

# WORKERS' PROTECTION

## The case of Slovenia

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### **I. Some preliminary remarks**

The situations in which one performs work can be very different. We differentiate between so-called formal and informal work. Informal work, which can take on various forms, is not the topic under discussion here and is therefore not mentioned further in this paper. As regards formal work, one needs to take account of the fact that the legal bases on which such work is performed can also vary. Such a basis can be a contract of employment, on the basis of which an employment relationship is established, or work can be performed on the basis of various other contracts - as a rule civil law contracts. Throughout its development, labour law was in principle limited to the protection of persons in a dependent employment relationship. As it will be illustrated below, it is interesting in Slovenia's case that laws governing labour relations also regulated certain types of work that weren't regarded as employment relationships throughout the period following World War II.

The emergence of new activities and professions, the introduction of new technologies, changes in the organisation of production and work proper, an ever greater internationalisation of the economy, attempts by employers to lower their labour costs and improve their competitiveness by avoiding labour laws and, last but not least, the critical rise in unemployment also give rise to the following two phenomena on the labour market: 1) an increase of the various forms of work which, from the aspect of labour law, were regarded as unusual, atypical forms of work, 2) a reduction of the extent of work on the basis of contracts of employment and a relative increase in the extent of work not regarded as dependent work (the work of the self-employed and work performed under contract law). Regardless of the different legal bases on which work is performed, it is important that so-called regular employees and independent workers often perform very similar work under similar conditions. That is why we are presently dealing with a range of dilemmas such as: is it appropriate to allow for an unlimited increase in the number of forms of work where workers are not guaranteed the protection envisaged by labour law and social security law?<sup>2</sup> Should persons

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<sup>2</sup> In this context the French apply the term professional status, guaranteed to the employees by labour law and social security law.

who do not fall into the category of dependent workers be guaranteed the same protection as regular employees? Where are the limits to such an expansion of labour law? Are there enough reasons to support that by extending labour law to persons who cannot be viewed as dependent workers we would in fact efface the essence of the difference between independent and dependent work, on the basis of which labour law came to its very existence? On the other hand, are there guarantees that by extending such protective legislation one could limit or even prevent abuses where civil law contracts are used by employers in order to lower their labour costs? The answers to the above questions can differ from country to country. They depend on the extent and the legal forms of work other than employment relationships that exist in practice, on the problems concerning unemployment in a given country, on whether a country is searching for a certain balance between, for example, the principle of free enterprise and the need to guarantee a professional status to as many workers as possible on the basis of their work.

The various legal forms of work that can be found in Slovenia will be identified below, and the protection enjoyed by workers of different legal status will be outlined. Prior to moving on to the discussion of specific relationships appearing in the sphere of labour, a few facts in connection with the development of labour law on the territory of what is today Slovenia require mentioning. On the one hand, one needs to take into account that the process of changing and adapting the system of labour law to the new social and economic conditions in Slovenia is not yet completed, on the other hand certain solutions and the achieved level of worker protection can be more easily understood if one takes account of the fact that since the end of World War II and until the late eighties labour law in Slovenia was developing in a socialist self-management environment. Without going into a more detailed explanation of the latter, I should like to underline the following facts for the purposes of this study:

\* The introduction of so-called social ownership (the common property of all persons working with resources in social ownership) and of the system of self-management resulted in an essential change in the nature of the employment relationship. Employment relationships weren't viewed as the asymmetric relationship between two in fact unequal parties, instead they were viewed as relationships of mutual dependency, reciprocity and solidarity between workers working with resources in social ownership and, on the basis of the right to self-management under the law, deciding themselves on their rights and obligations stemming from work. An employment relationship was not established on the basis of an employment contract (save the relatively small private sector). This fact is important in order to be able to better understand that one of the main preoccupations of the authors of the new Law on Labour Relations currently in parliamentary

procedure, is to regulate the employment contract<sup>3</sup> and adapt the regulation of individual rights and obligations of employees to the contractual nature of an employment relationship, i.e. to the fact that this relationship is one of at least relative subordination of the employee to the employer. Since we are still endeavouring to draft legislation that would appropriately regulate dependent or subordinate work, it is my view that the conditions in Slovenia would not allow for a possible extension of labour law to persons working on legal bases other than an employment contract, since this would intervene into the very essence of the concept of labour law developed to date.

\* The protection (as regards social security, for example) enjoyed by self-employed workers in Slovenia, for example, can be understood more easily if one takes account of the fact that in the past we also had certain other categories of persons performing work besides employees in a mutual employment relationship:

- so-called working people who, with their personal labour, independently performed, as their occupation, various activities (e.g. artistic, cultural, lawyer's activity, etc.); in view of the generally adopted principle that only work defines an individual's status in society, the Associated Labour Act of 1976 stipulated that on the basis of their work, such persons enjoy the same social status and basically the same rights and obligations as workers in organisations of associated labour. An example of the practical implementation of this principle their compulsory health, pension and disability insurance can be mentioned;
- farmers and other working people who independently, with their personal labour, performed activities with means of production in citizens' ownership (e.g. crafts, hotels & restaurants, transport, commerce) and who, on the basis of their work, enjoy the same socio-economic status and basically the same rights and obligations as workers in associated labour (the Slovenian legislation thus envisaged compulsory pension and disability insurance for them as well, though to a limited extent).

\* As regards claims which can be found practically throughout the world, that labour law is not flexible enough, it is an important fact that the labour legislation in force on the territory of Slovenia already in 1957 allowed the fixed-term employment relationships and so-called temporary employment relationships (now occasional or temporary contract work), while part-time work was enacted in 1965.

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<sup>3</sup> In the past there was no need to regulate the contract establishing an employment relationship either by civil or by labour law.

\* The final remark is one of the terminological nature.. The term worker is used in Slovenia to define person in an employment relationship, i.e. one performing work under a contract of employment. Under the established principle of uniformity, the term worker also applies to persons such as civil servants. The terms “worker” and “employer” have not been legally defined. A legal definition of the two terms is to be included in the upcoming new Law on Labour Relations which is currently in parliamentary procedure. This law shall stipulate that a worker is any natural person who has entered an employment relationship under a concluded contract of employment. The law shall define an employer as any legal or natural person or other entity (government authority, local community, subsidiary of a foreign company, diplomatic or consular mission) engaging a worker on the basis of a contract of employment.

It is interesting in this context that both worker and employer were defined much more broadly by the Law on health and safety at work adopted on 30 June 1999<sup>4</sup>. Pursuant to this law a worker shall be:

- any person performing work with an employer under a contract of employment,
- any person performing work with an employer under any other legal basis or performing an independent professional, agricultural or other activity, and
- any person performing work with an employer for purposes of training.

An employer under the aforementioned law shall be:

- any person engaging a worker under a contract of employment,
- any person engaging a worker on any other legal basis,
- a farmer or natural person who independently or with the members of their holdings or family members performs an agricultural, profitable or other activity as the sole or main occupation and does not employ other persons.

## **II. On sources of law de lege lata and de lege ferenda**

Individual employment relationships as well as collective bargaining in the Republic of Slovenia are regulated by the Law on Labour Relations<sup>5</sup>, adopted on the basis of the former federal Law on Fundamental Rights Stemming From Labour Relations<sup>6</sup> prior to Slovenia’s independence. The latter has effect in Slovenia on the basis of Art. 4, Par. 1 of the Constitutional Charter on the

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<sup>4</sup> Law on Health and Safety at Work, Official Gazette of the Republic of Slovenia, No. 56/1999;

<sup>5</sup> Law on Labour Relations, Official Gazette of the Republic of Slovenia, No. 14/90, 5/91, 71/93;

<sup>6</sup> Law on Fundamental Rights Stemming from Labour Relations, Official Gazette SFRY, No. 60/89, 42/90;

Independence and Sovereignty of the Republic of Slovenia<sup>7</sup> until the adoption of new Slovenian labour legislation. Both laws regulate in a general way the system of individual employment relationships in general, partly also collective agreements. The specifics of employment relationships in individual areas of activity (state administration, education, healthcare, culture, transport, agriculture, construction, trade, etc.) are regulated by special laws.

The new Constitution of the Republic of Slovenia was adopted at the end of 1991. It defined Slovenia as a state governed by the rule of law and as a welfare state (Art.2 ). One of the main principles it underlines is the principle of separation of powers. Its principal aim is the protection of human rights and fundamental freedoms. The chapter on human rights lays down the following rights and freedoms: the freedom of work (Art. 49), the right to social security (Art. 50), the right to healthcare (Art. 51), the rights of the disabled (Art.52). The principle of a welfare state is confirmed by some of the provisions of the chapter on economic and social relations. The Constitution thus provides that the state creates possibilities for employment and work and ensures their legal protection (Art. 66), that workers may participate in the management of the businesses and agencies (Art. 75). Freedom of association (Art. 76) and the right of workers to strike (Art. 77) are also guaranteed. Foreign citizens employed in Slovenia enjoy special rights as defined by law (Art. 79).

On the basis of the Constitution of 1991 certain new laws which could generally be regarded as labour legislation have already been adopted: the Law on the Employment of Foreigners<sup>8</sup>, the Law on the Representativeness of Trade Unions<sup>9</sup>, the Law on Workers' Participation in Management<sup>10</sup>, the Law on Labour Inspection<sup>11</sup>, the Law on Labour and Social Courts<sup>12</sup>, the Law on Safety and Health at Work<sup>13</sup>.

Both laws on labour relations constitute a legal basis for collective bargaining. Collective agreements are regarded to be so-called autonomous sources of labour law. In practice, collective bargaining is carried out at national, branch and enterprise levels. There are currently two general

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<sup>7</sup> **Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia, Official Gazette of the Republic of Slovenia, No. 1/91-I;**

<sup>8</sup> **Law on the Employment of Foreigners, Official Gazette of the Republic of Slovenia, No. 33/92;**

<sup>9</sup> **Law on the Representativeness of Trade Unions, Official Gazette of the Republic of Slovenia, No. 13/93;**

<sup>10</sup> **Law on Workers' Participation in Management, Official Gazette of the Republic of Slovenia, No. 42/93;**

<sup>11</sup> **Law on Labour Inspection, Official Gazette of the Republic of Slovenia, No. 38/94, 32/97;**

<sup>12</sup> **Law on Labour and Social Courts, Official Gazette of the Republic of Slovenia, No. 14/94;**

<sup>13</sup> **Law on Safety and Health at Work, Official Gazette of the Republic of Slovenia, No. 56/99;**

collective agreements in force (for economic activities and for non-economic activities), over thirty branch collective agreements, a few professional collective agreements, and a small number of collective agreements at enterprise level.

As regards the personal validity of collective agreements, their erga omnes effect should be mentioned. Thus the general collective agreement for economic activities applies to all workers employed with employers pursuing an economic activity and are based in Slovenia, as well as with employers who perform work in the Republic of Slovenia over a longer period. It also applies to students and apprentices undergoing practical training. Branch collective agreements have personal validity in the same manner.

As was already mentioned, the new legislation to govern individual employment relationships (Law on Labour Relations) and collective bargaining (Law on Collective Agreements) is still in parliamentary procedure. The objective of the new Law on Labour Relations<sup>14</sup> is to adapt the legal system to the new nature of labour relations (bilateral contractual relationship). Emphasis will be placed on a more detailed regulation of all the issues relating to the contract of employment itself (from its conclusion to its expiration), some changes to the substantive regulation of certain rights and obligations of workers, harmonisation of the law with labour legislation of the European Union, etc.

## **1 Some figures on labour force in Slovenia**

The macro-economic indicators for 1998 show an improvement in the conditions in the Slovene economy, with GDP growing in real terms for the sixth consecutive year. Economic growth was, above all, the result of foreign demand, and also of domestic factors, investment demand and state expenditure. Positive economic trends among Slovenia's most important foreign trading partners were reflected in a growth in Slovene exports. In real terms, exports went up by 6.8%, and imports by as much as 8.8%. The stabilisation of wage growth continued in 1998. Gross wages went up by 1.6% in real terms, which is about two percentage points less than the expected growth in productivity (3.5%). The inflation rate fell by 1.2% to 7.9%. The annual

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<sup>14</sup> **Draft Law on Labour Relations, Bulletin of the National Assembly of the Republic of Slovenia, No. 50/97, dated 24 October 1997, EPA 274-II-first reading;**

employment rate was slightly up, and the trends on the labour market towards the end of the year, particularly with the fall in self-employment, give cause for concern.<sup>15</sup>

Figures provided by Statistical Office of Slovenia show that there were, on average, 745,169 actively working people in 1998, which is 0,2% more than in 1997. According to end-of-year figures, there were 471,688 actively working people, which is a fall of 0,1% in comparison with 1997. In 1998 the number of employed people increased by 0,7%, and the number of self-employed people fell by 0,5%. There was a pronounced increase in the number of people employed by the self-employed. There was also an increase in the number of people employed by companies, societies and organisations. At the end of 1998, companies, societies and organisations employed 592,652 people, which is 0,4% more than at the end of 1997.

#### Active population by branch as at 31 December

Branch		Number of employees as at 31 Dec. 1998	Employment growth index 12.31.98 / 12.31.97
1	Agriculture, hunting, forestry	44,915	91.1
2	Fishing	226	88.6
3	Mining	7,395	100.4
4	Processing	236,636	99.7
5	Electricity, gas, water supply	11,440	97.2
6	Civil engineering	52,781	100.2
7	Retail trade, motor vehicle repair	91,807	99.9
8	Catering	26,427	99.7
9	Transport, storage, communications	45,272	102.0
10	Financial services	18,446	117.2
11	Property, leasing, business services	42,701	102.8
12	Public administration	40,369	94.7
13	Education	51,608	100.2
14	Healthcare, social security	48,338	103.2
15	Other public, joint and personal services	22,659	101.8
16	Private households employing staff	668	109.2
1-2	Agricultural work	45,141	91.1
3-6	Non-agricultural work (excluding services)	308,252	99.7
7-16	Services	388,295	101.1
ACTIVE POPULATION		741,688	99.9

Source: Annual Report 1998, Employment Service of Slovenia, p.38

<sup>15</sup> Annual Report 1998, Employment Service of Slovenia, Ljubljana, April 1999, p.37;

At the end of 1998, self-employed persons were employing 61,468 persons, or 3,1% more than at the end of 1997. Prior to 1998, the number of self-employed persons grew slowly, but in 1998 there was a sharp decline. At the end of December 1998 there were 87,568 self-employed persons in Slovenia ( on the average there were 92,688 self-employed persons in 1998).

#### **IV. Most frequent forms of performing work for another person in Slovenia**

It is characteristic of the **labour legislation currently in force** that it mainly governs employment relationships, however both laws regulating the field of labour relations also contain provisions pertaining to work not regarded to be an employment relationship. Since unclearities as to whether a given legal relationship can be qualified as an employment relationship or as some other type of legal relationship may arise from this in individual cases, let me first expand on the very concept of an employment relationship according to the legislation in force as well as on certain changes to be brought on by the future system of individual employment relationships. This shall be followed by a description of other cases of formal work regulated under labour legislation that are not regarded as employment relationships, though.

##### **1. Employment relationships**

In view of the purpose of this study, the most important issue concerning employment relationships is when is a person deemed to be in an employment relationship and is thus guaranteed protection under labour law and social security law. I shall therefore not go into outlining the substantive regulation of the rights and obligations of employees. It should be noted, though, that this protection treats all employees equally, regardless of whether they are employed for a fixed term or permanently, and regardless of whether they work full-time or part-time. The latter enjoy all the same rights as other employees, the scope of certain rights depending on their working time, of course.

According to **legislation currently in force** two principal conditions must be met for the conclusion of an employment relationship:

- a concluded written contract of employment,
- commencement of work.

The Law on Labour Relations does not provide a definition of an employment relationship. According to the Law on Fundamental Rights Stemming From Labour Relations, an employment



relationship is defined as a voluntary relationship between a worker and an organisation or employer for the purpose of performing certain jobs and the economically sound and responsible use of resources as well as the realisation of the rights and obligations stemming from the employment relationship and social security. The said definition in fact does not suit the contractual nature of an employment relationship which is a relationship of subordination. It must be understood that this law was adopted in the time when the process of abolishing social ownership (privatisation e.g.) just barely began. The legal definition does not provide the criteria with the help of which one could decide in controversial cases whether a certain relationship is indeed an employment relationship or not. Also the current case law from the period following 1990, when the Law on Labour Relations was adopted, has not seriously dealt with the question of criteria facilitating the confirmation of the existence of an employment relationship.<sup>16</sup> Thus only theoretical discussions on the elements characteristic of an employment relationship can be traced, concerning the distinction between a contract of employment and an employment relationship on the one hand and temporary and occasional contract work and other civil law contracts on the other hand. This issue is further discussed in the next chapter.

## **2. Temporary or occasional contractual work**

Besides employment relationships based on contracts of employment, temporary or occasional contractual work is also in wide-spread use in Slovenia. In the former Yugoslavia, the 1957 Law on Labour Relations envisaged for an occasional work contract be concluded for occasional work on farms or forestry companies, occasional work by students or housekeepers. Such a contract mainly defined the work that was to be performed, the remuneration, working time and the deadline for the completion of work. The law in fact defined the relationship under the said contract as a temporary employment relationship, however it at the same time stipulated that persons performing work under such contract did not enjoy all the same rights as permanent employees did. They were only to be entitled to safety and health at work and to accident and occupational disease insurance.

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**<sup>16</sup> In a case where there was doubt as to whether an employment relationship was concluded because all the legal requirements weren't met (the contract of employment between a worker and a private employer was not registered with the competent administrative body), yet the worker regularly performed his job and the employer registered him for social security insurance, the labour court deemed that in cases where any of the requirements for the establishment of an employment relationship were missing, it should be regarded to what extent the parties fulfilled their mutual rights and obligations characteristic of an employment relationship. In this specific case the court ruled that an employment relationship did nevertheless exist.**

**Ruling of the Labour Court in Celje, No. PD 455/94, 14 November 1994;**

This institute of “temporary employment relationship” was replaced in 1965 by so-called temporary or occasional contractual work. The current labour legislation also provides for such contracts. Besides labour legislation such contracts are also envisaged by the Law on Obligational Relations.<sup>17</sup> But there are certain differences between the two types of contract.

### 2.1. Temporary or occasional work contract under labour legislation

The law on Fundamental Rights Stemming From Labour Relations only regulates this contract in general. It stipulates that certain works defined in advance and which are not performed as permanent and continuous work in the production process but have only a short duration and are performed occasionally (temporary or occasional work) may be performed under a temporary or occasional work contract. A person concluding such contract may perform the work individually or with the members of his family. What is essential, is that the law expressly stipulates that a person performing such temporary or occasional work is not in an employment relationship.

The Law on Labour Relations contains a special chapter on temporary or occasional work. It does not define the contract itself. It does however contain several provisions mainly aimed at limiting the conclusion of such contracts. Such contract may only be concluded for the performance of either temporary or occasional work with a duration of no more than 60 days in a single calendar year or for the performance of so-called permanent short-duration work, not to exceed 8 hours per week. It is further stipulated that such contracts cannot be concluded under the Law on Labour Relations or under the Law on Obligational Relations for those jobs for which a fixed-term or part-time employment relationship can be concluded. The same applies to work falling under copyright legislation. Such contract may not be concluded with a pensioner whose employment relationship with an employer was terminated for reasons of permanent redundancy and who received severance pay or whose pension insurance period was paid-off.

The law defines the written form of the contract and the minimum compulsory substance of the contract (definition of the work, deadline for completion, definition of remuneration, the venue of the performed work). A person working under contract must be insured for the contingencies of injury at work or occupational disease by their employer.<sup>18</sup> The contract must further define

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<sup>17</sup> Law on Obligational Relations, Official Gazette SFRY, No. 29/78, 39/85, 57/89;

<sup>18</sup> The Law on Pension and Invalidity Insurance (Official Gazette of the Republic of Slovenia, No. 12/92, 5/94, 7/96, 54/98) stipulates that pursuant to the Law on Labour Relations persons working on the basis of a temporary or occasional work contract shall be insured for disability, impairment or death resulting from an injury at work or occupational disease (Art. 21).

whether the work will be performed by the individual himself or whether it will be performed with the members of their family. The law defines family members to be the spouse, children of at least 15 years of age, and the parents of the person concluding the contract. In case the party to the contract delegates the performance of the work to family members, the latter are not directly parties to the temporary or occasional work contract and as such have no legal relationship with the “employer”. The party taking on the work is responsible for the fulfilment of contractual obligations. Nevertheless, the Law stipulates that also family members should be insured for the cases of injury at work and occupational disease. Under the current Law on Safety and Health at Work any person working under such contract is entitled to protection under this law.

Under the Law on Employment and Unemployment Insurance<sup>19</sup> the National Employment Office of the Republic of Slovenia is competent to assist people to find not only employment but also a work, the latter meaning work under a temporary or occasional work contract. In this context the Law on Labour Relations stipulates that the employer is obliged to inform the National Employment Office of the need for the conclusion of a temporary or occasional work contract, as well as of any such contracts in fact concluded.<sup>20</sup>

## 2.2. Work contract under the Law on Obligations

The work contract is defined as a contract binding one party to perform for another party a certain work (the result of the work can be product or a service), and in return he receives a pay. This is a *locatio conductio operis* contract with the following characteristics: independence of the person performing work, performance of the work at own risk, liability for the result of the work not for the work itself.

## 2.3. Differences between the two contracts

As regards the regulation of the temporary or occasional work contract under the Law on Labour Relations and the Law on Obligations, theory and practice are continuously dealing with the dilemma of whether these are two different contracts or one and the same contract, which are the

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<sup>19</sup> Law on Employment and Unemployment Insurance, Official Gazette of the Republic of Slovenia, No. 9/91, 12/92, 71/93, 38/94, 69/98;

<sup>20</sup> Annual reports of the Labour Inspectorate of the Republic of Slovenia demonstrate that employers often break the said obligations under law. This could be the reason why the National Employment Office does not actively pursue the referral of work. At least no data on its activities concerning the referral of work appear in its annual reports.

elements of differentiation between the two types of contract, and when a contract is to be concluded under one and when under the other law.

Regarding the admissibility of a temporary or occasional work contract under either of the laws one ought to note that the current Law on Labour Relations prohibits the conclusion of a contract under the Law on Labour Relations or under the Law on Obligations for jobs for which a fixed-term or part-time employment relationship can be concluded.

There are also differences between the two types of contract as regards the parties to the contract, the form of the contract, its duration, social security insurance for the person performing the work, and the court of law competent for any disputes concerning the contract. According to the Law on Labour Relations, only a natural person may perform the work, while the Law on Obligations allows for both natural and physical persons to perform work under such a contract. A contract under the Law on Labour Relations may only be concluded in written form, which is not a requirement for a contract under the Law on Obligational Relations. Only a contract under the Law on Labour Relations has a limited duration. Only persons performing temporary or occasional work under the Law on Labour Relations are insured against injury at work and occupational diseases. Finally, disputes stemming from contracts under the Law on Labour Relations are heard by labour courts, whereas civil courts are competent for disputes concerning pure civil law contracts.

#### 2.4. Difference between a contract of employment and a temporary or occasional work contract under labour legislation

Although the 1965 legislation, for example, expressly stipulated that a relationship on the basis of a temporary or occasional work contract is the civil law relationship, one can second the opinion that, as regards such contracts regulated by the current Law on Labour Relations, the contract is somewhere in between an employment relationship and/or a contract of employment and a civil law contract. Differentiation between a contract of employment and a civil law contract is rendered even more difficult by the fact that a temporary or occasional work contract under the Law on Labour Relations concerns “the performance of work”, i.e. an activity which is also characteristic of contracts of employment. Nevertheless, differences between the two contracts do exist and concern the following elements: the (in)dependence of the parties, whose account the work is performed on, remuneration, the (non-)permanence of the relationship, personal performance of work.

## 2.5. Temporary or occasional contractual work in practice

There is no data as to the number of actually concluded temporary or occasional work contracts under labour legislation, although employers are obliged to keep records of such contracts and report such data to the National Employment Office of the Republic of Slovenia. One can suppose, though, that the number of contracts under labour legislation concluded every calendar year is relatively high, although the labour inspectors' 1998 annual report estimates that employers are concluding fewer such contracts (also due to the warnings issued by labour inspectors as to the illegality of such contracts). These contracts are often concluded in contrariety with the law. These offences do not happen exclusively on the "employers'" initiative (the aim is to avoid the law, sometimes the reason is also a lack of knowledge of the law). Those performing the work have been supporting such contracts themselves in recent years. These were mainly those unemployed persons receiving cash benefits from unemployment insurance who attempted to improve their financial situation through temporary or occasional work. Below I shall summarise some of the findings reported by labour inspectors in their annual reports.<sup>21</sup>

Inspectors find most offences in connection with temporary or occasional work contracts in the fields of commerce, catering, tourism, road transport, construction, i.e. in those areas of activity where most work on this legal basis is performed. Of course, such contracts are concluded by employers in practically all other areas of activity, yet to a lesser extent. The practice of concluding contracts with pensioners is widely spread, too. It is also worrying that some enterprises conclude such contracts with workers who were previously laid off as permanently redundant.

The most frequent offences are found to be the following:

- contracts are being concluded for jobs that constitute part of the regular activity of the employer, thus failing to comply with the legal requirements for an admissible conclusion of such contract, e.g. short duration of the work, temporary or occasional nature of the work, possibility of concluding at least a fixed-term or part-time employment relationship; in some cases these contracts are used to replace contracts of employment for trial periods;
- time limitations are exceeded (contracts with a duration of 1 year are concluded);
- the contracts do not contain all the legally required elements (definition of the work/job, duration of contract, etc.);
- persons taking on such work are not insured for injury at work or occupational diseases;

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<sup>21</sup> 1995, 1996, 1997 and 1998 annual reports are taken into consideration.

- employers fail to keep records of temporary or occasional work contracts, data on contracts concluded is not reported to the National Employment Office.

The most frequent sanctions against employers in cases where labour inspectors ascertain offences under labour legislation and under autonomous sources of labour law are as follows:

- fines;
- an administrative decision is issued to the employer, requiring him to do away with the offence and re-establish a legal situation;
- any further activity is prohibited until the offences are abolished;
- a proposal for the initiation of proceedings is submitted to the misdemeanours court;
- a proposal is submitted to the Public Prosecutor's Office of the Republic of Slovenia.

In cases where a contract of employment should have been concluded instead of a temporary or occasional work contract, an individual may claim the existence of an employment relationship before a labour court.

## 2.6. The temporary or occasional work contract and labour legislation *de lege ferenda*

The Slovenian labour law theory always deemed that it should be endeavoured for as many people as possible to perform work within an employment relationship. Labour law and social security law only guarantee the highest protection to employees. People are providing a certain income for themselves through temporary or occasional work, yet they do not enjoy the complete protection guaranteed to employees under labour and social security legislation. Our legislation was never fully in line with the above standpoint. Instead of working to prevent this form of work, individual provisions contained in the legislation actually increased the possibilities for contractual work. Problems have always been occurring in the practical implementation of the provisions on temporary and occasional contract work due to the unclear and inconsistent regulations. That is why there have recently been more and more assessments that the current system of temporary and occasional work under labour legislation is causing problems on the conceptual level, dilemmas concerning the differentiation from civil law contracts, and unclearities as to when a contract of employment is in place and when a temporary or occasional work contract under labour legislation is exceptionally permissible. This unclear system also generates abuses. Initiatives have been put forward, also by labour inspectors, for the new Law on Labour Relations to no longer regulate temporary and occasional work contracts. This proposal was accepted and thus the draft Law on Labour Relations no longer envisages such contracts, meaning that only civil law work contracts

will be possible.<sup>22</sup> It can be expected that there will be less temporary or occasional work contracts in the future, resulting in more contracts of employment. The required flexibility in the field of labour relations will foreseeably be provided by various types of contracts of employment (fixed-term, part-time, etc.) which have been and will continue to be permitted by our legislation.<sup>23</sup> The planned changes will result in fewer people who are guaranteed at least partial protection, even though they are not in an employment relationship. In the case of contractual work under civil law, protection will not be provided, save for safety and health at work.

### 3. Students' work

From a comparative point of view, the **current system** of students' work is quite unusual. The Law on Labour Relations namely allows for secondary school students and university students to temporarily or occasionally work with an employer. The law stipulates the rights and obligations students have on the basis of their work: the right to work full-time or part-time, the right to rest, the right to safety and health at work, the right to so-called special protection of youth, liability for damages, insurance for injury at work or occupational disease,<sup>24</sup> the obligation of the employer to refer a student to a medical examination if he or she is to perform work for which special physical/health capabilities are required. These rights and obligations are also to be the subject of collective bargaining, yet current collective agreements in fact only define the rights of a small group of students, i.e. those who perform compulsory practical work or work during school holidays.

Irrespective of the high level of protection enjoyed by students under law and collective agreements, their work is not regarded as an employment relationship.

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<sup>22</sup> Attention should be brought to Art. 11 of the draft Law on Labour Relations, stipulating that work may not be performed on the basis of civil law contracts when elements of an employment relationship under Art. 4 of the law are present, i.e. a voluntary integration of a worker into the employer's organised work process, personal and continuous performance of work under the instruction and supervision of the employer, remuneration. The enforcement of this provision will mainly depend on judicial practice.

<sup>23</sup> B. Kresal, Pogodbno delo: med civilnopravno in delovnopravno ureditvijo (Contractual work: civil law and labour law), Podjetje in delo, 1/1999/XXV, pp. 90-91;

<sup>24</sup> According to the current Law on Pension and Disability Insurance, the following persons - among the others - have compulsory insurance against disability, impairment or death resulting from an injury at work or occupational disease:

- students undergoing practical training in enterprises, students performing practical work or students on technical excursions,
- persons performing work on the basis of a temporary or occasional work contract under the Law on Labour Relations.

The main deficiency of the legal system regulating students' work is that the legal basis on which they perform work is not defined anywhere. Is this a temporary or occasional work contract, or perhaps another type of contract? Compulsory practical work is often an integral part of the curriculum of a school. In this case the school and the employer conclude an agreement on the basis of which such training is performed. To a limited extent the student's status at work is regulated by labour law in the broader sense of the term. The relationship in which the student is performing work is actually trilateral. The situation is different in the case of voluntary work during vacation time. This is usually carried out on the basis of a temporary or occasional work contract concluded under labour legislation. In this context attention should be brought to the wording of the law, where in the case of students' work it does not read "temporary or occasional works" but instead "temporary or occasional performance of work", i.e. work that can also constitute part of an employer's regular activity. In view of the above, a temporary or occasional work contract as defined by labour legislation is not even permissible.

Disputes concerning the performance of students' work fall under the competence of labour courts.

The **new Law on Labour Relations** will also contain provisions on the work of children below the age of 15, and of students. These provisions mainly emphasise the protection of the said groups of people (definition of the age at which certain jobs may be performed, provided such work does not pose a threat to the individual's safety, health, morality, education and development, etc.). The draft law does not regulate the legal bases on which the aforementioned categories of persons will be working, though. One can presume that civil law contracts will prevail in this case. According to the **draft Law on Pension and Disability Insurance**,<sup>25</sup> students performing practical work or undergoing practical training and students on technical excursions<sup>26</sup> will have compulsory insurance for the contingencies of disability, impairment or death resulting from an injury at work or a work-related illness.

#### **4. Apprenticeship**

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<sup>25</sup> **Draft Law on Pension and Disability Insurance, Bulletin of the National Assembly of the Republic of Slovenia, No. 48/99, dated 22 June 1999, EPA 561-II, second reading;**

<sup>26</sup> **There is a justified fear that the inconsistencies in the terminology pertaining to students' work contained in future labour legislation and social security legislation will fail to guarantee them solid safety at work;**



After a 16-year break.<sup>27</sup>, Slovenia re-introduced a dual system of vocational training, i.e. the training of an apprentice at a vocational school and with an employer, pursuant to the 1996 Law on Vocational and Technical Training<sup>28</sup>. This system was introduced on the initiative of craftsmen and small businesses who believed that only such a system of training can guarantee the appropriate balance between the theoretical knowledge and the practical skills required to master a trade. From the aspect of employment the fact that employers highly prefer to employ workers who underwent training with them was also taken into account. The risk of making mistakes in recruiting new employees is thus reduced. According to the Chamber of Crafts and Small Business of Slovenia, approximately 3,000 apprentices will enter this system of education in the 1999/2000 school year. This number is at least half lower than the expected figure. On the one hand the interest of employers for concluding apprenticeships is too low, while on the other hand the interest of young people for certain trades (mason, carpenter, etc.) far underscores the number of available apprenticeships. Most apprenticeships are concluded for the trades of hairdresser, automobile mechanic, joiner, and the interest for catering and food processing is also rising.

An apprenticeship relationship established on the basis of a learning contract does not constitute an employment relationship. As regards the protection of apprentices envisaged by the law itself, a learning contract could be regarded as a sui generis contract, of which it is characteristic that it is very close to a contract of employment.

The content of a learning contract is defined by law. Among other elements, the contract must specifically define the obligations of the employer (e.g. provision of safety and health at work, allowing for vacation and days off work in order for the apprentice to prepare for final examinations, regular payment of remuneration), the obligations of the apprentice (e.g. to work according to the instructions of the employer and of the school, protection of business secrets, compliance with safety regulations), the remuneration, amendments and cancellation of the learning contract, conditions for the extension of the apprenticeship. Under the aforementioned law, the legislation governing employment relationships shall apply to certain rights and obligations of apprentices, for example: daily and weekly rest period, paid leave, special protection of youths, disciplinary accountability and liability for damages. And the pertaining regulations on certain rights, contained in collective agreements, apply to apprentices as well.<sup>29</sup> The legal provision

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<sup>27</sup> The system of apprenticeship in force during the post-war period was abolished by the 1980 Law on Oriented Education.

<sup>28</sup> Law on Vocational and Technical Training, Official Gazette of the Republic of Slovenia, No. 12/96;

<sup>29</sup> The General Collective Agreement for Economic Activities also contains special provisions that pertain exclusively to apprentices. They concern payments to which apprentices are

stipulating that trade unions oversee the realisation of the rights of apprentices defined by law, learning contracts and collective agreements is an interesting one. In general, the Labour Inspectorate is responsible for controlling the compliance with legal provisions concerning apprenticeships.

In line with the legislation covering the said areas, apprentices have health as well as pension and disability insurance for the duration of an apprenticeship relationship.<sup>30</sup>

## **1 Triangular relationships**

### **1. Students' work performed with the intermediation of authorised students' organisations**

In connection with so-called triangular relationships, the work of secondary school and university students to them by so-called students' services was until now most important in Slovenia. It was already mentioned that according to the Law on Employment and Unemployment Insurance, the National Employment Office of the Republic of Slovenia may pass on not just employment, but also temporary or occasional contractual work. Besides the National Employment Office, the activity of employment agencies may also be performed in Slovenia by an organisation or an employer who concludes an appropriate concession contract. Such contracts may also be concluded by students' and youth organisations or employers who may act as agents in providing students with work, but not the employment. Students perform work passed on by the aforementioned organisation on the basis of a referral slip issued by an authorised organisation or employer which the students must in turn submit to the employer for whom they will perform the work. It is expressly stated that they are not concluding a temporary or occasional work contract<sup>31</sup>, however the organisation acting as agent is obliged to provide insurance for the contingencies of

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entitled.

<sup>30</sup> **The Law on Healthcare and Health Insurance does not refer specifically to apprentices as compulsory insured persons, whereas the Law on Pension and Disability Insurance envisages compulsory insurance for apprentices as of 1996 (Art. 15 a). The compulsory insurance of apprentices who are at least 15 years of age is also foreseen in the new draft law governing pension and disability insurance.**

<sup>31</sup> **In practice, temporary or occasional work contracts under labour legislation are not concluded, however employers do conclude agreements on mutual rights and obligations with students who are working on the basis of a referral for a longer period of time (even up to a year), whereby this is in fact an occasional or temporary or occasional work under civil law.**

employment injuries and occupational diseases.<sup>32</sup> Students hold health insurance as family members of insured persons.

As was already mentioned, labour legislation allows, in principle, to perform work for employers, however only on a temporary or occasional basis. Obviously the system is too general and indeterminate. In the case of work passed on by authorised students' organisations and authorised employers, it often happens that students are issued referral slips for work which they perform over a longer period of time, sometimes even throughout the year (on the basis of a so-called permanent referral slip). Such practice, although labour inspectors are trying to prevent it, has various negative consequences. Students in fact fail to meet their obligations as students. Among the consequences which are of a labour-law nature, I should mention only two: in these cases it is not possible to determine whether the individual even still has the status of a student, on the basis of which such work is permitted in the first place, and obviously employers often break the law by having students perform certain jobs. Students are taken on not only due to an unexpected increase in the workload, for purposes of substituting employees on their annual leave or on sick-leave, etc., but also in cases where the employer would in fact have to conclude a new employment relationship. This applies not only to employers in the economic sector, but also to the public sector, whereby it is especially worrying that this is also happening in state administration. Under such circumstances it is understandable that labour inspectors as well as others are proposing that the mediation of work for students as described above be abolished. It would be more appropriate in their opinion for at least university students to have fixed-term or part-time employment contracts.

## **2. Work performed by workers employed by employers pursuing the activity of providing the work of their employees to a user enterprise**

This form of work can only be discussed *de lege ferenda* for the time being.

The Law on Employment and Unemployment Insurance was last amended in 1998. It now also envisages the pursuit of the activity of supplying employees to other users on the basis of a concession contract.<sup>33</sup> In this context the new Law on Labour Relations is to regulate in greater

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<sup>32</sup> The new draft Law on Pension and Disability Insurance maintains this type of insurance, classifying it among so-called special cases of compulsory insurance (for the contingencies of disability, impairment or death resulting from an employment injury or occupational disease).

<sup>33</sup> The wording of the amended Art. 6 is unclear. It discusses the provision of labour, whereby the explication of the law demonstrates that the legislator wanted to enact the operation of temporary employment agencies.

detail the status of employees working at other user enterprises for a certain period of time but being employed by the intermediary.

There is a draft set of provisions<sup>34</sup>, which clearly show that the aforementioned case is supposed to be one of a typical triangular relationship established: 1) between the employee and the employer (permanent or fixed-term contract of employment)<sup>35</sup>, 2) between the employer and the user enterprise (agreement on mutual rights and obligations of the employer and of the user enterprise, and on the rights and obligations of the user enterprise and of the employee for the duration of the work), and, 3) between the employee and the user enterprise (the draft law explicitly stipulates that the employee shall perform his/her work following the user's instructions). From the view point of the workers' protection the proposed solution according to which Law on Labour Relations and the collective agreements binding the user enterprise shall apply to the employees throughout the duration of work by the user enterprise, is very important.

Regardless of the fact that the legal base for this new form of work is not yet in force, while it is also difficult to foresee the wording of the law that will actually be adopted by parliament, one can already find intermediaries' advertisements for "leasing of people", as they call their activity. The available information hints that, at least to begin with, they intend to provide workers for less demanding jobs. It is difficult to forecast the development of temporary employment agencies, which the legislator believes will assist in bringing employment figures up. All the problems that could appear in practice cannot be foreseen either, for the time being. Nevertheless, it is important to notice that the authors of the Law on Labour Relations were very careful as regards this form of work. The authors emphasise that workers must be guaranteed appropriate protection from abuse by those intermediaries who see this form of work solely as a good source of income at the workers' expense.

## **VI. Self-employment**

### **1. General**

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<sup>34</sup> The published draft Law on Labour Relations (first-reading) does not contain the above form of work. It will be included in the draft for the second reading, provided the social partners reach an agreement on such a form of work.

<sup>35</sup> The law is to limit the conclusion of fixed-term contracts of employment by prohibiting the conclusion of such contracts purely on the basis of the temporary nature of the need for an employee on the side of the user enterprise.

Figures provided by the 1998 Statistical Yearbook of the Republic of Slovenia show that there were, on average, 743,431 persons in employment in Slovenia in 1997. The structure of the persons in employment was as follows: 651,226 were persons in paid employment (593,086 employed in companies, enterprises and organisations and 58,140 employees by self-employed persons) and 92,205 were self-employed, of which there were 46,627 individual private entrepreneurs, 5,878 own-account workers and 39,700 farmers.

Among the individual private entrepreneurs, most pursued their activity as a craft (46,100). Most individual private entrepreneurs performed the following activities: manufacturing (10,851), transport, storage, communications (8,231), wholesale, retail (8,205), construction (7,544), hotels, restaurants (4,210), real estate, renting, business activities (4,049), other social and personal services.

Own-account workers mostly performed the following activities: personal services (2,904), business activities (1,214), health and social work (756).

The share of self-employed persons in the structure of actively working people dropped in the period from 1993 to 1997, as shown by the table below.

#### Persons in employment by status in employment, 2nd quarter

Year	Persons in employment (%)	Self-employed persons (%)	Persons in paid employment (%)	Other forms of work (%) (*)	Unpaid family workers (%)
1993	100.0	12.2	84.7	3.1	3.2
1994	100.0	12.3	82.4	2.8	5.3
1995	100.0	12.3	83.1	2.3	4.6
1996	100.0	12.5	83.2	2.3	4.3
1997	100.0	11.9	81.4	3.1	6.7

(\*) - Contract work and cash-in-hand work.

Source: Labour Force Survey 1998

According to data from the National Employment Office of the Republic of Slovenia, the number of self-employed persons rose by 0.5% between 1997 and 1998.<sup>36</sup>

In view of the wide-spread estimates throughout the world that there will be substantial employment opportunities in small businesses in the future, it would perhaps be interesting to add

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<sup>36</sup> 1998 Annual Report, National Employment Office of the Republic of Slovenia, Ljubljana 1999, p. 39;

the figure showing that in 1997 there were only 58,140 persons in paid employment with self-employed persons.

## **2. Legal framework**

The legal basis for at least the development of entrepreneurship in Slovenia can be found in the Constitution. It's Art. 74 stipulating that economic enterprise shall be free and that the requirements for the establishment of businesses shall be defined by law and that an economic activity may not be performed counter to public interest. Among the laws adopted under the provisions of the Constitution, the fundamental law for the field of the economy is the Law on Commercial Companies<sup>37</sup>, accompanied by several special laws, such as the Law on Crafts<sup>38</sup>, the Law on Catering<sup>39</sup>, the Law on Road Transport<sup>40</sup>, Law on Commerce<sup>41</sup>, etc. For the non-commercial sector, especially those laws permitting the independent performing of a professional activity in a given field are important. This currently applies to the following: the fields of culture, healthcare, social security and pharmacy, attorneys and notaries public.

Since the self-employed perform their work independently, protection under labour legislation does not apply to them. The way in which their social security insurance is regulated in Slovenia is especially interesting, though.

According to the Law on Healthcare and Health Insurance, compulsory insurance also comprises: 1) persons independently performing an economic or professional activity on the territory of the Republic of Slovenia as their sole occupation, 2) persons who are owners of companies in the Republic of Slovenia if they are not otherwise insured, 3) farmers, members of their household/agricultural holding and other persons performing activities in the field of agriculture in the Republic of Slovenia as their sole and main occupation.

Similarly to health insurance, the fundamental requirement for certain persons to enter compulsory pension and disability insurance is the fact that they perform their activity independently as their

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<sup>37</sup> **Law on Commercial Companies, Official Gazette of the Republic of Slovenia, No. 30/93, 29/94, 82/94; According to the law, an independent individual entrepreneur shall be understood to mean a natural person performing independently on the market a profitable activity as his sole activity.**

<sup>38</sup> **Law on Crafts, Official Gazette of the Republic of Slovenia, No. 50/94;**

<sup>39</sup> **Law on Catering, Official Gazette of the Republic of Slovenia, No. 1/95;**

<sup>40</sup> **Law on Road Transport, Official Gazette of the Republic of Slovenia, No. 72/94;**

<sup>41</sup> **Law on Commerce, Official Gazette of the Republic of Slovenia, No. 18/93;**

sole and main occupation. In this respect all the aforementioned groups of self-employed persons are incorporated in compulsory pension and disability insurance. The Law on Pension and Disability Insurance defines in greater detail the insurance requirements that must be met by company owners (they must personally manage the company, not have insurance on another basis, are not receiving a pension), farmers or members of their households/agricultural holdings. It should be mentioned that the described system of pension and disability insurance for the group of workers in question will remain principally unchanged under the new law.<sup>42</sup>

As concerns unemployment insurance, self-employed persons (individual private entrepreneurs) and company owners not insured on another basis may take out voluntary insurance.

## **1 Self-employment in situations of economic or other dependency**

On the basis of the aforementioned data on the number of persons in paid employment with self-employed persons, one can conclude that many self-employed persons do not employ any workers and thus perform their activity solely on the basis of their own personal work. Business partners are supplied with their products or services on the basis of contracts under civil law. The possibility must be allowed for these entrepreneurs to sometimes have a longer-term business relationship with a single partner, elements of economic or other dependency appearing in spite of a declared contractual independence in relation to the contractual partner. The public is most familiar with cases of independent artists, writers or journalists, usually denominated with the term “freelancers”, whereas not much attention has been paid until now to cases in the business world, self-employed individuals in fact finding themselves in a situation of economic or other dependency as regards another person to whom they provide their services. That is why more detailed data and other information is not available. The current point of departure is that in performing their work they do not conclude employment relationships but instead relationships under civil law, labour legislation thus not being applicable. One must mention the new Law on Safety and Health at Work and its previously mentioned broader definition of the terms “worker” and “employer”. The result of such a broader definition could be that in cases where a self-employed person personally fulfils his contractual obligations on the premises of the person to whom he is providing his services, all the rights and obligations laid down by the said law shall apply to him.

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<sup>42</sup> **It is envisaged for the new law to define in greater detail the persons that qualify as self-employed, to determine when it is deemed that the self-employed and farmers are performing an independent activity as their sole profession, and when the self-employed and farmers may be excluded from compulsory insurance.**

## VIII. The described admissible legal forms of work in practice

It is characteristic of our system of labour law that it gives absolute priority to work performed under a contract of employment. It is nevertheless possible, as an exception, to work on the basis of certain other legal bases. Amongst these other forms of work, the most important ones in Slovenia are temporary and occasional contractual work regulated by the current Law on Labour Relations on the one hand, and the work of students on the basis of a referral issued by an organisation or an employer that has concluded a concession contract for mediating work, on the other hand.

Among the activities in which the two forms of work mentioned rose to the highest levels, at least according to the findings of the Labour Inspectorate, are construction, commerce, catering and tourism, and road transport (especially taxi drivers). These cases often constitute an offence, i.e. such work requires a contract of employment under labour legislation. It should also be noted, of course, that inspectors are finding that the number of offences is decreasing, also as a result of their supervision and warnings about irregularities.

Whether an employer in Slovenia only employs workers in paid employment or also workers of other legal status is, in my opinion, still very much a function of the size of the employer and of whether the business entity is relatively new or has been in existence for a longer time. It is a fact that larger companies and companies with a certain tradition tend to better respect labour law, i.e. its fundamental principle that work is to be performed first and foremost within an employment relationship. The situation is often very different with individual private entrepreneurs, who started appearing on the market as of 1993. Here offences are more frequent, either as a result of not knowing the legislation or deliberate action. Wanting to generate as much profit as possible in as short a time as possible, they don't conclude contracts of employment with their workers. They perform their activity themselves personally or "with the assistance" of persons working under a temporary or occasional work contract, or on the basis of a referral.

The general findings above are confirmed by the case of SCT d.d.<sup>43</sup>, one of Slovenia's largest construction companies with a long tradition. In a direct conversation with the head of their personnel service, I obtained the following information and data on the issue that is the subject of this paper:

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<sup>43</sup> **Joint stock company**



SCT d.d. employs an average of 2,960 workers on the basis of a contract of employment. It is company policy not to conclude temporary or occasional work contracts under labour legislation. As an exception, occasional work by students referred by authorised organisations or employers is used by the administration. Students are recruited in cases where employees on annual leave or on sick leave need to be substituted. They also have 35 permanent contractors. These are individual private entrepreneurs who perform certain jobs (i.e. those that can be performed as crafts) on the basis of temporary or occasional work contracts under civil law. They perform the work using workers with contracts of employment, or occasional or temporary work contracts.<sup>44</sup> Contractors employ 450 to 500 people on average. In individual cases these contractors (e.g. transport workers) perform the work personally. Even in this case the work is performed on the basis of a contract under civil law. The problems that these self-employed persons may encounter in relation to the client, finding themselves in a relationship of dependency, have not yet been studied by this company. They only underlined that should protection under labour legislation in any way expand to the self-employed in a situation of economic or other dependency, they would no longer opt for such contracts.

The structure of the workers for an independent private entrepreneur would probably be quite different from the one described above. On the basis of general information available, one can assume that many individual private entrepreneurs working in the field of construction mainly execute the works using people with whom they conclude occasional or temporary work contracts, and with students referred to perform such work by authorised organisations or employers.<sup>45</sup>

The situation concerning the structure of the workers which I briefly outlined on the example of construction activities does not differ considerably from other activities such as commerce, tourism or road transport. I shall therefore refrain from any special mention of these activities.

## **IX. Conclusion**

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<sup>44</sup> **Exact data on the number of each type of contract is not available, since in the case of contracts under civil law the client only negotiates the work that is the subject of the contract, not the manner in which the contractor shall perform the work or the status of the people executing the work. Nevertheless, I was reassured that their contractors are not breaking labour legislation, as is also determined by labour inspectors on the basis of their constant supervision.**

<sup>45</sup> **In the past, such cases often constituted offences, where inspectors found that physical labour on construction sites are being performed by students who were still minors. Following the issue of special instructions to organisations and employers authorised for the referral of jobs, stating that heavy physical labour is prohibited for minors, the number of offences dropped considerably.**

1. On a declarative level, Slovenia always gave absolute priority to the performance of work within employment relationships, on the basis of which workers are guaranteed material (financial) and social security. Labour legislation deviated from the above principle since it regulated and thus always allowed for certain types of work not regarded as employment relationships. One ought to especially note temporary or occasional contractual work as well as the work of students through special organisations authorised to mediate employment.

2. It is clear that according to the new draft Law on Labour Relations employment relationship will remain a priority in the future. In order for the implementation of this principle to be more consistent, the possibility of performing work on the basis of an occasional or temporary work contract as provided for by the current labour legislation will be abolished. At the same time the authors of the law nevertheless are taking account of reality and of the new developments in terms of the manner and forms of performing work. The new law shall thus, to the extent possible, provide for the protection of employees of private employment agencies whose work is made available to a user enterprise to perform labour.

3. From the point of view of the issues that were the subject of this paper, two problems require special attention in the case of Slovenia. The first is one of terminology. We apply the term employee only for people performing work in an employment relationship. The other problem concerns the very process of the transformation of an employment relationship from a so-called mutual employment relationship into a bilateral employment relationship. This process began in the early nineties and will formally only be concluded with the adoption of the new Law on Labour Relations (late 1999 or early in the year 2000). Due to the inadequate regulation of the contract of employment, inclarities are arising as to the very essence of an employment relationship, which is the basis for defining the most important criteria to be applied in case of doubt as to whether a specific legal relationship is one of employment or not (e.g. one of civil law).

4. As was described, many workers not working in paid employment are guaranteed at least limited protection under labour legislation, compared to workers in paid employment. They are also guaranteed certain rights under social security insurance. The idea that it is appropriate to guarantee some protection to all workers, regardless of whether they are in an employment relationship or working on the basis of contractual arrangements other than a contract of employment, is not alien to our system of labour legislation and social security. In the past this idea was supported by our socio-economic and political system. Of course, many dilemmas are surfacing in the context of a possible new ILO international instrument or of the discussions already completed within the ILO. Allow me to illustrate just three of them as examples: How to

assess the planned abolishment of the possibility to work on the basis of a temporary or occasional work contract under our new labour legislation from the aspect of efforts for the extension of protection under labour legislation to workers who are not in an employment relationship? Which are the rights of all workers that the adequate protection should really refer to? Is it really appropriate to exclude employees of temporary employment agencies who are made available to a user enterprise to perform work from a possible new international instrument?