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From full-time wage employment to atypical employment: A major shift in the evolution of labour relations?

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Radical changes have occurred in recent years in the social and economic bases on which labour legislation rests. New forms of employment have made their appearance, and others that once were considered of secondary importance have gained prominence. While some of these variants have been formalised in employment contracts, others are merely *de facto* relationships. A number of terms have been proposed to define these forms of employment generically: the most widely accepted is that of atypical employment.

The labour legislation of virtually all countries has traditionally included a classification of employment contracts and in many cases has tolerated special relationships that did not follow standard employment patterns; today, however, the range of these deviations is unprecedented in the history of labour law. This may explain why some observers regard the new forms of atypical employment as a threat to the survival of the principles that have shaped labour law. Others are worried about the growing number of workers not covered by the classical system of protection; they even speak of a crisis in the system of labour relations. On the other hand, there are those who see in atypical employment yet another sign of the vitality and responsiveness of labour legislation which, confronted with the prolonged recession and changes in the structure of the labour market, has been able to extend its scope to include the new variants in contractual and *de facto* employment relationships.

Against this background, it is easy to understand why atypical employment relationships have acquired such great importance. It is not so much the appearance and proliferation of new occupational activities that observers find disquieting as the fact that they lie outside the bounds that hitherto had delimited ordinary and even special employment relationships, and that they

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dispense with the classical forms of employment contracts concluded under ordinary law. It is feared that these developments will result in a reordering of employment relationships, based on principles which may conflict with those that have governed them until now; or that in the absence of regulation, this new phenomenon will give rise to anomalous and irregular situations that may undermine the effectiveness of traditional systems governing the employment relationship. Of equal concern is the fragile, provisional and precarious nature of the new atypical forms, with all that this implies for the worker.

Our aim in this article is to determine the extent to which changes have taken, or are taking, place in the traditional model of employment relationships. In trying to assess their impact, we shall need first to discuss their causes, their spread, the controversies they have created and their possible repercussions on individual and collective labour relations and on social security.

Preliminary remarks

The phenomenon of atypical employment appears either as a reaction to or a departure from employment patterns until recently considered normal or typical. These typical patterns first took shape with the emergence of large-scale industry; they developed *pari passu* with labour law and trade union action, and culminated in what several French authors have called *emploi total*,[1] a concept which implies working for another, for a wage and in a subordinate role. In addition to these basic features, *emploi total* was characterised by the fact that the worker had only one employer, worked full time on the employer's premises and expected (or was expected) to continue doing so indefinitely. Where these conditions were present and employment was protected by the law the worker enjoyed statutory entitlement to a whole series of guarantees and benefits; at the same time the law imposed a number of contributions and obligations on the employer and the State. It was gradually found that this system of employment – what we shall call "full-time wage employment" here – created conditions propitious for the development of trade unionism and collective labour relations. Full-time wage employment eventually became the standard in business and industry as well as the framework within which labour law, collective bargaining and social security systems developed.

It is true that the traditional model tolerated the existence of special employment relationships, but these were closely linked to personal circumstances (the employment of women, young people, apprentices and the disabled who, in fact, were accorded additional protection), or were considered exceptional (fixed-term contracts, for instance).[2] Arrangements for certain sectors which also departed from the confines of the typical employment relationship were left to be spelt out by collective agreements or special legislation; however, with the exception of agriculture, these arrange-

ments usually provided for more favourable conditions of employment than general labour law or adapted general labour standards to the characteristics of the work concerned. There was very seldom a case where such arrangements were used systematically to undermine the rights guaranteed under the standard regulations.

This model of full-time wage employment (with its few exceptions) survived more or less unscathed until the 1970s, when the world of work witnessed the emergence of atypical forms of employment characterised by the absence of one or more of the standard features; the impact of these forms of employment, as regards both the numbers involved and the nature of their employment relationship, has proved to be of such magnitude as to cast doubts on the relevance of the earlier model. For not only do atypical variants differ in form from full-time wage employment, they fall outside the scope of regulatory and protective provisions which labour law and trade union action have established. Whereas former special employment relationships were covered by the basic system of protection, atypical forms now tend to lie outside it or to elude its more restrictive requirements. In any case, the mere existence of these variants indicates the presence of loopholes in the design or implementation of labour legislation; furthermore, it introduces an element of uncertainty in the development of trade unionism and in the balance of worker-management relations.

Towards a comprehensive classification of atypical forms of employment

Owing to the variety of atypical employment, it is necessary to inventory its most frequent forms and classify them coherently. Three major categories encompass most or all atypical forms: self-employment, atypical contracts and clandestine employment. Each of these categories, in turn, can be subdivided.

Many areas of atypical activity are, in fact, forms of **self-employment** that deviate from the earlier model of dependent wage employment. Many governments have nowadays begun to encourage young people entering the labour force to undertake independent activities, or former wage earners to become entrepreneurs and start their own small enterprise. Self-employment is not new, of course, but while it used to be confined to craftsmen and the liberal professions, it now includes even unskilled manual workers and is found in all marginal sectors of society. Institutionally speaking, what economists call the informal sector corresponds in part to a combination of this large category of atypical employment and the category of clandestine employment.

Atypical employment contracts are those that deviate from contracts of full-time wage employment in any of its other essential features. Instead of relationships with a single employer, there now exist *triangular employment relationships* and other approaches in which the worker establishes occupa-

tional connections with several employers. Examples include employment with temporary work agencies, subcontracting and secondments, as well as other minor variants such as classical intermediary agents, office sharing (the simultaneous use of the same clerical staff by a number of employers), labour pools available to several employers and labour on call.

Even when the employment relationship is limited to a single employer, the worker is not necessarily confined to the employer's premises but may engage in readapted forms of traditional home work or in new forms of work performed outside the employer's premises. The innovations in data processing and telecommunications, which have contributed to a greater decentralisation of work, have led to two modern variants of home-based work: work in the home properly speaking and work at telecentres (remote employment).

Similar changes have affected working time. *Part-time employment*, a long-standing preference of many women, students and pensioners, has prospered along with other variants under the pressure of increasing unemployment. Examples include the adoption of *short time working* in response to the need to redistribute working time, the *solidarity contracts* popular in France and Italy, and the *relay contracts* found in these countries and in Spain, under which workers are hired to perform a few hours of work a day previously done by older workers nearing retirement. Other factors have led to new forms of work that involve drastic changes in the distribution of working time and rest periods, for instance the system of *alternating work and rest* in some commercial aviation companies, in oilfields and on oil-drilling platforms, where certain employees work continuously for periods of up to several weeks and are then entitled to equivalent rest periods.

Nevertheless, the greatest diversity in atypical forms of employment is to be found in the duration of employment contracts. A number of factors, including the efforts of many organisations and enterprises to make contracts more flexible, have chipped away at the notion that contracts of employment are of indefinite duration. Various European countries have eliminated or relaxed previous restrictions, clearing the way for many new kinds of *fixed-term contracts* – contracts for a specific job or service, for cyclical or seasonal work, for casual, occasional or intermittent work, for the temporary substitution of other workers and for more flexible modes of trial employment. In some countries fixed-term employment contracts have been combined with apprenticeship contracts to form a variety of *training-cum-employment contracts*. Some of these variants are not new, but where they were to be found before their numbers were limited and their legal impact marginal. The novelty resides in the fact that these atypical forms have been accommodated, occasionally promoted and sometimes even imposed, and that some countries no longer apply the earlier presumption of continuity when repeated recourse is had to fixed-term employment.

Lastly, self-employment and the growing variety of atypical contracts are everywhere accompanied by the third category of atypical employment:

clandestine work. As early as 1980, an article published in these pages described clandestine work as a multifaceted and complex phenomenon that had reached unprecedented proportions in industrialised market economy countries.[3] Two years later the Federal Republic of Germany enacted legislation specifically designed to combat it.[4] Reports published in France and Austria in 1981 and 1985, respectively, described the extent of clandestine work and lamented the inefficiency of measures then used to discourage it.[5]

Clandestine employment can be subdivided into four groups: *undeclared work*, which is carried on beyond the reach of labour, fiscal and administrative law; *family work*, which takes advantage of family ties to elude the requirements of social protection; work performed by *foreigners without valid work permits*, which is becoming a vast and expanding phenomenon in many countries; and work in *micro-enterprises* which, capitalising on the shortage of labour inspectors, seldom comply with industrial regulations. Clandestine workers could be subdivided more generally by distinguishing those having only one occupation from those engaged in multiple jobbing, who mostly combine declared with clandestine employment.

The foregoing inventory simply provides a broad outline of the principal forms of atypical employment. Several reports presented at the 11th International Congress of the International Society for Labour Law and Social Security (Caracas, September 1985) made mention of other nationally prevalent atypical variants; the general report presented to the Congress estimated at 30 the total number of atypical employment relationships culled from national reports.[6]

The spread of atypical employment

All of these types of atypical employment have grown in recent years. In the United States, for example, the number of self-employed men and women has increased by 12 and 75 per cent, respectively, over the past decade.[7] It was recently estimated that the self-employed accounted for 10 per cent of the labour force in Great Britain and 30 per cent in Italy.[8] In 1985, 28 and 25 per cent of the working populations of Norway and Sweden were engaged in part-time work;[9] two years earlier 20 per cent of American and 10 per cent of French workers fell into this category.[10] In recent years two-thirds of all new contracts in the private sector in Portugal and Sweden have been for fixed terms. Subcontracting is fast becoming a standard feature of many large enterprises, and is used on an international scale in many sectors of production; its quick growth in office work is a recent phenomenon which has been facilitated by new techniques in data processing. Clandestine work in the Iberian Peninsula has increased hand in hand with unemployment; in 1984 18 per cent of the Spanish labour force were thought to be engaged in clandestine work, while in Portugal 51 per cent of construction workers and 65 per cent of workers in the metal trades were said to be

clandestine. In Argentina a recent survey showed that 27 per cent of all wage earners were not registered.

Taken as a whole, atypical forms of employment have reached impressive proportions. It is estimated that approximately one-third of the British labour force and 15 per cent of Japan's are engaged in atypical employment. In Mexico the Centre of Economic Studies for the Private Sector reports that the underground economy accounts for more than one-third of the country's economic activity. This percentage is even higher in Peru, where estimates of atypical employment run as high as 50 per cent or more of the labour force. In Asia atypical employment has been estimated at 33 per cent in the Republic of Korea and 50 per cent in Sri Lanka.[11]

Admittedly, workers hired through temporary work agencies do not exceed 2 per cent of the labour force even in the countries where the practice is most common, such as the United States and Switzerland. It is also true that part-time work has not yet gained a substantial foothold in developing countries, and that other atypical forms are limited in scope or unevenly distributed. While home-based work is widespread in Italy and Japan (involving more than 1.5 million workers in each country),[12] it is much less so in France, Sweden and Switzerland, where the number of homeworkers does not exceed a few tens of thousands. It is rather the rate of growth of atypical forms of employment and their aggregate impact that have led many to think that we stand on the brink of a sudden and significant shift in the evolution of the employment relationship.

Before leaving this aspect of the question, we should mention that although the problem of atypical employment is especially acute in the market economy countries, several atypical forms (home-based work, part-time employment and even clandestine work) have shown a tendency to increase in the socialist countries as well.[13]

The causes of atypical employment

To what do we owe the striking proliferation of atypical employment? We need not delve too deeply to find the causes. The most important, of course, is the lower rate of economic growth that most countries have been experiencing. Sluggish growth, compounded by stiffer international competition, imbalances in international trade and anti-inflationary policies, has triggered a great rise in unemployment; the economy has seemed incapable of generating enough jobs to ensure that full-time wage employment remains the basis and model for labour legislation. At all events, the prolonged recession has prompted those affected to explore alternatives to full-time wage employment and to unemployment; and many have found such alternatives in the temporary, casual, minor or partial forms of work that make up atypical employment.

There are two ways in which unemployment has acted as a catalyst in the growth of atypical patterns. On the one hand, it has forced governments to

devise new means of creating employment and distributing available jobs, leading at times to new employment models. On the other hand, it has predisposed workers who are unemployed or threatened with unemployment to accept these alternatives (and others devised by employers), however unstable or precarious they may be.

The effects of the recession, especially of growing unemployment, have been particularly severe for first-time jobseekers. Lacking experience and faced with corporate policies that keep new hiring to a minimum, many young people have found themselves threatened with a marginal existence. Their plight partly explains the spread of the training-cum-employment contracts mentioned earlier and new forms of apprenticeship contracts as governments have attempted to persuade or require enterprises to hire a certain percentage of young persons on fixed-term contracts, in exchange for tax exemptions and lower wage costs. In Belgium 3 per cent of the labour force were employed under such contracts in 1984.

Nor, at the other end of the scale, have older workers been spared by unemployment and industrial reconversion: many have been encouraged or forced into early retirement, or phased into gradual retirement, and hence obliged to resort to part-time jobs, thereby boosting the growth of atypical employment.

For their part, employers have maintained that in times of economic difficulty some of the features of the traditional employment model have worked to their detriment since full-time wage employment entails often high fiscal and social costs and is governed by laws that some employers claim are too rigid. If they were to weather the crisis, employers argued as the recession set in, a less costly and constraining system of employment relations, unfettered by dismissals legislation, needed to be devised. As talk turned to flexibility and internal reform of the enterprise, these notions eventually made their way into the labour policies of several countries, aided by the fading strength of trade unions and a shift in the balance of power between workers and management. Having lost some of their bargaining leverage, trade unions had little choice but to make concessions which often eroded the full-time wage employment model. Thus, unemployment, by weakening the unions, itself boosted the growth of atypical employment.[14]

The recession also coincided with profound changes in the structure of employment, as manufacturing industry lost ground to the service sector. That development was bound to disrupt the model of full-time wage employment, which had evolved at a time when the need to protect the industrial working class was paramount and the importance of the service sector was underestimated. The new economic activities did not fit into the historical and geographical pattern that had characterised large-scale industry and had helped to shape the original model of permanent employment.

Both the industrial and the service sectors have undergone substantial changes owing to the accelerated pace of technological change in recent years. New technologies have made it necessary to restructure industry and

have offered opportunities for relocating and reorganising its activities. The earlier model has often proved inadequate and enterprises have found it necessary to devise new ways of organising the workforce and distributing working time, and to divide up or decentralise the production process.

Demographic factors have also played a part in undermining traditional employment and fostering the new forms. Surplus manpower in the developing countries has undoubtedly created a fertile bed for the growth of unstable and clandestine forms of work, while in the industrialised world yesterday's full-time wage employment seemed to reflect another demographic pattern that presupposed a better balance between labour supply and demand; the classical model began to crack under the weight of growing manpower supply at the very time that labour-saving technologies were being introduced. These developments have been compounded by significant sociological trends; not only has the labour market been flooded by jobseekers whose needs and preferences bear little resemblance to those of the traditional family bread-winner, but attitudes towards work itself are changing. Wage-paying employment, with its structured, subordinate and impersonal aspects, is no longer everyone's preference. Although certain countries still favour the traditional employment model, a large part of the younger generation feel inclined to explore new variants or to choose more independent forms of participation in economic life.

Some of the factors discussed above are obviously transitory, due as they are to the current economic situation, while others show signs of becoming permanent. If the growth of atypical forms of employment has now assumed a critical dimension, it is because all these factors have come about simultaneously and are more or less interlinked; hence the fear that it may eventually prove difficult to eliminate from the labour market atypical forms that today are temporarily put up with.

The current debate and proposed solutions

The sharp growth of atypical forms of employment has fuelled a spirited debate on issues ranging from the *raison d'être* of specific atypical forms to their role in the general system of labour relations. Atypical forms that had coexisted peacefully with the standard pattern before they became widespread, now provoke bitter confrontations that involve not only trade unionists, but jurists and labour policy-makers as well.

The controversy has to do both with triangular forms of employment, especially those involving temporary work agencies, and with the various forms of limitation on the duration of the employment relationship. In the former case, the assertions of those who argue that temporary agencies serve a useful purpose as intermediaries in the modern world, meeting the needs of enterprises and the preferences of workers, are countered by others who point to the difficulty of identifying the true employer for the purpose of ensuring compliance with legal obligations, or who object on grounds of

principle to the fact that these agencies make a profit from placement services which should be handled by public bodies.[15] The arguments on both sides must have been persuasive, since temporary work agencies have been authorised or banned in roughly the same number of countries.[16] The issue of subcontracting raises yet another question: to what extent may it indefinitely replace a substantial share of permanent employment in a given enterprise?

In the case of fixed-term, single-project, occasional and seasonal work contracts, some fear that the relaxation of constraints that is now being proposed as an exceptional measure will undermine stability of employment and the established systems of workers' protection. Others hold that, in a time of recession and increasingly ruthless competition on a world-wide scale, enterprises should be granted greater facilities for hiring and should be exempted from obligations related to the termination of contracts of indefinite duration. Such proposals are especially important in countries which have provided for thorough protection in the event of dismissal; this may explain why the legislature has given so much attention to these forms of hiring in France (1979, 1982 and 1986), the Federal Republic of Germany (1985), Italy (1977 and 1984) and Spain (1980, 1981 and 1984). We should add that several trade union federations in Italy and Spain have recently approved a number of framework agreements containing provisions that authorise fixed-term contracts in very specific circumstances, notably where it can be shown that they will boost local economic activity.[17]

Indicative of the controversy surrounding temporary work agencies and fixed-term contracts is the fact that the principles and proposals on these subjects put forward by the Commission of the European Communities in 1980 and 1982 are still under discussion. It is also revealing that a number of countries are still vigorously debating whether the ILO's Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), applies to temporary work agencies.[18]

Similar debates focus on home-based work. Again, the issue is not whether it should be authorised or banned outright, but whether to abolish certain restrictions that prohibit this form of work in sectors where abuses have been greatest. Thus the case of Chile, which recently prescribed that home-based work is equivalent to self-employment, and therefore totally exempt from labour legislation, must be seen as exceptional. And yet, even when the problem is posed merely in terms of relaxing some of the earlier restrictions, there have been plenty of trade unionists who see in such measures the danger of returning to the days of the sweat-shop.

At first glance, it would seem that clandestine work would find few advocates, if any. Governments and employers' and workers' organisations everywhere roundly oppose this unlawful activity. Employers' organisations are especially categorical in their opposition, for they see clandestine work as a form of unfair competition that could undermine the formal sector. Many government officials and trade union leaders have also warned against the substantial losses that public treasuries and social security funds incur as a

result. Labour policy-makers, however, have hesitated to eradicate this atypical form of employment, whether because of the difficulty of applying sanctions to persons who, by and large, are unemployed or needy, or because of the tolerant attitude of the public, or for fear of eliminating an activity that serves as a safety valve for social tensions arising from unemployment.

Two particular forms of atypical employment – self-employment[19] and part-time employment – seem to give rise to little controversy, at least in the field of labour law. Both find justification in the principle of freely chosen employment; furthermore, they contribute to the fight against unemployment. In trade union circles, however, there are differing views on the advisability of promoting either of these atypical forms. France provides an example: while the French Democratic Confederation of Labour (CFDT) and the Confederation of Executive Staffs (CGC) participate actively in programmes designed to encourage unemployed persons to set up in business on their own, the General Confederation of Labour (CGT) and Force Ouvrière (FO) argue that it is not the function of trade unions to convert workers into entrepreneurs. On the issue of part-time work, there is a sharp contrast between its acceptance by Scandinavian trade unions and the more cautious approach of Italian workers' organisations, which has led Parliament to require that contracts for part-time work be concluded in writing and approved by the labour authorities wherever the worker previously held a full-time position.

In a more general vein, a consensus has failed to emerge on whether certain atypical forms should be regulated in an isolated and exceptional manner and others left in the limbo of *de facto* practices, as they are now, or whether it would be advisable to develop systematic regulations covering all atypical forms. Adopting the first alternative would mean that atypical employment would continue to operate through loopholes in labour legislation, depriving atypical workers of the protection and stability accorded to workers in traditional forms of employment. A number of reports presented at the Caracas Congress suggested that the current insensitiveness of the law to the characteristics and requirements of atypical employment may actually promote its development and diversification.[20] Adopting the second alternative would perpetuate and legitimise some activities that for many reasons should continue to be regarded as exceptional, transitory or even unlawful. Some authors caution that atypical employment should not be legitimised indiscriminately merely because it is not possible to ban it in all its forms.[21] Others suggest that shortcomings in the regulation of atypical employment could be made good through a more rational application of general standards governing traditional employment. However, ordinary labour law cannot accommodate self-employment and other forms of atypical employment without broadening its scope and relinquishing the notion of dependency as the prime element in the employment relationship.

A variety of solutions have also been proposed with a view to eliminating the causes of atypical employment. University as well as

entrepreneurial circles have stressed the need to undertake a critical assessment of labour law to determine whether the spread of atypical forms might be due to excesses or distortions in the legislation itself. It is in this context that terms such as *flexibility* and *deregulation* have cropped up. The former concerns contractual arrangements, while the latter is a more general term that implies the elimination of certain regulatory and protective aspects of labour legislation. Greater flexibility can be achieved by broadening the range of circumstances in which fixed-term contracts may be concluded or by allowing them to be renewed with the proviso that they are not deemed equivalent to contracts of indefinite duration. The circumstances now include "market conditions" (Spain), "exceptional increases of business activity" (France), "well-founded reasons" (Finland) and "the unfavourable economic position of the enterprise" (Belgium). Deregulation, for its part, may affect some or all of the guarantees governing specific aspects of the employment relationship. Total deregulation would imply a return to the principles of unrestrained competition and the most primitive notions of the labour market. The risks inherent in such a move have led to talk of "controlled" or "guided" deregulation.[22] But even this concept does not find favour with those who oppose any approach that would undermine the protection workers currently enjoy or threaten the stability which most developed legislations have sought to achieve.

In general, however, it is suggested that the way out of the difficulty lies in adapting labour institutions and industrial relations systems to current socio-economic pressures.[23] In fact, it has been suggested that management and workers should themselves endeavour to control the growth of atypical employment by striving for a fairer balance between permanent and temporary contracts and between the levels of protection to which those holding them are entitled.[24]

Lastly, there are differences of opinion concerning both the extent to which atypical employment has helped to diminish unemployment and the danger of its undermining labour law. Many think that atypical employment has had little success in reducing unemployment, and that its cost far outweighs its benefits. Others argue that atypical employment does help to cushion the effects of unemployment and that, in any case, this is not its only *raison d'être*: they cite the cases of Japan, Sweden and Switzerland, which do not have serious unemployment problems but have experienced a considerable growth of atypical employment.

Repercussions of atypical employment

It is easier to understand the reservations and objections that many people, especially trade unionists,[25] express about atypical employment, when one considers its possible repercussions on individual and collective labour relations and social security.

Individual labour relations

The main problem that atypical employment poses with respect to individual labour relations is the direct or indirect deterioration of working conditions. This is mainly due to the fact that certain forms of atypical employment are partially or completely unregulated; the net effect is a dilution of workers' protection schemes and guarantees. Direct deterioration manifests itself in the physical conditions of work and the level of remuneration in clandestine work, in certain forms of self-employment and employment-cum-training contracts, and in the more unusual variations of occasional and casual employment. The vulnerable or unstable nature of these forms of employment also leads to a deterioration in the quality of work. This problem is compounded by insufficient labour inspection; indeed, it hardly seems possible to supervise atypical employment properly, impermanent, fragmented and multifaceted as it is.

Indirect deterioration results from the disadvantaged situation of atypical employment vis-à-vis the universally accepted status of full-time wage employment. Since the system of workers' protection is largely based on the model of full-time, permanent employment at the employer's place of business, it is not surprising that part-time, temporary and home-based workers often find that they are unprotected and excluded from certain benefits. To promote such forms of atypical employment might lead to the creation of two types of workers: those with stable jobs who are entitled to rights and benefits, and those who are deprived of many of these rights, whose employment can be terminated at will and who form, in essence, a stand-by, second-class labour force.

Nevertheless, it would be rash to claim that all forms of atypical employment are characterised by precarious, insecure or harsh conditions. Many part-time jobs and assignments contracted through temporary work agencies are not particularly arduous in themselves. But this does not mean that they are free of problems in respect of the individual employment relationship. In the case of part-time work, for example, there are difficulties in defining it adequately, in compensating the work performed fairly, in ensuring that certain minimum legal standards are observed, in guaranteeing compliance with the principle of equal pay for equal work, in determining what constitutes overtime, in establishing the right to paid leave and in setting a suitable ratio between full-time and part-time workers. Each of the other forms of atypical employment has its own set of problems, which it is not possible to mention here. Most are legal in nature, but there are economic problems as well: for instance, how is one to motivate a worker when his employment is fleeting and precarious?

Collective labour relations

The effects of atypical employment on collective labour relations are potentially devastating. While the spread of atypical employment has not yet

reached critical proportions, its continued growth could well threaten the very foundation of collective labour relations, for the expansion of atypical relationships and the growth of clandestine employment would result in the contraction of full-time wage employment, that meeting-ground for collective interaction which has until now been the traditional basis and natural environment of labour relations. Beyond this normal or traditional environment has evolved a no man's land, untouched by many of the most basic conquests of labour law of the past 150 years, that does not lend itself to the rules of collective bargaining. In addition, unfair competition from clandestine employment could endanger the very existence of the formal sector.

It is interesting to note that the threats posed by atypical relationships arise more from their own nature than from the standards adopted in the field of collective labour relations. Atypical workers show little inclination to avail themselves of the instruments for collective action established by labour law. This is perhaps best illustrated by part-time workers who, according to several authors, are not conscious, or have a different notion, of their status as workers; this phenomenon has led to the emergence of a new type of employee whose attitude and behaviour are different. The isolation of home-based workers is, in itself, a great obstacle to their association and to trade union action. As regards triangular relationships, one author claims that they are in fact surreptitious attempts to neutralise the exercise of freedom of association and collective bargaining, as workers have nothing more to confront than a pseudo-enterprise or an employer in name only.[26] These circumstances lead to low rates of unionisation, very few agreements directly negotiated by atypical workers and little news coverage of their strike activities. When disagreements or frictions do arise, conflicts tend to take anomic or irregular forms that are not easily handled through the disputes settlement machinery established by labour law. These are ominous signs of what could happen if atypical employment continued to grow.

Since the traditional forms of organisation and representation seem inadequate to meet the needs of atypical employment, one might expect that other, more flexible forms of participation would come to the fore. However, even some of the simplest mechanisms for participation seem inapplicable to atypical employment. For example, how could one organise an effective system of works councils for home-based workers or for those in short-term or temporary employment? How can machinery for participation be designed for workers with several employers? Indeed the more autonomous forms of work spread, the more elusive the concept of participation becomes.

Although the problems affecting collective labour relations are generally questions of fact rather than law, there are nevertheless indications that legal provisions do exist that are detrimental to the interests of atypical workers. In Portugal, for example, membership of the *comissões de trabalhadores* (or workers' committees), which represent workers at the enterprise level, is restricted to permanent employees. In Uruguay the law (prior to the recent

change of government) stipulated that only workers with at least three years' service could participate in strike negotiations, and that only employees deemed to be working "continuously" could serve on wage councils, effectively excluding almost all workers with fixed-term contracts and most other atypical workers.

Such restrictions are also to be found in industrially more advanced countries. In the Netherlands, for example, atypical workers are excluded, in principle, from works councils. Although Norway and Sweden have adopted broader measures to protect atypical workers, as we shall see shortly, they nevertheless bar part-time employees who work fewer than 20 and 16 hours a week, respectively, from voting in elections to appoint workers' representatives to the enterprise's board of directors.

In these circumstances legal restrictions and inherent practical difficulties could well darken the outlook for collective labour relations in atypical employment. A number of countries have attempted to remedy this situation by extending to atypical workers the same collective rights as are granted to other workers. Atypical workers in France enjoy all of the generally recognised collective rights. The same is true of the Scandinavian countries, with the exceptions noted above. Norway has even stipulated that atypical workers are to enjoy the conditions of work established by collective agreements in their sectors; since 1976 atypical workers have also been explicitly guaranteed the right to strike. Switzerland does not draw a distinction between the various categories of work in connection with the right to organise.

Social security

The emergence of atypical employment has had a number of repercussions on social security and the entitlements of atypical workers. Its growth has undoubtedly contributed to the financial crisis of national social security systems, many of which were already on the brink of bankruptcy. Atypical employment grows largely at the expense of employment in the formal sector, thereby eroding to an alarming extent the taxable base that pays for the system's administration and the cost of benefits. This erosion is especially acute in countries where social security is financed by contributions calculated on the basis of the wage bill.

If atypical workers find little protection in labour legislation, they are at an even greater disadvantage when it comes to social security. Atypical workers who manage to break through to formal employment must begin contributing to social security, usually through automatic deductions from their wages, which are due by virtue of the fact that they are listed on the payroll. However, entitlement to social security benefits, and especially old-age, disability and death benefits, is by its very nature subject to relatively long qualifying periods of contributions and service; as a result, only those workers who meet these requirements are entitled to receive benefits or pass

on their entitlement to their dependants. In practice, many atypical workers whose contributions to social security are sporadic, intermittent or limited, find that they are covered by the obligations of the system but excluded from its benefits. Based as it is on actuarial formulae, social security is less able than labour institutions to assimilate atypical workers or to treat them on an equal footing with other workers. Furthermore, many social security systems were designed to cover the risks inherent in traditional, full-time wage employment, and are thus ill suited to accommodate many types of atypical workers. Even benefits that require relatively short periods of contributions, such as unemployment insurance, are tied to a greater or lesser extent to full-time wage employment. In the United Kingdom, for instance, part-time workers are not entitled to unemployment benefits. The right to these benefits in other countries is sometimes made conditional upon a certain number of months of work and a minimum number of hours per day. In other cases, part-time or home-based workers receiving unemployment benefits may forfeit their entitlements if they refuse offers of full-time employment (or, as is the case in some countries, employment in excess of 50 per cent of the normal working day). Similar considerations affect sickness insurance, inasmuch as a given period of employment is required before the worker is entitled to benefits.

Perhaps the only benefit to which atypical workers are entitled without having to complete a qualifying period is compensation for occupational injuries, although complications may arise in determining which enterprise is liable for the benefit claim, especially in cases involving triangular employment relationships and temporary work agencies where there may be a problem in identifying the employer liable for social security contributions. Some progress had previously been made in extending social security to self-employed workers, but the numbers and status of these workers have changed radically in recent years.

Conclusions

Atypical employment has grown enormously. What is striking in certain countries is not only the total number of people involved in this form of work, but also its diversity – in the duration of employment, the hours and location of work, and the number of employers involved. Even more striking is the expansion of clandestine work and self-employment.

The spread and variety of atypical employment have led some observers to conclude that the full-time wage employment model has reached a crisis and must be overhauled. Others hold that the current boom of atypical employment is a temporary phenomenon that will disappear once unemployment rates begin to fall. If the first line of thinking seems premature or exaggerated in the light of the data discussed in this article, the second overlooks the fact that the atypical phenomenon is not merely a by-product of unemployment, but a reaction to deeper socio-economic factors, including

structural changes in employment, technological innovation and new lifestyles and attitudes towards work. Although the full-time wage employment model continues to predominate in production activities, there can be no doubt that the assumptions underlying employment relationships are changing, and that this in turn is leading to an erosion of the social nucleus which originally inspired and still serves as the focal point of labour law.

Generally speaking, atypical employment is characterised by a total or partial absence of regulation that could heighten the vulnerability and instability of individual workers and imply sweeping changes for the unions. These circumstances raise fears that the growth of atypical employment will undermine the foundations of the law governing individual and collective labour relations and distort the actuarial basis and the objectives of broad-based social security schemes. Many ways of forestalling these dangers have already been proposed. Some seek to temper the more severe restrictions of protective legislation with a view to accommodating the new variants. Others recommend extending to atypical work as many of the provisions of ordinary labour law as possible. All, however, concentrate on atypical forms that differ only partially from the full-time wage employment model. The usual approach seems to be to try to regulate atypical employment selectively in its individual forms, rather than to treat it globally in a systematic way. Atypical forms that respond to the interests or aspirations of certain segments of the labour force tend to receive the greater legislative attention; in a few countries, however, legislation covers atypical forms that serve the interests of employers as well. This approach has resulted in legislative reforms that touch on specific aspects of atypical employment, without, however, addressing its underlying causes or the many forms it takes.

Even though the concerted action of labour and management and the inherent flexibility of the traditional system of labour relations could lead to a greater assimilation of some atypical forms of employment, they cannot be expected to eliminate the problem completely. Atypical employment is intimately linked to social transformations that are still in full swing; it promises to be with us for a long time to come. At all events, one thing seems fairly certain: the nature of employment relationships will no longer hinge solely on the position of the industrial worker, nor will it be characterised by the element of subordination to the extent that it is under labour law today.

Notes

[1] See various articles on this subject in *Droit social* (Paris), July and Aug. 1981 issues.

[2] Concerning the differences between atypical employment and special labour relationships see E. Córdova: "Las relaciones de trabajo atípicas (I)", in *Relaciones Laborales* (Madrid), Mar. 1986, pp. 13 and 14.

[3] R. de Grazia: "Clandestine employment: A problem of our times", in *International Labour Review*, Sep.-Oct. 1980, pp. 549-563.

[4] For an English translation of this Act see *Legislative Series* (Geneva, ILO), 1982 – Ger.F.R. 2.

[5] For a summary of these reports see *Social and Labour Bulletin* (Geneva, ILO), No. 1/83, p. 65, and No. 1/86, p. 109.

[6] E. Córdova: *New forms and aspects of atypical employment relationships*, General report presented at the 11th International Congress of the International Society for Labour Law and Social Security, Caracas, September 1985, p. 67.

[7] Statistics of the United States Bureau of Labor Statistics, published in *International Herald Tribune* (Paris), 22 Aug. 1986, p. 11.

[8] See K. W. Wedderburn: *Hiring procedures*, General report presented at the Second European Regional Congress of Labour Law, Jesolo, September 1986, p. 11.

[9] See the corresponding national reports presented at the above-mentioned Caracas Congress. Unless otherwise stated, these reports serve as sources for data presented in this article.

[10] As regards the United States see *Social and Labour Bulletin*, No. 3-4/84, p. 507.

[11] See the proceedings of the Second Asian Regional Congress on Labour Law and Social Security, Seoul, September 1983, passim.

[12] See *Social and Labour Bulletin*, No. 2/83, p. 243.

[13] In particular, see the reports presented at the Caracas Congress by Poland and the German Democratic Republic, in *National reports*, Theme II, Vol. II, pp. 245 ff., and Theme II, Vol. I, pp. 3 ff., respectively. Atypical employment is especially developed in Yugoslavia (see Wedderburn, op. cit., p. 12).

[14] Of course, neither unemployment nor the decline of trade unionism is a universal phenomenon.

[15] See S. Ricca: "Private temporary work organisations and public employment services: Effects and problems of coexistence", in *International Labour Review*, Mar.-Apr. 1982, pp. 141-153.

[16] Subject to certain restrictions, these agencies have been authorised in Argentina, Belgium, Brazil, Denmark, France, the Federal Republic of Germany, Ireland, Japan, the Netherlands, Norway, Portugal and Switzerland, among other countries. They have been banned in Algeria, Costa Rica, Gabon, Greece, Italy, the Libyan Arab Jamahiriya, Madagascar, Mauritania, Senegal, Spain, Sweden and Zaire.

[17] See paragraph 8 *(b)* of the Italian National Agreement of 22 June 1983, and Ministry of Labour, Spain: *Acuerdo Ecónomico y Social 1985-1986* (Madrid, 1984), p. 39.

[18] See, for example, E. J. Ameglio: *Las empresas suministradoras de mano de obra temporal* (Montevideo, Ediciones Jurídicas Amalio M. Fernández, 1984), p. 150.

[19] D. Christe: "New forms and aspects of employment relationships", in *National reports*, op. cit., Theme II, Vol. II, pp. 3 ff.

[20] A. Monteiro Fernández: "Relações de trabalho atípicas em Portugal", ibid., pp. 275 ff.

[21] J. Pelissier: "La relation de travail atypique", ibid., Vol. I, pp. 523 ff.

[22] F. Carinci: "Le nuove forme del rapporto di lavoro atipico", ibid., Vol. II, pp. 71 ff.

[23] T. A. Kocham: *Proposals for a program of research on the adaptation of industrial relations in industrialized countries*, unpublished paper submitted to the International Institute for Labour Studies (Geneva, 1986), pp. 1 and 4.

[24] E. Morgado Valenzuela: "Las formas atípicas de trabajo y las relaciones laborales", in *National reports*, op. cit., Theme II, Vol. II, pp. 173 ff.

[25] For an example of the trade union perspective of atypical employment see Bill Callaghan: "Flexibility: A UK trade union response", in *Social and Labour Bulletin*, No. 2/86, p. 193.

[26] R. Alburquerque: "Las nuevas formas y aspectos de la relación de trabajo atípico", in *National reports*, op. cit., Theme II, Vol. II, pp. 337 ff.