activity. Tax administratior finds out real character of relation and takes always into consideration a real content of legal act[26] and examines, if a concluded private law relations is not a relation of dependent activity[27]. The term

16 Section 1 (3) Act No. 311/2001 Coll., Labour Code
17 JOUZA, L., *Against illegal work*. Poradce, 2005, No. 4, p. 195
18 Section 139 of Employment Act
19 Section 140 of Employment Act
20 KOLMAN, P., *Fight against* "Svarcsystem"*: lessis more*. Právní rozhledy, 2012, No. 9, p. 326
21 Section 136 of Employment Act
22 Section 342 of Criminal Act
23 BUKOVJAN, P., ŠUBRT, B., *Illegal work and proving of labour-law relation*, Práce a mzda 2012, No. 5, p. 21.
24 ŠUBRT, B., TREZIOVÁ, D., *Dependent work, illegal work and the schwarz systém from 1. 1. 2012*. Práce a mzda, 2012, No. 1, p. 20.
25 Judicial Decision of the Supreme Administrative Court, No. Afs 62/2004 - 70
26 Section 8 (3) of Act No. 280/2009 Coll., Act of tax procedure
27 Section 6 Act No. 586/1992 Coll., Act of income tax

of dependent activity is not unambiguously determined in the Law of Income Taxes. On the basis of executive instruction two basic material criteria can be determined, firstly to follow command of payer and then incorporation into business organism of payer's company.[28] Mostly long-term works done at one place for one employer in determined working time, with breaks etc., are concerned. Labour-law relation concealed by business relation enables to financial authorities to find out the tax base in other way than only from book keeping of employer.[29]

Tax Office can overqualified relation of cooperative persons into relation of dependent activity and determine additionally income tax from dependent activity, which employer would have been obliged to deduct from provided remuneration. Tax Offices get support for this procedure in judicial verdicts at various levels. Business company is a subject to tax control, not a employee.

It is surprising that over-classification of remuneration for work to remuneration of employee is done neither by authorities of social security administration nor by health insurance companies. Change can happen in case of "centralized collection point", when one tax administrator will check also transfer of health insurance for public-law insurance.

b) Social-law protection of employees

Citizen, who does not do working activities in labour-law relation, can not apply his rights and claims resulting from labour-law regulations, particularly from Labour Code. Citizen is not protected by these regulations and that's why he has no claim for e.g. leave, wage compensation, work breaks, travel allowances, redundancy payments, days off for embarrassment at work, and other.

Employer's responsibility is objective responsibility. Responsibility for damage in labour law is regulated in other way than in civil law, where general responsibility is subjective. It is advantageous for employee to apply for damage compensation from employer than from the person who caused the damage.

Objective labour-law responsibility is applied during the assessment of industrial injury and occupational disease, which is covered by legal insurance of employer. Employer is responsible for damage also in case, when he did follow his duties resulting from safety regulations and health protection at work (with exception of liberal reasons). Employer is responsible for health damages of employee, which happened without his fault. It is objective responsibility (for result) in contrast to civil-law responsibility, which is based on presumption of breach of legal duties. Provided, fault of wrongdoer is not found out, damaged person will not reach a claim for damage compensation on health.

Only civil-law responsibility for damage can come into consideration in case of an accident happened during the performance of activities resulting from business-law relation. Mostly it is responsibility for breach of legal duties, when the damaged person is obliged to allege and prove breach of these legal duties, on the part of liable subject, whereby his procedural position will be broadly aggravated. Moreover problem can appear in case of dissolution of juridical person without legal successor. Labour Code solves this situation by transfer of duties to state (Ministry for Employment and Social Affairs of Czech Republic).

Labour Code differs from Civil Code in area of compensation of industrial injuries and occupational diseases and this namely in the way of calculation for compensation of a loss of earnings and costs of survivors' maintence, there are differences in way of taxation of compensation for a loss in earnings. The advantage of Labour Code is that the rights for compensation of above mentioned claims do not come under the statute of limitations, only single monthly installments do so. Contemporary regulation of damage for a loss in earnings according to Civil Code in contrast to Labour Code is not limited by the age of 65.

It seems to be, that compensations for pain and lesser employability is more difficult to make a living in extraordinary serious ways are more favorable in civil-law judicature than in labour-law judicature. Civil Code enables a conclusion of agreement about lump-sum and final settlement of claims for damage compensation, possibility of such agreement is controversial according to Labour Code.[30] In collective agreements according to Labour Code there is a possibility to determine higher compensation of survivors than the law guarantees, circle of the entitled persons is not possible to extend.

Duty to compensate damage for employer, which arose to employee during the occupational accident or occupational disease, comes from legal insurance of employer for damages arising during occupational accidents and diseases (in contrast to commercial insurance) to insurance company and to compensate him also costs of judicial proceedings of damage.

c) Economic reasons

Performance of independent work on the basis of trade license or on the basis of special regulations is

28 DZURILLA, B., *In shadow of the* "Svarcsystem" *the forgotten term of dependent work*. Právní rozhledy, 2012, No. 21, p. 745.
29 JOUZA, L., *Illegal employment*, Poradce, 2013, No. 1, p. 200.
30 MIKYSKA, M., *Compensation of Industrial Injuries and Occupational Diseases*. ANAG, 2010, p. 226.

economically more advantageous, particularly from the viewpoint of expended costs by subject, who hires for work.[31]

Also employment of natural persons by means of commercial-law relation is more advantageous for employers economically (businessmen). No duty arises to employer to pay transfers for health insurance, social security and to pay income tax. Such employer gets competitive advantage towards those, who employ their workers in labour relation. Prices of their goods can be dumping, because no all costs for work must appear in them.

System of using of people working on the basis of trade license is convenient for employers, because they spare money with not paying for high transfers. Tradesman can deduct his costs from his earnings; he pays less for insurance and for taxes. For example the difference in taxes and insurance, which are paid during the performance of employment and during the performance of the "Svarcsystem", makes with gross annual income of 300 000 Czech crowns about 40 000 Czech crowns, which the state is losing. It comes to vast tax evasions and evasions of transfers to state budget, which are estimated up to 20 milliard every year.[32]

DISCUSSION

Question arises if dependent work should be regulated in law. What would happen if it was not regulated? Probably it would come to reduction of employments, state would not collect monetary means for transfers, employees would not pay for insurance, but they would require from state to secure them. Exact definition of dependent work is important to differentiate labour-law relations from relations, which are not regulated by Labour Code.

As far as illegal work is concerned, I assume that it is important to determine reasonable limits, which works are possible to do except for employment and which are not possible to do. Crucial factor for judging, if in concrete case an illegal way of performance of working activity is concerned, is its real content. I hold a view that businessman should do a specialized activity for employer, which common employees are not able to ensure. Certain result, not performance of work, should be a subject of contract with businessman in contrast to contract with employee.

In the past the tolerated "Svarcsystem" is now persecuted by work inspectorates within their severe controls and increasing of sanctions. If there was no minimal fine for illegal work up to now, it is even astounding to determine it now in extent of quarter million crowns without possibility of determination of period for rectifying and aside from relevance of concrete unlawful act. Rigid lower limit of contemporary penalty restricts administrative discretion of work inspectorate and does not take account of adequacy of property sanctions.

Consideration of Tax Offices, if concealed legal act is concerned and performance of dependent work at the same time depends on individuality of concrete case. I assume that it is important to assess all signs and conditions, under which work is done and it all also with regard to real will of contracting parties. Only then court or administrative authority can arrive at a conclusion that it is a concealed legal act.

With regard to contemporary economic situation, stem employees are too expensive for employer and many of them probably end up at Employment Office. And so it happens that Economic Chamber calls for loosening of conditions for recruitment of new people with trade license and Prime Minister is promising to stop hard controls. Question remains if the state valid to the year 2004 should not be restored, when Employment Act allowed other contract as well (business or civil-law), provided it was concluded in written form. Penalties do not solve illegal employment.

In my opinion the best economic solution is the regulation of percentage rates of tax lump sum in Law of Income Tax concerning individual gainfully employed persons and simultaneously reduction in transfers to employers, which leads to decrease of costs for employees to employers.

CONCLUSION

On the basis of contemporary legislation self-employed person has no motivation to work in labour-law relation, when such a person is not obliged to pay transfers for social insurance and as a person doing business can apply fixed costs from 30 up to 80% from income. Their tax would be higher in labour-law relation, as well as transfers for insurance. It is true that self-employed persons minimize tax duty and companies reduce costs for employees as well. Other situation would probably happen, when tax allowances for self-employed persons are regulated and simultaneously the extent of transfers for employers is reduced.

Conclusion of labour-law relation should particularly happen in the interest a concerned person. Question of voluntariness for conclusion of business-law relation in contrast to its involuntary conclusion, where such relation is evidently forced, seems to be significant as well. In this case tradesman can object to invalidity of business-law relation. Why should we force protection to tradesman, who does not want it and is interested in conclusion of business-law relation? These persons are often remunerated with higher considerations. Lower transfers for insurance seem to them to be rather an advantage under present-day situation, their lower

31 BĚLINA, M., DRÁPAL, L., and coll. Labour Code. Commentary, C. H. Beck, 2012, p. 30.
32 PRAVEC, J., *The "Svarcsystem" in disgrace*. Ekonom, 2011, No. 11, p. 32.

pension and impossibility to take advantage of sick benefits will be taken as a disadvantage later on.

I tend to agree with opinion of the Supreme Administrative Tribunal in Czech Republic,[33] that it is not necessary to conclude a labour-law relation, if there is no mutual two-sided interest in it and it does not look like unambiguously dependent work and evading the law. In situation, when it is not advantageous neither for employee nor for employer, it would be suitable to keep possibility for choice and do not restrict freedom of contract.

Persons self-employed do not appreciate protection provided by Labour Code, a such as liability of employer for damage in the case of industrial injury and occupational disease, claim for leave, surcharges for overtime work, paid embarrassment in work, maintenance of minimum wage and etc. Therefore due to the pressure of present-day unemployment they do not resist to conclude business relation.

In my opinion, illegal employment without any contract is worse. In regard to the fact, that the "Svarcsystem" is not quite forbidden, as it was up to 2007, voices among the businessmen start to appear with requirement to involve it as a part of Labour Code. I am afraid that in contemporary economic situation a result of strict controls made by work inspection can lead rather in increase of unemployment, which is loss-making for state paradoxically more than in case of the "Svarcsystem".

SUMMARY

The Amendment to Act No. 262/2006 Coll., Labour Code, in wording of later regulations from 1. 1. 2012 gave precision to existing definition of dependent work. It names basic signs, which are determining for reliable recognition of dependent work and further it determines conditions, which must be fulfilled during the performance of dependent work. This definition of dependent work is a tool, which hinders from conclusion of business relations on the basis of trade license.

Act No. 435/2004 Coll., Employment Act, in wording of later regulations from 1. 1. 2012 newly regulates illegal work, by which even performance of dependent work by natural person except for labour-law relation is meant. So-called the "Svarcsystem" becomes illegal work, because dependent work must be done exclusively in labour-law relation, which is on the basis of employment contract, contract for services or contract for work.

Purpose of this regulation is to ensure that dependent work will be done on the basis of Labour Code and employees will be provided with labour-law protection. In cases when work inspection finds out, that there is a performance of dependent work except for employment relationship, employee is threatened to be fined up to 100.000 Czech crowns and employer (juridical person), which enables performance of dependent work to worker, is threatened to be fined up to 10 000 000 Czech crowns, however minimum 250 000 Czech crowns. With respect to amount of penalties it can be expected that some companies leave the "Svarcsystem" and will conclude employment relationship particularly for definite time or agreements to work outside the scope employment, alternatively they use temporarily allocated agency employees.

If a concluded business-law relation corresponds with dependent work, it is a concealed labour-law relation. Tax Office can additionally determine income tax and transfers for social security and health insurance can be levied against him. Typical arrangements, characterizing performance of dependent work, are personal performance of work, determining of place of performance for working activity, determination of working time, agreed regular remuneration for work. On the contrary, signs determining business activity are independence, business risk, own responsibility of businessman.

Every working relation must be considered separately and all its signs must be evaluated complexly. In private law it is not possible to exclude the existence of contractual relations, which run between border of labour law and civil law or business law. Contracting parties can not be forced to conclude labour-law relation, if there is no mutual two-sided interest in it. Illegal work, (so-called the "Svarcsystem") has its advantages, but also disadvantages. Even though I do not defend the "Svarcsystem", I assume that it will not disappear in present-day economic situation.

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33 Judicial Decision of Supreme Administrative Court from 24. 2. 2005, neg. No. 2 Afs 62/2004.

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