



Švarcsystém as the performance of illegal work, Act on Specific Health-care Services

1. Švarcsystém as the performance of illegal work

By the amendment to the Employment Act, the definition of the illegal work has been changed with the effect from 1 January 2012. Newly **the illegal work is deemed to be also the dependent work performed outside of an employment law relationship**, so called *švarcsystém*. The essence of *švarcsystém* is the usage of work of persons who act outwardly as self-employed persons, although the actual relationship between the company and these persons meets the characteristics of dependent activity (i.e. it corresponds to the employment relationship). While the *švarcsystém* was in the “grey zone” under the regulation effective before the amendment, as it was neither explicitly forbidden nor allowed, and the negative impacts, if any, related only to taxation, **the new regulation considers *švarcsystém* to be the illegal work *per se* and stipulates strict sanctions for the *švarcsystém***: If a legal entity or a natural person – entrepreneur enables performance of illegal work (factual “employer”) the penalty up to CZK 10,000,000 however CZK 250,000 at the minimum can be imposed on it. A fine up to CZK 100,000 can be imposed on natural person performing illegal work (factual “employee”).

The Labour Code stipulates that **the dependent work may be performed only within a basic employment law relationship**, i.e. in the **employment relationship or on the ground of the legal relationships established by agreements on work performed outside employment law relationships**. In case that the dependent work is performed on the ground of other legal relationships (typically commercial-law ones, e.g. contract for a work or a mandate etc.) it is deemed to be illegal work.

The dependent work is defined as work which is performed within the relationship of superiority of the employer and subordination of the employee, on the employer’s behalf, based on the employer’s instructions and which is performed personally by the employee for the employer. The dependent work has to be performed for salary, public sector pay or remuneration for work, at the employer’s expense and responsibility, during working hours at the employer’s work place, or at a place that is otherwise agreed.

In addition to the above mentioned sanctions, the performance of *švarcsystém* has also tax impacts: In case that the *švarcsystém* is proved, the Financial Authority re-qualifies the performed activity as dependent work. The consequence is then the **additional payment of tax on income from dependent activity, additional payment of social and health insurance premiums** and also **the sanctions on late payment of taxes and insurance premiums**.

For the purpose of determination if there is a dependent work performed outside of an employment law relationship, and therefore an illegal work, the actual circumstances of specific case will be always decisive. **As an illustration we mention some of the characteristics** which suggest the conclusion that there is a **dependent work**:

- In the contract with the self-employed person the working hours have been agreed.
- In the contract it has been agreed that the self-employed person is entitled to some paid days off (leave).
- The same amount is paid to the self-employed person by the company each month. The remuneration is regularly paid on the same dates on which the salary is paid out to the employees of the company.
- A superior has been set to the self-employed person, who assigns tasks to him/her, controls their fulfilments and evaluates him/her.
- The company is liable for the work of the self-employed person, or insures him/her.
- The self-employed person writes letters on the head paper of the company, uses business cards of the company or wears company's uniform. The self-employed person appears as an employee to third parties, it is not obvious that such person is supplier or sub-supplier.
- The self-employed person receives financial compensation (compensation of salary) during his/her illness.
- The self-employed person works at the employer's costs and the employer provides the self-employed person with working instruments.
- This work performed by the self-employed person is usually (elsewhere) performed in employment relationship.

2. Acts on Specific Health-care Services

On 1 April 2012 new Act No. 373/2011 Coll., on Specific Health-care Services comes into effect. This Act will, inter alia, regulate the **employment – physician services, medical reports and assessment of professional diseases**.

This Act introduces material change in the regulation of the **initial medical examinations**. For the time being, **in principal**, the employer is obliged to ensure that the natural person undergoes an initial medical examination **only prior to concluding the employment contract**.

The new regulation requires performance of initial medical examination of a person applying for employment **prior to establishment of any employment or similar relationship**, i.e. before establishment of employment relationship, but also before establishment of a legal relationship established by **agreements on work performed outside of an employment-**

law relationship. In case that the person applying for employment does not undergo the initial medical examination prior to establishment of the employment or similar relationship, such person is deemed to be **unfit for the employment because of health reasons.**

Unless the employer and the applicant for employment do not agree otherwise, the initial medical examination will be, in principal, paid by the person applying for employment; the employer will pay for this examination only in case that the employer concludes an employment or similar relationship with the applicant for the employment.