European Working Group on Labour Law

Persons without a contract of employment performing work personally

Italian Report:

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Questions for National Reports

1. What is the definition in your country of the contract of employment? What are thus the main criteria for assuming a contract of employment in your country? How are these criteria currently interpreted in regulations and in case law? What is the main source of uncertainty in this area?

2. What are the main different forms of employment contract in your country? Present these in a table showing the main distinctive characteristics.

3. Which categories can be distinguished of persons who perform work personally, but who do not have a contract of employment in your country? Which legal criteria are used to distinguish these groups. Which numbers on the respective groups are currently available?

4. Do labour law Acts and/or courts assist workers who have difficulties in proving that they (actually) have a contract of employment in asserting their claim? For instance, does the Act provide for legal presumptions that there is a contract of employment? In which situations? Do courts reclassify a civil law contract into a contract of employment? Under what conditions and by using which criteria?

5. Are aspects of labour law extended to categories of workers who do not have a contract of employment? If so, which parts and under which conditions? Is such protection also available for self-employed persons without staff (you need to give brief information on the position of the self-employed only)?

6. Are aspects of social security law extended to categories of workers who do not have a contract of employment? If so, which parts and under which conditions?

7. Are there recent developments in your country in view of the protection of persons working without a contract of employment?

8. Do (legal) authors criticise the present protection of workers without a contract of employment? What is their line of arguments and do they provide for any solutions?

Table of contents:

1. Definition of contract of employment.

Work in the Italian System is caracterized by a *summa divisio* in two macro-areas: the employment and the self-employment relationships.

Therefore, the contract of employment in the Italian System is a contract that has to protect the weaker party of work relationship, the employee, in compliance with a fundamental principle of labour law, the so called: "*favor lavoratoris*".

The Italian Civil Code does not offer a definition of contract of employment, but of employee, who is protected in many different ways by the law.

Article 2094 identifies the employee in: "*a person who agrees to collaborate with an enterprise for a wage, by means of his/her intellectual or manual work, under the direction and the authority of entrepreneur".*

At the same time, the Civil Code identifies the other macro-area of work: the self-employment.

The legislative provision dealing with self-employment is the Article 2222 of the Civil Code, entitled work contract, which defines the self- employed worker as "*a person who agrees to carry out work or service for remuneration, mainly by means of his/her labour and without a relationship of subordination with the client".*

The conjunction between the Articles 2094 c.c. and 2014 c.c., second part, that lays down the duty of diligence and the obligation to respect the employer directives, i.e. "*the provisions, about the way to carry out the work, given by the entrepreneur and his collaborators",* underlines the main feature of the contract of employment, that is absent in self-employment: the juridical element of subordination.

The classification of work as an employment or self-employment relationship is a problematic issue, fundamental to identify the core of protective law to be applied in specific cases. In regard, the Cases - law had a big role in the assessment of the worker's qualification. The decisions of the Supreme Court of Cassation[1], established that the judge, in the classification of a contract of employment, must evaluate the existence of subordination, that is subjection of the employee to the directive, control and disciplinary powers of the employer.

Doctrine and cases law have, also, identified a series of features of employment contract, for example: collaboration, continuity, a definite working time, wage, the integration of the worker into productive and organisational structure of the entrepreneur. These further elements, nevertheless, can't be considered alone sufficient to classify a work as an employment contract or self-employment.

2. The main criteria to identify a contract of employment.

The Article 2094 c.c. recognizes the main elements of the employment contract in the follows: wage, collaboration, "eterodirezione" (i.e. the subjection to the directive power of the employer) and dependency.

1) The wage is a fixed and regular element in the employment relationship, whereas in the case of self-employment the remuneration is absolutely variable depending on the results achieved with the work.

[1] See, *ex pluribus,* Court of Cassation n. 379/1999

2) The Collaboration is a technical and organisational element of subordination, recognized in the cooperation of the employee with other employees and the employer. In the employment relationship the relevance of this element is very strong, being characterized by stable insertion of the employee in the workplace organization of the employer.

3) The "eterodirezione" is the more characterizing element of the employment relationship, identifying the employee's duty to comply the employer's directive power. It was a theorical construction created by Ludovico Barassi in XIX century and it is represented by technical and functional insertion of the employee into productive and organizational structure of the entrepreneur, who exercises directive power, through orders, control and disciplinary powers.

4) The element of dependency refers to the economic and social weakness of the employee that uses his/her labour force, because he/she has not means own to produce.

3. The current interpretation of the criteria that identify a contract of employment in the decisions of the courts and the main sources of uncertainty.

The Labour Courts decisions recognized the element of the "eterodirezione" as the distinctive criteria to identify the exact relationship of work, to whom applies the protective core of labour laws.

"Eterodirezione" is identified in the exercise of the directive power by employer, through specific orders that indicate the way to carry out the work, strictly related to the employer's power of control of the diligence of the employee in the execution of the activity and to disciplinary power, in case of non compliance.

It could be underlined that the "eterodirezione" has to be intended in an elastic way because, in recent years, the concept of employment is changed in relation to the born of new working activity that cannot be easily fitted into one of the two macro-categories employee or the self-employed workers.

Therefore, the changing of the notion of "eterodirezione", with regard to the new different ways of employment, obliged the legal authors to search further methods of classification of the employment relationship in the problematic cases.

In relation to these work's changes, the specialistics authors have proposed two alternative method to individuate and to classify the controversial cases in a contract of employment or self-employment: the typological and the subsumptive. The first method proposes a synthesis reasoning, giving a judgment based on approximations of real data to the legal type, without the necessity that all own elements of the type have to be present to classify a contract of employment. The second is an analytical reasoning that verifies the presence in the controversial work activity of all the elements of subordination, provided by the abstract legal provision.

Beyond this doctrinal contrast, only the labour courts have the competence to classify a contract in a relation of employment or of self-employment, bringing the controversial cases into a type ruled by the law.

The Constitutional Court, in the 1990s, called to identify the areas of uncertainity of the subordination, has censured another doctrinal tendency, inspired by some decisions of the labour courts that gave relevance only to the *"nomen iuris"* given by the parties in the contract, denying the juridical classification of a contract of employment to labour relationships that have the elements of subordination provided by the abstract legal provision.

In regard, the Decision No. 115/1994 established that the *"nomen iuris"*, adopted by parties in the contract, is not influential to classify a relationship as employment or self-employment. The Court

underlined that is important to assess real intentions of the parties as showed in the real performances of work.

Therefore, in the controversial cases the real relationship is clarified not according to the formal qualification given by the parties, but the labour courts had to investigate the real performances carried out by the worker and, consequently, on the powers exercised by the entrepreneur.

Other fundamental evaluation that the Courts in the controversial cases had to carry out, how underlined by another decision of the Constitutional Court, the No. 30/1996, is the condition of economic and social dependency of the employee, that is absent in the others relationships of work.

For this purpose, the Constitutional Court distinguishes between two concepts: the technical – functional subordination and the strictly subordination. The first is not crucial to classify a contract of employment, because it's an element also presents in others contracts, which involve the person of the worker. Differently, the strictly subordination is, instead, *"a concept more incisive and different for quality"*[2], and represents a condition of the employees of "double extraneity".

According to the Decision the "double extraneity" is realized when the employee works in a productive organization of others and is not the recipient of the achievement of the work, because the employee has not any power to manage the productive organization and does not expect any economic result from the activity of the entrepreneur

In case of uncertain classification of the relationship, the courts could investigate the "double extraneity" of the workers to reclassify the relationship in an employment contract.

4. The two macro-area of work in Italy: employment and self – employment.

As above indicated, in the Italian Legal System the employment represents the essential social referent, in relation to which the labor law is applied. On the other side, the legislation recognized only one other kind of work relationship, the self-employment.

The identification of a relationship of employment or self-employment, is a crucial issue, because only in the first case will be applied all the protective provisions of the labour law.

The Art. 2094 c.c., that identifies the employee, can be compared with the Art. 2222 c.c., which provides the definition of the prototype of self-employment, stating that there is a self-employment relationship when a worker *"agrees to carry out work or service for remuneration, mainly by means of his/her labour and without a relationship of subordination with the entrepreneur"*.

The two provisions, allow us to display the mainly differences (as show in the table 1) between the two main types of work contract, around which rotates the Italian legal system of labour law: the presence or absence of an employee relationship (subordination).

[2] Constitutional Court, 5th February 1996, n. 30

Table 1

Employment, Art. 2094 c.c. : **<u>Characteristics</u>** **A) Wage** **B) Collaboration** **C) Eterodirezione** **D) Dependency**	**Self –Employment, general famework, Art. 2222 c. c.:** **<u>Characteristics</u>** **A) Prevalence of personal work** **B) Absence of an employment relationship**		
Non-standard employment relationships: . Part-time contracts; . Apprenticeship contracts; . Job sharing; . Intermittent work; . Insertion contracts; . Temporary agency work (open-ended and fixed term).	**Agency agreement** **Art. 1742 c.c. :** A) Stable relationship: it is a contract which implies a temporary dependency of the agent to the entrepreneur; B) The agent must promote the conclusion of commercial contracts in an area with exclusivity constraint; C) Extension of the free special employees' trial procedure *ex* Art. 409 seq. c.p.c.	**Association in partecipation** **Art. 2549 c.c.:** A) The member participates in the profits of the company in relation to the work performed. B) The ownership of the company remains under the responsibility of the entrepreneur "associante"	**Coordinated self – employment** **Art. 61 Legislative decree No. 276/2003** A)The object of the work is the realization of one or more specific projects or work programs or phases of it. B) The collaboration is characterized by autonomy in the management of the project in light of the results. C) The activity had to be coordinated with the client. D) The remuneration is commensurate with the quality and quantity of work. E) Extension of the free special employees' trial procedure ex Art. 409 seq. c.p.c.

5. The different categories of self-employed workers in Italy and the legal criteria used to distinguish these groups.

The Article 2222 c.c. recognizes the definition of self-employed worker as a person who agrees to carry out work or service for remuneration, mainly by means of his / her labour, without a relationship of subordination with the entrepreneur.

According to the legal definition should be identified the key elements of self-employment such as:

A) The object of the contract is realized by self-employed mainly with his own activity.

B) The autonomy of the performances that are not subjected to decisional power of the entrepreneur.

The self-employed performances, therefore, will take place in an autonomous way, without constraint of subordination that characterizes the employment relationship pursuant to the Art. 2094 c.c.

Under Italian system are also recognized other special cases of self-employment that need further clarifications by the law with specific rules:

A) The Commercial Agency Agreement; B) The Association in Partecipation; C) The Coordinated Self-Employment.

A) Commercial Agency Agreement

In the commercial agency agreement, *ex* Art. 1742 *et* seq. c.c., the agent permanently undertakes to promote, on behalf of the other party, against remuneration, the execution of commercial agreements in a specific area.

It implies, therefore, a temporary dependency of the agent against the entrepreneur, that involves special rights and obligations of the agent, recognized in the specific rules established by the Artt. 1742 *et* seq. c.c.

The agent, consequently, has the follows obligations: - he must perform the work according to the instructions given by the entrepreneur; - he must carry out his work with special diligence.

Despite these peculiarities, in relation to the general self-employment contract, *ex* Art. 2222 c.c., the agent is, however, framed as a self-employed worker, performing his work autonomously, without any management power of the entrepreneur.

The entrepreneur has only a special disciplinary power, in case of breach of contract by the agent, could withdraw at will the agreement.

Another specificity of the Commercial agency agreement is the stable work of the agent in a specific commercial area, that involves the sole agency of the agent in the assigned area and for the same branch of activity. On the other hand, it implies that the agent can not work in the same area and for the same commercial branch, for the other competitor companies.

To the agent is, moreover, recognized a right to compensation, according to the provisions of the Art. No. 1751 c.c. and the provisions of the special economical collective agreement, in case of withdraw of the entrepreneur, without a just cause.

B) Association in partecipation

In the association in participation, *ex* Art. 2549 c.c., the entrepreneur shares with the Associated worker a part of the enterprises profits or of one or more business, in relation with the specific work performed by the associated.

The work performances of the associated do not implie a contract of employment relationship with the entrepreneur in the absence of the typical elements of the employment contract. The associated participate, therefore, only *pro-quota* work to the profits of the bussines.

The absence of an extraneity from the business results, represents the element according whom it is possible to distinguish the position of the associated from the employees.

The association in partecipation agreement is, furthermore, interpreted by the doctrine as a contract of exchange, essentially aleatory for the “associated”, that is in a condition of substantial dependency against the entrepreneur. This condition, often, creates uncertainity when it is necessary to distinguish this relationship from the employment relationship.

The decisions of the Labour Courts established that it’s necessary to focus on the distinctive features of the contract to reclassify the bogus cases of association in participation in a contract of employment, being incompatible with this kind of relationship the exercize of any managerial power of the entrepreneur to the associated, that consequently participates to the business risks of the entrepreneur, with his work.

Article 86 of Legislative Decree No. 276/2003, underlines, moreover, that in case of “association in partecipation” made without the real participation to the profits of the company and without

adequate remuneration of the worker, must be recognized to the worker the insurance, economic and legal framework provided by the law and the collective agreements to the comparable employee, that work in the corresponding position and in the same sector.

C) Coordinated self-empoyment

Last case to underline is the coordinated self-employment, regulated by Articles 61 et seq. of the Legislative Decree No. 276/2003, that identifie the essential features of continuous and coordinated collaboration, referred to in the Art. 409 c.p.c. and limits the use of CoCoCo.

As a result of the regulations introduced by the Legislative Decree No. 276/2003, in fact, the ongoing continuative collaborations, mainly personal and without subordinate *status*, as per article 409, No. 3, of the Italian Code of Civil Procedure, must be reclassified in one or more specific projects, works or steps of work, that are determined by the entrepreneur and autonomously managed by the collaborator according to the result and with the coordination of the entrepreneur, independently of the working time.

The coordinated self-employment relationship should, therefore, be traced to one or more projects, or work programs or phases of them, which will be determined by the entrepreneur in the contract. The worker will manage the individual project (or projects) on the basis of the result, in accordance with the coordination of the entrepreneur.

The work, consequently, is considered performed in the view of the realization of a specific project; that implies that the relationship must be considered only a fixed-term work in wich the realization of the project, if it is not provided a term of expiring in the contract, automatically resolve the self-employment relation.

If in the contract, therefore, is not indicated a projet, the relation will be considered automatically an employment relationship for an indefinite period.

The coordinated self-employed has the right to a remuneration proportionate to the quality and quantity of work (ex Art. No. 63, Legislative Decree no. 276/2003). In such provision we can find a strictly relation with the Art. No. 36 of the Constitution, being recognized one of the two parameter of the wage with the exclusion of the sufficiency of the wage applicable only to the employment relationship.

The exclusion of the parameter of the sufficiency of the remuneration involves that, according to the par. 2 of the Art. No. 63 of the Legislative Decree No. 276/2003, another parameter could be individuated in the normal remuneration payed to the comparable self-employed workers

The protections afforded for the coordinated self-employed, although minimal and not comparable to those applied to the employee, are not totally absent, as it happens is in the case of the self-employment *tout court*, because in the Italian legal system, it is recognized as a subtype of the self-employment.

6. Statistics about self-employed workers.

The statistics, conducted by the CNEL, but stopped at the year 2006, show the strong recurs to self-employment in the Italian Labour market (See Table 2).

Table 2

Labour Force division in Italy

(absolute values in thousands).

Year	Indipendent	Entrepreneur	Professionals	Associate, Individual workers and Cooperative Associate	Familiary workers	Self-employed and Coordinated self-employed	Employees	Total
Men								
2004	4.336	320	823	2.744	241	208	9.285	13.622
2005	4.212	310	807	2.734	171	190	9.526	13.738
2006	4.222	279	796	2.759	177	212	9.717	13.939
Women								
2004	1.951	82	301	954	325	289	6.832	8.783
2005	1.817	73	305	923	250	267	7.008	8.825
2006	1.851	67	311	940	248	285	7.198	9.049
Men and Women								
2004	6.287	402	1.124	3.698	566	497	16.117	22.404
2005	6.029	383	1.112	3.656	421	457	16.534	22.563
2006	6.073	346	1.107	3.699	425	497	16.915	22.988

Source: ISTAT, Labour Force Survey Continued CNEL and elaborations on ISTAT data.

7. The main instruments used by courts and labour law to assist workers who have difficulties to prove that they have a contract of employment.

The employment relationship is characterized by a very strong system of protections of the employees, in which can be find many imperative and unavailable rules.

It is not relevant, according to the decisions of the Courts, the *nomen iuris* of the contract adopted by parties to identify an employment relationship, being necessary the evaluation of the real developments of the works performances, and the developments of the employer's powers. It implies that in case of conflict between formal and factual data in relation to the work performances, the courts must give preference to the latters in the judicial classification of employment.

In the controversial cases, in case of claim to the labour courts, legal presumptions are excluded and the employee has the burden to prove the facts corresponding to pleaded case, i.e. the subjection to the employer's directive, control and disciplinary powers.

8. The legal presumptions provided by law for the coordinated self – employed.

The absence of a legal presumptions of subordination involves that, according to the Article No. 2697, par. 1st, of Italian Civil Code: *"who wants to enforce a right in court has to prove the facts which constitute the presupposition of the claim"*.

This provision has to be read in connection with Article No. 414 of the Italian Procedural Civil Code, that establishes the essencial elements of the employee's introductory act in labour courts, indicating as a constitutive element of the claim,*"the specification of the evidence about which the claimant wants to rely, and in particular the documents that he / she wants to introduce in the case"*.

Only for the coordinated self-employment, as regulated by the Legislative Decree No. 276/2003, there is a legal presumption, that imposes the reclassification of the contract into an employment relationship, if the parties don't indicate in the contract the project, works or steps of work.

In such meaning, the Par. 1st of the Art. 69, Legislative Decree No. 276/2003, provides, therefore, that: *"the contracts signed without indication of a specific project, work, program or phase of it in accordance with the Art. 61 par. 1st have to be reclassify in an employment contract from the date of establishment of the relationship"*.

9. The judicial reclassification into a contract of employment.

The Italian Civil Code does not contain specific formality for the employment contract, as for other private law's contracts. Therefore, the employment contract has a free form, in the respect of the general rules of the civil code. The will of the contractual parties, as expressed in the real performances of work and in the entrepreneur's powers, is the most important element.

Only the labour courts have the power to reclassify a contract from self-employment into an employment relationship.

It is not important, as underlined above, the *nomen iuris* adopted by the parties, but it's fundamental to understand how the relationship of employment is concretely developed and the development of the directive, control and disciplinary employer's powers (so called non-availability of the contractual type).

If the worker claims in court the application of the discipline of employment contract and its protective core, he has to prove: *"the subsistence of the requirement of employment, ex Art. 2094 of Civil Code, i.e. the subjection to managerial authority and to hierarchical control of the employer, that the labour Courts have constantly interpreted as the key to the configurability of an employment relationship, being irrelevant other circumstantial indices, such as, for example, hours of work"*[3].

The subjection of the worker to the employer's directive and hierarchical powers, that identifies the technical and functional subordination, therefore represents a distinctive feature for the exact classification of the employment relationship.

When the employer's powers are not fully proved the worker can prove other elements so called "external", such as the inclusion in the employer's organization, the collaboration and the continuity

[3] See, *ex multis*, Cassazione civile, sez. lav., 27 febbraio 2007, n. 4500.

of work. These elements by themselves do not give full proof of the subordination, but as *semiplena probatio* of employer's powers, take decisive relevance, in the reclassification of the contract in an employment relationship, like index of subordination.

10. The aspects of labour, trade union and social security law extended to some categories self-employed

In the field of the protections recognized by the law for the self-employed workers, the analysis of the legal provision afforded to the coordinated self-employment and to the commercial agency agreement must considered very important, being possible a noticeable extension of some typical forms of protections of the contract of employment, because of the special position of dependency of this self-employed workers.

The framework of the protections afforded to the coordinated self-employed has been delineated by the legislator, taking into account the protective provisions of the contract of employment.

The purpose of the legislator is to guarantee to the coordinated self-employed workers a kind of suitable protection intervening on different levels: trade union rights, disease, pregnancy and health and safety protection, free trial procedure, and the loss of the job (on which see par. 11).

First of all it is important to indicate that the Act No.335/1995 has introduced the separate management of the INPS, extending the pensions guarantees reduced to the CoCoCo, and now to the coordinated self – employed. The amount of the contribution in charge of the entrepreneur was initially individuated in the 15% of the workers remuneration, but in the recent years the amount was constantly increased, approaching the parameters of the employment relationship.

In case of disease or accident, the coordinated self-employment relationship is not extinguished, but it remains suspended (as in the contract of employment) and the worker has the right to an indemnity. Actually, the economic protection is recognized through a daily indemnity that is payed by the INPS within the maximum limit of days equal to 1/6 of the work relationship's duration and however not less then twenty days in the solar year. The suspension of the work's contract does not involve a prorogation of the contract, unless the parties have not expressly previewed it. The relationship is resolved if the suspension is extended for a period longer than 1/6 of the contract's duration, or 30 days for contracts of determinable duration.

In case of pregnancy, instead, besides the right to the suspension, the duration of the relationship is extended for the minimal period of 180 days, unless more favorable prevision of the individual contract. The worker has the right to an indemnity payed by the INPS for 2 months before and 3 months after the birth. Beside such protection, parental leaves are also recognized, for a maximum period of three months, and have to be asked within the first year of life of the child. The indemnity is payed at the 30% of the remuneration of the worker.

As regard to the protection of the health and safety at work, the Legislative Decree No. 81/2008 has extended to the coordinated self-employed worker all the protections afforded to the employees, on condition that the working performances are carried out in the entrepreneur's workplace. The job performance must be carried out in the respect of the protection of the health and safety of the worker.

To the coordinated self - employed workers are, also, recognized some trade-union rights according to the collective agreements that interest such workers. Therefore, the collective bargaining could provide the right to participate to appropriate meetings and to elect own trade-union representatives.

Under the trial protection, to the coordinated self - employed workers are extended the free procedure afforded for the employees, ex Art. 409 seq. c.p.c. It implies that the coordinated self -

employed has a right to a judicial procedure inspired to the following principles: orality, concentration, immediacy and gratuity. The same trial protection is, also, guaranteed to the commercial agents.

The commercial agent has, furthermore, *ex* Art. No. 1751 c.c., the right to the payment of a compensation in case of resolution of the relationship without just cause. At the end of the relationship, indeed, the entrepreneur must pay an indemnity to the agent in the following cases:

A) when the agent has finded new clients for the entrepreneur;

B) when the agent has developed with his work the pre-existing business of the entrepreneur.

The indemnity, ex Art. 1751 c.c., represents, therefore, the compensation of the commercial starter that the agent has guaranteed with his work to the entrepreneur.

11. Recent Italian developments of the protections for persons who work without a contract of employment: una tantum for the coordinated self – employed.

The recent protective perspectives, afforded by the italian legislator to the self-employed workers, have been concentrated on the category of the coordinated self-employed and are aimed to protect situations of economic difficulties, due to the loss of the job.

For these reasons the Act No. 102/2009 has established, experimentally for the years 2009-2011, the payment of a lump-sum *una tantum* to the coordinated self-employed workers, in consideration of the current economic phase of crisis and the consequent loss of many works places.

The lump-sum *una tantum* was, initially, equal to the 10% (now the 30%) of the worker's income of the year before and is payed at the follows conditions:

A) if the coordinated self-employed worker is enrolled exclusively to the separated administration of the INPS;

B) The worker has carried out his work for only one entrepreneur;

C) the worker has perceived, in the year before the end of job, a gross income included among 5,000 € and 13,819 €;

D) the coordinated self-employed had not an employment relationship from at least two months.

Like any other protective treatments of the income, afforded by the legislation, also the lump sum *una tantum* is subjected to the presentation, by the same worker, of a declaration of immediate availability to another job or to a professional retraining. In case of refusal, the worker loses any social security rights, except the consideration already perceived.

The 2010 Financial Act has widened the requirements and the measure for the protection of the income of the coordinated self - employed workers, recognizing the lump sum *una tantum* in the measure of the 30% of the income perceived in year 2009, with a maximal of reference of the gross income equal to 20.000 €.

12. The position of the licterature about the actual protection of self-employed workers.

Many italian authors had expressed alternative position to the binary classification of employment and self – employment contracts, aimed to create a new kind of work relation in halfway between the two types of relationships *(tertium genus)*.

For these authors, therefore, work performances should be articulated in three different types of relationships:

A) The relationship of self-employment, in which the self-employed worker performs his activity autonomously;

B) The employment relationship, under which to the employees are afforded all the protective labour law's provisions;

C) The "para-subordinated" or "coordinated" relationship, in which there is a balanced allocation of obligations between coordinated self-employed and entrepreneur.

These theories suggest the establishment by law of a third type of contract of work called "coordinated", in relation to the needs of the company, under which is possible to subsume some differents contractual relationships, which currently fall under the discipline of subordination, typical or atypical, or under the discipline of self-employment.

The critical of this thesis shows that a similar type could also have a negative effect, opening different areas of uncertain qualification.

Another answer to the problems generated by the phenomenon of parasubordination/coordination is provided by those who propose the extension of the case of subordination.

They argue that the redefinition and expansion of the notion of employment, rearranging it to the economical and social changes, could reduce the pathological phenomenon of "bogus self-employment", promoting "real autonomy".

In Italy, the debate on an extension of the concept of subordination is structured around two currents.

The first, headed by Professor Roccella[4], proposes to classify the worker as a "dependent" employee, going beyond the traditional approach that identifies the key element of this type of relationship in the "eterodirezione".

A second, headed by Professor Alleva[5], proposes that the extension of the concept of subordination is done in an indirect way, through the creation of a new contract of employment, called "contract of employment on behalf of others", that individuates in a unified way the work for others.

Therefore, according to this approach, the coordinated self-employment would be attracted into the legal rules of the new type of contract of employment, enjoying a special legal regime, under which would not only recognized the general rights of the employee, including the warranties indicated by the Art. No. 36 of the Constitution, but also the advantages of autonomy, typical of the self-employment.

A similar breakdown of the employment relationship has been challenged by those who consider that the same would prevent the effective functioning of essential criteria of the labour law, leading to almost total assimilation of the economically dependency to employment, with serious repercussions on the level of real protection of the employees.

Moving from positions critical towards the methodological approaches just discussed, Perulli[6], however, offered another perspective, the peculiarity of which is to identify a minimum core of social rights applicable to all work's relationships.

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[4] See M. Roccella, *Manuale di Diritto del Lavoro*, Giappichelli eds., Torino, 2010.

[5] See Alleva P. (2006), *Nuove norme per il superamento del precariato e per la dignità del lavoro*, ‹‹Quale Stato ››, XI, 4.

A minimum level of protection, then, regardless the qualification of the relationship in terms of autonomy or subordination.

Going beyond the strict binary logic that articulates the types of labour contract in our legal system, such a prospect guarantees the expectation of gradual protections for all the workers; the protection, starting from a minimum common to all, is articulated according to the duration of the contract.

According to this approach, therefore, the protection would start from a minimum of general principles, universally applicable to every contract of work, such as the rights to freedom, dignity, privacy, health and safety, freedom of association etc.; this minimum set of guarantees should be followed, subsequently, by rules with more specific profiles.

[6] See A. Perulli, *Lavoro autonomo e dipendenza economica*, in Rivista Giuridica del Lavoro, No. 2/2003.

Further readings

1. Accornero A. (2006), San Precario lavora per noi, Milano, Rizzoli.
2. Alleva P. (2006), Nuove norme per il superamento del precariato e per la dignità del lavoro, ‹‹Quale Stato ››, XI, 4.
3. Altieri G. (2006), Dalle collaborazioni coordinate e continuative al lavoro a progetto: cosa cambia nel mercato del lavoro italiano, in Pallini M. (a cura di), Il "lavoro a progetto" in Italia e in Europa, Bologna, il Mulino.
4. Bavaro V. (2007), Lavoro a progetto e call center: l'inversione di tendenza concertata nell'accordo collettivo di gruppo Almaviva, ‹‹ http//www.cgil.giuridico.it ››
5. Bologna S. (2006), Dobbiamo rallegrarci se i lavoratori autonomi spariscono?, ‹‹ Giornale di diritto del lavoro e di relazioni industriali ››, XXVIII,.
6. Carinci F. (2007), Molto clamore per poco: all'indomani del d.lgs. n. 276/2003, ‹‹ il Lavoro nella giurisprudenza ››, XV, 9.
7. Carinci M.T. (2007), Il dialogo fra Pino Santoro Passatelli e la dottrina. Dalla parasubordinazione al lavoro economicamente dipendente: la rivincita di un'idea, ‹‹Argomenti di diritto del lavoro ››, XIII, 4-5.
8. De Luca Tamajo R., Flammia R., Persiani M. (1996), La crisi della nozione di subordinazione e della sua idoneità selettiva dei trattamenti garantistici. Prime proposte per un nuovo approccio sistematico in una prospettiva di valorizzazione di un tertium genus:il lavoro coordinato, ‹‹ Lavoro Informazione ››, XV, 15-16.
9. De Luca Tamajo R. (1997), Per una revisione delle categorie qualificatorie del diritto del lavoro: l'emersione del "lavoro coordinato", ‹‹ Argomenti di diritto del lavoro ››, III, 5.
10. De Luca Tamajo R. (2005), Profili di rilevanza del potere direttivo del datore di lavoro, ‹‹Argomenti di diritto del lavoro ››, XI, 2.
11. Gallino L. (2007b), Il lavoro non è una merce, Bari, Laterza.
12. Ghera E. (2003), La subordinazione e i rapporti atipici nel diritto italiano, in Aa. Vv., Du travail salarié au travail indépendent: permanences et mutations, Bari, Cacucci.
13. Ghera E. (2006), Subordinazione, statuto protettivo e qualificazione del rapporto di lavoro, ‹‹ Giornale di diritto del lavoro e di relazioni industriali ››, XXVIII, 1.
14. Pallini M. (2006), Il lavoro al progetto: ritorno al ... futuro?, in Id. (a cura di), Il "lavoro a progetto" in Italia e in Europa, Bologna, il Mulino.
15. Persiani M. (2005), Individuazione delle nuove tipologie tra subordinazione ed autonomia, ‹‹Argomenti di diritto del lavoro ››, XI, 1.
16. Perulli A. (2003), Lavoro autonomo e dipendenza economica, oggi, ‹‹ Rivista giuridica del lavoro ››, LIV, 2, p. I.
17. Perulli A. (2006a), Lavori atipici e parasubordinazione tra diritto europeo e situazione italiana, ‹‹ Rivista giuridica del lavoro ››, LVII, 4, p. I.

18. Perulli A. (2006b) in Perulli A., Santoro Passarelli G., Opinioni sul lavoro a progetto, ‹‹ Giornale di diritto del lavoro e di relazioni industriali››, XXVIII, 2.

19. Proia G. (2006), Verso uno Statuto dei lavori?, ‹‹ Argomenti di diritto del lavoro ››, XII.

20. Roccella M. (2000), Contrattazione collettiva, azione sindacale, problemi di regolazione del mercato del lavoro, ‹‹ Lavoro e diritto ››, XIV, 3.

21. Roccella M. (2011), Manuale di diritto del lavoro, Torino, Giappichelli.

22. Roccella M. (2006a), Lavori flessibili o lavori precari?, in Mariucci L. (a cura di), Dopo la flessibilità, cosa?, Bologna, il Mulino.

23. Roccella M. (2006b), Call center: elogio degli ispettori del lavoro, ‹‹Eguaglianza & Libertà ››, 21 settembre.

24. Roccella M. (2007), Spigolature in tema di subordinazione. Lo strano caso del signor B., ‹‹ Rivista giuridica del lavoro ››, LVIII, 2, p. II.

25. Santoro Passarelli G. (2004), Dal contratto d'opera al lavoro autonomo economicamente dipendente, attraverso il lavoro a progetto, ‹‹Rivista italiana di diritto del lavoro››, XXIII.

26. Speziale V. (2007), Il lavoro subordinato tra rapporti speciali, contratti "atipici" e possibili riforme, ‹‹WP C.S.D.L.E. "Massimo D'Antona"›› .IT-51.