

## Summary

### The concealed employment relationship – so called „Schwarzsystem“

I have chosen this theme for my master thesis (i.e. the concealed employment relationship – so called „Schwarzsystem“<sup>1</sup>) based on the fact that the issue of engaging self-employed people instead of concluding a proper employment contract triggers several issues of the employment law and has been subject to political as well as experts debates for a couple of years.

To qualify as „schwarzsystem“ the activity involved must be undertaken by an individual which according to its character is clearly that of an employment relationship. Instead of concluding an employment contract which would be appropriate in this case the individual concerned enters into a commercial contract with the other party and obtains its remuneration via invoicing them.

The obvious advantage of schwarzsystem involving the „employee“ obtaining a trade licence and thus becoming a self-employed person and concluding a commercial contract with its „employer“ is that the employer is not obliged to contribute to the public health insurance system and the public pension funds which it otherwise would be obliged to do on behalf of its employees. As a result the employer is thus able to offer the self-employed person a higher „salary“ all this to the detriment of the state budget.

The disadvantages on the side of the self-employed person involves the loss of standard employee benefits such as the annual leave entitlement, regular breaks during the day, the

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<sup>1</sup> This is an untranslatable term which comes from the surname „Schwarz“ being the first publicly discussed case involving this issue.

equipment and tools necessary for the job or the redundancy payment entitlement. One of the other disadvantages involves the obligation of its own bookkeeping, the obligation to file the tax returns with the respective tax authority and contribute to the public health and pension insurance systems.

The schwarzsystém has been forbidden in the Czech Republic since 1992, however, there are still exceptions to this prohibition (i.e. outsourcing or franchise).

The employment relations are currently defined by the Employment Code (Act No. 262/2006 Coll.) as a „dependent work“. This definition has made it clear what should qualify as an employment governed by the provisions of the Employment Code and what should be regarded as circumvention of the applicable laws and thus considered to be illegal.

The issues around schwarzsystém have been ruled upon by the higher courts of the Czech Republic and their opinions vary significantly. The landmark decision was issued by the Supreme Administrative Court of the Czech Republic under the No. Asf 62/2004.

A part of this master thesis focuses on the comparison of the difference between the tax liabilities of an employee and that of a self-employed person. The sample calculations of these differences captured in tables clearly demonstrates the advantages of engaging the self-employed persons on the side of employers. An important part of this thesis also concerns the opinions of the employment law experts and the experience with schwarzsystém from abroad.

The whole schwarzsystém issue is still a hot topic in the Czech Republic. My personal opinion is that this issue could be resolved if the employment law would allow for a choice to be made to conclude a contract either under the Employment code or the Commercial Code or Civil Code without any

further constraints. Only when one party challenges this choice in particular case and submits a petition to the court, the court should be entitled to determine whether or not this contract amounts to a concealed employment relationship.