EUROPEAN WORKING GROUP ON LABOUR LAW

"PERSONS WITHOUT A CONTRACT OF EMPLOYMENT PERFORMING WORK PERSONALLY"

SPAINISH REPORT

UNIVERSITY OF CASTILLA -LA MANCHA

ANA CARBONELL

SONIA RACIONERO

ALEX PAZOS

OSCAR CONTRERAS

PERSONS WITHOUT A CONTRACT OF EMPLOYMENT PERFORMING WORK PERSONALLY

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?

1.1 Employment contract definition in Spain.

Contract of employment is not defined explicitly in the Spanish legal system as a closed concept, but the general reference offered by labour law starts with the employment relationship, which is characterised as a contract of employment. So according to the definition given by article 1.1 of labour law in Spain is the “Worker’s Statute”, contract of employment is an "agreement whereby a person called employee provides their services for a wage within the organization, dependant and subordinate to a company or person called employer”.

Originally, this exchange between employee and employer was articulated under the Civil Code, especially through the contract of services; however contract of employment has become its own entity since his full incorporation in Spanish legislation with the *Contracts of Employment Act* of 1931. Nowadays it is subject to regulation in Spanish legal system as a contract that is completed with the consent of the parties, bilateral, onerous, and synallagmatic.

Labour law in Spain offers a clear distinction between employment relationship under a contract of employment and other worker relationships, which are explicitly excluded from the scope of the Act. The following are not considered as an employment relationship under a contract of employment:

- Civil servants.
- Mandatory personal provision.

- Directors or members in charge of companies.
- Work done by way of friendship, kindness and good neighbourhood.
- Family works, unless there is evidence that a labour relationship exists.
- Commercial intermediaries in commercial operations.
- Self-employed carriers with an administrative permission.
- Company owners or self-employed people.

1.2 Main criteria for assuming a contract of employment.

Labour law in Spain starts with the employment relationship, which is characterised as a contract of employment. The contract of employment adopts the criterion of dependence and subordination of the employee to the employer's command or control as to the time, place and manner in which the work is to be done as it is essential defining element.

Therefore, dependence and subordination are the essential elements to identify the presence of employment contract in a labour relationship. But not only have that, in Spanish labour law the existence of an employment contract will depend on the contractual relationship between the parties. So it will exist always that it is characterized by the following features called notes of employment relationship:

a) Personal and voluntary activity. The employee status can only be attributed to a person, never a legal entity. The provision of services is personal and direct, *intuitu personae*, with the consent of the person and unable to delegate it to someone else.

b) Performance of work on another's account: This aspect is relevant to differentiating between being or not an employee in Spain. It involves the responsibility of the employee to the result of running the business. Performance of work on another's account can be seen from two perspectives: work output or risks. First one involves the transmission to employer of goods or services for later use or sale in the market. Second one involves taking part in economic risks exclusively by employer.

c) Dependence: This means the employee develops his activity within the organization and management of the employer. Spanish labour law considers as evidence of the existence of dependence on employment, among others, to follow instructions and orders from the employer, regular attendance to the workplace, existence of a work schedule, reliance on a stable workplace or continuous work attendance.

d) Paid employment: Labour relationship under a contract of employment is done with the purpose of obtaining an economic return that is called salary, which is guaranteed, regardless of profits or losses of the employer. The salary is usually characterized by its periodicity and uniformity in its value.

1.3 Spanish labour law and case law interpretation: main legal classification criteria of employment contract.

In Spain there are three main legal mechanisms by which employment relationships under a contract of employment are determined:

a) The legal definition of employee contained in Article 1.1 of Spanish labour law -*Worker's Statute*- taking into account the notes or characteristics of employment relationship under employment contract.

b) Special rules for clarification and interpretation the boundaries of employment contract in each circumstance or situation. These are special industrial relations (Art. 2 ET) and excluded work. (Art. 1.3. ET).

c) Further action of case law including those coming from the Spanish Supreme Court, from Doctrine of the Constitutional Court and the Court of Justice of the European Communities. Unequivocally, the contribution of case law is vital to provide causal constraint patterns that certain contractual labour relationships hold, due to its special characteristics, which may be susceptible to different interpretations by the parties that lead to voluntary or involuntary account of an employment relationship, is not under an employment contract.

In the legal status of labour relations in Spain, another factor that influences the effective rating is called presumption of employment. Under this provision, contained in Article 8.1 of ET, "*it is presumed to exist (employment contract) between everyone who provides a service of work on another's account within the organization and management of another company or person and the receiving exchange for remuneration from the employer*". Regardless in addition to declarations by the parties in the employment contract as the legal nature of the contractual relationship will be determined by circumstantial reality of the activity developed. However, a rebuttable presumption «*iuris tantum*» of which burden of proof rests on the employer demonstrate non-labour contractual relationship.

1.4 Main source of uncertainty in this area.

In Spanish labour legislation the main source of uncertainty in the legal classification of labour relation under an employment contract is, on one hand the indetermination of the criteria or notes that characterize employment contract: voluntariness, subordination, dependence and remuneration. There are difficulties in determining some of these notes, especially in the characterization of dependence or subordination, which can lead to misinterpretation of the contractual employment relationship.

On the other hand, contractual simulation assumptions are as well a source of uncertainty within the labour relationship system in Spain, usually from the cover of an employment relationship whose criteria is to presume the existence of an employment contract which is, however camouflaged through a contractual relationship under civil or commercial law.

We have to highlight that the criteria of *dependence* or *subordination* is the most significant defining element of the existence of an employment relationship under a contract of employment. However, at same time this criteria presents some doubts of interpretation both in its legal aspect as in its economic aspect.

Dependence in legal sense refers to the way of performing the job by submission to the orders and instructions of another person. Article 1.1 E.T. defines it consider that the employee services will be held "within the organization and management of another

person." Nevertheless it is not an absolute employee's subordination because the nature of certain employment relationships currently holds a higher degree of flexibility. It means that *legal dependence* in terms of labour relationship under a contract of employment has been understood in Spain as a generic subjection of employee to the orders and instructions of the employer, as well as its disciplinary system.

Although in a first moment, the legal subordination or dependence was understood by Spanish courts as employee submission to strict orders from the employer, over time and due to the existence of new forms of flexibility at work it is has been interpreted more as a simple insertion of the employee within the "governing and organization circle of the employer."

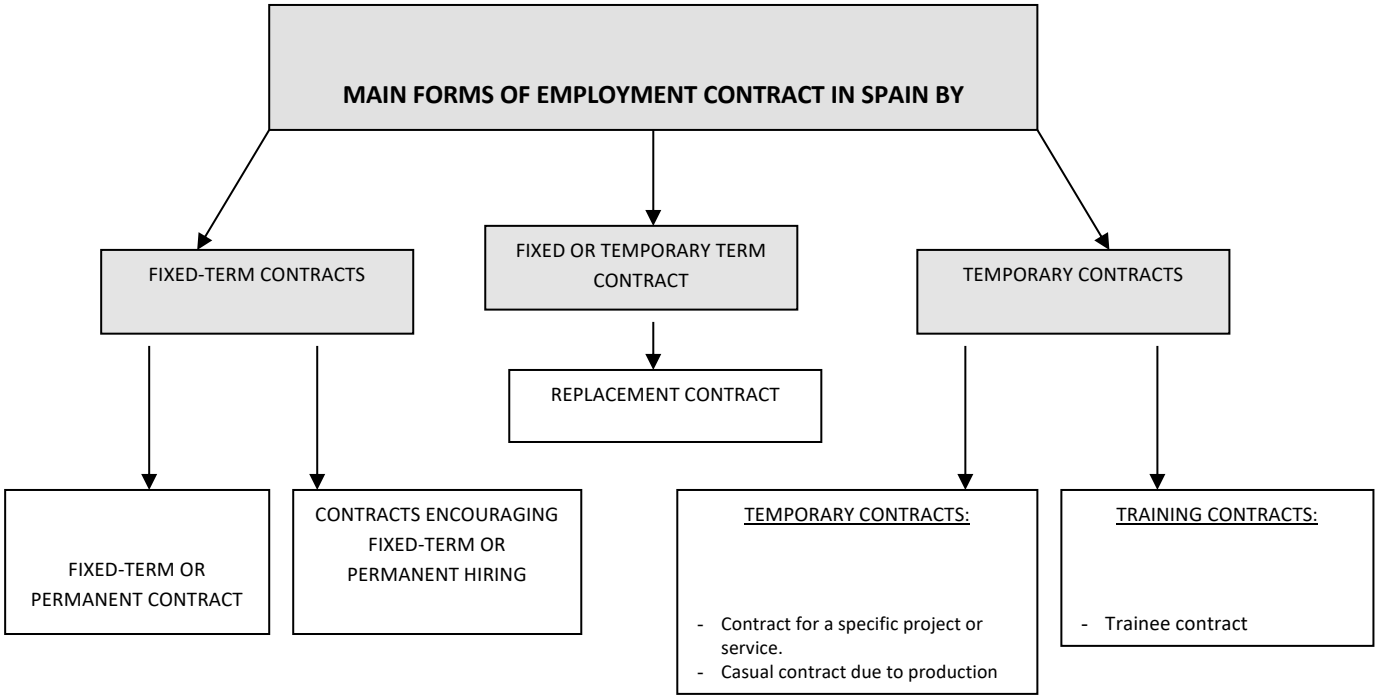
Case law from Spanish courts deemed sufficient to consider the existence of dependence at work when some of these circumstances exist in the way of performing the work: joining the circle of the employer organization, regular and continued attendance to workplace, taking orders about the place and manner of performing work tasks, to be subject to a fixed schedule, not taking risks, the continued use of workplace, premises, among others.

On the other hand, the *economic dependence*, which has been manifested primarily by the doctrine, and subsequently coined by the Spanish legislator in case of dependent self-employed workers in the Law 20/2007 of July 11 (Statute of self-employed work), refers to being faced with an employment relationship under a contract of employment, the employer becomes the main source of income to the employees, because they get their revenue exclusively from the income earned by the provision of work. Therefore this seems to bear out that the employee is going to depend economically on the employer in terms of earnings a living.

2. Main different forms of employment contract in Spain.

According to the duration of employment, employment contracts may be made for a permanent term or for a specific duration, these are temporary contracts which are therefore generally "circumstance-driven", except in certain specific cases, there must be circumstances justifying such temporary hiring. If the type of temporary contract does not conform to a cause established by law the contract is deemed to be permanent.

2.1. Types of contract according duration.



2.2 Main types of contract according form.

a) Fixed-term contracts.

TYPE	TARGET	FORM	COMPENSATION
Fixed-term contract	People over 16 years.	Written or verbal	Depending on cause of dismissal. 45 o 20 Days.
Contract encouraging fixed-term or permanent hiring	- Young people aged 16 through 30. - Unemployed women, if hired for Jobs or occupations in industries with a lower proportion of female employees. - The unemployed aged over 145. - Unemployed employees who have been registered as job seekers for at least six months. - The disabled. - Employees who, on the date of signing a new contract to promote hiring for an indefinite period, were employed by the same company under a temporary contract, including training contract arranged before December 31, 2007	Written or verbal	33 days of salary per year worked. Maximum 24 months.

b) Temporary contracts

TYPE	CAUSE	TERM	REQUIREMNT	OBSERVATIONS	COMPENSATION
Contract for a specific Project or service	Performance of a specific independent and self-contained service or project within the company's activity.	At first uncertain. It will depend on the time of performance the specific service or project by employee was hired.	It should mention the work and project clearly and precisely	Employees who have been hired for longer than 24 months within a 30-month period, on a continuous or interrupted basis, for the same position at the same company by means of two or more temporary contracts, under the same or different forms of temporary contracts will become permanent employees.	Its termination entitles the employee to receive severance pay equal to 8 days' salary per year worked. This compensation will be 12 days after 2015.
Casual Contract due to production overload or backload	To meet market needs production overload or backlog.	Maximum of 6 months within a period of 12 months (this period may be extended by an industry-wide collective labour agreement for 18 months.	It should mention the work and project clearly and precisely	Employees who have been hired for longer than 24 months within a 30-month period, on a continuous or interrupted basis, for the same position at the same company by means of two or more temporary contracts, under the same or different forms of temporary contracts will become permanent employees.	Its termination entitles the employee to receive severance pay equal to 8 days' salary per year worked. This compensation will be 12 days after 2015.
Contract to substitute employees entitled to return to their job	To substitute employees entitled to return to their job by provision of law, of a collective labour agreement or an individual contract.	From the beginning of the period until the return of the replaced employee or expiry of the term established for the substitution.	One of the formalities is that it should contemplate the name of the replaced employee and the cause for his substitution.	May be extended tacitly when a maximum duration has been established having been set for a shorter period.	No compensation.

c) Training contracts.

TYPE	TARGET	TERM	OBSERVATIONS	INCENTIVES
Trainee contract	Made with people from 16 to 21 of age who do not have the qualifications necessary to obtain a work experience contract The main aim is acquire the necessary theoretical and practical training necessary for a certain post of work	Minimum of 6 months and maximum of 2 years. It may be extended up to 3 years under a collective labour agreement).	The employer undertakes to provide theoretical training that will never be less than 15% of the maximum working hours	There is some bonus to employer contributions to Social Security System.
Work experience contract	Contracts with persons with a university degree or high or middle-level professional qualifications or an officially recognized equivalent degree qualifying them to perform their profession. Not more than 4 years may elapse from the completion of the respective studies.	Minimum of 6 months and maximum of 2 years. It may be extended twice, but always subject to the two-year limit.	The minimum wage to be paid will be between 60% and 75% of the wage established in the collective labour agreement for an employee holding the same or an equivalent post (first and second year of the contract).	Conversion of this contract to fixed-term contract could have some bonuses to employer contributions to Social Security System.

3 Which categories can be distinguished of persons who perform work personally, but who do not have a contract of employment in your country?

There are two main categories: self-employed persons and "self employed person economically dependent"

3.1 Which legal criteria are used to distinguish these groups?

Law 20/2007 of Self-employed Person's Statute establish the criteria to distinguish between "employees", "autonomous workers or self-employed person" and the so called "self-employed person economically dependent". Articles 1 and 2 Law 20/2007 are providing the legal criteria for self-employed person concept:

1) Article 1: Law 20/2007 will be applied to:
    - Persons who perform an economic or professional activity (for lucrative purposes) with the following characteristic: habitual, personal and directly done by them, independently and outside the scope of direction and organization of another person. These persons can have –or not- employees.
    - The relatives of the people defined in the previous paragraph, which are not considered to be employees according to article 1.3.e) of Workers´ Statute.

2) Article 2 Law 20/2007 excludes from its scope:
    - All kind of work or professional activity which are not meeting article 1 Law 20/2007 requirements, and specifically employment relationship included in the scope of article 1,1 Worker's Statute and special industrial relations regulated in article 2 Worker's Statute.

3) Article 11 Law 20/2007 regulates "self-employed person economically dependent"
    - Persons who perform an economic or professional activity (for lucrative purposes) with the following characteristic: habitual, personal and

directly done by them.

- The “self-employed person economically dependent” is mainly working for an individual or legal entity, so called “client”. These persons have an economical dependence from the client due to fact that they are receiving from him at least 75% of their total income.
- The “self-employed persons economically dependent” should meet in addition some other conditions such as not having employees working for them, not to subcontract part or all of the activity with other companies or autonomous workers or to develop the professional activity with their own organizational criteria and assuming all the risks of the activity.

3.2 Which numbers on the respective groups are currently available?

1. Worker on another's account or employee (Regulated by Real 1/1995 Decree Statute of the Workers).

2. Independent worker (Regulated in Law 20/2007 Statute of the Independent Work).

3. Independent worker economically employee (Regulated in Law 20/2007 Statute of the Independent Work).

4. False independent (Fraud of Law). They are workers on another's account who hide under a concealed independent relation

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?

The Courts by means of the resolutions dictated by them, are those that delimit the borders between the work employee and the independent one.

For Court Supreme (STS 22-4-96) renting of services, of nature civil, tolerates in

itself freedom of action professional on the part of renter, that has to be stated, without, therefore, the nature of the relation because the worker subscribes a contract like independent independent employee or, according to the forecasts of the new Law can be determined, being due to be in any case, to the circumstances that concur in the benefit of the service.

4.1 For instance, does the Act provide for legal presumptions that there is a contract of employment?

In the sentences of annulment for unification of the doctrine of dates 25-1-2000 and 29-12-1999, it declares the irrelevance of the qualification that the parts grant to a contract, indicating that the nature of a contractual being come determined by the set from right and obligations which they are agreed to and those that really are exercised (between otrasm uchas, SSTS/IV 20-9-1995, 15-6-1998, 20-7-1999) and that the dependency understood like situation of the working subject, even in form flexible and nonrigid, nor intense to the organicistic and governing sphere of the company, and the ajenidad, repecto to the repayment regime, contituyen essential elements that differentiate the relation from work of other types of contract (among others, SSTS/IV 14,2/1994, 27-5-1992, 19-4-1995, 20-9-1995, 22-4-1996 and 20-10-1998, General Room); although the dependency requirement does not concur when the contracted one acts with total autonomy (among others, STS/IV 7-3-1994).

4.2 For instance, does the Act provide for legal presumptions that there is a contract of employment? In which situations?

Yes, the courts are the ones in charge to establish if labor relation or benefit of services exists; they are then these notes of ajeneidad and dependency those that more clearly distinguish a type of work of the other, but, although a priori they could seem definitive, actually they become blurred so much in many assumptions that is difficult to discern if we were before civil or mercantile a benefit of services on the part of an independent worker or if it is realised in a labor relation; supposed that they are incardinan in that gray zones" of the Right of the Work have come to denominate

themselves “because, as much the ajenidad with the dependency can appear noticeable so that some with respect to its presence or absence in the relation does not fit doubt or debilitated until the point to offer clear doubts of the nature of the contract, doubts that come more and more increasing with the defendant fragmentation from the enterprise activities, so that many of which before assumed directly the company, have been different and externalizando through contracts and you subcontract with companies or independent workers, thus happens of generalized form already to the cleaning, security, the transport, tele-marketing, etc., but now even fragment productive scopes that are externalizan to obtain reduced costs more, in the same way than contract to workers under the mercantile form, trying to elude a laboralidad that sometimes is evident.

4.3 Do courts reclassify a civil law contract into a contract of employment? Under what conditions and by using which criteria?

The sentences of the TS of 19 of September and 18 of October of 2006, pick up the doctrine consolidated to which the legislator talks about, when examining the nature of the contract subscribed by mediators in the field of insurances deprived like Subagentes in regime of declared mercantililidad and carriers, affirming that the notes of dependency, ajenidad and subordination concur that are own of the induced relation of work and of the Art. 1,1 E.T., maintaining the Court Supreme that:

- The dependency has to be understood “like situation of the working subject, even in flexible and nonrigid nor intense form, to the organicistic and governing sphere of the company, only excluible when the contracted one acts with total autonomy (SSTS 07/03/94 - Rec. 615/93; 29/12/99 - Rec.1093/99-; and 03/05/05 - Rec. 2606/04)” and that does not offer doubt, although appear with the flexibility margin that is own of the work that is to be developed outside a work center.
- The ajenidad like anticipated cession of the fruits or the patrimonial utility of the work of the worker to empreador (SSTS 20/10/90 - Rec 57/90-; 16/03/92 - Rec. 1105/91-; 29/01/91 - Rec 802/90-; 25/01/00 - Rec. 582/99-; 17/11/04 - Rec. 6006/03-; and 11/03/05 - Rec. 2109/04 -), manifest of unequivocal form, when it is the company the one that incorporates the fruits of

the work to offer them asus clients, perceiving itself directly the benefits of this activity and the temporary continuity of the work for a single company is also pronounced through typical indications of the laboralidad like a and the application of a regime of personal dedication that actually makes the supply impossible of services for the market, although is not exclusive feature commitment, which is not definitive either in sequence to the qualification of the relation, com is come off article 21,1 of the Statute of the Workers.

It emphasizes the High Court who these two notes constitute essential elements that differentiate the relation from work of other types of contract (SSTS 27/05/92 - Rec. 1421/91-; 25/05/93 - REC. 2477/91-; 04/11/93 - Rec. 2053/92-; 09/12/04 - Rec. 5319/03-; 03/05/05 - Rec. 2606/04-; and 11/03/05 - Rec. 2109/04-).

And as far as the other two notes to which article 1,1 of the Statute of the Workers talks about, the mentioned jurisprudence has established:

- The most personal character: Its work for the relaización of the service is pronounced when the worker is not holder of an own enterprise organization, but quick of direct and personal form, being this benefit the fundamental element of the contract and without the nature of this one is weakened by the contribution of a work instrument, when such contribution of a work instrument, when such contribution does not have sufiente economic relevance to turn the operation of same into defining element of the fundamental purpose of the contract, whereas the personal activity of the worker is revealed like predominant. The discharges in the special regime of Independent, the fiscal payment of license and the invoicing including the IVA are only formal data, that do not correspond naturalizes with it of the bond, nor define their character; rather they form parde of the mechanism that has started up to try to disqualify the relation like labor.

- The wage: The wage, as it is defined in article 26,1 of the Statute of the Workers, exists although their criteria of determination pay attention based on the activity carried out by the worker and act or commission is repaid

to him by. On the other hand, the one that a part of the perceived canitidades presumably destines to compensate the expenses that the worker realises for the amortization and maintenance of the vehicle or instrument of work used for the activity does not disqualify the laboralidad, because such compensation is normal when trabajaodr has to realise certain payments like consecuencai of the work benefit.

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 self-employed only).

Comparative law of the countries around us have no examples of self-employment regulation as such. In European Union countries it is the same as in Spain: the references to the figure of self-employed are scattered throughout the social legislation, especially social security legislation and risk prevention.

Currently, to June 30, 2006, the number of independent members of the Social Security in Spain amounts to 3,315,707, distributed under the Special Scheme for Workers Self-Employed in the Special Agricultural Scheme and Special Scheme for Sea Workers Of these, 2,213,636 are for individuals who perform professional activities in different economic sectors.

From this latter group, it is significant that no self 1,755,703 employees and 457,933 left the group, slightly more than 330,000 have only one or two employees. Ie, 94 percent of self-performing a professional or economic activity without the legal framework of business are not employees or only one or two. It is, in short, a group that demands a level of social protection that are similar to the employees. Over recent years there have been some initiatives to improve the situation of self-employment. These included the elimination of business tax for all individuals, as well as those introduced by Law 36/2003 of November 11, Economic Reform Measures, which includes coverage from the Temporary Disability fourth day of the low, the possibility of coverage for occupational accidents and diseases and the Impairment for those who incorporate for the first time the Special Scheme for Self-Employed, being under thirty or women over forty-five. In Act 2 / 2004 of 27 December, the General

State Budget for 2005 are incorporated as measures to promote youth self-employment up to thirty years old and females up to thirty-five, a reduction of quotas Social Security as well as access to measures to promote stable employment of relatives employed by the self. Note also the recent Law 32/2010 of 5 August, establishing a specific system of protection for cessation of activity of the self. It also improves the system of capitalization of the unemployment benefit in the form of payment to the unemployed to start their activities as autonomous.

One of the major innovations introduced by the new status of self, is the embodiment of FIG Economically Dependent Self-Employed Workers (Title II, Chapter III). This figure was created to avoid the increasingly common contractual simulation known as "false self" which involved the hiring of a person under the guise of a civil or commercial contract, for a job with the characteristics of an employment contract (outside and dependence), which required the provider to register and list on the RETA, and avoided the application of labor and social security.

Article 11.1 clearly define what we mean by TRADE: (...) Those who engage in economic activity or profession for profit and habitually, personally, directly and predominantly for one person or entity, called customer, which are economically dependent on perceiving him, at least, 75 percent of their income from labor income and economic or professional activities. Broadly speaking, to be considered as such, must meet certain requirements: No workers have responsibility or subcontract to third parties. Do not carry out his activities, another workforce indistinguishable dependent client. Have their own means to carry on its business. Not to have the organizational power of the customer. Take the risk and peril of their activities, receiving the monetary compensation for it according to their agreed outcome. You must also mediate between written contract that details the features of the service, and must enroll in a public office.

Chapter III recognizes and regulates the figure of the economically dependent self-employed. Its regulation reflects the need to provide legal cover to a social reality: the existence of a collective self-employed who, despite their functional autonomy, develop their business with a strong and almost exclusive economic dependence on employer or client who hires.

For the performance of the business or professional and economically dependent self-employed, it must cumulatively meet the following conditions: a) Do not be in charge of employees or contract or subcontract all or part of the activity

with others, both in terms of the contract activity with the client who is financially dependent for all activities that could contract with other customers.
b) Do not run your business in an undifferentiated manner with employees serving under any type of employment contract by the customer.
c) Have own production infrastructure and material necessary for the conduct of business, independent of his client, when such activities are economically relevant.
d) work with their own organizational criteria, subject to the technical indications that his client could receive.
e) To receive a payment based on the result of its activity in accordance with the agreement with the client and assuming risk and the former.
According to data supplied by the National Institute of Statistics, in 2004, amounted to 285,600 employers with no employees working for one company or client. The figure is important, but what is significant is that this group has increased by 33 percent since 2001.
It extends to the economically dependent self-employed workers the protection of industrial accidents and occupational diseases and recognizes the possibility of early retirement for workers to develop an autonomous toxic activity, dangerous or painful, in the same conditions as for the Regime General.

Economically dependent self-employed person is entitled to a break in their annual activity of 18 business days, notwithstanding that the scheme can be improved through a contract between the parties or by agreement of professional interest. By individual contract or agreement of professional interest will determine the regime and weekly rest for the holidays, the maximum daily amount of activity and, if it is computed by month or year, weekly distribution.

The completion of activity longer than the agreed contract will be voluntary in any case, the increase may not exceed the maximum set by agreement of professional interest. In the absence of agreement of professional interest, the increase does not exceed 30 percent of ordinary time agreed individually activity.

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?

In Spain, social benefits for the self-employed or self soon appear until the second half

of the twentieth century through the novel concept of Social Security, whose subjective scope extends to all citizens. The extension of Social Security benefits was scheduled late in the Decree 1167/1960 of 23 June. Subsequently transformed into a special regime, the RETA, finally established by Decree 2530/1970, of 20 August which led to a marked and progressive enlargement of the group initially protected. Of note is the Basic Law on Social Security of 28 December 1963 and it articulates the Social Security Act 1966 which provide, by means of specific arrangements and special legal recognition to self-employed or self of such social protection. In the context of the existing legal framework of Self-Employment Status of 2007 stands as the basic rule governing the social protection of self-employed or own-account until its enactment, had been partially contained in the Social Security Act 1994 which repealed the 1975 Act and explicitly in the Decree 2530/1970 of 20 August, which regulates the special regime of Social Security for Workers Self-Employed.

Reforms tend to try to equip the protective action afforded to workers covered by the RGSS and RETA. In this sense, we proceeded to include as voluntary improvement of the protective action of RETA's temporary disability benefit. With the same purpose, successive reforms equated the death and survival benefits, and eliminated the requirement of having at least 45 years of age for the total permanent disability pension and vesting prior to profit from temporary disability benefits arising from accident and permanent.

In recent years there have been important reforms in maternity, risk during pregnancy, temporary and permanent disability and retirement, which pose a substantial but not complete alignment between the RGSS and RETA.

In accordance with Article 41 of the Constitution, persons with a financial professional or self-employment or maintenance shall be entitled to a Social Security scheme, which guarantees the assistance and benefits sufficient in situations of need . Additional benefits are free.

The protection of workers Self-employed will be implemented through a single system to be called the Special Scheme for the Workers Social Security for Self-Employed.

Royal Decree 1 / 1994 of 20 June, approving the revised General Law Social Security extends its scope to employed workers or independent, whether or not holders of individual companies or relatives and are eighteen years. Necessarily be included in the Special Regime for Social Security workers Self-employed persons exercising the

functions of leadership and management that involves the performance of the office of director or manager, or provide other services for a capitalist corporation, by way profit and habitually, personally and directly, provided they have effective control, directly or indirectly from it. Shall, in any case, such a circumstance occurs when the shares of workers represent at least half the capital.

Although it is noted that the Special Scheme for Self-Employed, interested parties may choose to qualify or not to cover the protection of temporary disability allowance.

Also self-employed or freelance may voluntarily improve the field of protective steps to absolve them that scheme, incorporating contingencies for accidents and occupational diseases, on condition that they previously or simultaneously, have chosen to include within this area, the temporary disability benefit. In this sense, be understood as work accident occurred as the self-employed direct and immediate consequence of the work done by his own account and that determines inclusion in the scope of that scheme. It is understood, on the same issue, the occupational disease contracted as a result of work done on their own, which is caused by the action of the elements and substances and the activities specified in the list of occupational diseases and the relationships main activities capable of producing, attached to Royal Decree 1995/1978 of 12 May, approving the schedule of occupational diseases in the Social Security System.

Indicated by the contingencies will be recognized benefits for the same, granted to the workers included in the general scheme, under the conditions established by regulation. For self-employed or freelance, whatever the special scheme of social security in which they are framed, the birth of the temporary disability benefit may be entitled to occur in the terms and conditions regulations are established from the fourth day of the corresponding drop in activity, except in cases where the person concerned had opted for the coverage of occupational contingencies, or have covered on a mandatory, and the subsidy because it originated of a work accident or occupational disease, in which case the benefit shall arise on the day after the fall.

The protective action of the Special Social Security Scheme for Workers Self-Employed, in accordance with the terms and conditions provided for by law, shall in all cases:

a) Health care in maternity cases, common or occupational disease and accidents, whether or not working.

b) Cash benefits in situations of temporary disability, risk during pregnancy, maternity, paternity, risk during breastfeeding, permanent disability, retirement, death and child survival and family dependents.

Economically dependent self-employed must necessarily include within the scope of the protective action of Social Security, coverage for temporary disability and occupational accidents and occupational diseases of Social Security.

The protective action of the Social Security scheme for self-employed tend to converge in contributions, rights and benefits for existing employees in the General System of Social Security.

As the Law 32/2010 of 5 August, establishing a specific system of protection for cessation of activity of the self, it is understood within the scope of protection of the provision for cessation of activity, the self-employed who have opted for the protection afforded to professional contingencies, including self-employed included in the Special System for Agricultural Self-Employed and the self-employed included in the Special Scheme for Sea Workers . The cessation of activity, including that affecting the economically dependent self-employed, there will be total in the economic or professional activity as usual, direct staff and he comes to play. Will be in legal status of cessation of all those employed workers who are leaving the course of his business by any of the following causes:

a) For the combination of economic reasons, technical, production or organizational determinants of the impossibility of continuing the business or professional. In case of establishment open to the public, require close it during the receipt of benefits.

   In any case, it is understood that these reasons exist when any of the following situations:

   1. º) A loss arising from the exercise of its business, in a full year, over 30% of revenue, or more than 20% in two consecutive years and complete. In any case, the first year of commencement of the activity calculated for this purpose.

   2. º) A judicial executions aimed at debt collection recognized by the courts which they relate, at least 40% of the income of the self-employed activity for the preceding fiscal year.

   3. º) The contest court ruling that prevents continuing with the activity, in terms of Law 22/2003 of July 9, Insolvency.

b)

1. º) Force majeure, determining temporary or permanent cessation of business or professional.

2. º) The loss of an administrative license, provided that it is a condition for the exercise of economic or professional activity and not be motivated by breach of contract or the commission of violations, administrative offenses or crimes attributable to the independent applicant.

3.º) Gender-based violence determinant of temporary or permanent cessation of the activity of the self-employed.

4. º) For divorce or marital separation agreement, by an appropriate court order, in cases where the independent exercise divorced or separated family support functions in the business of your ex-spouse or the person who has separated, according of which was included in the relevant social security scheme, and left to be exercised due to marriage breakdown or separation.

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

7.1 Socioeconomic transformations and self-employment

In its original conception, Labour law arises primarily and historically around the concept of subordinate employment, ordering, therefore, individual and collective relations established between those who "perform gainful employment and dependent on behalf of and for another person, those who give back and make the results of his work activity engaged".

In this scenario, self-employment occupies a marginal position. A self-employed worker is defined as that which it reserves for itself the autonomy of management and organization of your benefit, assuming the risks and benefits of it and going directly to market goods and services, both for the acquisition of means or raw materials and the marketing of products or services and for which it was understood that "state intervention should be minimal, as they could defend themselves, and with sufficiency, professional and social interests.

Significant changes in the forms and modes of production and work organization launched from the economic crisis of the 70, causing the abandonment of large enterprise model with mass production and its replacement by a company small dimensions in which only remains the most profitable phases of production and outsource other. To this contributes also the incorporation of new technologies and the development of computing and telecommunications, is at that stage innovative new technologies become a means to facilitate decentralization and allows "the outsourcing of a range increasingly broad and diverse range of activities, usually in the tertiary sector.

In the words of RUIZ DEL CASTILLO, The relatively" impassable border between dependent employment and self-employment has become permeable, which leads, today more than ever, the emergence of qualitative and quantitative changes in both modes of delivery".

- From the **quantitative** point of view, although in the past the general trend was the steady progress of wage labor to the detriment of self-employment, at present, although strictly speaking we cannot speak of a process of reversing this trend, then at least you can ensure that there is a stabilization of self-employment on total employment of.

- From a **qualitative** point of view, it is clear that the decentralization of production processes are contributing not only to the expansion or "normalization" of self-employment but also to a change in its appearance: "the craft industry, small businesses, transport small size, traditional crafts and the so-called liberal professions had been the traditional niche of self-employment job ", however, outsourcing of activities have led to the emergence of new forms of self-employment as disparate as entrepreneurs, partners, cooperative workers and industrial companies, or managers of corporations that have effective control thereof, or economically dependent workers. Thus, self-employment, "and cannot be defined simply as an activity carried out openly in favor of customers, which are recruited to specific orders, according to the needs of the moment", but in today, professional groups have appeared "semiautonomos" that not "respond to the classical principles of operation of the civil contract, because they concur that certain elements that clearly come to

work dependent. On the one hand, it is usually a supply of services of personal and direct way contractually bound by the subject, while often the basic activity of this subject and, therefore, which obtains its primary means of economic survival. Furthermore, in isolation attend any of the elements that are often taken as symptomatic of the presence of an employment benefit, submission to instruction, control of work performed, the default system to quantify the economic consideration, but with complete absence of other data".

That collective, so-called *economically dependent workers* (in Spain, TRADEs), or also traditionally known as "parasubordinate workers", whose specialty compared with classical self-employment is outside the budget of not having employees at your service, above all and this is the most distinctive, your job no longer offer the market in general but who work personally and directly, for a specific business subject (principal or main client), which are economically dependent (not legally), and which establish links with a more or less stable or lasting.

7.2. The necessary protection of economically dependent employment and regulatory proposals.

In this current scenario of diversification of ways to provide work, where there is a fragmentation and development of self- employment, the powerful emergence of a double question. The first, on whether the system should meet its regulatory work, or else how could it be?, especially with regard to "those who respond to "hybrid figures" or impregnated intermediate economic dependence and even organizational", as in the case of the TRADEs, which by their economic dependence, have a limited potential to negotiate contract conditions with the business partner.

Indeed, the importance of socio-economic reality represented by the independent work, has not been accompanied to the LETA, a legal framework to regulate comprehensively, systematically and successfully, the most salient aspects of their contractual relationship, for "qualifying of a given subject as an employee subordinate and dependent on legal and technical sense, determined the overall implementation of labor law policy as a whole, this occurred due to a situation characterized by an absolute

difference in the levels of protection, which paradise guard against Labour Law, rose absolute insecurity of self-employment", especially dependent.

However, the lack of a comprehensive regulatory framework and even self-employment and the exclusion of this group the protective umbrella of labor law, does not mean that there is full legislative anomie in the sense that everything is sent to the free will of the parties bargaining over the contracts they consider suitable compromise, but the measures that are seen "are scattered and varied origins" that "lead to a concrete implementation of labor institutions to work strictu sensu".

For this reason, numerous voices from different backgrounds (academics, professionals and even trade unions) has long demanded legislative action to regulate the working relationship of the TRADEs, with the aim of"providing it with security and protection mechanisms to ensure the effectiveness of minimum contractual rights (and welfare) "to these workers.

The reasons for the opinion of the doctrine underlying the necessary protection are, on one side, "the only fair and appropriate labor organization, because this group because of their economic dependence is at a disadvantage in contractual leading them many cases to have to accept the conditions imposed by the client". In this sense, "the decentralization of production processes, generate a unique dynamics of economic restraint, which is usually hidden behind the independence of the workers regarding the choice of modes of execution of their work is concerned", and another, "the recognition of minimum rights to TRADEs will help reduce fraud situations and simulation of self-employment " to not be as attractive to the recipients of their services, the use of contractual arrangements that facilitate the escape of Labour Law.

As you can see, the debate on the regulation of self-employment, and more specifically, economically dependent self-employment is relevant in Europe, both at the different Member States and European Institutions. In this regard, it noted a particularly interesting report, is known Perulli Report (2003) on "economically dependent/ quasi-subordinate (parasubordinate) employment: legal, social and economic aspects", presented on June 19, 2003 the European Parliament.

Perulli report, lists the options that have been considered in some Member States, notably Italy and Germany, and possible solutions that fit for this group, on the

one hand, the “maintaining the status quo”, other, “creating a new type of legal employment status located between subordinate employment and self-employment“, or even a “broad redefinition of the concept of subordinate employment” need to accommodate it, and finally, the “creation of a hard core” of social rights that apply to all contracts of employment regardless of their formal definition in terms of autonomy and subordination”. And in any case, the study proposes to act in the national and European level. And in the last area, observes that it would “establish a set of programmatic rules that are not traumatic and leave leeway to Member States to adapt to the national context for”.

For his part, iuslaboralista Spanish doctrine, being aware of the necessary recognition of rights to self-employed workers, especially the subordinate, focuses the debate on this issue on what would be the most appropriate way to face this challenge the extension of protective shuffling by scholars of the subject several possibilities that can be summarized as follows:

- The first is a **labourization exceptional** or that is the same as the application of one or more of the institutions of labor law, using the option open for Disposal 1 st of the Worker´s Statute (hereafter ET), which states “the work done on their own is not subject to labor laws, except in those areas that, by law it is expressly stated”. This technique has been followed by very limited in our country, pending the entry into force of the Self-Employment Statute and, “has the great advantage of being able to choose, in each case by a specific definition for each rule or principle, more or less extensive collective of self-employed workers who would apply it.

  However, other authors believe that this pathway is not the most appropriate because this provision contains a generic reference, ie, “indiscriminate application to self-employed and therefore not take into account the uniqueness of relationships involved, both from the perspective of the person who works as a productive activity that develops“ making it applicable to all types of self-employed, which would entail a difficult articulation of the measures that may apply simultaneously for both groups since, as has been discussed above, the needs of self-employed and economically dependent workers are substantially different.

- The second and more drastic, is to **apply common labor standards without any cracks or restrictions** on situations where there is economic but not legal subordination. This solution, for some authors, would "overcome the configuration of the Labor Law as a legal discipline in the provision of regular employment, and proceeded to include within it a heterogeneous relations sector, either dependent or independent, and the common denominator would be given by the imbalance of positions in which they operate".It is worth noting that this solution is rejected by the majority of writers, for several reasons: First, because "despite the rapprochement that has occurred in recent years in terms of material and social conditions of its development, the self-employment and dependent workers at present still different realities, which claim a separate legal organization". Second, because "the legal dependence, defined as the integration of workers in the field of organization, management, control and punishment of the employer" "is the raison of many genuine legal institutions and labor relations, would a contradiction to want to force their removal to other legal relationships where substantially not met this kind of legal dependence".

- The third option that could be classified as intermediate, it supported the inclusion of the provision of economically dependent self-employed as a **special employment relationship**: some authors, consider that this is the most convenient channel greater potential for real protection for this group, based on the following arguments:

    - In Spain, the existence of special labor relations is justified by the idea that "good for the quality of the people who provided either by the site where work is performed either by the type of functions they perform", certain relationships work seem to depart from the common model of contract and require certain peculiarities in its legal regulation. In this sense, the use of special relations, have also served to facilitate entry to a special labor law, some relationships that are discussed at length in its subordinate character (senior management personnel or sales representatives). For this reason, there would be no obstacle to recognizing the benefit of economically dependent self-employed as a special relationship, because despite the lack of legal dependency, there

is a clear economic subordination. However, we must not forget that the same cannot be extended to use over and pretend to address all conceivable cases provision of services personally, as it would push too hard the situation, try to identify all the formulas economically dependent employment with business services as it does not adapt sufficiently to the labor law, however much they were given the treatment of special labor relations.

- Finally, and this was the choice made by the Spanish legislator, **statutory regulation itself** outside the walls of the Labor Law, but certain categories protective picking "imported" from it. Through this approach, the aim is the creation of a self regulatory framework which takes into account the rights and duties of self-employed professionals, which cover all or the bulk of them, because we have a collective every cross again, and could be a risk to the exclusion of important sectors of protection needed this new social reality. And on the other hand, collect the professional status of the self- employer dependent and must be sensitive and specific to the various interests at stake. That is, in some cases it is desirable to move certain principles and even its own institutions of labor law that the legal system is to provide the TRADEs, to settle certain issues arising from their vulnerability "dependency" of a client employer- strong contractor, while in other cases, it is preferable to the realization of certain security and protection mechanisms in their own commercial sphere (civil and even in the field of administrative) which ultimately develops the legal relationship.

Despite these misgivings, the regulatory option was pursued by the Government, which culminated in the enactment on July 11, 2007 of the Law of Self-Employment Statute (Law 20/2007) which entered into force on 12 October 2007, known as LETA.

The new regulation, he replies, first, to this need for order and collect in a systematic and consistent, in a single body of law, all legal provisions that were scattered references to self-employment. Thus, the Self-employment Statute, for the first time explicitly the self-employed application of fundamental rights and also the first time the duties and obligations explicit. And, secondly, the legislator, aware of the

contractual asymmetry contractual which are economically dependent workers against companies for providing services, introduces tools that have permitted to grant protection this group, better protection and much more guarantees than it had been enjoying until the adoption of the Law.

This regulation more protective for the TRADE, from the individual perspective is reflected, first, in the first recognition of certain rights "minimum" for this group, as the right to discontinue its annual activity for at least 18 business days, or the possibility of limiting the day activity, the right to determine by individual contract or Professional Interest Agreement (hereafter AIP) scheme weekly rest; to interrupt their careers or the right to receive compensation when the principal client (one of which receives at least 75% of their income) necessary to terminate the contract concluded between them without just cause; rights to reconciling professional and family life or personal safety and health at work, social protection, etc.

And in this sense, it is very important to note, and from the collective perspective, innovations and advances that incorporates the new Self-Employment Statute. First, the legislator recognizes the right of self-employed workers to organize and collectively defend their professional interests and, second, and only introduces the right of the TRADEs to collectively negotiate and regulate the conditions of manner, time and place of execution of his business through the AIPs. The recognition of this "professional collective bargaining" is intended to act as a tool for rebalancing the bargaining position of TRADE. Another novelty of the LETA is the allocation to the organs of social jurisdictional competence to hear claims arising from the contract concluded between a TRADE and his client, and any issues arising from the application and interpretation of the AIPs, without subject to the provisions of the law of competition.

8. Do legal authors criticize the present protection of workers without a contract of employment? What is their line of arguments and do they provide and any solutions? The Development of Self-Employment Status after three and a half years of life.

One of the most important problems presented by the LETA from the point of view of the real effective appreciation of the view of the doctrine was that it was subject to mandatory legal development, regulatory or negotiation of AIPs by representatives TRADE and the client company. The Act provided, in some cases, within one year after its entry into force for the regulatory commission, and as regards the form, features and registration of contracts for the TRADE activity and determining the conditions for the legal representatives of workers have access to information that your company contracts concluded with TRADE (art. 12.1 and Disposal second paragraph five). Or, equally, with respect to studies on the capitalization or single payment of unemployment benefit for the start of activities on their own (Ninth additional provision) on the sectors that have a special impact on the collective self-employed (Fourteenth additional provision) and those regarding the updating of the regulations governing the Special Scheme for Self-Employed (Fifteenth additional provision).

In others, the legislator merely provided statutorily mandated to develop certain aspects of the LETA but without setting a specific time commitment. This was the case in matters as important as setting objective criteria to be considered for measuring the representativeness of the associations of self, and the registration of such associations and the creation of a Council responsible to declare the status of partnership representative at the state level, the functions and working procedure also developing regulations (art. 21.1 and 2) or the constitution of the Independent Labour Council as a consultative body of the Government socio-economic and professional self-employment.

Besides a general rule for the initiation of force, the LETA contains various transitional provisions have also produced, it is unclear whether he intended, the practical effect of deferring to the regulatory development of effective implementation of certain aspects of its articles. Such interim arrangements are referred to the "adaptation of existing contracts", of the TRADE to the new legal regulation, adaptation that should produce "within six months from the entry into force of regulations" of the LETA (Temporary Provision second); except "in the transport sector" and "in the field of insurance agents", where the period of adaptation of the contracts were extended "to eighteen months" from the same effective date of the regulation of development of the LETA (Transitory second and third).

The Government violates the deadline and the first of the regulations responsible for developing the LETA not see the light until February 23, 2009, when approving the RD 197/2009 on the Statute Labour develops autonomous in terms of contract of the economically dependent self-registration and establishing the State Register of self-employed. And later, on Dec. 29 came into force on Royal Decree 1613/2010, of December 7, which creates and regulates the Council of the representative associations of self-employed professionals in the state and establishing the composition and rules of procedure and organization of the Independent Labour Council.

Regulatory development concerning the fixing of objective criteria to be considered for measuring the representativeness of the associations of self, was a topic of vital importance because of the associations depended on which qualified for the status of most representative could occupy a unique legal position before the state and society, "having access to institutional participation and socio-political practice of social dialogue and negotiated legislation".

Another regulatory developments that have occurred in this period was the establishment of a specific system of protection for cessation of activity of the self through the Law 32/2010 of 5 August, which came into force did not occur until on 6 November.

The standard, due to the LETA brings, as Additional provision four, the task entrusted to the Government to regulate, provided that the principles of contribution, solidarity and financial sustainability were secured, a specific system of protection for stoppage of work for the self employed, according to their personal characteristics or nature of the occupation. The rule keeps a remarkable parallel with establishing a system for unemployment protection that benefits employees and responds to the need to protect self-employed workers that "able and willing to exert economic or professional activity for profit, such activity had ceased, inadvertently, by any of the grounds provided for by law, provided that, prior , had signed the corresponding social benefits".

In short, although the Self-Employment Statute is presented first as an ambitious and innovative, it was an unfinished work, as it left some issues unresolved and caused various interpretative gaps affecting especially the legal status of the TRADE. In the words of other authors, there are significant silences and shadows on the need and

development of Self-Employment Statute "which have been partly to tear aforementioned protective order alleging that the LETA had regard to the economically dependent worker. Therefore, although the LETA is the "first commitment to provide this very diverse and large group of a standard reference framework, the challenges, problems, uncertainties and risks are abundant, and in this sense, the strong economic crisis is going through, also Spain, has been able to influence the delayed or even halted development policy and institutional self-employment.

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