Workers= protection
Czech Republic - National study

Introduction

According to sample inquiries on employment situations made by the Czech statistical office the number of inhabitants of the Czech Republic was 10,293,600 by the end of 1998, of which 61,9 per cent were persons in economically active age. The number of persons employed was 4,985,700 of which 5,5 per cent worked in the primary sector, 40,9 per cent, and 53,6 per cent, respectively, in the secondary and tertiary sectors. Labour offices registered 311,700 unemployed persons which corresponds to the rate of 6 per cent and unemployment was on a steady increase.

In recent years, the most symptomatic feature in the development of basic economic indicators in the area of employment has been the flow of workers from big public enterprises engaged, in particular, in the primary sector (mining, metal industry, agriculture) into small and medium- sized enterprises in various areas of manufacturing and services, such as trade, repairs of automobiles, banking, insurance, telecommunications and the building industry. This occurred in the context of massive privatisation of the former traditional industries, restitution of property and the following restructuring of enterprises. Additional source of workers= migration were also profound changes in public administration and emergence of non-government organisations, as well as the split of the former Czech and Slovak federation. These changes brought a marked increase in numbers of self-employed persons which reached the figure of 1,000,000. Before 1989, this type of employment did not exist in the Czech Republic (as opposed to Hungary and Poland). Many of the new >entrepreneurs= registered as self-employed persons and continued to engage in their former salaried employment which provided them a guarantee of basic income and of their social security rights. Most of them performed their self-employment activities alone. Gradually, another form of >employment= developed on the basis of the trade licence. Employers, both natural and legal persons, didn=t recruit their workers in a normal employment relationship but contracted their services on the basis of their trade licence, in spite of the fact that these persons performed activities which are normally performed by wage-earners in a dependent relation, i.e. employment relationship.

Private business activities grew particularly in the sector of services, small-scale trades (activities that previously were performed on the black market) and small retail trade shops. New standard businesses started to emerge in connection with adoption of the Commercial Code (act 513/1991).

At present, the total employment in the Czech Republic is estimated at 4,95 mil. persons, of which 4,13 mil. are employees, 0,53 are self-employed persons working alone, 0,21 mil. persons run small businesses employing one or two workers. The rest are working family members (0,03 mil.) and members of production co-operatives (0,06 mil.). The number of the unemployed has reached nearly 9% of the workforce at the end of the second quarter 1999 and continues to rise.

Until 1989, all employed persons in the Czech Republic participated in a complex system of universal protection which included both protection ensuing from labour legislation and social security covering the health, sickness and pension branches. In the context of the social and economic transformation the protection of employed persons is gradually changing. This is mainly caused by the emergence of new types of employment and business activities. In a number of cases these changes mean weakening of social protection of the persons concerned which is due to various reasons, such as efforts on the part of employers to reduce costs and paper work connected with regular employment of workers and adoption instead of illegal or disguised forms of employment. One problem in this respect is the fact that legislation lags behind the pace of economic transformation and that the role of the social dialogue, in particular the role of industry level collective bargaining, has not been fully appreciated.
Considering the volume of changes which have taken place in the Czech Republic after 1989 the present study has been conceived as providing an analysis of the legal system concerning workers= protection and assessing its impact on main types of employment, including the most frequent instances of law misuse and evasion. Considering the fact that the developments to be assessed by

the study are relatively new and the situation is subject to many and frequent changes, no literature on the subject is available, nor are there reliable statistical data and case law. Therefore the study draws on the existing legislation and information based on experience obtained by officials from various unions of the Czecho-moravian Chamber of Trade Unions.

I. Employment relationship

1) Employment relationship is still an overwhelming type of employment of the active population in the Czech Republic. Employment act 1/1991, as amended, provides that employees participate in the employer's entrepreneurial activities by means of employment relationship which is based, in most cased, on an employment contract. Quite evidently, the employment act lays emphasis on employment relationship which is considered to be the main form of employment. However, the provisions covering employment relationship suffer from shortcomings which tend to reduce workers' protection. This situation is exacerbated by low efficiency of inspection and control systems in the area of implementation and enforcement of labour law, and by long delays when seeking legal redress in a court of law (there are no specialised labour courts or tribunals). Involved here are cases where no written contracts are concluded with workers; repeated fixed-term contracts are concluded; cases where there is no written contract on the amount of wages, or agreed wages are lower than the actually paid wages. In other cases employment contracts include provisions which are invalid, or employers tend to conclude civil contracts with their employees in spite of the fact that the relationship evidently includes elements of employment relations. The above refers both to rank and file and managers. Last but no least there is a growing problem of illegal employment where foreign migrant workers play an important role.

Sources of labour law in the Czech Republic are, in descending order, international treaties, in particular ILO Conventions, the Constitution of the Czech Republic and the Charter of fundamental rights and freedoms which forms part of the Czech law. The Charter of fundamental rights and freedoms, in its title four, guarantees to citizens economic, social and cultural rights. By way of example, mention can be made of the right to freely chosen occupation, the right to obtain means for covering one's needs by work, the right of employees to equitable remuneration for work and satisfactory working conditions, the right of women, young persons and persons with disabilities to increased safety and health at work, including adapted working conditions and assistance in training for an occupation.

In accordance with article 10 of the Constitution of the Czech Republic, ratified and published international treaties on human rights and fundamental freedoms, by which the Czech Republic is bound, are directly applicable and enjoy priority over Czech law. Further sources of law are acts, Government decrees, ministerial notifications and other measures (decrees, directives, guidelines) published in the codes of law, normative provisions of collective agreements and individual employment contracts. Case law is not, strictly speaking, considered to be direct source of law. However, in practice, court decisions, particularly those made by appeal courts, are fully respected. Thus case law is a complementary element of the existing written law. The legislation regulating labour relations is concerned mainly with employees' and employers' rights and obligations, and the status and responsibilities of workers' representatives - the trade unions. This is in line with the constitutional principle according to which obligations may be imposed only by law and within limits of law, subject to respect of fundamental rights and freedoms. Implementing regulations, such as Government decrees and ministerial directives can be issued only to implement acts adopted by the Parliament and on the basis of specific authority provided by these acts.

Labour relations are regulated, in particular, by written labour law - the Labour Code - and, within its framework, by collective agreements and individual employment contracts. In this context it is worth mentioning that the Labour Code, act No. 65/1965 was the first systematic set of labour regulations in the former Czechoslovakia with effect as from 1 January 1966. The Code was amended more than twenty times since. In spite of the fact that recent amendments were designed to respond to social and economic changes, in particular the ongoing privatisation and a fundamental change in the employee status on the labour market, a number of the Code's provisions have remained unchanged and do not fully respond to the developments which have taken place in labour relations, new forms of employment, etc. The Labour Code is based on the overriding principle:

`What is not permitted by law, is prohibited.Â In fact, the implementation of this principle in practice does not allow to depart, in individual employment contracts, from cogent provisions of the Code.

As regards collective agreements, provisions which are more favourable for workers, can be agreed only in cases where the Code has expressly provided for such arrangements. An exception to this rule are provisions concerning remuneration in accordance with act 2/1991 on wages, remuneration for stand-by and average earnings, as amended, by which pay in the private sector has been completely liberalised. The result of some of these cogent Labour Code provisions is that many of them are disregarded in practice. Many employment contracts include provisions which tend to respond to real needs of the parties but are frequently contrary to the existing law. For the most part, such provisions are to the detriment of workers and tend to reduce their protection. Frequently also, employees tend to accept or tolerate these provisions because they are unaware of the fact that they are in contravention of the law (and thus legally null and void) but the main reason is that they are afraid of losing their job. This situation can be frequently found in private sector, mainly in small businesses and in the informal sector.

Provisions of the Labour Code are generally applicable and cover all employment relations between employer and employee. Employment relations of certain groups of employees are subject to special legislation. This is the case of judges, State prosecutors, members of armed forces, citizens performing public functions other than those based on employment relationship.

Employment relationship is the main form by means of which employees participate in the performance of the employer=s entrepreneurial activities. Employment relationship is concluded between the employer and the worker. In the performance of his job the employee is subordinated to the employer and undertakes to follow the employer=s instructions. The results of the work are appropriated by the employer; the worker who contributed to those results has no rights of disposal. This is the reason why the worker=s activities undertaken within employment and similar relationship are referred to as dependent work. The worker works for agreed wages. Employment relationship is the basic, most important and most frequent type of individual labour relation.

The Labour Code distinguishes among three types of employment relationships; these can be based on an employment contract, on appointment or election. In practice employment contracts prevail. The principle that employment relationship can be concluded only on the basis of a free decision made by both employer and employee, is applicable to all three types. In respect to the citizen, this principle is absolute and subject to no exceptions.

The Labour Code defined the concept of >employer= as a natural or legal person who employs a natural person in the context of labour relations. This definition puts all employers, both natural and legal persons, on the same footing. Legal persons are understood to mean associations of natural or legal persons, associations designed to administer property (foundations), local government units (communities) and other entities referred to in the legislation. Legal persons are entitled to acquire rights and enter into obligations, including by means of their legal acts. The State is also a legal person, although it can be considered as such for the purpose of employment relationship only by analogy as no specific provision to this effect exists. The most frequent types of legal persons are companies established on the basis of provisions contained in the Commercial Code. They are partnerships (unlimited companies), *société commandite* (special type of partnership), limited liability companies and joined stock companies. State (public) enterprises act also as legal persons. Other types of legal persons established under the Czech law are >budgetary and contributory organisations= (means to run these organisations are provided fully or partly by public budgets). Special legislation has provided for the existence of a number of other legal persons, such as banks, investment companies and investment funds, insurance companies, or pension funds. It follows from the above that there is a host of various legal persons differing both in types and form.

In practice, employers are also citizens who engage in activities in accordance with the trade act (small business act). Similarly, employers can be also persons engaged in various liberal professions, such as attorneys, solicitors, notaries, tax adviser, auditors, consultants, etc. who employ other

workers.

The capacity to act as an employer is not dependent on any trade licence or permit or performance of activities on the basis of special regulations Also citizens without any legitimate authority to engage in entrepreneurial or other activities can acquire a status of employer. Nor is it necessary to employ a person for a consideration - employers can employ workers for any reason other than payment of wages.

The capacity to have rights and obligations as employer in labour relations starts with the birth of the person concerned. Capacity to acquire rights and enter into obligations as employer by means of one-s own legal acts starts with reaching the age of 18.

Legal acts within an employment relationship are performed mostly directly by the employer. In the case of a natural person this is done by the employer himself, in companies (juridical persons) legal acts can be performed on behalf of the employer by statutory bodies. Statutory bodies of juridical persons are all those who are authorised to perform legal acts by the contract to establish the company or those authorised by company statutes, organisational rules or by law.

The Labour Code also provides that legal acts in labour relations can be performed on behalf of the employer by persons specifically authorised by the employer. Such authorised persons are employees with assigned special authority, in particular heads of organisational departments and units. These authorised employees act as the employer-s bodies and are allowed to perform legal acts within the limits provided in internal organisational regulations. Acts performed by the employer himself (as a natural person) or by statutory bodies of a company are considered to be acts performed by the employer whereas authorised persons act on behalf of the employer. As such, the employer - a natural person - and/or the statutory body of a legal person have full authority to all legal acts whereas the scope of responsibilities of authorised persons is more narrow. They are authorised to act only within the limits of internal regulations. Nevertheless, they are considered by the Labour Code to be the employer-s bodies. In addition to persons who derive their authority from internal organisational regulations, an employer can specifically authorise other persons to perform certain legal acts in the area of labour relations on his behalf. To do so, those persons need, according to the Labour Code, a written authority the scope of which must be stated in the written assignment.

Legal acts can also be performed by other employees - who are assigned to act as managers of organisational units at different levels and, in their capacity, are authorised to formulate and assign work tasks to subordinate employees, to organise, direct and supervise their work and to give them binding orders for that purpose. Manager in accordance with this definition can be only a person to whom one other employee is subordinated.

The Labour Code has formulated a principle that even legal acts by which the authorised employees exceeded their competencies, are fully binding for the employer. Exception to this rule are situation where the other party must have been aware of this fact. The burden of proof lies always with the employer.

Natural persons acquire the capacity to have rights and obligations in labour relations as employees, and the capacity to acquire these right and enter into obligations by their own legal acts on the day they reach the age of 15. However, employers may not make an agreement concerning the start of employment relationship on any day which precedes the day when the person concerned has completed his compulsory school attendance. This provision is designed to safeguard the completion of the compulsory school attendance which is of nine years duration and is completed by pupils by the end of the last school year.

The employment contract is a bilateral legal act by which the two sides declare their mutual willingness to enter in an employment relationship. At the same time it is a legal expression of the principle of free choice of employment because it enables the citizen to freely choose his employer, type and place of work which corresponds to his competency, health condition, skills, personal relations and interests. Also employers have the possibility to recruit staff for their businesses with a

view of meeting the objectives of their business plans.

The Labour Code requires employers to do certain things in relation to their future employees even prior signing the employment contract. Employers are required to acquaint the candidate with the rights he will acquire and obligations he will assume under the employment contract and with wages and working conditions under which he is expected to perform his work. Employers are also obliged to ensure that, prior to signing the employment contract, employees undergo a pre-entry medical examination in cases where occupational health regulations so require.

For concluding an employment contract it is necessary for the parties to agree certain basic elements of the contract. They are: the type of work, the place where the work will be performed and the day when the work will start. The type of work is of great importance because in this way activities are defined in which an employee will be engaged. In principle, an employee has no obligation to perform other type of work with the exception of cases where the Labour Code confers to the employer a right to transfer his employee to other work. A broad or narrow definition of the job has an impact on the employer=s possibility to assign his employee to different jobs and to determine the respective tariff grade for the purpose of pay.

The designation of the place of work in the employment contract determines the employer=s decision making options concerning possible transfers. Otherwise, transfer to other place of work is possible only with the worker=s agreement. Workers can only be sent on an official mission. Again, the place of work may be determined in a broad or narrow way. Normally, it is understood that the place of work would be a community, or an organisational unit. However, the law does not exclude cases where the place of work is agreed in a different manner. This is the case, for example, where the work takes place on different sites (building industry, repairs, overhaul of installations). Similarly as with the type of work, various alternatives may be agreed concerning the place of work.

Employers in small and medium-sized enterprises have shown a tendency to define the type and place of work in a very broad way which tends to reduce the protection of workers and opens the way to get round those provisions of the Labour Code that regulate reassignment and transfer to other job or other place of work.

The day of start of work is very important because this is the day of origin of employment relationship.

In addition to the above basic elements of the employment contract, other conditions may be agreed upon. Where there is no agreement in respect on any matter upon which one of the parties insists, the agreement is not complete and no contract can be considered as concluded. Such other conditions are, in particular, reaching agreement on wages, and conditions of work which the parties want to be different from those ensuing from general legislation. This may concern, for example an agreement on shorter working hours or on an atypical distribution of working hours. Where an agreement is concluded on conditions which are at variance with the Labour Code, or the law in general, or where a worker would waive his rights in advance, the respective provisions in the employment contract would not be legally valid.

As said above, it is not required to agree on wages for the employment contract to be concluded. This was fully satisfactory under the previous wage system which relied on universally applicable tariff rates. However, at present, there are frequent cases where no agreement concerning pay exists, neither in the employment contract nor elsewhere. Frequent are also cases where a low wage (for example minimum wage) is agreed in the employment contract and higher (non-taxed) wages are paid under a separate agreement. In these situations workers lose their protection in situations of disputes and they are also placed at a disadvantage in the event of sickness (low sickness benefits) and concerning their pension rights (low official average monthly earnings) and in the event of paid leave and compensatory wages in the event of impediments to work. In such cases workers have virtually no protection in cases where employers fail to fulfil their promises outside of the official employment contract, such as in respect of paid leave. In addition, both employers and workers commit a fraud by paying lower income tax and social insurance contributions. In other similar cases the parties

agree shorter working hours with the correspondingly lower pay as compared with full working hours. However, in reality, full working hours are worked and wages corresponding to hours worked in addition to those contractually agreed are not paid at all, or are paid unofficially with the same consequences as referred to above.

2) The employer is required to conclude an employment contract in writing and provide a copy of the contract to the employee. In this way the legislator wanted to prevent possible disputes concerning the existence of an employment contract and concerning its contents. However, non-existence of a written contract does not mean that employment relation do not exist nor that an employment contract is not valid. In such a case, the employer concerned runs only a small risk of paying a penalty for violation of this provision of the Labour Code. The obligation to conclude an employment contract in writing does not cover cases where the employment relationship is expected to last for a period of less than one month. However, the worker can insist on a written contract in all instances. In practice, due to the fact that non-existence of a written employment contract does not automatically mean invalidity of employment relationship, there are cases where no employment contract is concluded with the worker. The digest of court rulings, conclusions and analyses and Supreme court decisions >S III=, page 19 states: `...in cases of non-observation of the written form in accordance with section 32 (1) of the Labour Code, an employment contract is also valid when concluded orally or is implied.A However, such situation does not create legal safeguards for workers. Doubts may exist concerning the existence of employment relationship, its duration, type of job etc. with implied consequences on the worker=s rights.

Experience has also revealed that employers refuse to provide a copy of the employment contract to the worker under a pretext that there is a rule that the contract must be `confirmedA by the regional office of social security administration for the purpose of social insurance application. In most of these situations the copy of the employment contract is not transmitted to the worker at all and the employer also fails to meet his obligation towards the social security bodies. The worker might seek the existence of his employment relationship to be confirmed by a court of law but he would have to rely on evidence given by his colleagues. It would be difficult, if not impossible, to obtain such evidence because, for obvious reasons, workers are not prepared to give evidence against their employers. The worker might appeal to the labour office (public employment service) but also in this case it is difficult to prove that the copy of the employment contract was not transmitted to him. Where the worker is not registered with health and social insurance it would be up to the court to determine on the basis of other evidence if an employment relationship exists or not. However, court proceedings take a long time and worker tend to be reluctant to enforce their rights in this way.

An agreement on the duration of employment relationship is not required. Unless otherwise agreed it is assumed (section 30 of the Labour Code) that employment relationship has been agreed for an unlimited period of time (an irrefutable presumption). An employment contract may also contain a provision for a trial period the duration of which is three months, unless a shorter period has been agreed. The trial period cannot be agreed by means of a document other than employment contract and must be agreed at the moment when the contract is signed; no agreement to this effect can be concluded subsequently. Fixed-term contracts and trial periods cannot be concluded with certain groups of workers referred to in paragraph 2 of section 30, such as graduates of colleges and institutes of higher education and training centres who enter an employment relationship for the first time in jobs corresponding to their qualifications, adolescents, employees designated by collective agreements and persons with disabilities.

Recently, employers tend to insist on the conclusion of fixed-term contracts. These are usually concluded for the period of one year and then repeatedly extended. There are also frequent cases of extension of trial periods. The reasons given by employers include a volatile economic situation and impossibility of long-term planning. However, the real reason is that employers want to avoid a situation where termination of employment proceeds on the basis of a valid reason, by way of notice. Notice on the basis of restructuring or other organisational reasons implies a severance pay in accordance with section 60a of the Labour Code in the amount corresponding to two-months

average earnings. The use of other valid reasons inherent in the workers= behaviour is seldom warranted in these cases. Compared to this, during trial periods, employment relationship can be terminated quickly and without any financial compensation. Experience derived from labour inspection activities has shown that, frequently, workers did not receive any wages for the portion of the trial period actually worked.

An employment relationship for a limited period of time ends by the expiration of the agreed period. The Labour Code provides an exception to the prohibition of fixed-term contracts in respect of certain groups of persons (referred to above) to the effect that this prohibition does not apply in cases where the persons concerned expressly request the conclusion of a fixed-term contract. In practice this leads to situations where school leavers and graduates are recruited only under conditions that they request conclusion of a fixed-term contract. In most cases the text of such request is supplied to candidates by the employer. In a situation of high unemployment, in general, and high unemployment of young persons, in particular, there is no other way than to sign such statement. Persons with disabilities find themselves in a very similar situation. Otherwise, they would enjoy a high level of protection against dismissal and employers can avoid this only by concluding a fixed-term contract >requested= by the person concerned.

As of the day when an employment relationship has been established, certain obligations are imposed on the parties by the Labour Code (section 35(1)) by which mutual relations are defined. Firstly, the employer is required to assign his employee type of work corresponding to the employment contract and pay him or her wages for the work performed. The worker is required to perform the assigned work in person, in accordance with the employer=s instructions and during the working hours, and to adhere to disciplinary rules.

The present economic crisis in the Czech Republic has had adverse impact on the viability of many enterprises. This leads to situations where work is not assigned to employees or wages are not paid for the work performed. There is a number of cases where wages have not been paid for several months. Unfortunately, there is no legal remedy available to workers to improve their lot. No legislation has yet been adopted concerning protection of wages in the event of employer=s insolvency - a similar arrangement to that which exists in EU member States. Employees can only register the amount of wages due to them in the respective bankruptcy proceedings or enforce their rights by means of a civil action. This path is very difficult and lengthy and, very often, the company is insolvent to such an extent that no money is available even for wages.

The Labour Code has restated the freedom of contract in that modification of the agreed contents of an employment relationship is subject to agreement of both parties, i.e. must be agreed by the worker. The obligation to conclude an amendment in writing applies only to employment contracts that were concluded in writing. This means that oral and/or tacit agreement is not excluded. An additional provision of the Labour Code (section 37) refers to cases where the employer is required to transfer the worker to another job, including cases where he is entitled to do so without the worker=s agreement. The definition of these situations is very narrow but, in practice, workers tend to give their agreement with amendments of the employment contract, irrespective of the provisions providing them with legal protection, because they are afraid of losing their job altogether. Such amendments concern transformation of unlimited duration contracts into fixed term contracts, transfer to a lower paid job, etc.

Employment relationship can be severed only by ways and means provided by the Labour Code. They are: agreement, notice of dismissal, immediate cancellation and cancellation during the trial period. A fixed-term contract ends on the expiration of the agreed period. Employment relationship also ends upon the worker=s death. The first mentioned among these possibilities is an agreement which would imply that this is the preferred way how to proceed when termination of employment is intended by the parties. An agreement on termination of employment must be made in writing but no penalties are provided for situations where no written agreement exists nor is such termination considered null and void.

Notice served to the other party is a unilateral action expressing the will of the party

concerned to terminate employment relationship. As compared with the agreement to terminate employment relationship, the notice is subject to strict formal provisions. This is because of the fact that one of the participants in the employment relationship usually does not want the relationship to be terminated. Employment relationship can be severed in this way by both the worker and the employer and no priority treatment is provided to either party. The notice must be made in writing and delivered to the other party, otherwise it is invalid. An employer can give notice of dismissal only for reasons expressly provided by the Labour Code (section 46, paragraph 1, letters (a) to (f)). The reasons of dismissal referred to under letters a) to c) are commonly summarised under the concept of › organisational‹ reasons. The remaining reasons are connected with the workers‹ behaviour or ability to perform work. The Labour Code provides for the so called protection period in the course of which no notice of dismissal can be given by the employer. In this way, workers who find themselves in difficult situations (sickness, pregnancy, service in armed forces, care for a child of less than three years of age) are protected against the hardship caused by loss of job.

This protection concerns notice of dismissal only, not reasons for which employment relationship can be immediate cancelled (section 53 of the Labour Code). Special protection has also been provided by the Code to workers with disabilities and trade union representatives. In cases of redundancy, employers are obliged to provide assistance in search of a new job to single both male and female workers caring for a child of less than 15 years of age and to disabled workers who are not entitled to a pension. Unfortunately, this special protection works to the disadvantage of these categories because employers tend to avoid such additional responsibilities when recruiting workers and give preference to able bodied workers, preferably without family responsibilities.

Immediate cancellation is an exceptional tool of termination of employment. This possibility is provided both to employer and worker. The reasons which can be invoked by employers are intentional criminal act committed by the employee concerned for which he or she was finally sentenced. The law also defines criminal acts which constitute a valid reason. Employment relationship can also be immediately cancelled for a particularly gross violation of work discipline.

Immediate cancellation on the part of a worker can take place for two reasons. The first is a situation where he cannot perform his job without serious threat to his health and the second that the employer failed to paid wages. The latter reason was a theoretical possibility in the past but has been used at present in situations referred to earlier. By means of immediate cancellation workers become entitled to register as unemployed with the labour office and to receive unemployment benefit.

Other reasons than those stated in the Labour Code cannot be invoked for a notice of dismissal or immediate cancellation. However, the legislation on termination of employment is not always respected in practice. Employers often state other reasons, for example breach of trust, etc. and the path to reinstatement is difficult.

Fixed-term relationship ends with expiration of the agreed term or can be terminated by way of notice or immediate cancellation for the same reasons as employment relationship with unlimited duration.

Agreement on trial period in an employment contract enables both sides to terminate the employment relationship quickly and easily because both employer and worker can severe the relationship without giving any reason. This is the reason why certain employers force the policy of repeated short fixed-term contracts and extended trial periods.

There are also cases of termination of employment where, on the part of the employer, no regular termination takes place in accordance with the provision of the Labour Code. Quite simply, the employer tells his employee that he does not want him to work for the company any longer and that he need not come the next day. Also, the employer would refuse to issue a confirmation of employment to the worker as required by section 60 of the Labour Code. This document should state the duration of employment, the data concerning the workers rights to paid leave, as well as other data required by the regulations, such as the amount of average earnings and data needed for calculation of unemployment benefit. In cases where no regular termination of employment takes place the worker finds himself in a difficult situation when seeking a new job and the labour office

might also refuse to register him as unemployed because he does not officially fulfil the condition of not being in a regular or similar employment relationship. Where no documents exist which would prove the existence of the employment relationship or its termination, the only way open to the worker is an action before a court of law.

Fairly frequent are also cases where the company virtually ceases to exist without being regularly dissolved and the employer fails to meet his obligations towards both the State, the banks (repayment of loans) and his employees. Thereafter the employer establishes a new company in which he proceeds with similar activities. These criminal practices are very complex and disguised and are commonly referred to as ›tunnelling=. Our legislation concerning entrepreneurial activities of both natural and legal persons is very liberal and, without fundamental changes to deal with these damaging practices, it will hardly be possible to prevent further cases of fraud.

In its title three the Labour Code (sections 249 to 251 (b)) contains provision concerning the passage of rights and obligations arising employment relationship on the employer=s side. The enumeration of these cases is not taxative a similar provision concerning transfer of rights can be found also in other legislation, such as the Commercial Code, act on bankruptcy and composition. The intention behind these various provisions is to maintain the employees= jobs in cases where the company ceases to exist by way of merger, acquisition, division into separate units or change of legal form, transfer of ownership or the employer=s death. In these different cases the rights and obligations are transferred to the new employer/owner. These provisions are frequently violated in practice. The original employer would promise his employees that he would guarantee them a job in his transfer contract with the new owners if they sign an agreement concerning termination of employment. However, the new contract is then for a trial period enabling the new owner to make his `selectionA and redundant workers are dismissed in the trial period. In this way employers avoid the prescribed procedure of notice for reasons of organisational changes and payment of severance pay.

As regards other conditions of employment great problems exist in the area of working time and overtime. The Labour Code provides that working hours may not exceed 43 hours a week and, according to its further provisions, overtime may not exceed 8 hours a week and 150 hours a year. If an employer wants to extend the scope of overtime work he has to apply to the labour office and the `excessA overtime work has to be agreed with the employee concerned. These provisions are often disregarded or various ways are devised how to ›solve= the problem. In some cases no overtime is registered and wages are stipulated to include overtime work, without stipulating the scope or whether overtime will be ordered or agreed. As a matter of fact, employers are required to stipulate the beginning and end of working hours and the mandatory breaks but there is no provision for maintaining a record on the time actually worked. It is evident that this approach by employers is detrimental to workers, in particular as regards payment of wages, but also as regards compulsory rest periods between two shifts and weekly uninterrupted rest periods. In most cases employees are overworked and subjected to increased risk of accidents from fatigue.

Violated are very often also legal provisions concerning paid leave. In principle yearly paid leave is scheduled by the employer. Where leave is taken in parts then one part should include two uninterrupted weeks, unless otherwise agreed. Inquiries in companies have revealed that there are cases where employers have not provided for leave to be taken by their employees, sometimes for a number of years, under a false excuse that the worker did not ask for leave. In the process of collective bargaining employers tend to refuse the extension of the basic duration of paid leave over and above the legal minimum (three weeks).

3) As described above the Labour Code contains a definition of employment relationship, its elements and features and conditions of its establishment. Situations were referred to where doubt arise about the existence of employment relationship and where we can speak of a disguised relationship, illicit jobs and similar situations of insufficient workers= protection. In addition to these practices there are other forms of employment enabling employers to avoid the rigidity of employment relationship. One of them are agreements concerning performance of work.

They are described in title four of the Labour Code under `agreements on work performed outside of employment relationshipA. These are specific labour relations with a specific set of regulations. The provisions concerning employment relationship are not applicable, not even by analogy. Relevant are only provisions in title four of the Labour Code and, eventually generally binding legal provisions and those that were specifically agreed by both parties and aren=t in contravention with law. There is no right to paid leave or compensations of wages in respect of impediments to work, unless agreed by the parties which is rarely the case. Agreements concerning work performance can be concluded where employment relationship appears not to be instrumental or otherwise uneconomical. In contrast with employment relationship where the worker must perform the job himself, work in respect of this type of agreements can be performed also with the assistance of family members.

Agreements concerning performance of work may be concluded between an employer and a natural person where the envisaged volume of work is not expected to take more than 100 hours in a calendar year. The agreement may be concluded both in writing and orally, must include task description and the agreed remuneration (not wage) and, as a rule, the deadline until which the task is to be completed. Work related to agreement concerning performance of work need not be performed in the employer=s premises. Consequently, problems can arise with respect to the employer=s accountability for occupational injuries. In respect of these agreements the provisions of the Labour Code concerning occupational injuries are fully applicable, same as in respect to employment relationship. However, it is difficult to prove that the worker sustained the injury in connection with work performance or that the accident was directly related to the performance. Accountability for possible injuries of family members is regulated by the Civil Code. In contrast to employment relationship this type of agreement is not subject to obligatory social insurance.

Most of these agreements are concluded orally and employers are not required to register hours actually worked. There is not yardstick against which to control the adherence to regulations and employers run no risk of being penalised for contravention.

There are other ways and means how to avoid normal employment of workers in employment relationship, for example certain types civil agreements, such as mandatory agreement and agreement on provision of goods.

The former is regulated by sections 724 to 732 of the Civil Code. It concerns an activity in favour of someone else. The obligation of the person under obligation (the mandatory) is the provision of certain goods or performance of certain activity described in the agreement. The obligation does not include attaining specific results. Such activity can be of various types; relevant is that it is performed for the mandator (principal) and in his favour. However, it is not excluded that the result of such activity will satisfy the needs of a third person.

The agreement can be made in writing or implied by conduct. The activity may concern various ancillary acts that are connected with the main object of a contract, or independent activities (for example provision of information, provision of assistance, etc.). The mandatory is required to perform the mandate in person. The law assumes that the activity may be performed without consideration. A possible consideration concerns correct and timely actions and not the result intended to be achieved. Therefore, the mandatory has a right to remuneration irrespective of the result.

An agreement on provision of goods is a special type of the mandatory agreement. In this case the law assumes that the activity is performed for consideration. In this case, the provider may engage intermediaries with asking the mandator. No formal requirements are prescribed for the validity of contract which can be concluded in writing or orally. However, specified must be the parties to the contract, the object to be provided, its price, time in which the provision should take place and the remuneration.

These various types of agreement often serve as a disguise to what really is an employment relationship. Citizens who would otherwise be entitled to be treated as employees often enter in these relationships without being aware of adverse legal implications which consist, first of all, in

insufficient workers= protection in general and in lack of protection is cases of liability for damage or occupational injury, in particular. Workers are also often unaware of the repercussions on their social security rights.

In general, we can say that the number of cases of disguised nature of the employment relation is increasing, particularly in the service sector - retail trade, delivery of goods, tourist industry and also agriculture and building industry. Many cases of disguised employment relations can be found in small and medium-sized enterprises. Employers tend to believe that regular employment relationship is too rigid, costly, protectionist and that the legislation is too complex. Civil contracts of >pseudo-commercial nature= are perceived by them as a simple solution involving less responsibility (as derived from the provisions of the Civil Code or Commercial Code). The employers responsibility and his obligations towards an employee based on the Labour Code are much greater in scope. We often hear employers= arguments that high staff costs have adverse impact on the price of goods and services and weaken the competitive strength of the company. However, wages and other labour costs in the Czech Republic are much lower that those in EU countries.

4. In accordance with act 1/1991 on employment, as amended, labour inspection is performed by public employment services, i.e. by labour offices. Activities of inspection bodies is directed at compliance with legal provisions employment and concerning establishment, changes and termination of employment relationship, employment of young persons, etc., except the area of health and safety where inspection is implemented by specialised services. Competencies and activities of labour inspection bodies are regulated by section 8 of act 9/1991 concerning employment and field of competence of bodies of the Czech Republic in the area of employment, as amended. Their function is to secure enforcement of legal provisions. Labour inspectors are empowered by the provisions of the act to enter premises and workplaces liable to inspection, require information from both the employer and his employees, require the production books, documents prescribed by law and timely provision explanation and clarification and further collaboration needed for due implementation of their duties. The law also provides for giving warnings and imposing penalties for violation of legal provisions. Labour offices organise their inspection activities in accordance with inspection plans. More recently, inspections have frequently taken place on advice given by citizens. However, it must be said that labour offices se their main task in implementing the State employment policy, i.e. evaluating the labour market situation, providing free information, advice and placement services, establishment of socially useful workplaces and provision of services to the public in general, training and retraining of job seekers, paying unemployment benefits, provision of specific assistance including training to workers with disabilities and other vulnerable groups and maintain a freely accessible register of vacancies and of job seekers. Since the establishment of public employment services a considerable volume of work has been accomplished. It should be taken into account that a service of this type did not exist in the Czech Republic before 1990. At the beginning, no skilled staff was available and this adversely affected the performance of inspection activities. Training was provided to staff members and the collaboration with other bodies of the State administration (social security administration, public revenue bodies) has also improved. More recently, labour offices started to co-operate with social partners, especially with the trade unions. However, the authority of labour offices in the area of inspection are far from satisfactory. They have to rely on documents provided by the employer. It appears to be nearly impossible to bear out cases of illegal employment on the basis of evidence of third persons, or through other bodies. Labour inspectors have also no right to verify the identity of workers at the workplace. This key authority will be provided to them by a recent amendment which will start to be applicable on 1 October 1999. In this situation, violation of labour legislation can be established only on the basis of written documents. Action by inspection bodies can also be initiated by a worker who believes that his rights have been violated. However, this tool is rarely used for fear of loss of job. A further gap in the present regulations can be seen in that the inspection body is not required to inform about the inspection results the person who made the notification concerning alleged irregularities. This also should be remedied by the amendment referred to above with effect as from 1 October 1999. Notification concerning alleged violations can also be made by trade union organisations. However, employers often exert pressure on unions (where they

exist) arguing that possible penalties imposed by labour inspectors would be harmful to the company and, consequently, to all workers who would see their earning reduced.

In connection with inspection activities performed by employment services it is necessary to say that authority to perform inspection has also been given to trade union organisations (section 22 of the Labour Code) in respect of compliance with labour legislation, including wage regulations and safety and health regulations. With a view of performing the respective inspection duties, trade union officers are authorised to enter the workplaces, request from the competent managers the required information and documents, submit proposals for improvements to be made to the existing working conditions and to request information on measures taken by the employer to remove defects discovered during inspection. Another section of the Labour Code (section 136) concerns the right of trade union bodies to supervise the operation of safety and health arrangements in the undertaking. Section 136 contains a number of rights and competencies, including that of demanding by a binding instruction that the employer remedies defects in the operation of machines and plant and those discovered in the work process where there is direct threat to life and health to workers. In respect to the compliance of conditions of work other than health and safety the role of trade unions consists, first of all, in calling the employer=s attention to shortcomings and violations, this enabling his to take necessary measure and avoid possible penalties. Trade unions have a great advantage of profound inside knowledge of the situation and direct contact with workers and this may lead to discovering of disguised employment relation. However, it must be said that trade union organisations, for different reasons, do not sufficiently avail themselves of the rights and competencies provided to them by law. Considering the fact that trade union rights in this respect are integral part of labour law it would be appropriate for the labour offices= inspection activities to embrace this area, as well, and for trade union bodies to strengthen their co-operation with labour offices in this regard.

5) - 5a Practical repercussion of disguised employment relationships on the formal and effective protection of workers, as regards conditions of employment, remuneration, social security, etc., were described above in connection with different types of employment.

5 b) The area of health and safety is specifically regulated by act 174/1968 on State inspection of safety at work, as amended. State inspection of safety at work, safety of technical equipment and compliance with the provisions of the said law has been confined to the bodies of the Czech occupational safety office and to its inspectorates which exist at regional level. The bodies of the State inspections are bodies of the State administration and are empower to make inspections concerning safety at work, safety of machinery and equipment and compliance with regulations concerning other working conditions, such as employment of women and young persons, working hours, night work and overtime. These services also approve documentation concerning buildings, industrial equipment and personal protective equipment, etc. in respect of compliance with safety regulations. Among significant competencies given to these bodies is to issue authority, or to withdraw authority to undertakings to produce, assemble, servicing and maintenance of specified technical equipment. Occupational safety inspectorates also participate in the investigation of causes of employment injuries, industrial accidents, defects and breakdowns of technical equipment and causes of industrial poisoning and industrial diseases. Activities of occupational safety inspectorates are directed by the Czech occupational safety office to which appeals can be addressed concerning the decisions made by inspectorates. There is also a fully equipped research institute which contributes to the activities of the Czech occupational safety office. Similarly as labour offices, the bodies of the State occupational safety inspection were given by law special competencies enabling them to perform their inspection activities. The have also the authority to impose penalties for violation of safety regulations. A parallel activity in the mining sector is performed by the Czech mining office and its inspectorates which have similar competencies. Inspection in the area of protection of health at work is performed by bodies of industrial hygiene services which operate within the competency of the Ministry of Health. The supreme body at national level is the Chief hygienist who is supported by regional hygiene services.

It is clear from the above that there is no uniform labour inspection system in the Czech Republic.

Activities of the different institutions which operate in the sector which is called upon to enforce legislation on labour law and safety and health are based on separate legislative instruments their competencies are not matched and interrelated. Thus there are duplicities in some areas and gaps in others. The activities of the existing bodies are also hampered by the fact that the number of companies to be inspected has substantially increased without a corresponding increase in the numbers of inspectors. Also the new smaller companies don=t have their internal safety and health departments. This legal situation has an adverse consequence on the general safety and health situation. In a growing number of companies work is performed under health threatening conditions and the number of industrial accidents and occupational diseases has increased. The amendment to the Labour Code, which is under discussion at present, should align the present legislation with the provisions of EC directives, in particular in the safety and health area. Alignment of legal provisions should improve practical impact of legal provisions and contribute to remove systemic shortcomings in the area of safety and health inspection.

5c) Another adverse repercussion of disguised employment relationships on both formal and effective protection of workers is their exclusion from compulsory social insurance. This is true for workers who concluded contracts referred to under part 3) who on the basis of their contract are not subject to compulsory sickness and pension insurance. Such insurance is compulsory for groups of persons referred to in section 5 of the pension insurance act No. 155/1995, as amended (for example employees in employment relationship, persons in service relationship, i.e. military and police personnel, members of co-operatives performing work for which they are remunerated by the co-operative, self-employed persons, persons who perform an activity based on a contract concerning performance of a job (as opposed to performance of work), partners and agents in a limited liability company who are not in an employment relationship but work for such company and are remunerated for their work, etc.). These persons participate in compulsory pension insurance insofar that they fulfil conditions for participation in sickness insurance in accordance with sickness insurance act No, 54/1956, as amended. The condition to be met for participation in sickness insurance is that the employment is not of a casual and non-recurrent nature which has not exceeded or is not planned to exceed the period of seven calendar days and also an employment the contents of which is a working activity of small extent that is understood to mean an employment producing an income (earnings) of less than 400 Czech Crowns (or around 12 USD) a calendar month.

This means that workers with various contracts construed under the Civil Code and their employers evade payment of sickness and pension insurance contributions which would otherwise be due on their earnings but the workers have no protection against the risk of sickness (sickness benefit and benefit when caring of a sick family member, maternity benefit) i.e. benefits compensating the loss of income for a short-term incapacity for work. Non-payment of social security contributions is also prejudicial to the worker=s future pension rights (neither the period of >employment= nor the earnings are credited towards the insurance period required for entitlement to invalidity and/or old-age pension). Such worker would be eligible for a reduced pension or, possibly, would not qualify for the pension at all and would rely on social assistance. The >winner= is his employer, if he can get away with this practice.

5d) Freedom of association in the Czech Republic is enshrined in the Charter of fundamental rights and freedoms (article 27). Everybody is free to associate with others to protect his or her economic and social interests. It follows from this that trade union organisations can be established independently and without State intervention. Restriction of the number of trade union organisations is prohibited, including their positive discrimination in companies and/or sectors. Activities of trade union organisations and activities of other association established with a view of protecting economic and social interests can be restricted by law only in cases where such measure is essential to protect security of the State, public order or rights and freedoms of others in a democratic society. The legislation is based on ILO Convention 87 (Freedom of association and protection of the right to organise Convention) and Convention 98 (Right to organise and collective bargaining Convention).

5e) Section 18 (1)of the Labour Code that trade union organisations have the right to participate in labour relations, including collective bargaining, under conditions stipulated by law. The Labour

Code further enumerates a number of special rights in their relation with the employer and defines situation where the employer is required to provide information, arrange for consultations concerning certain envisaged measures before their implementation, and, in certain other cases, situations where there is a right of co-decision or mutually agreed action. According to existing legislation, trade unions represent all employees, including non-organised workers. Trade union organisations can mostly be found at the level of enterprises but they are also established on a regional basis and associate also citizens having no employment relationship (the unemployed, pensioners, women workers on maternity leave, self-employed workers who do not employ other persons). The association act provides that a trade union can be established by an association of three persons and stipulates other formal requirements for its establishment. The existence of a trade union organisation is formalised by having been registered in the competent ministry or an industry union (federation). This is by no means a process of approval or certification. The main purpose of a trade union is to represent employees in labour relations, to engage in collective bargaining and conclude collective agreements on behalf of all employees. This means that trade unions are best placed to provide an effective protection to workers. However, in the event of disguised employment relationships, the workers concerned cannot enjoy the rights and benefits in the area of working and employment conditions ensuing from collective agreements, as regular workers do, not even where they are registered as trade union members.

5f) Access to justice. There are no special courts in the Czech Republic which would be called upon to deal with individual labour conflicts. These are subject to proceedings before a civil court, on the same footing as other civil court proceedings. Labour disputes are judges by tribunals consisting of one professional judge and to associate judges - laymen. After 1989, the average duration of dealing with individual cases has lengthened many times. Courts are overwhelmed mainly with claims for restitution of property and trading disputes. In addition, competent judges are in short supply and positions could not be filled. The average duration of an action in labour matters until final judgement is around two years. In these circumstances, and considering the expenditure involved, most employees voluntarily waive their right to appeal to a court of law. In general, workers do not believe that they can successfully enforce their right before a court or otherwise. This of course adversely affects the treatment of workers by certain employers who are aware of the fact that no reliable and effective machinery exists to remedy the failure to comply with violations of labour law.

6) Possible solutions. The present situation has clearly demonstrated that the present law is outdated and does not adequately cover the development of employment relations and new employment forms and needs. It is evident that changing social conditions, developments in science and technology, particularly information technology, require greater flexibility of manpower and the corresponding new forms of employment. It must also be taken for granted that employers will continue to make effort to reduce labour costs and improve in this way their competitive position and that they will reject any measures of workers= protection that would be related with increased costs. Improvement of the overall competitive position is one of the main objectives to be achieved by the Czech Republic for a smooth EU accession. However, this does not mean that illegal practices prejudicial to workers= interests should be tolerated. Workers continue to believe that stable and regular employment should the basic form of mutual relations. Reaching a balance between conflicting needs and aspirations and finding mutually acceptable solutions in conditions of economic transition is a great challenge. I believe that a modern labour law should respond to these problems, should define new types of atypical employment while providing workers with adequate protection and thus to fulfil its historical role.

It should not be admitted that new forms of employment would continue to expand on the basis of civil and commercial law which provides to >employees= practically no protection, except perhaps, provision of consideration for the performance of work or the result of agreed work. In this context it will also be necessary to rethink the existing special protection of certain groups of workers, because increased protection tends to bring along discrimination in the labour market against those whom the legislator wanted to protect. Conditions have to be created to induce employers to provide employment for these vulnerable groups. In my view, solutions should be sought in the areas of tax

policy and/or social security systems. Above all, it is necessary to make arrangements for improving the functioning of the inspection systems and courts to enforce the application of labour legislation.

The Czech labour law will be subject to a fundamental reform which will take place in two stages. The first of them is connected with EU accession and consists of aligning the Czech labour legislation with the provisions of the relevant EU directives. It is clear to us that adoption of these new provisions will contribute to improvement of the present legislation, including the introduction of new legal instruments (for example concerning collective redundancies and protection of employees in case of their employer=s insolvency). The second stage would consist of adoption of a new Labour Code which might bring extension of the freedom of contract in the area of both individual and collective labour relations. The new provisions would necessarily have to deal with the problems which are subject to the present ILO inquiry and of the present paper.

II. Triangular relationships

1) In accordance with the present legislation the so called triangular relationships can be based either on the provisions of the Labour Code, or on the basis of a system where workers are supplied by an agency.

In accordance with section 38 (4) of the Labour Code workers can be temporarily assigned to another employer (or natural or legal person) with a view of performing work for him. In these cases the employer can make a written agreement with a worker employed by him concerning such assignment. This need not be a new employer, but any legal or natural person that did not yet employ the worker concerned. The written agreement to this effect must include the designation of the legal or natural person to whom the worker is assigned. In the case of a legal person this would be the name and seat of the company, in the case of a natural person full name and surname, even in cases that this is an entrepreneur who uses a company name. The agreement must further include the day on which the assignment starts, place of work and the period for which the temporary assignment has been agreed.

In accordance with section 2 of the Government decree No. 108/1994 to implement the Labour Code and certain other legislation, the legal or natural person, to whom the worker was temporarily assigned, gives instructions and tasks to the worker on behalf of his employer, organises and supervises his work and makes the necessary safety and health arrangements. However, such legal of natural persons is not permitted to make legal acts in relation to the temporarily assigned worker on behalf of the employer. During the period of temporary assignment the original employer continues to pay wages to the worker including, if appropriate, compensation of travel and other costs.

The employer and the legal or natural person to whom the worker was temporarily assigned may conclude an agreement according to which the said person will reimburse to the employer the agreed amount of wages plus compensation of travel and other costs, if appropriate, corresponding to the extent of work performed by the worker. If the employer who temporarily assigned his worker to perform work for another legal or natural person paid to this worker damages caused in connection with the fulfilment of the workers tasks or in direct connection with these tasks when working for that legal or natural person the corresponding amount is payable to the employer by that legal or natural person, unless otherwise agreed. The temporary assignment can be terminated before the expiration of the agreed period by agreement of the participants or within ten days since one of the participants has notified the other of his intention to terminate the assignment.

The provisions of paragraph 4 of section 38 of the Labour Code and of the Government decree referred to above to implement the Labour Code is of exceptional nature and was intended to be used in practice in isolated cases where two employers want to help each other to perform a specific task. This provision should not be used for the purpose of a systematic gainful `leasingA of workers to legal or natural persons. However, these cases can be found in practice. One of the reason is similar as referred to in connection with the employment contract. Though a written agreement is required for temporary assignment to perform work for another legal or natural person, non-existence of a

written document does not mean that such assignment is not valid. Where no written agreement exist there is no way of proving the existence of such situation. There is no secret that such sale of workers exists and payment is made from unofficial sources of enterprises or natural persons to whom these workers are assigned, or the transaction is legalised by commercial contracts, for example by invoicing a service or by formal invoicing a fictitious transaction.

The present regulation concerning employment agencies can be found in section 5 of the employment act No. 1/1991, as amended and is based on ILO Convention 34 (Fee-charging employment agencies, 1933). In accordance with this Convention and the corresponding domestic regulations placement of workers for consideration is lawful, but the fee which the private agency requires from a citizen or a company should correspond to expenditure in connection with the operation of the service and to the tariff of fees and charges which is regularly approved by the Ministry of labour and social affairs. Section 5 of the employment act expressly prohibits, in connection with the placement of workers, any deductions to be made from wages or from other components of the worker=s remuneration for the work done for other persons. The same applies to deductions from wages in connection with recruitment or in connection with a promise to safeguard the job. The present regulations do not allow establishment and operation of private employment agencies which would operate on profit basis. Also, there are no rules concerning co-operation between private employment agencies and public employment services.

However, private employment agencies exist because the said regulations can be circumvented by having recourse to the provision of the Labour Code referred to above. The procedure is as follows: a person obtains a business licence and thus a status of employer and recruit employees who are then offered and `soldA to other juridical and natural persons. In this connection it should be mentioned that in order to become employer it is not necessary to have a licence for engaging in activities defined by specific regulations. Any person may obtain a licence in respect of an entrepreneurial or other free activity.

The `saleA is then performed as described above or by agreeing with the worker the place of work in the premises of the juridical or natural person where the work is performed in accordance with instructions of this person.

2), 3) Disguised employment relations exist also by way of establishing a company in accordance with the Commercial Code. Most frequently used for this purpose are limited liability companies, partnerships and co-operatives. A limited liability company may be established by one person or, at most, by fifty partners. The capital is defined by denominated deposits of partners. The company is liable only up the amount of its capital and liability of individual partners is limited by the amount of their shares, which is indicated in the commercial register, provided this amount was not already paid up. The lowest amount to be registered is CZK 100,000 (or around USD 3,000). In order to be registered, at least 30 per cent of each individual share must be paid up giving, at least, CZK 50,000 (around USD 1,500) or 50 per cent of the total of paid up capital. Where only one person establishes a limited liability company the capital must be paid up in full. The supreme body is the general assembly. It takes decisions concerning all matters covered by the law and those provided in the company statutes. The company appoints one or more agents who act as statutory bodies. An `advantageA of these companies is that they can be established by one person only, or that one partners holds a majority share conveying to him full decision rights and the other partners are, de facto, his employees.

A partnership (unlimited company) includes association of, at least, two persons for the purpose of doing business under the agreed commercial name. All partners are liable for the company=s obligations jointly and severely with all their property plus the property of the company. In this case, the statutory body is each partner, unless the statutes conveys the authority to one partner only or to two or more partners jointly. An `advantageA of this company is that the law does not prescribe the creation of capital.

A co-operative is an association of a non predetermined number of persons, at least five natural persons or two juridical persons, for the purpose of doing business or engaging in meeting their

members= economic, social or other needs. A co-operative is a juridical person which is liable by its entire property. Members are not liable unless the members= meeting imposes on them an obligation to participate in covering eventual loss. The establishment is decided by the constitutional meeting where decision is made on the co-operative capital (at least CZK 50,000 or USD 1,500). The member=s meeting is called upon to approve the statutes, elect the board and supervisory body. The supreme body is the members= meeting. Elected as board members can be natural persons fulfilling general conditions for engaging in business activities.

Disguised employment in both these types of companies takes place in that employment relationship is replaced by co-operative membership, or by relations among partners of whom one of them is a *de facto* employer (determines the contents of job, issues instruction concerning the work performance, acts as owner). Misuse of these types of companies can be found in the Czech Republic particularly as regard employment of foreigners. This is because of the fact that the requisite trade permits are much easier to obtain than permits from the labour office for employment of foreigners.

4) No statistical data are available in the Czech Republic concerning quantitative evolution of these triangular relationships. Experience has shown that they can be found, in particular, in sectors where unskilled and low-skilled labour is extensively used, such as in the building industry, in agriculture, forest industry, trade and services, hotels and restaurants. The present situation is a direct consequence of the post 1989 developments where a principle was included in the Constitution that permitted is everything what is not expressly prohibited. At the same time, full support was provided for entrepreneurial activities. Only following adverse experience of uncontrolled developments of the different `entrepreneurialA activities subsequent legislation has made efforts to provide detailed regulation (procedure for obtaining a licence or permit, integrity - extract from the crime register, certificate of competency, etc.). As a consequence of this the scope for deployment of illegal activities has somewhat narrowed but it must be said that the practical effect of these various measures is very limited (for example extensive use of `suppliedA Ukrainian workforce in the building industry is taken for granted by the public and all concerned).

5) In addition to misuse of the commercial relations by the fouder-promotor for the purpose of illegal employment, other forms of direct `saleA or lease-hiringA of labour for performance of work for other juridical of natural persons can be found, especially by means of a performance contract. The *de facto* employment relationship is based in circumstantial evidence: the contractor (entrepreneur) performs the commissioned task in the premises of the employer, uses the employer=s material equipment and tools and acts on his instructions. Such quasi-employment relationship is made possible by the provision of the Commercial Code, according to which the work to be performed consists also of physical and mental work for the performance of which no tools and means need be owned by the contractor. The Commercial Code provides that the contractor is required to perform the work at his own expense and risk. There is no definition what the >expense= actually means and this enables the illegal practice of mere supply of labour.

6. - a) b) There are many problems with the protection of workers misused in this way because in cases referred to above no employment relation exists *de iure* and the workers concerned do not enjoy the protection provided to regular workers by the Labour Code (as described earlier in connection with employment relationship). The remuneration for the work performed tends to be around the minimum wage level (which is extremely low in this country), practically no rules apply concerning working hours and occupational safety and health.

The protection of workers temporarily assigned to work for another juridical or natural person (section 38 (4) of the Labour Code) should be the same as in respect of other workers covered by employment relationship. However, in practice, this protection is of little effect. There are also great difficulties with organisation of these workers because there is usually no trade union organisation in the company of the real employer where employment relationship exists. Trade unions organisation may exist in companies where the work is performed but the supplied workers would not benefit from any provisions of collective agreements because they are not employees of the company which

concluded the respective collected agreement. No trade union protection can also be provided to ›contractors‹, i.e. workers under performance of work contracts.

6 c) Another consequence of quasi-employment relation is frequently non-existence of any social security arrangements for the workers concerned (compulsory insurance is related to employment relations enumerated in the pension insurance act, as described in part I of this report). It has to be emphasised that the persons concerned do not avail themselves of the opportunity provided to them to opt for voluntary insurance of self-employed persons (see later in more detail).

6 d) There are no obstacles in respect of freedom of association because membership in a trade union organisation is not contingent of the existence of employment relationship. Admittedly, the act on citizens‹ association states that a trade union organisation may be established by three citizens and only minimum formal conditions are required for establishment, but in these situations no workers‹ associations are established due to adverse attitudes of `employersA towards the unions in general, and the persons concerned are afraid to lose their job which is the only source of livelihood and no other opportunity is usually available to them.

6 e) Collective bargaining is out of question in these circumstances because no labour relation exists. It is not possible to make wage settlements (because work is not performed for wages) or to engage in bargaining concerning annual leave, shorter working hours, etc. which is the case in regular employment. Even if the persons concerned are members of trade unions, the disguised employment relationship excludes them from enjoying similar benefits that are provided to regular employees.

6 f) The disguised nature of ›employment‹ in the cases described above tends to markedly restrict or summarily exclude possible access to justice. It is also very difficult to apply for protection to labour offices or occupational safety inspectorates (inspection is directed at juridical and legal persons employing employees in labour relations), or to use regular procedures available to workers in employment relationship.

7) Recently, the Parliament of the Czech Republic adopted an amendment to the Employment act which introduces stricter conditions for employment of migrant labour and is expected to reduce the incidence of their illegal employment. The amendment also took account of the provisions of Convention 181 and Recommendation 188 on private employment agencies (1997) and provides protection to workers who the services of these agencies or are employed by these agencies. The legislation will respond to the need to provide more flexibility to the operation of the labour market and all participants in the market and it is hoped that the new provisions would contribute to a more efficient operation of all actors engaged in matching supply and demand of labour and creation of an environment which would be conducive to the provision of adequate protection of worker‹s needs and interests and to meeting legitimate needs of employers. In respect to workers‹ protection it will be necessary to amend certain provisions of the Labour Code. At the same time it will be necessary to denounce Convention 34 of 1933 because its provisions are perceived of being outdated and do not respond to the present labour market needs. In order to reduce or exclude adverse consequences of triangular relationships it will be necessary to adopt fundamental changes of the respective provisions of the Civil Code, Commercial Code and the Trades act (Gewerbegesetz) with a view of reducing to the minimum the possibility for illegal employment and disguised employment relationships.

III. Self-employment

1. Self-employment in the Czech Republic has several different forms which are frequently summed up as ›entrepreneurship‹. The most frequent form of entrepreneurship in the activity regulated by act No. 455/1991 concerning entrepreneurial trades‹ activities (the trades‹ act, or small business act), as amended. The term ›trade‹ (›business‹) is defined by the act as a systematic activity operated independently and under own name and responsibility for the purpose of obtaining profit and under conditions established by the act. Business can be operated by a juridical or natural person meeting conditions determined by law; in certain cases the performance of such business activities is subject to a special permit (licence). The persons concerned are used to be referred to as ›

entrepreneurs=. This is in line with popular perception of entrepreneurship and people engaging in these activities. General conditions for natural persons to engage in business activities are: 18 years of age, capacity to legal acts, and integrity which is understood to be equal to having a clean crime register in relation to the object of entrepreneurship and in relation to intentional criminal offences. Exclusion from business activities is warranted by the likelihood that the person concerned might commit the same or similar act in connection with his business activity.

Various types of self-employment (referred to as independent gainful activity) are summarily defined in the legislation concerning social insurance. This is in line with the need to have a clear definition of the range of independent gainfully active persons who are liable to compulsory insurance and who are entitled to sickness benefits and pensions if they meet the conditions stipulated by law. The pension insurance act No. 155/1995 refers to `independent gainfully active personsA (the range of these persons is broader that the concept of >entrepreneur= as defined by the trades= act). In accordance with the provisions of the Pension insurance act, an independent gainfully active person is a person who either is engaged in the performance of an independent gainful activity in the territory of the Czech Republic, or who co-operates in the performance of such independent gainful activity and in respect of whom income and expenditure obtained by the performance of such activity may be distributed in accordance with the provisions of the income tax legislation. There are six main types of independent gainful activity:

_ activities in the sectors of agriculture, forest and water surfaces, where the person engaged in the production of goods is registered under a special law (in this case this is act No. 105/1990 on citizens= private entrepreneurship, as amended);

_ operation of a trade (business) in accordance with act No. 455 concerning entrepreneurial trades= activities (the trades= act), as amended;

_ activity as partner in an unlimited company or main partner in a *société en commandite* as defined in the Commercial Code No. 513/1991, as amended;

_ the performance of an artistic or similar creative activity on the basis of intellectual property rights, as defined by act No. 35/1965 concerning artistic, scientific and literary works (authors= act), as amended

_ the performance of other activity not referred to above in a gainful manner and on the basis of a permit based on special legislation, provided that this activity is performed other than in labour or similar dependent relation (for example activity of attorneys, notaries, auditors, tax advisors, interpreters);

_ the performance of activities not referred to above performed under own name and responsibility for the purpose of attaining an income (except lease of both movables and imovables) - for example professional athletes.

2. Award of a trade (business) licence is related to specific types of activities irrespective of whether the entrepreneurial entity was established in accordance with the Commercial Code or the trades= act. Most of businesses established in accordance with the trades= act are small enterprises run by the owner, sometimes with assistance of his family members. The sectors among which such gainful activity may be found include retail trade, repairs of motor vehicles, activities in the real estate sector, leasing of property, services for the commercial sector, manufacturing (food, clothing, woodworking industries, publishing) and construction.

3. Self-employment is a new phenomenon in the Czech Republic, a sector where an unprecedented development was registered after 1989 in connection with transition from the centrally planned to market economy. In a short time considerable numbers of people tried their fortunes in self-employment activities. A number of them experienced difficulties after 1996 in connection with economic downturn (slow-down in sales, servicing high-interest loans, competition of international supermarkets, full responsibility for business failure, customers fail to pay for delivered goods and

services, etc.). More recently, an outflow of persons can be observed from self-employment activities and their efforts to return to dependent relation and employment relationship. People seek more security even at the price of lower income.

4. The legal system on which independent gainful activity is based is related to the provisions contained in article 26 of the Charter of fundamental rights and freedoms, which guarantees the right to engage in entrepreneurial and other economic activity. Paragraph two of this article says that the law will specify conditions for engaging in such activities. In addition to the acts referred to above, these conditions are stated in other pieces of legislation such as the act on legal profession (No. 85/1996) the act on auditors and the Chamber of auditors (No. 524/1992), the act on provision of tax advice and the Chamber of tax advisors of the Czech Republic (No. 523/1992, as amended), and on notaries and their activities (No. 358/1992, as amended). This legislation includes a comprehensive set of rules defining the status and activities of these liberal profession, including basic principles for the determination of their fees.

5. Main rights and obligations of self-employed workers are stated in the legislation regulating the activities of individual groups of self-employed persons (emphasis has been placed on obligations). The main right consist in performing an independent gainful activity under certain defined conditions. The legislation referred to above states specific conditions for the performance individual types of gainful activities including, for example, those related to environment, protection of natural resources and cultural monuments against adverse effect of gainful activity, etc. So, the trades act requires the self-employed person to fulfil conditions determined by that act and by specific regulations and responsibility in respect of his personnel to prove the competency required for the performance of an occupation in accordance with the respective regulations, obligation to brief the staff on the relevant health and safety regulations, obligation to put a sign on his premises clearly indicating commercial name and identification number. Where sale of goods and provision of services are concerned entrepreneurs are required to indicate prices and to issue to customers a receipt confirming the payment of goods and/or services, etc. Another obligation consists of performing the activity in an orderly manner or act assiduously and honestly (for example the act on expertise and interpreting, act on the legal profession).

A number of obligations concerns the relation of self-employed persons with the State of with public institutions (taxes, contributions towards compulsory health and pension insurance, supervisory activities performed by public authorities and/or health and social insurance institutions). Frequently, the obligation of confidentiality is included in respect of information provided t by clients (for example the act on legal profession, notaries= regulations, etc.). In certain other cases the applicant is required to pass a special examination (for example the act on auditors and the auditors= chamber).

6a 6b Protection of self-employed workers is much weaker when compared with workers in dependent relation (employment relationship). It is assumed that the persons concerned, while having to comply with conditions determined for the performance of the activity concerned, have ample freedom of action in respect of their working conditions and on fixing the price of their services. However, self-employed persons have to comply with relevant legislation on occupational safety and health (in particular act 174/1968, as amended, on technical inspection of occupational safety and implementing regulations) and specific regulations covering their activities. They are subject to inspections and controls concerning the compliance with these regulations that are undertaken by relevant bodies. In certain cases the conditions of pay (fees) of self-employed persons are determined by special decrees (for example attorneys, judges, notaries).

6 c) Self-employed persons are covered by social security schemes for the calendar years for which they paid social security contributions (it is possible to pay contributions for past years to be eligible to pension entitlement, even after reaching the retirement age, self-employed persons are also entitled to substitute periods for which contributions are not payable, as employees). Insurance contributions are calculated from the assessment base, which amount to, at least, 35 per cent of the net income from independent gainful activity. This is also the basis for calculating the amount of benefit. Most self-employed persons pay insurance contributions at this minimum rate (they can pay

higher contributions in order to qualify for higher benefit) and the result of this are low benefits paid by the social security scheme, in particular sickness benefit, old-age and invalidity pensions. Proposals were tabled to increase the base from which insurance contributions are calculated to the level from which contributions are paid jointly by employees and employers. So far these proposals have not received sufficient support for various reasons (the main being promotion of small enterprises). However, the impact of future low pensions has not been taken fully into account.

6 d) As to freedom of association regulations concerning trade union membership were described under II/6 d) above. So far, self-employed persons have not established trade union organisations and most of them have not joined existing unions, in spite of the fact that statutes of certain unions provide for such possibility, provided the persons concerned have no employees. Apparently benefits derived from membership are not powerful enough as compared to employees in an employment relationship and unions have only few members among them. However, in certain professions performed by self-employed persons there are association based on article 27 of the Charter of fundamental rights and freedoms. These associations were established with a view of protecting the members' economic and social interests. They are professional organisations promoting their members' interests in relation to public authorities (for example the Czech chamber of attorneys). These associations fulfil certain other roles promoting the status of the profession, or roles similar to those which can be found in employer-worker relations (for example disciplinary proceedings against members, constitution of social funds).

6 c) Collective bargaining and conclusion of collective agreements has no practical application because there are no industrial relations - self-employed persons have no employers. It is not possible to make wage settlements (because work is not performed for wages) or to engage in bargaining concerning annual leave, shorter working hours, or concerning other improvement of the basic provisions contained in labour law.

6 f) Access to justice is at the same level as in respect to other citizens. Conflicts related to the performance of independent gainful activity may be brought before a court of law. These conflicts are settled by general courts in civil proceedings at the same level as other cases. Self-employed persons encounter similar problems to those referred to in respect of workers in employment relationship: very long duration of the consideration of cases by courts. Courts are overwhelmed mainly with claims for restitution of property and disputes arising from commercial transactions. Due to reasons already referred to above many cases drag for several years. Delays are encountered in connection with incorporation, termination of activities and other relevant facts concerning self-employment activity in the business register. This situation has an adverse impact on the performance of self-employment activity and on the protection of self-employed persons' interests.

IV. Self-employment in situations of economic or other dependency

1. The conditions under which permit can be obtained on the basis of act No. 455/1991, as amended, are very liberal, indeed. Businesses can be established essentially in respect of whatever activity. Except for prescribed specialised qualifications the trade authority makes no assessment whether the applicant has essential means for the performance of the relevant activity. If there are no formal defects in the application the authority cannot refuse the issue of the trade/business licence. The tax to be paid by the applicant is very low. This situation opens the way to the so called *quasi-entrepreneurial* activities. Formally the persons concerned are self-employed but, as a matter of fact they are in a situation of dependency towards another entrepreneur for whom they work and who derives his profit from their labour. There is no equality between the two entrepreneurs. One of them does not perform his activity under his own name and responsibility, as stated by the Trade act. Unfortunately, in practice it is very difficult to separate cases of dependent and independent activities. Sometimes, it cannot be established which part of the job was done by the self-employed worker and whether he used his own material and tools. It is also worth mentioning in this context that, in certain regions, employers who take advantage of these disguised relationships have concluded cartel agreements concerning remuneration for the work performed by these workers. In doing this they wanted to establish situations of equal competition in the region and make agreement on the level of

pay. Instead of arriving at equitable working conditions in industries and regions by way of collective bargaining between the two social partners, working conditions are imposed unilaterally (and illegally) by one of the partners. Discussions relating to these cartel agreements are also used to mutual information among employers on trouble makers among employees - including self-employed › employees‹ for whom there is then no way of finding a job.

2. The term currently used for this type of employment in the Czech Republic is `Švarcsystém', i.e. a system used very extensively by an employer whose family name is Švarc who managed to obtain in this way a considerable comparative advantage, by avoiding the payment of tax and social security contributions for his `employees'. Mr Švarc took full advantage of the gaps in the labour law. In spite of further developments, this practice is far from eliminated.

3. It can be said that some success has been achieved in efforts to curtail this type of `employment'. This is due to inspection activities made by labour offices. Under control are previously frequent orders for supply of bricklayers' and joiners' work which immediately arise suspicion that it is, in fact, a disguised employment relationship. On the other hand, employers are very ingenious in finding new ways of formulating their orders in order to formally comply with the provisions of the employment act (i.e. with the obligation to ensure the fulfilment of the tasks ensuing from the business activity by the company's own workers who are employed for this purpose in a dependent labour relation). This can be achieved by ordering a piece of work (for example repair of an automobile) or a complete service. In some cases it is difficult to see during a subsequent control under what conditions the work was done. However, the volume of ›employment' based on the workers' own trade licences has also diminished because of the fact that workers have gradually perceived that non-payment of taxes and social security contributions is connected with a risk of being caught and, in particular, that they need a decent protection guaranteed only by employment relationship. At present this form can be found in the performance of low skilled jobs and in jobs which were referred to in part III - self-employment.

4. The main cause of existence of this kind of work are increasing rates of unemployment which compel workers to accept any type of work to obtain a source of livelihood for their families, even in full awareness of the fact that the relationship and ›employment' conditions are forced on them. Certain employers take advantage of these situations, shake off their responsibilities ensuing from employment relations and avoid their responsibilities towards the State (taxes) and social security schemes.

5. Among main activities carried out by such workers are to be found in the building industry, repair of automobiles, in sales, forest and agricultural activities, and ancillary work in retail trade and various services (dressmaking and repairs, cleaning, hairdressing), small-scale production and small-scale transport.

6. Due to the described circumstances and conditions under which the work is performed it seems to be clear that these persons work in a dependent relation and should be classified as subordinate workers with the same status as employees. The problem is how to guarantee them the corresponding legal treatment.

7. The lack of workers' protection in these situations has direct impact on conditions of employment, remuneration, occupational health and safety, social security, collective bargaining and access to justice, as described above in part III.

V. Case studies

Examples of the different kinds of cases of disguised employment relationship, triangular relationships and pretended self-employment activity were mentioned in individual parts of the report. The cases of truck drivers in transport enterprises, construction workers or salespersons in stores are among those where cases of transgression can often be found. However, the situation of a salesperson in a perfume department is no different from a situation of a salesperson other departments. All these jobs, and jobs referred to in preceding parts of the report are, as a rule, performed in an employment

relationship or as a self-employment activity, in accordance with the respective provisions of the law, but in a certain extent, which is difficult to measure self-employment situations of dependency and other illegal situations exist. Some jobs (drivers, construction workers, workers in repair shops) are more vulnerable to violation of law than others, with the corresponding adverse impact on workers' protection. The available information does not allow to develop a case study.

Conclusion

The status of workers performing their jobs under employment relationship a that of self-employed persons is under significant influence of complexities and uncertainties connected with the profound transformation of the Czech economy. Legal and social environment has been subordinated to efforts to rapidly introduce a fully operational market economy, including the introduction of standard forms of regulation and workers' protection which exist in developed market economy countries, such as the EU countries. However, certain adverse phenomena and practices related to the introduction of market economy could not be avoided, such as illegal employment, lack of social protection, delayed payment or non-payment of wages, non-payment of social security contributions by employers, violation of occupational health and safety regulations and violation of trade union rights. Among the reasons for these developments the following can be singled out: frequent changes of regulations and difficulties in creating a comprehensive and transparent legal framework; difficulties in access to justice and inefficient enforcement of law; lack of awareness on the part of workers (mainly young workers) of adverse consequences of these various types of disguised employment; and prolonged economic recession and rising unemployment rates connected with the willingness of workers, who find themselves in difficult social situations, to accept any work, even under adverse and indecent conditions, irrespective of consequences in the area of workers' protection. There seems to be no single short-term solution. Strengthening of legal protection and of institutional arrangements and of related efforts at both national and international levels will certainly contribute to the improvement of the workers' lot. However, certain phenomena are inherent in the social and economic system and comprehensive approach, including improvement of the economic situation, better enforcement of law, promoting awareness, etc. has to be adopted. Certain type of measures have been stated in the report.

Prague, 26 August 1999 JUDr Marcela Kubínková