

THE POSITION OF THE EMPLOYEE IN THE CHANGING WORLD OF DEPENDENT WORK

ABSTRACT

This dissertation theses focuses on the issue of dependent work with regard to the phenomenon of the so-called sharing economy or platform economy. In its first part, I therefore discuss in detail what is actually meant by dependent work, what has been its historical development in our territory, and how its individual definitional features are interpreted, as defined in Section 2(1) of the Labor Code, as well as other features imported by case law, which are the consistency of work and its performance for remuneration. I conclude that the definition of dependent work as it is currently written in the Labor Code may in many cases erode the labor market rather than preserve legal certainty. The reason for this is that, particularly in the 21st century, the labor market is undergoing significant changes which, among other things, have resulted in new expectations, attitudes and requirements for mutual contractual relations on the part of both employers and employees. Strictly speaking, the definition of dependent work still corresponds to so-called factory work, but it is very skeletal when applied to more modern and flexible forms of employment such as those found in the IT sector or the sharing economy.

For this reason, in the next part of the thesis, I make a comprehensive legal comparison of the legal regulation of dependent work in the Czech Republic with a number of other European countries and critically analyze the key case law concerning the issue of so-called both-activities. The aim of this part is primarily to show that there are a number of approaches to the distinction between dependent and independent workers other than the one chosen by the Czech legislator and that the Supreme Administrative Court and the Supreme Court of the Czech Republic are themselves aware of the diversity of approaches to the assessment of the dependence of one subject on the other. In addition to the basic four definitional features of dependent work, the case law under review has extracted a number of other relevant criteria by which it is possible to assess whether a worker performs dependent work or not. This is why I come to one of the key conclusions of this dissertation, which is that the entire definition of dependent work could be abolished.

After the evaluation of the individual definitional features of dependent work, analysis of case law, specialized literature and foreign legal regulations, I then move on to the main part

of the dissertation, which focuses on new forms of work performance made possible by modern technologies. In particular, I present in detail the principles of operation of such concepts as the sharing economy, Gig economy, crowdsourcing or platform economy, primarily because the number of people who earn their living through these new forms of labor performance is steeply increasing, but especially foreign practice shows us that there is a big problem with the ability to properly identify them in the legal sense. In fact, the digital giants who use their workers through these forms of labor exploitation claim, in most cases, that they are not employers within the meaning of labor legislation and that their workers are therefore not entitled to the protection of any labor law provisions. However, as can be seen from other case law, this time foreign, which I have examined in detail in my dissertation, this conclusion does not reflect the reality in many cases, and it is quite common for workers on these platforms to try to defend themselves in court and often successfully. If I measure this newly emerging problem against the current wording of the Labor Code in the Czech Republic, I conclude that it is written in such a rigid manner that the courts will not actually have the ability to address it effectively and, more importantly, teleologically correctly.

Therefore, in the last and most important part of the thesis, I present possible *de lege ferenda* considerations that could correctly reflect this shift in the labor market and thus enable the correct setting of labor legislation in the future. The employee is no longer in a large number of cases the factory worker to whom the current wording of the Labor Code fits, but often performs activities for which it is impossible to satisfactorily deal with such areas as the distribution of working hours, the place of work, breaks at work or rest periods between shifts, the absolute responsibility of the employer for SHE or accidents at work, etc. Therefore, in addition to the above-mentioned abolition of the legal definition of dependent work, I propose, for example, the adoption of a special law that would explicitly address the issue of so-called platform workers, or alternatively, the introduction of the institute of the worker, which is the subject of my dissertation, since in my view it is the best solution to the described problem, as shown by foreign decision-making and application practice, especially from Great Britain or Germany.

The basic idea behind this new institution of the worker is that it is a person who is on the borderline between a classic employee and a self-employed person. The important point is that, just as a worker would not be subject to such strict rules regarding his dependence, he would also not have the same protection under labor law compared to employees, as only certain protective institutes would apply to him. Similarly, the worker would be subject to different

levy and tax obligations, since it is also very important that the use of such an institute should not be so bound by draconian rules and levies and that economically active subjects should be interested in its use in practice.