

Employment situations and workers' protection

National Studies

Italy

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According to an April 1998 survey, out of a total population of around 57 million with a workforce estimated by Eurostat at slightly less than 23 million, just over 20 million Italians were in employment during that month. There was a zero variation in the employment rate over 1996-97 and a 0.1 per cent increase over 1997-98. A recent survey conducted by Italy's central statistics institute (ISTAT, April 1999) reported that 20,394,000 Italians were employed, representing a 1.4 per cent increase on the April 1998 figure, against growth in the workforce of 0.9 per cent (23,205,007 workers).

For a breakdown between employees and the self-employed, the available statistics refer to 1996, when out of slightly more than 20 million workers, more than a quarter were in some form of self-employment (5,786,000) while a little more than 14 million were employees.

These statistics clearly demonstrate that the Italian labour market is following the trend, seen in all the industrialised countries, of the typical employment relationship losing its traditional role as the fundamental legal relationship between those who place their intellectual or manual labour on the market and those who utilise it to further their interests in exchange for remuneration.

Solely from the statistical perspective, therefore, there are clear signs of a growing propensity among those entering the labour market to choose some form of self-employment. While the structure of such jobs varies, because of the different and often contradictory reasons leading to this choice of profession path, self-employment lies outside the typical framework of the employment contract.

The contract of employment is between two parties (the employee and employer) in which the first party, in exchange for remuneration, agrees to personally carry out labour for the latter (who may be a natural or legal person), undertaking to perform activities that can be appropriately integrated into the productive structure that the employer has created and operates according to his own organizational decisions to pursue interests that are unrelated to the legal sphere of the employee.

A common trend today-and too well known to be discussed here from the perspective of organizational science-is the increasing segmentation of production through outsourcing, a phenomenon that information technology has given further impetus. From the perspective of the legal regulation of how the results of the labour of a third party may be acquired, outsourcing can create significant difficulties when it comes to identifying the contracting parties and who is responsible for worker's dues for the labour performed.

In the face of the current profound changes in Italy's production system, and therefore in its labour market, the provisions relating to the acquisition of the labour of third parties are still based on dated legal considerations and concepts that are often unsuitable for supplying clear and univocal principles for situations that were simply unknown when the provisions were introduced. This difficulty is compounded by the structural peculiarities of a system of civil law in which judges must interpret and apply provisions that are dictated in only general and abstract terms by the statutes, with narrow margins for interpretative freedom in the case of controversial provisions.

1. As Italian legislation stands, the relationship between an individual undertaking to supply his labour to another in exchange for remuneration falls into one of two very distinct categories: the employment relationship, as defined in A. 2094 of the Civil Code (cc) and the self-employment relationship, as defined in A. 2222 cc. The distinction between the two is fundamental, since only the former is the subject of labour law.

Labour law has three main sources. The first is the Constitution of the Republic of Italy (1948): principally, the guarantee of freedom in

the organization of trade unions (A. 39) and the right to strike (A. 40); the right to remuneration that is to be commensurate with the quantity and quality of work performed and sufficient to provide a free and dignified existence for the worker and his family, subject to a maximum length of the working day and the right to weekly rest and annual holidays as established by law (A. 36); the protection of female workers (A. 37); and the protection of workers in the case of illness or accident (A. 38). The second is the Civil Code (Artt. 2094-129), which dates to 1942, that is, before the Constitution. And third is the abundant special legislation, largely containing specifications of constitutional principles, made over the last 50 years.

In essence, labour law outlines minimum standards for the protection of the interests of employees. These pertain to: the guarantee of union rights in the workplace; the formation of the employment relationship; the rights and obligations of the parties in the relationship (with several aspects of the employer's powers as master being specifically limited); the rights of female workers (with particular reference to motherhood); the legitimate termination of the employment relationship, both in the case of individual sackings and staff reductions; workplace safety; social security and retirement benefits and so on.

Broadly speaking, only the general principles of contract law apply to the self-employed worker, with some minor modifications introduced given the special nature of the subject of the contract—that is, human labour. As we shall see, in the case of contracts with self-employed workers, the law provides for special regulations for particular types of intellectual labour. This, however, does not alter the breach between the regulation of employment (with the resulting protection of the manifold interests of the employee, in particular, and the employer) and the substantial lack of legal regulation of the self-employment relationship.

In distinguishing between the two situations and the conditions applicable to each, the concept of subordination is essential. Introduced as a means of differentiating between two different contractual relationships whose object is human labour (*locatio operarum* and *locatio operis*) so as to attribute the risks involved in the performance of labour, the concept of subordination has gradually taken on additional meanings relating to identifying the parties covered under provisions that are much broader and multifaceted in their scope than simply identifying the party who may have failed to provide a service under a contract.

The main purpose of differentiating between contracts with employees and with the self-employed was originally to determine which of the parties would be responsible in the case that the service in question was not provided or was unacceptable. In the case of *locatio operis*, liability lay entirely with the worker, while with *locatio operarum* the employer was responsible by virtue of the fact that the employee's obligation was restricted to making available his energies to the other party.

From this perspective, the distinguishing factor between employment and self-employment lies in the old classification contained in the Civil Code of 1865 (which is still present to some degree in legal practice today), which distinguishes between the obligation of the employee to provide a generic activity in favour of the employer and the obligation of the self-employed worker to produce a specific result as the subject matter of any contract involving the supply of labour.

It is obvious that the distinction between *activity* and *result* is ambiguous and of little practical use. On the one hand, it emphasises the nature of the subject matter of the contract, which in both cases is labour provided by one party in favour of another. On the other, however, the distinction is ambiguous because in neither case is it possible to escape from the idea of a result that to some degree must satisfy the party using the service provided under the contract.

Early 20th-century Italy—that is, the social and economic context of these early theories regarding the elements that were to form our current concept of subordination—was characterised by an essentially pre-industrial production system in which the mass employment typical of the capitalist production system was uncommon. As in many other European countries, the first provisions regarding factory work in Italy did not come directly from the codes, but from the practice of specially established industrial arbitration councils authorised to rule on cases, when the contract law was inadequate, on the basis of equity. It was only in 1942, during the Fascist era, that the Civil Code began to pass these principles into law through the standardisation of the contract of employment and its regulation. What we recognise today as labour law therefore began taking shape during this period.

The Civil Code contains the essential elements for the legal regulation of employment. In addition, there is a multifaceted abundance of special legislation that—always in relation to what is specified in the Civil Code—provides a regulatory framework for the most diverse aspects of the relationship.

While such special legislation is an inevitable consequence of the economic, social, political, and, therefore, legal-institutional evolution of Italy, it has led to a flood of overlapping, often heterogeneous regulations that have upset the technical-legal balance on which the Civil Code was originally founded and, as a result, the identification of the general framework of employment legislation.

Another result has been the attachment of social implications to what was originally a technical notion of subordination introduced for

other purposes and, as a consequence, structurally unsuitable to act as a 'proper and sufficient' element for discriminating between parties seen to be worthy of special protection and parties excluded from such protection on the basis that they are believed to be perfectly capable of protecting their own interests.

This background explains why today the accurate identification of the subordinate or independent nature of a relationship is an extremely delicate and important task. The identification of a relationship as subordinate determines the applicable regulations as regards the terms and conditions of employment set by law and the social security obligations of both parties, such matters having administrative, and in some cases criminal, repercussions.

It is, however, important to note that not all legislation for the protection of workers is applied *in toto* in every instance of employment. Some of this legislation (that relating to unfair dismissals and mass redundancies, for example) only applies to employers who employ more than a certain number of workers, to particular categories of worker (managerial staff are excluded from the provisions regarding dismissals, for example), and to employers who conduct certain activities (political parties, unions, and religious institutions, for example). Further differences exist between fixed-duration and open-ended employment contracts, as well as in other areas.

In essence, the final decision as to which provisions apply to each particular case involves the classification of two factors: first, the subordinate or independent nature of the relationship; second, the terms and conditions applicable given the specific circumstances of the case in question.

Before attempting to outline in theoretical terms the typical characteristics of the employment relationship, the special relationship between legal practice and theory in Italy in the field of labour law must be mentioned. The lines of reasoning and cultural implications of this area are sometimes contradictory and in many cases create a wide breach between the theory of subordination and its practical application by judges in individual cases. In particular, the various theories on subordination are essentially based on the meaning of certain terms used in A. 2094 cc- that is, expressions such as 'collaborazione' (collaboration), 'essere alle dipendenze di' (at the disposal of), and 'sotto la direzione dell'imprenditore' (under the direction of the entrepreneur).

The real problem, however, is not so much constructing in the abstract a notion of subordination suitable for use in the context of labour law, but how this notion is used by those whose job it is to interpret it. As we shall see, judges required to decide whether a relationship is subordinate or independent refer by necessity to numerous circumstantial elements drawn from observing what actually happens within that relationship. These elements, not all of which are always present, are referred to as *indici della subordinazione* (subordination indices) and are of differing importance in each decision, depending on the type of relationship. Judges refer these indices even though it is not possible to assign with certainty to any of them the role of a proper and sufficient condition. On the contrary, judges stress the inappropriateness of each element to describe a situation if taken separately.

Beginning with the definition in the Civil Code of the worker as a 'collaborator of the entrepreneur,' some authors believe it possible to interpret the act of collaboration as being an appropriate element for indicating the typical condition of subordination- in short, the employee collaborates with the enterprise to the degree to which his work can be co-ordinated by the entrepreneur with that provided by other employees for achieving a result that satisfies the interests of the entrepreneur. Consequently, the right of the employer to give directions as to how the labour is to be performed, as treated in A. 2094, is seen as an essential element that characterises the subordinate labour relationship. Article 2104 cc likewise regards it as a specific obligation that the employee observes the directions given him by his employer relative to the execution of his work, while A. 2106 gives the employer the right to discipline a worker who does not follow such directions.

It must be mentioned, however, that a dependence on the instructions of the client also exists in certain independent labour relationships- for example, contracting. On the other hand, the employer's right to issue instructions (in theory, an essential element of subordination) is not always exercised in situations where, although subordinate under the law, the nature of the labour supplied requires extensive autonomy for the worker (as with managers or highly skilled workers).

Still more complex and delicate is the problem of giving practical meaning to the final expression used in A. 2094 to define the employee- the idea of the employee being 'at the disposal of the entrepreneur' assumes that he is subject to the instructions of the employer. The act of the employee placing himself at the disposal of the employer encapsulates in its broadest sense the obligation assumed by the employer in entering a contract of employment- that is, acknowledging him, and him alone, as having the power to use the employee's labour for the achieving of a result that is, and remains, outside the sphere of interests of the employee.

Seen by those who must interpret it as having these characteristics, the concept of subordination becomes a synthesis of the typical essential effects of the contract of employment: regulation of labour by the employer, and the absence of a legal interest on the part of the employee in the result of this labour and in the means of production. Based on this line of reasoning, subordination has come to be defined as: 'labour performed within an enterprise, in which the worker has no legal power of control, and utilised according to the directives of the

employer for ends in which the employee has no legally relevant interest.'

With subordination thus defined, it was inevitable that-given the popular image of the worker in the capitalist industrial society (such as Italy in the '60s, when the modern theory of subordination developed)-there would be an overlapping of the legal concept of subordination and the purely sociological concept of socio-economic dependence. Thus, rather than the legal effect of a particular type of contract, some authors see subordination as a socio-economic supposition of the contract itself that implies the inferiority of the employee *vis-à-vis* the employer.

There is no doubt that inherent to many of the characteristics of the common notion of subordination as discussed above (particularly the fact that the employee does not own the means of production) is the socio-economic inequality of the parties and the rationale of protecting employees under legislation (which has always been connected to the generally weaker economic position of the employee).

As discussed below, the issue of work performed in a situation of socio-economic dependence (even outside of a subordinate labour relationship) and the necessity of establishing appropriate standards for protecting those who perform their labour in the interests of third parties is a crucial element of recent political and legal debate in Italy. A clear indication of its importance is, on the national scale, the legislation (currently before the Italian Parliament) concerning 'atypical work,' and, on the international scale, the ILO initiative for which this paper has been written.

From the technical-legal perspective, however, the real issue is whether any situation of socio-economic dependency is a proper and sufficient condition to classify a labour relationship as subordinate. In essence, the issue concerns whether subordination equates with a socio-economic status of the employee to which the judiciary would apply legislation expressly provided for the employment contract or if this is a subjective situation that is only of legal importance as the result of the typical effect of a particular type of contract.

Despite the differing opinions of some authors and several important legal decisions, on the theoretical level the concept of economic dependency has no place in determining whether a particular labour relationship is subordinate. This is first demonstrated by the existence of obvious cases of self-employment (notably in agriculture) in which there is economic disparity between the parties without there being on the strength of this any question of the absence of subordination in the technical or legal sense. The opposite situation can also exist. Second, as far as A. 2094 is concerned, subordination is no more than a contractual effect, basically the result of the worker recognising in the employer the authority to co-ordinate the work of others, which, as we have seen, represents the typical distinguishing element of the employer's position in the contract of employment.

This does not, however, exclude elements from the classification process performed by a judge that are not strictly legal in nature but socio-economic. The reasons for this stem from two groups of factors. On the one hand, since the definitions contained in Artt. 2094 and 2222 are not always appropriate for every case, judges must adapt the abstract legal formula to a kaleidoscope of situations that are often difficult to pin down to just one or the other solution. On the other hand, the important social and political implications that have always marked Italian labour law (since it provides protection for working class people) and the attitudes of judges themselves play a major role in a judge's task of weighing the various factors when determining whether a relationship is subordinate or independent. In practice, the purely technical view of what constitutes subordination (in the sense of the employee submitting to the authority of the employer and the latter's instructions regarding how the work should be conducted) gives way to some degree to other elements stemming from the prevailing image of the subordinate in society. Thus in practice, the economic dependency of the employee is included, perhaps implicitly, among the elements considered.

To explain how the theory of subordination operates in practice-in particular, in the judge's task of considering individual cases-I believe a few preliminary comments are necessary.

In the Italian legal system-which, as mentioned, is a civil-law system in which legislation is the sole source of law-a judge's sole task is to apply the existing norms to each case presented to him. In theory at least, the interpretation and application of the laws should therefore follow a logical, syllogistic approach. Thus, when it is necessary to determine whether a particular contract is subordinate or independent, the solution should stem from identifying in the way the labour agreement is conducted those characteristics described in abstract by the law as defining subordination. Should these characteristics not be present, the relationship can be deemed to be independent and thus not subject to protective legislation.

In practice, however, the question is much more complex. This is demonstrated by the fact that judges, although stating that they refer to the abstract definition of subordination, set about classifying relationships following a different path to that described above. Abandoning the often problematic-and more often impossible-task of reconciling the abstract model of subordination with the actual case, judges employ an approximation of the typical model. This has come about because of the consolidation of tendencies from the case law to use the circumstantial elements outlined above as a means for directly assessing a relationship. Thus, 'indices' of subordination and independence were developed.

Judges therefore substantially rule on individual cases by assessing the dominance of one or the other index in a relationship. If the elements typical of a subordinate relationship prevail, the relationship is deemed to be subordinate and vice versa.

Many of the reasons for this occasionally unwitting deviation from tradition are fairly complex and date back in time. The far-reaching changes in Italy's socio-economic makeup over the last 20 years, largely caused by the migration of much of the workforce from the manufacturing industries to the services sector and rapid technological innovation, have also given the phenomenon a major impulse.

As mentioned, the legislative formula contained in A. 2094 cc and used by the system as a general definition of subordination was drafted in reference to a particular employment situation, that is, the medium to large industrial enterprise in which the prevalent sociological figure was that of the manual labourer employed full-time under an open-ended contract whose work was performed in a specific place at a specific time within the organization of production.

But this definition introduced ambiguity. While under the pure legislative formulation of subordination, non-specialized workers in their first job and senior managers could both be regarded as equally subordinate, the indices of subordination were developed almost entirely in reference to the blue collar worker (if for no other reason than the prevalence of this class of worker).

There is a paradoxical aspect of this question that deserves our attention. The common image of the subordinate worker-and thus of subordinate labour-is of the blue-collar worker, and it is on this image that the above-mentioned subordination indices are based. However, these indices are used by judges to decide highly complex cases in which the labour under discussion could equally well be provided under a subordinate or independent labour relationship without any significant change in the way the labour is performed. No one would ever question whether or not an assembly line worker in a major automobile factory was an employee. Likewise, no one would say that the service provided to a client-possibly in the same automobile factory-by a famous advertising wizard would constitute a subordinate relationship. A problem arises, and dramatically, whenever the line between independence and subordination is so fine and unstable that both classifications are possible. Thus the potential exists for excluding a worker from protection under the provisions for subordinate labour by fraudulently classifying the relationship as independent.

An initial and very important aspect of this issue-and one that is useful for understanding how Italian case law has developed in connection with subordination-is the importance given to the wishes of the parties. A characteristic of the Italian case law has always been to underestimate the value of the intentions expressed by the contracting parties in the selection of a particular contract type, particularly when this choice goes the way of the independent relationship. In this regard, the socio-economically weaker position of the worker compared with the employer, and the resulting risk of a limitation of the worker's freedom of choice between contracts of a subordinate and independent nature, has seen the case law increasingly exclude the wishes of the parties as expressed on the contract as being relevant.

In past decades, there have even been some moves to give no importance whatsoever to the wishes expressed by the parties. However, on the basis of the general principles of the Italian legal system, the express manifestation of the parties' intentions can only be disregarded by the judge to the degree to which the nature of the actual labour relationship-and therefore the execution of the contract by the parties-runs counter to the characteristics of the independent labour contract (A. 1362- cc regarding the interpretation of contracts).

An explanation of this phenomenon can be found in a recurring tendency in the case law to sidestep the essential and correct process of interpretation and proceed directly to the classification of a relationship through reference to the symptomatic elements described above, and then proceed to how the law applies to the particular case in question accordingly. Such a procedure often has the result of shifting the investigation away from establishing the elements that are proper and sufficient to reconstruct the common intention of the contracting parties where the contract wording is vague or ambiguous, to a reconstruction of the labour relationship-in itself considered to be a natural and pre-judicial fact-to which the law would attribute certain effects once sufficient conformity is found in the facts of the case with the subordinate labour relationship.

Recently, however, there has been a significant shift in the approach of judges, who are now giving greater importance to the actual intentions of the parties. This is partly the result of greater consideration-more in the cultural sense than the technical-legal sense-being given to the relationship between freedom (individual and/or collective) and imperative legislation. But to a large degree, this shift is also due to the fact that an increasing number of those jobs created by the latest market development are such that it is in the interests of both parties for the relationship to differ from the legal prototype of the subordinate relationship.

Within the Italian legal system, this question has been further complicated up until now by the influential presence in this variety of case by a third party, who is neither employer nor employee and is often indifferent to the subjective motivations of the parties. The party in question is the Italian social security service (INPS), whose primary interest is collecting social security contributions. These contributions are compulsory in the case of subordinate relationships and, since very recently, are also applicable to a lesser degree to certain varieties of self-employment. While not so much the case today, it was for this reason that in the past it was in the interests of the social security service for any disputed relationship to be classified as subordinate.

Numerous cases have been brought against employers by the social security department in this connection, even where the department's

claims run counter to the formally stated wishes of the workers involved.

Now we have discussed the force of the parties' intentions in law, we need to look at the practical criteria used by judges for resolving this variety of controversy.

Normally the first distinguishing element is subordination in its technical sense as the submission of the employee to the authority of the employer to give directions and administer disciplinary actions. In this regard, the obligation of the employee to observe set working hours is certainly a typical feature of the subordinate relationship, precisely because it stems from the employer's authority to issue directives and exert control.

The integration of the worker into the employer's organisation (the so-called organisational test), that is, the fact that the labour is performed within an environment of means and personnel organized by the entrepreneur, is probably a good indication of subordination. One cannot state, however, that this has an absolute value or that a positive outcome of the organisational test necessarily indicates that a relationship is subordinate. Cases where clearly independent professional services are provided within the organisational environment of a company are common (see discussion below regarding outsourcing and triangular relationships).

A further factor that judges regard as a sign of a subordinate relationship is continuity in the worker's obligation to the employer. This continuity is not only, and not so much, in the sense of an obligation characterised by its duration in time, but of the typical profile of the employment contract in which the worker places his labour at the disposal of an enterprise for an extended period. In practical terms, this undertaking exhibits continuity both in the worker's basic obligation (labour) and his secondary obligations which persist even when he is not actually engaged in this labour (bans against competition and the obligation of secrecy). Payment systems for hourly labour or piecework, which are mainly set by collective bargaining, are also customarily considered significant in assessing whether a relationship is subordinate. In the same way, ownership of infrastructure and work tools, generally by the employer, is, save in the case of outworkers, another typical element of subordination. Although, as the production system has evolved, this latter element has lost a great deal of persuasiveness.

Continuing with these examples-which I stress are merely a list of circumstances that judges consider, without any of one of them being conclusive in itself-the fact that a worker performs his labour for one employer only often indicates subordination, although cases do exist of self-employed individuals who work under an exclusive contract with one client.

A further element of the subordinate relationship is that the labour must be performed personally by the employee. In certain circumstances, this factor is seen as indicating subordination, although a standard clause in the contract for hiring self-employed workers is that the work is performed by the person named in the contract.

To conclude this brief summary of the distinction between subordinate and independent labour relationships, I would note that it is extremely difficult, if not impossible, to arrive at a univocal description of how judges apply the general principles laid down by the legal system. Arriving at a correct and balanced judicial assessment of certain relationships is a very real problem, and this problem is compounded by the structure of a legal system that, forced to deal with a highly changeable and diverse labour market, severely restricts those who must interpret the law to inflexible alternatives that are radically different in the effects they produce.

From this perspective, despite a lack of coherence of certain decisions and the general climate of dissatisfaction throughout Italy in this regard, the efforts of judges to perform the difficult job of interpretation are in general laudable for the overall balance achieved. But these same judges appear disorientated and one may detect a certain polarisation of judicial policy.

On the one hand, there are decisions that react to changes in the market and the resulting difficulty in classifying new labour relationships with a hardening of the concept of subordination. This results in the exclusion from workers' protection of all those cases in which certain of the typical elements of the traditional notion of subordination seem to be absent or are present but to a lesser degree. Or-and in practice the effect is the same-special attention is given to the intentions of the parties as expressed in the contract. In this way, investigation into the actual way in which the work is performed is sometimes foregone in favour of a formalistic respect for the contractual label.

At the other extreme, and in reaction to this latter tendency, there are judges who strongly emphasise the socio-economic aspects and the presumed necessity of protecting the weaker party, broadening the concept of subordination beyond all limits. The danger in this case is that the strict meaning of the elements that, according to A. 2094, are peculiar to the subordinate labour relationship could be completely lost.

Both these tendencies-at least in their extreme forms-are obvious signs of the difficulty of the task of classification, a difficulty that is unlikely to be resolved without new legislation allowing greater flexibility and diversification in both the quantity and quality of workers' protection. But some help may be on the way in the form of the legislation on the new employment situations now becoming so common. To some degree, such legislation could provide clarification of the importance of the concept of subordination, taking its cue from the example provided by A. 1 of *l* No. 877 of 18 December 1973 regarding outworkers, who are to be deemed as such when 'the worker is obliged to observe the directives of the employer regarding the execution, characteristics, and requirements of the labour to be performed in the partial

completion, completion, or entire manufacture of products that form the object of the entrepreneur's business.'

From another perspective, legislation could contribute to a relaxation of the rigid subordinate/independent alternative, which, at present, produces an equally rigid dichotomy between the extensive protection of the employee and the almost total lack of legal protection of the self-employed worker. The Italian Parliament is currently moving precisely in this direction in its discussion of a bill concerning telework and, in particular, the above-mentioned bill concerning atypical work.

An important harmonising function could be played by collective bargaining, the role of which is by no coincidence widely referred to in the atypical work bill. With a contractual basis divorced from the inevitable legislative schematism, collective bargaining could provide protection to many of these new workers that is appropriate for the work performed and compatible with the economic needs of the market, which, given the likelihood of the spread of these jobs, are inescapable.

2.1. A direct consequence of the issues discussed above is that in Italy all forms of labour that differ from private enterprise-independent labour *par excellence* (the right to undertake private enterprise is guaranteed under A. 41 of the Constitution and has specific provisions under Artt. 2082- cc-and that cannot be covered under the contract of employment are treated as self-employment and covered under the Civil Code and special laws.

As mentioned, labour performed for a principal as self-employment is regulated, in general terms, by Artt. 2222-8 cc, which refer specifically to the independent labour contract. This contract is to be seen as the principal feature, and the consequence, of the self-employment relationship-numerous other activities performed independently (contracting, transport, storage, agency, mediation, administration) have standard contracts with specific provisions in the Civil Code applicable to them, while newly instituted forms of labour are governed by special provisions.

According to the above definition from A. 2222, the self-employed worker undertakes to perform for payment a job or service using labour that is predominantly his own and with no subordinate relationship existing between him and his client. The law requires that the activity is performed 'predominantly' by the worker himself, but does not prevent the worker from occasional and minor collaboration with third parties.

Even in the absence of subordination, the client is still expressly recognised certain powers under A. 2224 concerning timeframes and how the work is to be carried out, even during its performance. Self-employment does not in itself exclude the possibility of the worker being integrated into the structure of the enterprise, provided that this does not specifically require the self-employed worker to submit to the employer's power to make directives and administer disciplinary actions.

Another aspect that characterises the relationship is the assumption of a risk that is predominantly the burden of the worker. While the checking of the product upon its receipt and reporting any flaws within a pre-established time is the onus of the principal, in doing so, the principal is also partially protecting the interests of the worker. An attempt at providing equal treatment of both parties' interests in this regard is contained in A. 2228, according to which, should it become impossible to complete a job for reasons beyond the control of the worker, the latter remains entitled to payment for that part of the incomplete work that can be utilised.

As mentioned, additional to, and integrated with, the general independent contract, the Civil Code provides for a variety of contractual models that deal with the performance of labour in the interests of a principal. Among the most important of these, special mention should be made of the *contratto d'appalto* (similar to the independent contract) because of its far-reaching implications regarding the minimum standards of protection of the worker in completing the task or service that forms the object of the contract. Subject to the provisions of A. 1655 cc, the *contratto d'appalto* is characterised by the fact that the labour is performed by an enterprise and, therefore, the input of the general contractor is not geared directly to performing the task, but to organizing the means required to fulfil the contract while assuming the risk for this. Later, in the section dealing with triangular relationships, we shall return to the *contratto d'appalto* and the protection of workers who perform their labour under the employment of an employer, but in reality are performing it in interests of a third party client, who takes possession of the results of that labour, although no direct legal relationship exists between these parties.

The self-employed worker is obliged to produce an agreed result and, in the process, must perform this work according to the conditions set down in a contract, employing the professional skills demanded by the nature of the work. The non-performance of these obligations entitles the client to annul the contract.

The client is obliged to pay the worker the agreed fee. Where no express agreement exists, this fee is determined on the basis of standard professional fees, customs, and practices, or, where this is not possible, by a judge, basing his decision on the result produced and the labour normally required to produce such a result (A. 2225 cc). In arriving at this figure, the judge is not restricted to precise parameters, and occasionally-even where this is not the product of a legally binding rule-fees have been established on the basis of the fee normally paid for the corresponding task or service in the ambit of a standard employment relationship.

Article 2227 cc recognises the right to withdraw from a contract solely to the client, whereas the worker's right to withdraw must be agreed between the contracting parties at the time the contract is entered into. This difference is justified by the element of trust inherent in the relationship between the two parties. Should this trust be undermined, the client is justified in discontinuing the relationship, the law setting no conditions or limitations on his prerogative to do so. However, to protect the worker in the case of the client's withdrawal, A. 2227 cc also provides for the self-employed worker's right to a reimbursement of expenses sustained, payment for the work completed, and the payment of a sum equal to the loss of earnings resulting from the unexpected termination of the relationship.

Prior to the social security reforms of 1992 and later, there were no uniform rules regarding social welfare for the self-employed. Different categories of worker were covered by different systems based on rules specific to particular sectors, but did not extend to all self-employed workers. The recent reform laws extended pension cover to every independent labour relationship. Thus, since 1996, workers who customarily work under self-employment arrangements have been obliged to register in a separate system with the INPS (Italian social security service).

2.2. The intellectual professions constitute a special category of self-employment covered under Artt. 2229-38 cc. The provisions contained in these articles do not affect those relative to self-employment in general (Artt. 2222-8), which remain applicable since they are compatible with the nature of the labour in question. Nor do they affect those relative to labour within an enterprise (Artt. 2082-221) if the labour constitutes an element of an enterprise's business.

The contract in question is a variety of independent labour contract, but differs from the standard contract by virtue of the special nature of the labour performed.

Despite the fact that this issue has been extensively debated, practitioners of the majority of professions are required to register their names in special professional roles, this being intended to protect the public interest relative to the performance of these professions. The intellectual professions do include, however, some whose practice is completely free from such requirements.

One of the direct consequences of the law's different stance on the conduct of the various intellectual professions is, for historical reasons, that there are professions whose practice is subject to specific provisions and professions that have no specific regulation other than the provisions generally applying to self-employment. Among the former group, I shall mention first for their historic importance legal professionals (barrister solicitors, notary publics), medical professionals, architects, and engineers, the practice of whose professions is strictly regulated by their respective professional associations. Such regulations rigidly establish the obligations and rights of the professional as regards relationships with clients and social welfare arrangements, the latter generally being handled by an autonomous pension fund operated by each professional association.

2.3. Another self-employment arrangement expressly regulated by law is the agency agreement. Under this agreement, a party undertakes, on an ongoing basis and for a fee, to work for the fulfilment of specific contracts in a particular area on behalf of the other party (A. 1742 cc). More precisely, the agent is that particular collaborator of the principal who undertakes to supply him with a finished product—that is, the conclusion of specific business deals—by providing his labour independently and assuming the risk of providing a useful result from his activities as well as liability for the expenses incurred while performing them.

The agency relationship has traditionally occupied a position midway between the master-servant and independent relationships since it can be, and is, carried out both with the agent subordinate to the principal (thus creating an employment relationship) and with the worker acting independently in a situation of self-employment. Strictly speaking, the agent is a self-employed person, whereas the employee who performs similar tasks is a traveller. The distinction between the two becomes problematic, however, because of certain common elements—first and foremost, the continuity of the relationship and close collaboration between the contracting parties—which again force judges to resolve cases following the same rules and interpretative procedures discussed above in reference to the notion of subordination.

Agents are obliged to register on a special role maintained by local chambers of commerce. Social security arrangements are via a special system provided by the Italian social security service.

2.4. From the point of view of contracts, participation in a joint venture is an unusual category of the huge sphere of self-employment. Article 2549 cc defines the relative contract as the instrument through which the business operator gives another party a share in the profits or the business of his enterprise in exchange for a certain input from the party. This definition indicates that we are dealing with a bilateral contract of exchange, the characterising elements of which are the input of one party and his sharing in the profits on the basis of this input. The provisions do not specify, however, the nature of this input. As a consequence, nothing prevents it from being in the form of labour.

However, the prevailing orientation of the case law is that such a contract is not a legitimate basis for the provision of labour in a situation

of subordination. Such arrangements are, in fact, regarded as a fraudulent attempt at sidestepping the provisions put in place to protect employees. This does not apply, however, to the rendering of professional services or other forms of independent labour that are completely compatible with the joint venture contract because of the absence of any risk of sidestepping the law.

As for labour performed by partners in co-operatives, the case law clearly indicates that the activity, when performed in conformity with the provisions of the partnership agreement of the co-operative and its objects, cannot be deemed to be an employment relationship but merely a part of the partnership agreement. A true employment relationship could only exist if the activity in question were different from those activities that a partner is obliged to do on the basis of the memorandum of association of the co-operative.

3. A large range of different varieties of labour exist that, as regards the principal, are formally self-employment, but nevertheless display sufficient elements typical of employment such as to make their categorisation into one or the other of the basic classes problematic, and the radically different treatments sometimes metered out by the legal system in favour of one or the other difficult to comprehend. Such differences are all the more difficult to appreciate when developments over the last decades would indicate that the choice of self-employment, even where no fraudulent intentions exist, is frequently due to an attempt by both parties to escape from the inflexibility and high costs associated with the employment relationship.

For more than 20 years, discussion in Italy of potential ways to conduct different forms of labour has centred on the appropriateness of the rigid distinction between employment and self-employment. However, this discussion has been negatively influenced by a confused overlapping of dissimilar ways of assessing the issue. On the one hand, there is the eminently technical-legal question regarding the distinction between employment and self-employment provided in Artt. 2094 and 2222 cc. On the other, there are the social and political issues that underlie the growing need to put in place specific provisions for protecting the interests of individuals who, as workers in a position of contractual weakness, merit protection under the law irrespective of the nature of the contract they have signed.

The underlying issue, however, can also arise in the case of contractual relationships between two entrepreneurs, and it is in this regard that the legislature recently implemented Recommendation 95/C 144/03 of the European Union Commission, introducing a specific statute concerning subcontracting in industry (*I* No. 192 of 18 June 1998). The situation dealt with by the law is that of an entrepreneur who 'undertakes on behalf of a client-business to work on semi-finished products or raw materials supplied by the same client-business, or who undertakes to supply to the company products or services intended to be incorporated or otherwise used in the ambit of the business activities of the client-business or in the production of a finished product, in conformity with final designs, technical and technological knowledge, models or prototypes supplied by the client-business' (A. 1).

Even based on its initial definition, the law in question is clearly protecting the weaker contractual party within a relationship marked by the fact that the client-business occupies a superior position on the market *vis-à-vis* the subcontractor. In the spirit of other important recent and less recent legislation—namely consumer protection, urban rental laws, and so on—the intention of the law is to prevent the abuse of this stronger position. This is also in line with the classic model of protection of the employee, who is seen to be the weaker party in the relationship that binds him to his employer. In its means and ends, the law also exhibits a significant convergence between labour and commercial law, two areas that in the Italian legal tradition have until recently been marked by their non-convergence.

In accordance with their declared intent, the provisions regarding subcontracting impose precise limitations on the form and content of the contract, specifying (among other things) the elements that must be contained in the document, in particular as regards specifying the product or service required by the principal, the agreed price, the terms and methods of delivery, testing, and payment.

The cornerstone of the statute is, however, A. 9, which governs the abuse of economic dependency. The article confirms the prohibition on enterprises exploiting the state of economic dependency of a client-business or supplier. It then specifies that economic dependency is 'the situation in which a company is able to affect, within commercial relations with another company, an excessive imbalance of rights and obligations.' Later, the article establishes that economic dependency is to be determined by taking into account the possibility for the party who has suffered the abuse to find on the market satisfactory alternatives. It expressly states that the abuse can consist in 'the refusal to sell or the refusal to buy, the setting of unfairly onerous or discriminatory contractual conditions, or the arbitrary termination of the commercial relationships in progress.' Such abuse renders a contract null and void.

Beyond the specific case of relationships between companies marked by a strong imbalance in contractual power, the phenomenon that for years has preoccupied lawyers is the case of the supplier of individual labour (not a company) who, under similar conditions, undertakes to perform work on behalf of a third party in a condition of self-employment. As mentioned above, the socio-economic dependency of the worker does not constitute in itself a situation of subordination as described in A. 2094. But the question of the terms and conditions applicable to this relationship and the degree of protection afforded by the law for the economically weaker party represent two interconnected levels of issues.

On the one hand, the way in which the labour is performed is often similar enough to the employment relationship to raise the suspicion that a principal has taken advantage of the worker's need for work in an attempt to escape the obligations and costs associated with regular employment. On the other, the far-reaching differences in the terms and conditions of employment and self-employment in the presence of actual work conditions that are very similar and the real gap between the protection of the two different categories of worker have aggravated the problem.

In some cases these factors have prompted judges to go beyond the normal interpretation with the stated aim of providing self-employed individuals, believed to merit protection, with those standards of protection normally afforded to employees.

The earliest sign of a change in direction of the Italian legal system as regards workers' protection came about in 1973, when the legislature reformed the rules of procedure concerning employment disputes. The new wording of A. 409 of the Code of Civil Procedure extended the applicability of the new procedure—which is particularly favourable towards the weaker party in a labour relationship—to agency and other forms of contractual relationships in which the worker personally performs the labour in the presence of continuity and co-ordination by a principal, but in the absence of subordination.

The introduction of this legislative formula marked the entry into the Italian legal lexicon of the notion of *parasubordinazione* ('para-subordination'). First used by a young academic at the University of Rome, Giuseppe Santoro Passarelli, but later entering into the standard vocabulary of labour lawyers, the term indicates a variety of self-employment that, given its characteristics and the way in which it is performed, has a sufficient number of the typical elements of employment to justify the extension to it of a limited number of the protections afforded to employees. The wide-ranging discussion the issue triggered is still in progress today and has even been rejuvenated by the fact that the Italian Chamber of Deputies is currently discussing a bill—passed by the Senate on 4 February 1999—concerning procedure in relation to so-called atypical work. A key element of the bill is its definition of the atypical work relationship, which draws much of its inspiration from the provisions of A. 409 of the Code of Civil Procedure.

Before briefly looking at the provisions regarding atypical work, it must be mentioned that the most controversial point of the entire para-subordination debate concerns the appropriateness of the notion being used to identify a third category of labour that is neither subordinate nor independent and that can encompass all positions that are difficult to slot into one or the other of the existing categories.

The idea of a third category is opposed by some, who foresee a risk of a gradual erosion of the protections afforded to employees through jobs that are traditionally deemed to constitute master-servant relationships in the strict sense progressively entering the no man's land of an inadequately defined notion of para-subordination.

In my opinion, the risk of creating a new category of worker—neither subordinate nor independent—would not appear to have any real basis in Italian legislation, including both existing legislation and legislation currently before the Parliament.

In separating the alternative between employment and self-employment from the issue of the quantity of protection guaranteed to workers under the law on the basis of their greater or lesser ability to protect their own interests, the obvious and stated aim of the legislation in question is to extend to categories of independent workers currently excluded from the treatment afforded to employees, some minimum level of protection. In this regard, far from the possibility of introducing an intermediate category, a substantial easing of the traditionally strict division between employment and self-employment stemming from a watering down of the perverse alternative of a maximum of protection for employees and a total absence of compulsory standard terms and conditions for self-employed workers is only an additional, and desirable, outcome.

Occupying another level is the issue of a potential political exchange between an enlargement of the sphere of protection to include workers who currently have none and an attenuation of the rigidity typical of legislation applying to those who are actually employees. This issue is currently the subject of discussion in Italy in the political and union spheres, the objective being to attenuate the conflict between insiders and outsiders by increasing the number of working people through greater market flexibility.

Returning to the bill currently before Parliament, the legislation recognises a few basic rights—freedom of thought, prohibition of medical examinations ordered by a principal, prohibition of opinion surveys, prohibition of discriminatory treatment, freedom to join a trade union—as well as the applicability of regulations concerning the equal treatment of men and women and as regards workplace safety and hygiene for all workers involved in 'collaborative relationships, which are not casual in nature, co-ordinated with the activities of a principal, even if performed in the absence of subordination personally by the worker without the use of organized means and against payment.'

Similar to the provisions regarding subcontracting, A. 3 of the bill specifies that a written contract is compulsory and that it must contain precise information such as to allow the complete and unambiguous identification of all the obligations and rights of the worker, including the subject of the labour, the amount of remuneration, the terms of payment, and the term of the contract.

Collective bargaining is expected to play the role of regulating the rights of the dismissed worker to suitable severance pay and preferential

treatment in the case that the client-business later decides to stipulate a contract of a similar type for the same variety of labour. Article 6 then specifies that such workers are to be registered in a special scheme with the social security service, and makes specific mention of protection as regards maternity, illness, and accidents. Article 11 on the other hand provides for the automatic conversion of the atypical work relationship to a permanent employment relationship should it be determined that the relationship established in terms of A. 1 conceals what is in reality an employment relationship. For the stated purpose of reducing contentiousness in the classification of labour relationships, A. 17 provides for the future operation of a complex administrative system of voluntary certification of contracts by a bilateral organisation comprising equal numbers of workers and client-businesses.

To conclude this section, a word of a methodological nature is necessary. Legislation defines atypical work on the basis of elements-continuity and co-ordination of labour-that make explicit and exclusive reference to the way in which the contractual obligation is carried out. Insufficient reference is given, however, to the structural notion of economic dependence and the resulting contractually weaker position of the worker. The risk exists, therefore, that, as noted in connection with the notion of subordination, the criteria for classifying the typical case can become overloaded with social and political implications greater than their capacity to effectively represent a labour market passing through rapid and tumultuous change. An example: according to the INPS database, as regards the workers registered with the special 12 per cent fund provided for under the recent reform of the social security system for 'para-subordinate' workers (*l* 335/1995), in the kaleidoscopic sector of co-ordinated and ongoing labour, the new professions, such as merchandisers and telemarketers, are outnumbered by traditional figures who are anything but inadequately protected, such as corporate directors and auditors. Likewise, the professional categories that contain the greatest number of registrations are research/consultancy and teaching/training.

4. A separate issue from the complex question of the terms and conditions applicable to employment and self-employment relationships is the many problems stemming from the existence, both obvious and concealed, of triangular relationships-that is, relationships in which the worker is obliged to perform his work in the effective interests of a party that is not his employer or client. As mentioned in the opening pages of this paper, from the legal perspective the question essentially concerns the clear identification of the contracting parties and, as regards labour performed in a situation of effective subordination, of the party to whom to ascribe responsibility for the relationship and the relative liability in contract and tort.

The Italian legal system has recently undergone profound changes that, by sweeping aside previous legislative obstacles, have seen the definitive legalisation of temporary work (*l* 196/1997)-that is, the contract under which an entrepreneur can directly utilise, without being the direct employer, the services of an individual who performs his labour within a subordinate arrangement by stipulating a contract with a specialised temping firm.

The exceptional triangular structure of this relationship is created by the fact that the worker is hired by the temping company, and for all intents and purposes is its employee, while the fulfilment of the contractual obligation involves the worker performing his labour according to the instructions and in the interests of the temping company's client. No direct legal relationship exists between the client and the worker, other than the obligation of the worker to follow the client's instructions. The client is not, however, able to exert any disciplinary action, this responsibility remaining with the temping company itself (subject to the provision of suitable justification), this constituting a sign of the exclusive nature of the relationship.

In light of the issues discussed above in reference to the employment relationship, it should be clear how the introduction of temporary work in Italy represents a major challenge to existing concepts of subordination, since this is a case in which the law creates a previously unknown disassociation between the power to issue instructions regarding the performance of labour-very much the cornerstone of the notion of subordination given in A. 2094 cc-and the direct control of that relationship by the party who issues these instructions.

Testimony to the exceptional nature of this situation compared with the traditional structure of the employment relationship is given by the numerous conditions attached to the laws legalising temporary work. First and foremost, before a company's name can appear on the list of firms authorised to supply temporary labour, it must meet rigorous prerequisites regarding standards of professionalism, financial solvency, and territorial coverage. And registration on this list is necessary for it to legally conduct this activity.

Under law No. 1360 of 23 October 1960, a client-business wishing to utilise temporary labour that stipulates a supply contract with a company that does not have the necessary authorisation results in that client-business automatically hiring the workers in a standard employment relationship. The same law forbids intermediation in the supply of labour, a subject we shall return to presently.

Given that the temporary worker is an employee of the temping firm, which is the only party that in principle is responsible for payments due to the worker, basically the Italian law sets out to guarantee the easy and immediate identification of the party liable to pay wages and the solvency margins required to meet them. In the absence of this guarantee, the general rule becomes fully operative, and the party benefiting from

any work performed is required to assume all the liabilities normally associated with the position of the service user/employer.

The law cites the legitimate cases of recourse to temporary work, excluding its use to replace striking workers and other categories. As regards professions excluded from the legitimate supply of temporary work, the law specifies that this is to be determined through collective bargaining. The temporary work contract, stipulated in writing between the worker and the temping firm, must contain all the information necessary to accurately describe the duties of the employee. The employee himself has the right to conditions on par with those enjoyed by employees at a similar level in the client-business. The client-business is directly responsible for workplace safety and hygiene, and is likewise jointly and severally liable with the temping firm for the wages and contributions arising from the relationship.

The engagement of the worker by the client-business may be for a set period (for the performance of a particular task) or for an indefinite period. In the latter case, if the worker is available but is not actively engaged in labour, he has the right to a monthly indemnity in an amount determined through the collective bargaining process. Temporary workers also hold the rights of union membership guaranteed in the Statute of Workers' Rights (l 300/1970) and for the entire duration of the contract he is entitled to exercise these rights within the client-business.

Outside the sphere of temporary work, the general rule is that any disassociation between the control and the use of a labour relationship is forbidden. In this regard, an old statutory law (l 1369 /1960) expressly governs the various situations in which, through a contract, a triangular relationship can exist between worker, employer, and the effective user of the worker's labour. The law in question prohibits some of these situations and regulates others. It distinguishes between intermediation in the simple supply of labour (in effect, a bogus independent contract), which is prohibited, and a genuine independent contract, which is regulated by different provisions on the basis of the greater or lesser relevance of the labour performed by the contractor within the business activities of the client-business.

On the one hand, A. 1 specifies that 'it is prohibited for the entrepreneur to contract or sub-contract out the execution of mere work through the use of labour engaged and paid by the contractor or the intermediary.' 'Any form of contracting in which the contractor employs capital, machinery, and equipment supplied by the client-business, even when a fee is paid to the client-business,' constitutes 'the contracting of mere work.' Workers hired in violation of this law are, for all intents and purposes, regarded as the employees of the entrepreneur that used their labour. The law basically sets out to prohibit the triangular relationship created through the intermediation of a third party with the role of employer, but without organizational autonomy as a company, acting to relieve the client-business of the responsibilities and liabilities inherent in the position of employer.

On the other hand, in the case of genuine contracting (that is, where the contractor has organizational autonomy as an enterprise and is professionally engaged in the activity to which the contract refers), A. 3, in establishing the legitimacy of contracting out specific phases of the manufacturing process, states that, where the labour is performed within the client firm, the workers are guaranteed a standard of treatment that is not inferior to that enjoyed by the employees of that client, which is jointly and severally liable with the contractor for the wages and contributions arising from the relationship. Moreover, the most recent case law has led to an overall interpretation of the law aimed at shifting the sense of the provision from the merely spatial- 'within the firm' -to the organizational, referring to A. 3 for all activities that, while the legitimate objects of a contract, concern labour generally performed within the typical production cycle of the client undertaking.

Article 5, however, expressly excludes from the contractor's obligations regarding wages and liability a series of contracting situations- building work on commercial premises, extraordinary maintenance work, the installation of equipment and machinery, and so on- concerning activities that are clearly external to the normal production cycle and, precisely because of their exceptional character, will inevitably be entrusted to third parties.

The law says nothing regarding the time span of an independent contract. In effect, therefore, nothing prevents it from having as its object a service provided for an indefinite term.

The line drawn by the case law between legitimate contracting and (as yet illegal) staff leasing is guided by the different professional role of the supplier. In the first case, it represents an integral part of the service provided under the contract, expressing itself principally in the organisation and direction of workers according to the contractor's own methods. In the second case, however, it would be undermined by the reduction of the transaction costs that the main company sustained during a structural phase prior to the contract for first putting together a workforce and then for administrative and accounting management as regards the workforce.

This law was created 40 years ago to prevent the exploitation of workers, particularly in agriculture and the building industry, in the situation of socio-economic underdevelopment of Italy's post-war reconstruction period. On the basis of this essential profile of the provisions, their major shortcomings in governing the process of industrial restructuring now under way (and in all the industrialised countries) are obvious.

Today the phenomenon has entirely new features as regards the various situations created by subcontracting, sharing with it in many cases

the characteristic of having a single purchaser and manifesting itself in the form of franchise, auditing, factoring, marketing, and engineering contracts. All of which occurs in the absence of a legislative framework that can accommodate the necessity of flexible production with a minimum guarantee of certainty in the legal relationships of the workers concerned.

Among the various elements leading to this assessment, two points stand out. First, the recently introduced law concerning subcontracting regulates a situation that is both legal and widespread, but whose essential terms border on what, according to Art. 1 of *I* 1369/1960, is illegal in that it constitutes a bogus independent contract, that is, intermediation in the supply of mere labour. Second, this law does not directly concern itself with the employment relationship of the employees of the subcontractor, and it is only according to a recent and debatable interpretation of the law that the subcontracting relationship can be deemed to be equivalent to the situation of the independent contract as regulated by A. 3, *I* 1369/1960, under which the contractor's employees are guaranteed minimum standards and an adequate level of certainty as regards their legal relationships. This equivalence is all the more debatable given that, seen as a whole, triangular relationships do not always have the legal features of the independent contract, to which the cited law specifically refers.

As regards the entrusting to third parties of entire production phases previously performed within a company—that is, outsourcing—should this take place through the transfer of a part of a business, the laws applying to the employees involved in the restructuring process are, in general, those laid down by European and national regulations concerning the transfer of undertakings, namely: union consultation throughout the transfer, continuation of employees' relationships under unaltered conditions, a prohibition against firing workers on the basis of the transfer per se, and continuation of the terms and conditions of the collective agreements with the transferor. In this sense, the most recent developments in the case law of the European Court of Justice (albeit inconsistent in its interpretations and partially weakened in its real effect in the wake of Directive No. 50 of 1998, which states there is a transfer within the meaning of the Directive when it concerns, 'an economic entity which retains its identity, meaning an organised grouping of resources which has the objective of pursuing an economic activity') have led to a gradual broadening of the notion of what constitutes a transfer to include the transfer of a simple labour activity carried out by an organised group of workers using specific skills.

5. The issues discussed above allow us to understand how for each real situation there are a number of different potential responses stemming from the typical indices of one or the other type of relationship.

This most certainly applies to the employment relationships of truck drivers, for example, in which various elements can vary, such as the ownership of the vehicle, the degree to which the labour is an integral part of activities organised by a third party, the regularity with which the labour is performed in favour of the same beneficiary, and so on. In every case where the relationship, albeit one of self-employment, exhibits the characteristics of continuity and co-ordination provided for by the legislation regarding atypical work (or para-subordination), the protections granted under this legislation will be applied, either in their current form (A. 409, Code of Civil Procedure) or in the form of the bill currently before Parliament.

In the case of building industry workers, the protection of whom (and others) is specifically provided for under the law of 1960 concerning contracting, the question of protection hinges on the genuineness of the contractor and the identification of the employer. Apart from certain professional activities performed by specialised craftspeople (small businesses, A. 2083 cc), self-employment is virtually excluded to these workers.

Among the most hotly debated relationships is that between businesses and computer experts. In view of the high degree of specialised knowledge of such workers and their resulting level of contractual power in the labour market, the case law has always classified this situation as one of self-employment. This particular example demonstrates the special importance now given to agreements between the parties to a case and serves as confirmation of the usual claim to this effect by the contracting parties.

In a case involving a person hired to run a shop, the existence of subordination was found combined with the presence of instructions and control on the part of the owner, who retained liability *vis-à-vis* suppliers and made decisions regarding purchases and pricing.

The case law is often called upon to classify the labour relationship of individuals regarded by an enterprise as its consultants and who are engaged within the structure of the company on an ongoing basis to perform tasks requiring a notable level of skill in the administrative, accounting, financial, management, or managerial areas. In response to requests by such workers for the recognition of their relationship as being subordinate because of the way in which their work is performed, despite a written contract confirming the worker's state of being self-employed, the case law generally classifies the relationship of part-time chief executive officers on a fixed monthly wage and who work to fixed hours within the company structure, for example, as subordinate.

The position of a financial manager working under the instructions of an entrepreneur has been commonly regarded as subordinate, as was the position of an individual in whose job he acted as the alter ego of the entrepreneur, carrying out managerial tasks and making decisions,

when the entrepreneur was not present, on matters of company policy. A legal representative not subject to the instructions of a board of directors, a worker in charge of management planning and control whose salary was partially determined by company profits, and a bookkeeper who worked independently but consistently within the structure of a company have all been deemed to be self-employed.

The labour of company physicians was generally regarded as being subordinate on the basis that their role is included within the structure of the company and that they provide a service stemming from the organisational choices of the company. Recently this position has been regarded as one of self-employment, however, where there has been an absence not only of instructions from superiors, but also fixed working hours and the inclusion of the doctor as staff within the company structure. In such cases the only connection found was to be one of place, that is, the doctors were free to organise their work with their other professional activities without being subject to instructions or subordinate to superiors within the company hierarchy.

Likewise, while the work of loss adjusters was once seen as subordinate in that it forms a part of the standard activities of an insurance company, it has recently been classified as self-employment because of the absence of direct instructions and continuity.

Door-to-door sales has always been deemed to be subordinate, given that in individual cases salespersons were found to be subject to the instructions of their employer and the worker was elemental in the company's structure.

6. The general conclusion that can be drawn from this survey of the issues stemming from the forms of protection in place under the Italian legal system in the interests of those who, against remuneration, supply their labour to a third party is that the traditional conceptual tools of the labour lawyer are inadequate to deal with the profound changes that have taken place in the labour market.

The rigid choice between the two poles of external protection and self-protection based on the alternative between employment and self-employment would seem destined to a gradual demise.

In many respects, the guaranteeing of standards in the interests of those engaged in a contractual relationship the object of which is the exchange of labour for remuneration leaves out of consideration the actual way in which that labour is performed. Instead, it bases itself on the condition of contractual weakness of one party relative to the other.

As we have seen, because of its origins and the events of this century, Italian labour law has developed through successive layers that have been the upshot of changing balances of political power. The result has been an occasionally incoherent overlaying of rules aimed at protecting the typical interests of those engaged in subordinate labour (the regulation and limitation of managerial prerogative, duration of labour relationships, dismissal regulations, and so on) and rules that are more generally stem from the rationale of protecting the weaker party (the freedom of unionism, access to collective forms of self-protection, guarantees of a minimum of transparency and certainty in legal relationships, access to the social security system, and so on).

Because of its historic and structural peculiarities, subordinate labour is the most regulated subject of Italian legislation. As regards the extraneous points of this legislation, a potential solution-and a feasible path also as regards the establishing of international standards of protection-is the identification of the essential elements of economic dependency. Analysis from this perspective specifically pinpoints two typical features of the contractual weakness of any supplier (of labour, but also of services or semi-finished products) *vis-à-vis* the purchaser: the relationship may be the supplier's sole, or principal, source of income, this resulting in the concentration of risk on the supplier; and the continuity (interpreted as being a considerable period of time) of the relationship, this resulting in a reduction in the supplier's aptitude for finding other clients offering similar conditions arising from of his resulting lack of familiarity with the market and the difficulty in employing the particular professional specialisations acquired in an ongoing relationship with one particular client. In the presence of these two traits-the identification of which does not relate to the specific contractual relationship between the parties and would not appear to present any great problems at the practical level-the relationship could be subject to general provisions, specifically aimed at correcting the distorting effects of the client-business's dominant position.