

THE ABUSE OF DEPENDENT WORK AND FALSE SELF-EMPLOYMENT

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Abstract

Illegal employment represents a serious multidimensional issue with significant legal, economic, and social consequences. It undermines the integrity of the labour market, weakens employee social protection, and results in substantial losses in public revenue. The aim of this paper is to analyse the legal framework of illegal employment in the Slovak Republic, identify its most common forms, assess its impact on employers and employees, and evaluate the effectiveness of current control and sanction mechanisms. Special attention is paid to false self-employment (the so called Švarc system”), failure to register employees with the Social Insurance Agency, and employment of third-country nationals without a work permit. The research is based on a comparative legal analysis complemented by the interpretation of relevant legislation, judicial decisions, and secondary European legal sources. The applied methodology includes descriptive, comparative, and analytical methods, as well as a case-based approach. The paper compares Slovak regulations with approaches in the Czech Republic, Germany, Austria, and Poland, highlighting good practices and transferable elements for domestic improvement. To assess the effectiveness of the Slovak Republic’s current legal and institutional framework in combating illegal employment and to propose legal tools that could contribute to its more efficient suppression in practice.

Existing legal instruments and enforcement mechanisms regarding illegal employment are insufficiently applied in Slovakia, enabling employers to circumvent the law without facing adequate consequences. In conclusion, the paper offers recommendations aimed at strengthening prevention, legal awareness, and transparency in business relations to improve the fight against illegal employment.

Keywords: illegal employment, false self-employment, labour law, dependent work, legal liability, control mechanisms

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Introduction

Illegal employment represents a grave socio-economic problem, exerting a detrimental effect on the national economy, the labour market and the rights of workers. Despite the implementation of legislative measures designed to address this form of the illegal economy, there remains a prevalence of illegal employment practices among both corporate entities and individual actors. The primary motivation for employers engaging in such practices is the avoidance of health and social insurance contributions for their employees. Employers thus attempt to circumvent this levy obligation while concurrently minimising labour costs. However, the onus of these costs ultimately falls upon the employees. Unlike employment relationships, which are governed by labour law, the relationship between an employer and a self-employed person (sole trader) remains outside the protective framework of standard labour law regulations. Consequently, self-employed individuals are not entitled to protections such as liability limitations for damages or occupational health and safety guarantees, which employers are otherwise obligated to provide for employees. Similarly, an employer can terminate a commercial contract with a sole trader without prior notice, whereas employment relationships are subject to legal safeguards. Furthermore, from an external perspective, employers appear to have fewer employees (or none at all) than the actual number of individuals performing dependent work for them. This phenomenon, therefore, provides a rationale for employers' adoption of

the so called "*Švarc system*"¹ in circumstances where it is legally feasible to do so.² Illegal employment poses a severe legal, social, and economic challenge, leading to violations of labour law, loss of tax and social security contributions, and the erosion of workers' rights. This issue is subject to regulation at both national and European levels, with recent years witnessing a tightening of enforcement mechanisms and sanctions. The key research questions explored in this study are as follows:

- How does the legal system of the Slovak Republic define illegal employment?
- What perspectives on this issue can be observed in other jurisdictions?
- What legal consequences arise from the employment of individuals without a formal employment relationship?
- What measures could contribute to the more effective suppression of illegal employment?

The main objective of this academic article is to analyse the legal framework of illegal employment in the Slovak republic, its societal impact, and its consequences for both employers and workers. Specifically, the article focuses on:

- Defining the concept of illegal employment.
- The legal framework governing illegal employment in Slovakia.
- Identifying and detecting illegal employment practices through inspections and control mechanisms.
- Consequences for employers and employees, including liability and sanctions.
- Potential strategies for combating illegal employment.

The phenomenon of illegal employment is often associated with a number of detrimental effects, including, but not limited to, non-payment of wages, evasion of tax and levy obligations, and a lack of

¹ The so-called *Švarc system* refers to a practice whereby dependent work is concealed under the guise of another type of contractual relationship, most commonly a contract for work, a mandate contract, or an agency agreement. The term originates from Czech entrepreneur Miroslav Švarc, who popularised this method of circumventing labour law regulations in the 1990s. Although *Švarc system* is not a legal term, it has become widely recognised and frequently used in professional and academic discourse. See: Výzkumný ústav bezpečnosti práce: *Švarc systém*. eBOZP: Encyklopedie BOZP. Available at: https://ebozp.vubp.cz/wiki/index.php?title=Švarc_systém [accessed 25 April 2025].

² For further details, see: HAMULÁK, J. 2017. Legal or illegal. Bratislava : Wolters Kluwer, 2017. 139 s. ISBN 978-80-8168-688-7 a ŠVEC, M. – TOMAN, J. a kol. 2019. Zákoník práce. Zákon o kolektívnom vyjednávaní. Komentár. Zväzok 1, čl. 1 až § 176 Zákonníka práce. Bratislava : Wolters Kluwer, 2019. 1479 s.

labour protection. These issues have the potential to exert a detrimental effect not only on the workers concerned, but also on the economy of the country as a whole.

1 The legal framework for illegal employment

i. Definition of Illegal Employment

Illegal employment refers to the utilization of labour in violation of legal regulations. According to Act No. 82/2005 Coll. on Illegal Work and Illegal Employment, as amended³, illegal employment includes:

- The performance of dependent work without an employment contract or without registration with the Social Insurance Agency.
- The employment of individuals without the necessary work permit, particularly third-country nationals.
- The circumvention of labour law regulations through fraudulent self-employment arrangements (the so-called "*švarc system*").

On the other hand, Act No. 82/2005 Coll. on Illegal Work and Illegal Employment explicitly defines circumstances that shall not be considered illegal employment. Pursuant to Section 2a (2) of the Act, employment shall not be deemed illegal if a relative in the direct line, a sibling, or a spouse of a natural person who is an entrepreneur, or of a partner in a limited liability company (with no more than two partners, provided they are relatives in the direct line, siblings, or spouses), performs work for such person or entity, provided that the relative, sibling or spouse is covered by pension insurance, is a recipient of an old-age pension under special legislation, or is a pupil or student under the age of 26.

ii. The Domestic and European Legal Framework of Illegal Employment

In the Slovak Republic, the regulation of illegal employment is primarily established through a set of legal provisions that define the conditions for lawful work, the obligations of employers, and the consequences of non-compliance. The key legislative instruments governing this area include **Act No. 311/2001 Coll., the Labour Code**,

³ Act No. 82/2005 Coll. on Illegal Work and Illegal Employment (Zákon č. 82/2005 Z. z. o nelegálnej práci a nelegálnom zamestnávaní v znení neskorších predpisov).

as amended⁴ (hereinafter referred to as "*Labour Code*"), which serves as the cornerstone of labour law by outlining the fundamental rights and duties of employers and employees. Additionally, **Act No. 82/2005 Coll. on Illegal Work and Illegal Employment**, as amended⁵ (hereinafter referred to as "Act No. 82/2005"), specifically addresses the issue of illegal employment, setting out the legal parameters for detecting and sanctioning such practices. Furthermore, **Act No. 5/2004 Coll. on Employment Services**, as amended⁶ (hereinafter referred to as "Act No. 5/2004"), regulates the broader framework of employment services, including conditions for legal hiring and measures aimed at preventing unlawful labour practices. Together, these legislative acts establish a comprehensive legal framework designed to ensure compliance with employment regulations and to protect both workers and the integrity of the labour market. At the European Union level, the regulation of illegal employment is primarily governed by a series of legislative instruments aimed at ensuring compliance with labour standards and protecting workers' rights. A key measure in this regard is **Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009**⁷, which establishes minimum standards for sanctions and enforcement mechanisms applicable to employers who engage in the unlawful employment of third-country nationals residing irregularly within the EU. Additionally, **Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018**, which amends **Directive 96/71/EC on the posting of workers in the framework of the provision of services**,⁸ introduces specific provisions governing the conditions under which workers may be temporarily assigned to another Member State. These directives reflect the EU's broader efforts to harmonize labour regulations across its Member States, mitigate unfair competition, and strengthen the legal

⁴ Act No. 311/2001 Coll., the Labour Code (Zákon č. 311/2001 Z. z. Zákonník práce v znení neskorších predpisov).

⁵ Act No. 82/2005 Coll. on Illegal Work and Illegal Employment (Zákon č. 82/2005 Z. z. o nelegálnej práci a nelegálnom zamestnávaní v znení neskorších predpisov).

⁶ Act No. 5/2004 Coll. on Employment Services (Zákon č. 5/2004 o službách zamestnanosti v znení neskorších predpisov)

⁷ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

⁸ Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services – regulates the conditions of posting of workers within the EU.

safeguards afforded to workers operating in transnational employment contexts.⁹

iii. Forms and Circumstances of Illegal Employment

Illegal employment can manifest in several forms, each presenting significant legal and socio-economic consequences. One of the most prevalent forms is the **employment of individuals without a written employment contract**, which severely limits the employee's legal protection. In such cases, the employer avoids the obligation to contribute to social insurance, depriving the employee of the entitlement to essential social benefits, including pension and sickness benefits. Another common form is the **practice of false self-employment**, often referred to as the "*Švarc system*," in which the employer forces the employee to work as a sole proprietor despite the work meeting the criteria of dependent employment. In this arrangement, the employee is compelled to follow the employer's instructions, use the employer's equipment, and work within the employer's premises, thus blurring the line between independent and dependent labour. Additionally, illegal employment frequently involves the **exploitation of foreign nationals**, particularly those from third countries (non-EU nationals) who lack the necessary work permits. Employers engaging in this practice circumvent legal regulations, often offering lower wages than those allowed under lawful employment. Lastly, another form of illegal employment occurs when an employer, despite entering into an employment contract, **fails to register the employee with the relevant social insurance institutions**. This failure prevents the employee from accessing vital social security benefits, further undermining their legal and financial security. Each of these practices represents a significant violation of labour laws and exposes workers to severe socio-economic risks.¹⁰

⁹ BARANCOVÁ, H. a kol.: *Zákonník práce. Komentár*. 3. vydanie. Bratislava : C. H. Beck, 2022., 1624 s. ISBN 978-80-8232-024-7.

¹⁰ RAK, P. a HAMULÁK, J.: *Zákon o nelegálnej práci a nelegálnom zamestnávaní*, Komentár. 1. vydanie. Praha : Wolters Kluwer ČR a. s., 2024. 128 s. ISBN 978-80-7676-994-6

2 Practices in selected countries

2.1 The Czech Republic

In the Czech Republic, the determining factor for assessing whether a particular form of work constitutes an unlawful method of employment is its actual economic substance. The Czech Labour Code clearly establishes that if an individual performs personal labour for an employer, under the employer's instructions, on behalf of the employer, for compensation, during working hours or at another agreed-upon time, at the employer's workplace or another agreed location, and at the employer's expense and responsibility, this constitutes dependent work. Such work may only be carried out within an employment relationship as stipulated by the Labour Code. Czech law does, however, allow for the possibility that certain tasks can be performed by a sole proprietor under a contract for work. In such cases, the sole proprietor assumes full responsibility for the payment of required contributions, including taxes.¹¹

2.2 Germany

In the Federal Republic of Germany, the Social Code defines dependent work as non-independent gainful activity primarily carried out within an employment relationship. The characteristics that define dependent work include adherence to the employer's instructions and integration into the employer's organizational structure, as well as the obligation to report and the existence of supervision. When individuals perform dependent work outside of an employment relationship and outwardly present themselves as self-employed, authorities consider them as individuals engaged in dependent work. The law guarantees them protection against dismissal, paid leave, and other employee benefits, similar to those afforded to other employees. The "*Švarc System*" is closely linked to non-compliance with tax regulations or social security provisions. Typically, it embodies the characteristics of

¹¹ See also: Slovak Business Agency. Current Conditions of Forced Self-Employment in Slovakia. Bratislava: Slovak Business Agency, 2022. Available at: <https://monitoringmsp.sk/wp-content/uploads/2022/04/Aktu%C3%A1lne-podmienky-n%C3%BAten%C3%BDch-%C5%BEivnost%C3%AD-na-Slovensku.pdf> [accessed 25 March 2025]; Supreme Court of the Slovak Republic, judgment of 28 November 2024, Case No. 4CdoPr/2/2024.

so-called "illegal employment" under the provisions of the law combating illegal employment (*Schwarzarbeitsbekämpfungsgesetz*).¹²

2.3 Austria

In the Republic of Austria, the legislation, due to its sophistication, recognizes, in addition to the employment contract (personal dependence on the employer, provision of labour without guaranteeing specific work outcomes, integration into the employer's organization, etc.) and the contract for work (independent performance of specific tasks with own production means, without integration into the business organization, with an obligation to deliver a specific work result, etc.), a so-called "*free employment contract*," which is a hybrid form of the aforementioned contracts. Unlike the employment contract, the employee is not personally dependent, but only economically dependent. However, the assessment of the economic content of the contracts is crucial, rather than their designation. Therefore, the tax office may reclassify a contract for work or a free employment contract into a proper employment contract. In such a case, the employer is required to pay all outstanding social security contributions, and additional wage-related costs (such as employer's contributions, employer's supplements, severance contributions) may be imposed. If the contractor under a contract for work or the employee has not filed an income tax return, the employer is also liable for ensuring the proper payment of income tax from dependent work.¹³

2.4 Poland

In the Republic of Poland, the Polish legal framework stipulates that replacing an employment contract with another legal relationship in the case of performing dependent work is inadmissible. If an employee performs work of a specific type at a designated place and within a specified working time set by the employer, and the employer commits to paying remuneration for the work performed, this will constitute an employment relationship regardless of the contract's formal designation.¹⁴

¹² *ibid.*

¹³ *ibid.*

¹⁴ *ibid.*

2.5 An overview of the European union

According to the European Parliament and Council Decision EU 2016/344 of 9 March 2016, establishing a European platform to enhance cooperation in addressing undeclared work, it is evident that the abuse of self-employment status, as defined by national law – whether at the domestic or cross-border level – is a form of falsely reported work, often linked to undeclared work. The phenomenon of false self-employment arises when an individual is formally self-employed while meeting the criteria that are indicative of an employment relationship, with the intention of evading specific legal or tax obligations. The consequences of undeclared work for workers are grave, as they are compelled to accept precarious and occasionally hazardous working conditions, significantly diminished wages, substantial violations of labour rights, and a considerable reduction in protection under labour and social protection legislation. This results in a denial of adequate social benefits, pension rights, and access to healthcare, as well as opportunities for skills development and lifelong learning. The repercussions of undeclared work vary across diverse social groups, notably women, migrants, and domestic workers, with certain undeclared workers encountering heightened vulnerability.¹⁵

3 The monitoring and control of illegal employment

i. Authorities Responsible for Oversight

The control of illegal employment is a responsibility shared by several state institutions, which work together to identify and penalize illegal labour practices. The primary supervisory body in this area is the **Labour Inspectorate**, which conducts both scheduled and unannounced inspections in businesses to ensure compliance with labour laws. Additionally, the **Labour, Social Affairs and Family Office** focuses on overseeing the employment of foreign nationals, ensuring that employers adhere to work permit conditions. The **Financial Administration of the Slovak Republic** is responsible for verifying that employers fulfil their tax obligations and make the appropriate social contributions on behalf of their employees. Meanwhile, the **Police force of the Slovak Republic** monitors the legality of the stay and employment status of foreign workers, while the

¹⁵ *ibid.*

Social Insurance Agency is tasked with tracking contributions to pension and sickness insurance. This comprehensive network of institutions plays a crucial role in detecting and addressing instances of illegal employment, ensuring that workers' rights are protected and that employers are held accountable for their obligations.¹⁶

ii. *Control methods and consequences*

The control of illegal employment is carried out through several methods aimed at detecting and addressing non-compliance with labour laws. Inspections are primarily conducted in the workplace, where authorities directly verify whether employees have formalized employment contracts. Additionally, the social insurance register is used to compare the number of reported employees with the actual workforce present in a given enterprise, ensuring that all workers are accounted for in the required social security frameworks. Furthermore, electronic control mechanisms are increasingly employed, leveraging data analysis techniques to uncover instances of illegal employment by identifying discrepancies in employment patterns or reporting.¹⁷ In cases when illegal employment is detected, the consequences for employers can be severe. Supervisory bodies have the authority to impose fines as a deterrent and corrective measure. In cases where criminal activities are suspected, such as falsification of records or the employment of undocumented workers, the relevant authorities are notified to pursue legal action. Moreover, employers found to be in violation of labour laws may have their names published on a list of violators, commonly known as a "*blacklist*," which can have significant reputational and operational consequences.¹⁸

¹⁶ HAMULÁK, J.: *Legal or illegal*. Bratislava : Wolters Kluwer, 2017. 139 s. ISBN 978-80-8168-688-7.

¹⁷ NOVÁKOVÁ, M., HAMULÁK, J., KRIŽAN, V., FREEL, L., ČAPÍKOVÁ, S., PAVLÍKOVÁ, B., MINČIČ, V., GREGUŠ, J., RAK, P.: *Pracovné právo (I)*, – 1. vyd. – Bratislava (Slovensko) : Wolters Kluwer, 2024. – 235 s. [tlačená forma] [online]. – (Učebnica). – ISBN 978-80-571-0676-0. – ISBN 978-80-7160-713-7. – ISBN (elektronické) 978-80-571-0677-7.

¹⁸ See also: National Labour Inspectorate. *Informative Report on the Detection and Suppression of Illegal Work and Illegal Employment for the Year 2023*. Bratislava: National Labour Inspectorate, 2024. Available at: <https://www.ip.gov.sk/wp-content/uploads/2024/04/Sprava-za-rok-2023.pdf> [accessed 25 March 2025].

4 Liability and sanctions for illegal work and illegal employment

Illegal employment carries serious legal consequences not only for employers but also for employees (workers) and other entities that may be involved in such practices. Legal liability can be categorized as follows:

i. Administrative liability

Pursuant to Section 7 of the Act No. 82/2005, labour inspection authorities are vested with the power to impose financial penalties on entities engaged in unlawful employment practices. The statutory framework establishes a minimum fine of €2,000 for illegal employment, while the maximum sanction may reach €100,000 for natural persons and €200,000 for legal entities. In instances of repeated infractions or the employment of a substantial number of illegal workers, the applicable penalties may be further increased to reflect the severity of the violation. Beyond financial sanctions, employers found guilty of illegal employment may also face significant administrative repercussions, including a prohibition on participating in public procurement processes and restrictions on accessing subsidies or financial contributions from both national and European union funds. Such prohibitions remain in effect for a period of five years, thereby reinforcing compliance with labour regulations and deterring unlawful employment practices.

ii. Criminal liability

In instances of systematic or large-scale illegal employment, employers may face criminal prosecution under the Criminal Code (Act No. 300/2005 Coll.). Section 251 of the Act stipulates a range of sanctions proportionate to the severity of the offense. For the basic form of illegal employment, the law prescribes a penalty of up to two years of imprisonment. However, if the offense involves elements of exploitation or results in other serious consequences, the sanction may be increased to a term of up to five years. In cases where a significant number of individuals have been unlawfully employed or where the offense was carried out as part of an organized activity, the prescribed penalty may extend to seven years of imprisonment. These criminal sanctions reflect the Slovak legislator's intent to address illegal employment as a grave violation of labour and social protection

standards, particularly in cases where such practices entail systematic abuse or exploitation. By imposing stringent penalties, the legal framework seeks to uphold the integrity of the labour market, deter unlawful employment practices, and reinforce the protection of workers' rights.

iii. Civil and Labor Law Liability

Employees who have engaged in illegal work are entitled to assert their rights under Section 82a of the Labour Code. Notwithstanding the informal nature of their employment, they have the legal right to claim remuneration for the work performed, ensuring that the absence of a formal contract does not deprive them of earned wages. Additionally, such workers may seek the recognition of an employment relationship, thereby asserting all associated entitlements, including paid leave, sickness benefits, and severance pay. This legal framework aims to protect workers from the adverse consequences of undeclared employment by granting them access to fundamental labour rights, irrespective of their employment status at the time of work performance.¹⁹

5 Subsidiary Liability of the Service Recipient

Pursuant to Section 7b of the Act No. 82/2005, a service recipient bears liability for the illegal employment practices of its subcontractor if it knew or ought to have known that individuals were employed illegally in the course of service provision. This provision establishes liability for illegal employment, thereby extending sanction mechanisms not only to employers but also to service recipients who engage with entities that violate the prohibition on illegal work. The introduction of Section 7b aims to enhance the effectiveness of measures combating illegal work and illegal employment within commercial relationships, particularly in the context of cross-border service provision. The legislature thus responds to situations where illegal work is carried out through supplier-recipient relationships, circumventing direct employment relationships and, consequently, evading labour law obligations. Section 7b establishes the joint liability of service recipients for breaches of the prohibition on illegal

¹⁹ BARANCOVÁ, H., OLŠOVSKÁ, A., HAMULÁK, J., DOLOBÁČ, M.: *Slovenské pracovné právo*. Bratislava : Sprint 2, 2019. 664 s. ISBN 978-80-89710-48-5.

employment, holding them accountable if they accept services or work performed by illegally employed workers. This provision extends the scope of responsibility beyond direct employers, thereby strengthening mechanisms for combating unlawful labour practices within contractual relationships. The legal framework specifies several key conditions under which a service recipient may be subject to sanctions. First, the service recipient must be either a legal entity or a natural person engaged in business activities. Second, the service provider must have employed workers illegally. Third, liability arises if the service recipient knew or ought to have known about the violation of employment regulations. Finally, the law applies where the service in question has been provided for more than five days within a twelve-month period, which is particularly relevant in cases of contract chaining or long-term subcontracting arrangements. If these conditions are met, the service recipient may face sanctions for accepting work performed by individuals who have been unlawfully employed. To mitigate the risk of undue penalties against service recipients, the law includes a safeguard mechanism under Section 7b(6), which allows recipients to verify the employment status of workers engaged by their service providers. Specifically, service providers are obliged to provide, upon request, documentation confirming the legal employment of their workers. This enables service recipients to ensure compliance with labour regulations and avoid potential liability. If the recipient exercises due diligence by conducting a thorough verification of the provider's employment practices, they may be exempted from responsibility, thereby balancing enforcement measures with the principles of fairness and legal certainty. Sections 7b(2) and 7b(3) establish the transfer of liability for fines and additional payments to the service recipient under specific circumstances. This occurs when the original employer has engaged in illegal employment and the imposed fine cannot be recovered from them. Furthermore, liability is contingent upon the existence of a contractual relationship between the original employer and the service recipient. In such cases, responsibility may also extend to intermediaries involved in the supply of labour or services. Failure to comply with the obligations set forth in this provision may result in the imposition of financial sanctions, which serve as a deterrent against the deliberate use of service providers that engage in illegal employment. The applicable fines range from €2,000 to €200,000 for business entities. Additionally, where two or more individuals have been unlawfully employed, the minimum fine is set at €5,000.

Importantly, fines may be imposed within two years from the date the inspection report has been formally reviewed. These sanctioning measures are designed to reinforce compliance by discouraging service recipients from knowingly benefiting from subcontractors that violate labour regulations, thereby strengthening enforcement mechanisms within labour and contractual relationships.²⁰

i. Impact on Employers

Section 7b introduces significant legal implications for employers, particularly those who engage in illegal employment practices. By establishing increased risks of detection and penalties, this provision not only affects the employers directly involved in illegal employment but also extends its impact to their business partners, who may face sanctions if found complicit in such activities. Consequently, companies that rely on external contractors are now required to exercise heightened diligence when selecting partners. It is imperative for these companies to implement robust oversight mechanisms to ensure compliance with the law. To mitigate the risks associated with illegal employment, employers are advised to adopt a series of preventive measures. These measures include requesting documentation from service providers to verify the legality of employee employment, incorporating contractual clauses that explicitly address the legality of employment practices, and conducting regular audits of suppliers to ensure ongoing compliance with labour laws. These proactive steps are essential to safeguarding against potential legal liabilities and ensuring the integrity of business operations within the framework of legal and ethical standards. In this regard, we refer to the conclusions of the Prešov Regional Court from January 27, 2022, which, in its decision under file no. 1S/7/2020,²¹ stated: *"If the recipient accepts a service or work from an illegally employed worker, they violate the prohibition on accepting services or work performed by illegally employed individuals, for which a fine will be imposed. The purpose of the legal regulation, with the amendment of Act No. 82/2005 Coll., was to ensure a more effective fight against illegal work and illegal employment in the context of commercial legal relationships, particularly in cross-border service provision, cross-border labour supply, and the abuse of the*

²⁰ RAK, P. a HAMULÁK, J.: 2024. *Zákon o nelegálnej práci a nelegálnom zamestnávaní*, Komentár. 1. vydanie. Praha : Wolters Kluwer ČR a. s., 2024. 128 s. ISBN 978-80-7676-994-6.

²¹ Judgment of the Regional Court in Prešov of 27 January 2022, Case No. 1S/7/2020 (*Rozsudok Krajského súdu Prešov z 27. januára 2022, sp. zn. č. 1S/7/2020*).

posting of workers. The prohibition on accepting a service or work from a service provider who illegally employs a natural person applies to cross-border service provision for a period exceeding five days, i.e., services that last for more than five days during a regular year, including cases of contract chaining and multiple employees performing the service at different times over a 12-month period from the first service provision. It is assumed that the service recipient knew, or should have known, about the violation of the prohibition on illegal employment or illegal work and should not have accepted the service or work performed by illegally employed workers from the service provider. To this end, § 7b (6) of Act No. 82/2005 Coll. regulates, as a protective instrument for the service recipient, the obligation of the provider. The service provider is required to promptly provide the legal entity or the natural person engaged in business, to whom they provide labour or services, with necessary documents and personal data of the individuals through whom the labour or service is provided, needed for the recipient to verify whether the service provider is violating the prohibition on illegal employment. The service recipient thus has the legal option to request from the service provider the documents and personal data of the individuals through whom the service is provided, or labour is supplied, which are necessary to verify whether the provider is violating the prohibition on illegal employment. Based on such documents, the recipient may determine whether the workers are illegally employed before accepting the service or work, and, on this basis, may choose not to accept the service or work. If the recipient accepts a service or work from an illegally employed worker, they will be in violation of the prohibition on accepting services or work performed by illegally employed individuals and will be fined. The concept of objective liability for the service recipient regarding accepted services or work means that the recipient, who accepts a service or work from an illegally employed worker of their supplier, will be fully responsible for the violation of regulations and the obligation to pay a fine, as though they were illegally employing workers themselves. The relevant labour inspectorate will not examine whether the recipient knew about the illegal employment by their supplier. The law assumes that the recipient should have known, as they have the tool to request all necessary information from their supplier for this purpose. Therefore, the legal framework for liability for illegal employment in the context of cross-border service provision allows for the imposition and enforcement of two fines: one from the supplier for

*violating the prohibition on illegal employment, and another from the recipient for accepting work or services provided by an individual who was illegally employed by the supplier. Based on the above, the question may arise whether such a procedure is contrary to the principle of ne bis in idem. This consideration must be resolutely rejected, as each perpetrator has violated a different legal obligation. The provider violated the prohibition on illegal employment, while the recipient violated the prohibition on accepting services from a provider employing individuals illegally."*²² In contrast to provisions concerning the transfer of responsibility for paying fines or additional charges (according to Section 7b, paragraphs 2 and 3 of the Act No. 82/2005), the establishment of such responsibility does not require the service recipient's knowledge of the service provider's violation of the prohibition on illegal employment. The law does not provide any exonerating reasons in this case either. It is our view that, although the legislator's intent was to primarily apply this type of responsibility to cross-border service and labour supply, the use of the term "domestic supply of labour" clearly indicates that the prohibition and subsequent responsibility also apply to any domestic supply of labour to a legal entity or natural person – entrepreneur. Therefore, this provision covers a very broad range of commercial legal relationships. Section 7b of the abovementioned act extends responsibility for illegal employment to service recipients, thereby increasing pressure for transparency in business relationships. Service recipients may be sanctioned if they accept services from providers who employ workers illegally. As a preventive measure, they are legally entitled to verify the legality of the workers, which allows them to avoid sanctions. This underscores the necessity for entrepreneurs to exercise utmost care in selecting business partners and to implement thorough oversight mechanisms in order to avoid sanctions and reputational damage. Judicial practice consistently affirms that service recipients may be subject to sanctions if they fail to adequately verify their suppliers, thereby enabling the execution of illegal work. Central to this legal framework are **several key findings** derived from case law. Firstly, **responsibility** for illegal employment **is not automatically attributed to the service recipient**; it is imperative to establish that the recipient either knew or should have known about the illegal employment practices. Secondly, judicial practice underscores the critical **importance of due diligence**,

²² RAK, P. a HAMULÁK, J.: *Zákon o nelegálnej práci a nelegálnom zamestnávaní*, Komentár. 1. vydanie. Praha : Wolters Kluwer ČR a. s., 2024. 128 s. ISBN 978-80-7676-994-6.

emphasizing that companies have a proactive obligation to verify the legality of employment practices within their supply chains. This duty of care extends to ensuring that their suppliers are compliant with labour laws. Moreover, it is crucial to note that practices such as **contract chaining and the outsourcing of responsibility do not exempt the primary service recipient** from their obligation to assess the legality of their subcontractors' employment practices. Finally, court rulings consistently reinforce that companies intentionally circumventing labour law regulations must bear the legal consequences of their actions.

ii. Impacts on Practical Application

Business entities are facing new challenges as a result of the regulation of illegal employment. One of the primary practical implications is the obligation to thoroughly verify suppliers, requiring companies to maintain clear and accurate documentation regarding the employment status of their workers. Additionally, there are increased compliance costs, as firms must establish and implement internal mechanisms to monitor the legality of employment practices within their supply chains. Moreover, heightened legal risks emerge, with companies being exposed to significant sanctions in the event that they fail to demonstrate due diligence in ensuring that their suppliers comply with employment regulations. In response to these risks, large enterprises are already taking proactive measures, such as incorporating specific contractual clauses that allow for the termination of agreements should illegal employment practices be discovered within their subcontractor networks. This approach not only serves as a safeguard against potential legal repercussions but also aligns with the growing emphasis on corporate social responsibility and compliance.

Conclusions

Illegal employment has significant societal consequences, primarily manifested in the loss of tax and contribution revenues, which results in substantial financial shortfalls for the state. This issue also disrupts fair business practices, as businesses that adhere to legal employment standards are placed at a disadvantage relative to those exploiting illegal labour. Additionally, illegal employment leads to the deterioration of working conditions, with illegally employed workers often deprived of essential social security benefits and exposed to heightened risks of

exploitation. The consequences of illegal employment can be systematically categorized as follows:

a) Consequences for Employees: Employees working under illegal conditions face significant uncertainty and a lack of protection, as they are not entitled to essential social benefits, including sickness benefits, pensions, or unemployment insurance. This absence of legal safeguards leaves them highly vulnerable to economic instability. Additionally, illegally employed workers are at an increased risk of exploitation, as they are often subjected to poor working conditions, such as excessive working hours, lower wages, and a general absence of job security. These factors exacerbate their overall vulnerability and undermine their ability to maintain stable employment. Furthermore, the absence of formal employment contracts means that employers can dismiss workers at any time, without legal justification or any form of protection, which further erodes job security and diminishes the stability of their working conditions.

b) Consequences for Employers: Employers found in violation of labour regulations face significant consequences, including substantial fines, as labour inspectorates are empowered to impose penalties of up to €200,000. Such financial sanctions can severely impact the financial stability of businesses involved in illegal employment practices. Additionally, companies implicated in these activities suffer considerable reputational damage, which can erode trust among customers, business partners, and investors. The adverse media coverage surrounding such violations further exacerbates this issue, leading to long-term harm to the company's public image. In some cases, employers may also face criminal liability for engaging in or facilitating illegal employment practices. This exposes them to legal repercussions that extend beyond financial penalties, potentially resulting in more severe consequences for both the business and its management.

c) Consequences for the State and the Economy: The state experiences considerable losses in tax and social security revenues due to illegal employment, as this form of labour evades the formal taxation system. This deprives the government of essential funds necessary to support public services and welfare programs, ultimately affecting the broader socio-economic system. Furthermore, the prevalence of illegal employment contributes to the expansion of the grey economy, where businesses circumvent labour regulations, fostering an environment that undermines legal and regulatory frameworks. This, in turn, distorts fair

competition and encourages further non-compliance. Additionally, workers who are excluded from legal employment benefits often have no choice but to rely on state social assistance programs. This reliance increases the financial burden on the public welfare system, further straining limited government resources.²³

To address the growing issue of illegal employment, it is essential to intensify inspections by labour authorities, who should conduct regular audits of businesses suspected of engaging in illegal hiring practices. Moreover, the implementation of stricter sanctions, particularly through higher fines for repeat offenders, is necessary to deter non-compliant employers. Additionally, enhancing awareness and education campaigns aimed at informing employees about their rights and available avenues for legal recourse is crucial in empowering the workforce to protect itself from exploitation. Illegal employment is a serious issue with negative consequences for employees, employers, and the state. Despite existing legislation, there are frequent violations of regulations, with the most common practices being employment without a work contract, the so-called "grey system," and the employment of foreign nationals without proper permits. The solution lies in better labour market monitoring, stricter sanctions, and improved worker awareness. Only through effective enforcement of laws and increased awareness can this phenomenon be minimized and the rights of workers protected.

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