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Source / Izvornik: **InterEULawEast, 2022, 9, 51 - 84**

Journal article, Published version
Rad u časopisu, Objavljena verzija rada (izdavačev PDF)

https://doi.org/10.22598/iele.2022.9.1.3

Permanent link / Trajna poveznica: https://urn.nsk.hr/urn:nbn:hr:118:465905

Preliminary Communication
UDC: 004.738.5:551.242.5:331(497.5)(4-67EU)
DOI: https://doi.org/10.22598/iele.2022.9.1.3

WHAT LESSONS COULD CROATIA LEARN FROM A COMPARATIVE PERSPECTIVE REGARDING THE LABOUR MARKET STATUS OF ON-DEMAND PLATFORM WORKERS?

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ABSTRACT

Digital labor platforms play a key role in the digital transition of the European economy and are a growing phenomenon. With its growth, it brings also new forms of employment which are not regulated properly, which does not guarantee elementary labor human rights with a real risk of the precariousness of these forms of work. In the paper, the authors give a review of the EU legal framework and soft-law tools on platform work and elaborate on the labor law status of platform workers together with a comparative analysis of the case law in France, Italy, Spain, and the UK. In the last part of the paper, the authors give an overview of the results of the empirical research on platform work in Croatia, review the legal framework and elaborate on some de lege ferenda suggestions in line with the future EU Directive on platform work.

KEYWORDS: *on-demand, platform work, EU, Croatia, labor, market*

1. INTRODUCTORY REMARKS

Platforms are digital networks that coordinate transactions in an algorithmic way. They represent hybrids of markets and firms: the network and algorithmic components of platforms perform the functions of each of those basic economic institutions. Platform work is performed within the triangular structure,

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involving the person performing work (the worker), the end-user (the customer), and the company or companies providing the digital intermediary service (the platform). This is the form of employment that uses an online platform to enable organizations or individuals to access an indefinite and unknown group or other individuals to solve specific problems or provide specific services or products in exchange for payment [1], the matching of the supply and demand for paid labor through online platform [2].

Some studies which have been conducted estimated that in the European Union (hereinafter: EU) today, over 28 million people in the EU work through digital labor platforms. In 2025, their number is expected to reach 43 million people. The vast majority of these people are genuinely self-employed. Around 5.5 million are however estimated to be incorrectly classified as self-employed. Between 2016 and 2020, the revenues in the platform economy grew almost fivefold from an estimated €3 billion to around €14 billion.[3] This brings us to the conclusion that there is the exponential growth of platform work and its potential to disrupt the labor market. Digital labor platforms play a key role in the digital transition of the European economy and are a growing phenomenon. They bring innovation, create jobs and enhance the EU's competitiveness and also provide additional income to people, including those whose access to the labor markets may be more difficult[4]. On the other hand, platform work entails certain challenges to the labor law in the context of guarantees of its traditional goals: protection of workers, respect of workers' dignity, privacy, and their physical and mental health.

So, the main challenge in platform work is the unclear employment status of platform workers and the risk of the precariousness of their work which includes: the absence of some or all forms of labor-related security: labor market security (adequate income-earning opportunities), employment security (protection against arbitrary dismissals), job security (ability and opportunity to retain a niche in employment), work security (protection against accidents and illness at work), skill reproduction security (opportunities to gain skills),

[1] Eurofound, New forms of employment, Publications Office of the European Union, Luxemburg, 2015, p. 107.

[2] Eurofound, Automation, digitisation and platforms: Implications for work and employment, Publications Office of the European Union, Luxembourg, 2018, p. 3.

[3] European Commission proposals to improve the working conditions of people working through digital labour platforms, [https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6605], accessed on 03/12/2021.

[4] European Commission, Protecting people working through platforms: Commission launches second-stage consultation of social partners. [https://ec.europa.eu/commission/presscorner/detail/en/IP_21_2944], accessed on 20/01/2022.

income security (assurance of an adequate stable income) and representation security (possessing a collective voice in the labor market)[5]

In the next sections we shall try to give answers to several important issues which arise in connection to on-demand platform work: is Labour Law applicable to platform workers? Can traditional regulations of labor standards cope with challenges that arise in platform work? Do platform workers form another group of precarious workers? In answering these questions[6], we shall offer an explanation of the platform's work as a new business model with a new control strategy. Further, we shall tackle the most problematic issue in the sphere of platform work – the legal classification of platform workers. In this context, we shall briefly outline the conclusions of the case-law of some national jurisdictions and employment policy interventions of European institutions. Special attention goes to the analysis of the situation in Croatia regarding the regulation of platform work and the employment status of platform workers. In concluding remarks, we shall offer some solutions *de lege ferenda* for Croatian platform workers legal protection.

2. PLATFORM WORK – NEW BUSINESS MODEL WITH A NEW CONTROL STRATEGY

What is new about the platform business model of work? The main difference compared to the traditional business model is the widespread use of algorithmic management as work settings in which "human jobs are assigned, optimized and evaluated through algorithms and tracked data".[7] It encompasses: constant tracking of workers' behavior; constant evaluation of workers' performance through gathered data from clients' reviews; the automatic implementation of the decision, with only a few or no human intervention; almost all communication is mediated by a platform, so there is evident lack of human interaction which could lead to a feeling of isolation of platform worker and necessary feedback from their supervisors; transparency, even though algo-

5 Standing, G.: *The Precariat. The new dangerous class*, Bloomsbury, London, 2011, p.10.

6 Some parts of this article are the result of the research conducted by prof. Bilić and prof. Smokvina which are going to be published in the article: Bilić, A., Smokvina, V.: On demand platform workers – what about their employment status? Slip into indecency?, in: Sander, G. G., Pošćić, A., Martinović, A. (Eds): *Exploring digital legal landscapes, series: Europeanization and Globalization*, Springer, 2022. (in print).

7 Lee, K., Kusbit, D., Metsky, E., Dabbish, L.: *Working with machines: The impact of algorithmic and dana-driven management on human workers. Proceedings of the Association for Computing Machinery Conference on Human Factors in Computing Systems*, Seul, 2018, pp. 1603-1612.

rithms rely upon an explicit set of rules, but the company rarely discloses them, therefore, creating very low transparency for workers and customers to gain an information advantage.[8]

The change in the structure of the firms is evident: instead of a managerial firm that is organized as an entity, platforms as market-organization pose few assets, outsource the work and try to avoid taking on any (social) responsibility by pretending to be only intermediary and a marketplace.[9] Platforms like to present themselves as an intermediary in the labor market and platform workers as self-employees in order to circumvent provisions of labor, social, and tax law. In reality, they are "controlling autonomy"[10] of their workers in different ways, mostly by technological control (algorithmic control), human management (procedures to avoid classification of platform worker as an employee, e.g., preventing continuous work with one client), and financial incentives.[11]. What was the reason for the use of informational control "algorithmic management", "algorithmic control", "app-based management"[12]? It was a necessity to access and control workers who perform their work in a so-called "virtual office" who do not have a traditional obligation to obey employers' instructions and who lack personal dependence on the employer. This way, employers could ensure that their workers provide services of good quality to their customers.

As it is been said the business model of "work on demand" requires intensive control over work performance in order to guarantee a high quality of services for the customers. In the next chapters, we shall investigate if these control mechanisms play a decisive role in court decisions concerning the employment classification of on-demand platform workers. We shall also consult other indicators for the identification of employment relations with an aim to conclude if

[8] Choudary, S. P.: *The architecture of digital labour platforms: Policy recommendation on platform design for worker well-being, ILO Future of Work Research Paper No.3*. ILO, Geneva, 2018, pp. 6-7, 12; Möhlmann, M, Zalmason, L.: *Hands on the wheel: Navigating algorithmic management and Uber drivers' autonomy. Proceedings of the International Conference on Information Systems*, Seul, 2017, p. 5.

[9] Acquier, A.: Uberisation meets organizational theory. Platform capitalism ant the rebirth of the putting-out system, in: Davidson, N, Finck, M, Infranca, J. (eds.): *Cambridge handbook of the law of sharing economy*. Cambridge University Press, Cambridge, 2018, p. 15.

[10] Schönefeld, D.: Kontrollierte Autonomie. Einblick in die Praxis des Crowdworking, in: Hensel, I.,at all. (eds.): *Selbstständig Unselbständigkeit*, Nomos, Baden-Baden, 2019, p. 76

[11] Hotvedt, M. J.: *The contract of employment test renewed. A Scandinavian approach to platform work*. Spanish Labour Law and Employment Relations Journal, 7(1-2) 2018, p. 59.

[12] Ivanova, M., Bronowicka, J., Kocher, E., Degner, A.: *The app as boss? Control and autonomy in application-based management, Arbeitspapier, 2. Europa-Universität Viadrina Frankfurt*, Frankfurt (Oder), 2018, p. 6.

on-demand platform workers could be classified as employees or whether they form a new group of self-employees.

3. CLASSIFICATION OF PLATFORM WORKERS

The most problematic issue in the sphere of platform work is the legal classification of on-demand platform workers under self-employed or salaried employee status[13] Namely, the classification of any contractual relation as employment status functions as an *action finium regundorum* of labor law or getaway to the applicability of labor law. The question is: is employment classification criteria as such applicable to the present "market-organization" model of platform work with the domination of algorithmic control or does it need some modification? Despite numerous attempts of labor law scholars to taxonomize online platforms mediating labor[14] problems regarding their nomenclature and legal classification still persist.

Here we can use the ILO Employment Relationship Recommendation, 2006 (No. 198) as one of the most important sources which could help us to determine the employment relationship of platform workers. The recommendation noted that a disguised employment relationship occurs when the employer treats an individual as other than an employee in a manner that hides his or her true legal status as an employee, and that situation can arise where contractual arrangements have the effect of depriving workers of the protection, they are due. For the purposes of the national policy of protection for workers in an employment relationship, the determination of the existence of such a relationship should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties. Based on ILO Recommendation no. 198, we can conclude that the essential element of differentiation between employment and self-employment (subordinate work) is the bond of the worker to the organizational, managerial, and disciplinary power of the employer. First of all, employees make their productive labor (*operae*) available to the employ-

[13] Roşioru, F.: *The changing concept of subordination*, 2013., p. 5-6 [http://old.adapt.it/adapt-indice-a-z/wp-content/uploads/2015/11/Rosioru_changing_concept.pdf], accessed on 20/01/2022.

[14] Schmidt, F.: *Digital labour markets in the platform economy – mapping the political challenges of the crowd work and gig economy*. Friedrich- Ebert- Stiftung, Bonn, 2017; De Stefano, V, Aloisi, A.*: European legal framework for digital labour platforms*. European Commission, Luxemburg, 2018; Howcroft, D, Bervall- Käreborn, B.: *A typology of crowd platforms*, Work, Employment & Society, 33(1) 2018, pp.1-18.

er under his/her managerial prerogatives this way making his/her integration into the entrepreneurial organization. On the contrary, the self-employed person provides a service i.e., the result of his/her activity (*opus*). Regarding the managerial power of the employer in classifying subordinate or autonomous relationships on/autonomy, we need to look if the worker is sticking to employers' directives regarding working time, place, the content of work, and the way it is going to be performed (personal subordination/dependency), his economic dependency on a single employer, his obligation to be available for work, if the employer provides tools and materials, bears the risk of profit loss and has entrepreneurial control and make some job-specific investment.

In the identification of employment relationship what matters more is the actual features of the legal relationship, which means that the principle of primacy of facts prevails setting aside the principle of *nomen iuris*. So, the question is: which of the previously mentioned "classical employment status indicators" are applicable to the on-demand platform workers? In most cases, on-demand platform workers do not have a fixed timetable and regular workplace, but this kind of freedom is ambiguous. Namely, the absence of workers' obligation to accept the task has its justification in absence of the platforms' obligation to provide work and pay, which in turn can limit platform workers' profit possibilities. In many cases, they do not perform work just for a single platform. The remuneration is mainly for the result and is determined by the platform, as also the other terms and conditions of work. Also, on-demand platform workers bear inherent costs, such as a vehicle, smartphone, fuel, phone bills, etc. But, in this context, we should ask the next question: which mean is essential for the development and exercise of the economic activities carried out through the digital platforms: vehicles and smartphones or digital software owned by the platform (company)? Obviously that the latter presents essential means without which this sort of business could not exist. Also, not the platform worker, but the platform provides corporate *know-how* as accumulated knowledge regarding skills, modes, and procedures used in carrying out business in a customer recognizable way.

Workers on demand do not show typical characteristics of entrepreneurial activity in the sense that they negotiate with customers, do not have business practice on their own (e.g. disconnection from the platform means immediate termination of that sort of economic activity for the platform worker), do not have the freedom to arrange their professional activities, don't have control over the information which is indispensable in order to organize the provision of services and don't have autonomous capacity to decide about the price charged to the customer.

Control of on-demand platform workers could be direct, e.g., through the use of geolocation systems for the platform to control times and routes of platform work-

ers, or as indirect control when the control is outsourced to the clients through rating and evaluation mechanisms, and different forms of control (detailed instruction how to complete the work, direct supervision of work, availability for a certain number of hours, requested screenshots of the executed work, etc.). But this does not mean that the platform has no control over the work of its workers. Namely, the rating system is provided in the structure of the platform. That way platforms have indirect control over the performance of their workers. So, we can conclude that personal and economical subordination of demand platform workers depends only on relation to the platform and not to certain clients. Also, it is not disputable that the legal relationship between the platform and on-demand platform workers has both autonomous and subordination features which make the classification of their legal status even more complex.

From the previously explained, it is obvious that the current criteria leave the legal status of on-demand platform workers unresolved and leave them without protection that traditional goals of labor law guarantee. So, the question is: how to provide that kind of protection for on-demand platform workers? In the literature on platform work, we find several proposals[15]:

- redefine and broaden the concept of the employee;
- renewal and adaptation of employment relation (contract of employment) tests;
- develop intermediary category between employee and self-employed person and develop a certain set of rules for their protection;
- extend the protection of labor and social security law to the self-employed persons to a certain extent;

[15] Weiss, M.: The platform economy: the main challenges for labour law, in: Méndez L M (ed.): *Regulating the Platform Economy, International Perspectives on New Forms of Work*, Routledge, New York, 2020, pp. 11-12; Recchia, G. A.: Gig Work and the Qualification Dilemma: From the Judicial to the Theoretical Approach, in: Wratny, J. at all. (eds.): *New Forms of Employment. Current Problems and Future Challenges*, Springer, Wiesbaden, 2020, pp. 137-152; Unterschütz, J.: Digital labour platforms: Dusk or Dawn of Labour Law?, in: Wratny, J. at all. (eds.): *New Forms of Employment. Current Problems and Future Challenges*, Springer, Wiesbaden, 2020, pp. 319-342, Chesalina, O.: Platform Work as a New Form of Employment. Implication for Labour and Social Law, in: Wratny, J. at all. (eds.): *New Forms of Employment. Current Problems and Future Challenges*, Springer, Wiesbaden, 2020, pp. 153-168; Hotvedt, M.: The contract of employment test renewed. A Scandinavian approach to platform work, o.c., Alvarez Alonso, D.: *Assessing the employment status of digital platform workers: renewed approach, new indicators and recent judgements*, Compendium of Papers for XIII European Regional Congress of the International Society for Labour and Social Security Law "Work in Digital Era – Legal Challenges, Portugal, 5-7 May 2021, [https://lisbon2020digital.pt/papers/68-71], accessed on 12/01/2022.

- develop special legislation for platform workers irrespective of whether they are employees or self-employed;
- creation of platform cooperatives managed by platform workers in order to retain part of the revenues generated by workers' work,
- readjust the platform business model to comply with current labor legislation.

In the next chapter, we shall briefly outline employment policy interventions of European institutions', results of the case-law of some national jurisdictions and the European Court of Justice and connect them with key elements of previously outlined theoretical debate to help us make some conclusions about the legal status of on-demand platform workers and possibilities regarding their legal protection on the labor market.

4. A COMPARATIVE LEGAL APPROACH

4.1. FRANCE

In 2016. France has adopted the El Khomri Act which specifically regulates platform work. It is the attempt to create the third status of workers together with an existed binary divide on employee and self-employee, without naming it. This new legislative approach is based on a platform's social responsibility and not on its legal responsibility as an employer. It requires platform workers to take out private insurance against work-related accidents and occupational diseases. Regarding labor law issues Act equities platform workers with self-employed workers, while giving them collective rights, e.g., freedom of association and the possibility to form their unions, which they did, but collective bargaining has still not taken place.

The first court case on platform workers Take It Easy case[16] was handed down before the Social Chamber of the Court of Cassation. In the judgment decision of this case on 28th November 2018, the judges highlighted that the principle of primacy of facts prevails the *nomen iuris* which was already established in the landmark ruling of Court de Cassation of 13th November 1996[17]. This principle means that the existence of an employment relationship is not dependent on expressed will of the parties nor the name given to their agreement. Also,

[16] Court of Cassation, civil, Social Chamber, November 28, 2018, 17-20.079, [https://www.legifrance.gouv.fr/juri/id/JURITEXT000037787075/], accessed 01/02/2022.

[17] Court of Cassation, Social Chamber, November 13, 1996, 94-13.187, [https://www.legifrance.gouv.fr/juri/id/JURITEXT000007035180/], accessed 01/02/2022.

if the actual conditions reveal that the work is performed under the authority of an employer who has the power to give orders and instructions on how to perform work, as well monitor its execution, and has the power to sanction all wrongdoings this means that subordinate employment relationship exists. Also, in this case, the app and geolocation system allows the company to track the courier's movement online and to record the distance traveled which also satisfies the reclassification of the agreement between platform worker and platform as an employment contract. So, the Court concluded that Take Eat Easy riders are employees, by holding that (1) the system of geolocation allows the real-time monitoring of the position of the rider (2) the control of the total number of kilometers rode by the riders and (3) the sanctions applied to the riders in some particular cases demonstrated that Take Eat Easy had powers of direction and control over its contractors. The subordination relationship is characterized by the performance of work under the authority of an employer who has the power to give orders and directives, control their execution, and sanction the subordinate's failures.

The second decision rendered by the Labour Chamber of the Court of Cassation concerning platform workers is the Uber BV case[18]. In this case, the Court of Cassation approved the Court of Appeal's proof of the existence of employment in further elements: (1) the driver has joined a transport service created and entirely organized by that company, a service which exists only thanks to this platform, through the use of which the driver does not constitute a proprietary clientele, does not freely set his fares or determine the terms and conditions for conducting his/her transportation business; (2) the driver is required to follow a particular route which he is not free to choose and for which fares adjustments are applied if the driver does not follow that route; (3) the final destination of the journey is sometimes not known to the driver, who is not really free to choose, as a self-employed driver would, the journey which befits him/her or not; (4) the company has the right to temporarily disconnect the driver from its application as of three refusals of rides and the driver may lose access to his account in the case that an order cancellation rate is exceeded or in case of reports of "problematic behavior". In this case, the existence of a relationship of subordination when the ride-hailing driver connects to the Uber application is thus recognized, and the Court of Cassation has ruled out taking into consideration the fact that the driver has no obligation to connect and that no sanction exists in the event of the absence of connections for any length of time (unlike what existed in the Take Eat Easy

[18] Court of Cassation, Social Chamber, March 4, 2020, 19-13.316 - ECLI:FR: CCAS:2020:-SO00374, [https://www.courdecassation.fr/toutes-les-actualites/2020/03/04/reclassification-contractual-relationship-between-uber-and-driver], accessed 02/02/2022.

application). Indeed, the Court of Justice of the European Union holds that the qualification of "self-employed service provider" given by national law does not exclude that a person must be qualified as a "worker", within the meaning of Union law, if that person's independence is merely fictitious, thus disguising a genuine employment relationship[19], and the fact that there is no obligation on workers to accept a shift is irrelevant in the context in question.

4.2. ITALY

In Italy, there are different kinds of employment contracts, so workers can work on an open-ended, full-time contract, fixed-term contract, part-time contract, intermittent workers, temporary agency workers, voucher workers, occasional workers, "continuous and coordinated workers" and "VAT workers". Mostly, platforms choose to hire their workers as occasional workers or "VAT workers" (e.g., Deliveroo), "continuous and coordinated workers" (e.g., Foodora) or hire temporary agency workers (e.g., JustEat). But it is worth noting that courts in Italy are guided by two fundamental principles of Italian labor law: "interrogability" and "primacy of facts" which means that private agreements may not derogate from the requirements set by law and collective agreements and that the proof of the existence of employment relation is based upon facts relating to the actual performance of work and not on the nomination of the relationship between the parties. At the moment there is no legal regulation of platform work on the national scale, but only a few regional specific laws, namely Lazio law, the legislative proposal in Piamonte, and Bologna Charter. Lazio law introduces several rights for platform workers (workers who, notwithstanding the type and the duration of their work relationship, provide their labor to the platform and organize them to offer a service via an app, determining the price and the conditions of service; obligation for the platforms to provide health and safety training and equipment protecting workers against work accidents and work-related illness; insurance against work accidents; maternity/paternity; third party liability. Also, Lazio law forbids piecework pay and stipulates compliance with the minimum wage set by collective agreements signed by most representative trade unions. Platform workers have the right to be informed on working conditions and the functioning of the algorithm and rating system. Register in which "fair business" platform can be registered is set.

A legislative proposal in Piamonte guarantees the right to information on working conditions, fair wages, the right for trade unions to negotiate algo-

[19] CJEU Case C-256/01 of 13 January 2004., Debra Allonby v Accrington & Rossendale College and Others, *European Court Reports 2004 I-00873; CJEU* Case C413/13 of 4 December 2014 FNV Kunsten Informatie en Media v Staat der Nederlanden, ECLI:EU:C:2014:241.1

rithms, the right to disconnect, rules on working time, prohibition of discrimination, data protection, and the ban on piecework pay. Also, it broadens the concept of the worker set by the Civile code (art. 2094) classifying the worker who receives orders via an app or another program as an employee.

The Bologna Charter of Fundamental Digital Workers' rights was signed in Bologna in May 2018 and applies to all platform workers operating in Bologna, but only to those employers who have signed it. It does not affect the qualification of platform workers as employees or self-employed. The Bologna Charter provides for a right to information on working conditions and on rating systems, a fixed and fair wages greater or equal to those set in national collective agreements for the provision of similar services, overtime pay, prohibition of discrimination, the official notification including justification in cases where workers are excluded from a platform, insurance against work-related accidents and illness, compensation for bicycle maintenance costs, protection on personal data, a right to disconnect, freedom of association and the right to strike.

Regarding jurisprudence, it is worth noting that the first cases related to platforms in Italy concerned competition law.[20] The first case involving platform workers was decided by the Tribunal of Turin on 11th April 2018 in case of Foodora.[21] The case concerned six Foodora workers fired after a strike organized in Turin in 2016. The judge rejected their call for employee status because they were deemed to be free to decide when to work and to disregard previously agreed shifts. Moreover, the judge denied them the status of "workers organized by the principal", following the very narrow interpretation of Article 2 of Legislative Decree 81/2015.

In July 2018, the Tribunal of Milan similarly denied Foodinho workers employee and para-subordinate status. Both decisions have been criticized by labor scholars.[22] Namely, the facts that the riders, after having declared their

[20] Trib. Roma, Sez. IX, 7 April 2017, in De Jure; Trib. Torino, Sez. I, 22 March 2017, in De Jure; Trib. Torino, Sez. spec. Impresa, 1 March 2017, in De Jure; Trib. Milano, ord., Sez. spec. Impresa, 9 July 2015, in Rivista Italiana di Diritto del Lavoro, 2(1)2016, 46 ff.; Trib. Milano, ord., Sez. spec. Impresa, 25 May 2015, in De Jure.

[21] Trib. Torino, case Foodora, no. 778/2018, 11 April 2018. in Argomenti di Diritto del Lavoro. 2018, https://www.lavorodirittieuropa.it/sentenze/sentenze-lavori-atipici/171-tribunale-di-torino-sez-v-lavoro-sentenza-n-778-2018, accessed on 01/04/2022.

[22] Biasi M.: *Il tribunale di Torino e la qualificazione dei riders di foodora*, Argomenti di Diritto del Lavoro, 2018, 4-5, p. 1220; Liebman S., Aloisi A.: *I diritti in bianco e nero dei riders (e degli altri gig workers)*, [www.viasarfatti25], accessed on 03/02/2022; Cavallini G.: *Torino vs. Londra il lavoro nella gig economy tra autonomia e subordinazione*, Sintesi, (5)2018, pp. 7-11; Conte M., Razzolini O.: *La gig economy alla prova del giudice: la difficile reinterpretazione*

availability for a certain shift, had to show up at a defined hotspot where they could log onto the app and receive their delivery orders, and that the delivery order had to be executed within a certain time (calculated on the basis of the suggested route), that the platforms could always monitor the riders' location and their speed in performing a task, that the prices were fixed by platforms, that a rating system was used to allocate shifts and delivery orders and that riders' delivery orders depended on their availability and their performance, were deemed insufficient to prove the subordinate nature of the relationship. Just a few months following, the Turin Court of Appeal, with ruling no. 26/2019, radically overturned its first instance judgment and recognized that these rules identify a new type of employment relationship, different from both subordinate employment and autonomy (self-employment), to which the discipline of subordinate employment should apply. Also, the Court has focused on the entrepreneur's ability to organize the timing and places of work, to the point of denying it by assuming that "the fundamental choice in terms of work and rest time was left to the applicant's autonomy, which he exercised when he expressed his availability on certain days and times and not in others" (here again the core concept is that "if I am free to accept or not to carry out the assignment I am therefore not organized by others", since they are not bound by enduring mandatory obligations.[23]

4.3. SPAIN

In Spain, there is no regulation specifically covering platform work. In the sphere of Spanish labor law two modes of work can be distinguished: subordinate and autonomous work and from 2007 *tertium genus* between those two – "economically dependent self-employed" has been introduced by the legislation. The last form of employment has been used by many platforms to avoid the risk of an employer being qualified as the employer of couriers, drivers, and other persons providing their services through electronic channels. Also, this form of employment was proposed by labor law scholars in order to avoid misclassification.

Taking into account that so far there is no regulation specifically covering platform work and consequently, the presence of the controversial status of

della fattispecie e degli indici denotativi, Giornale di Diritto del Lavoro e di Relazioni Industriali, (159)2018, pp. 673-682; Spinelli C.: *La qualificazione giuridica del rapporto di lavoro dei fattorini di Foodora tra autonomia e subordinazione*, Rivista Giuridica del Lavoro e della Previdenza Sociale, (3)2018, p. 371.

[23] Pizzoferrato, A.: *Platform Workers in the Italian Legal System*, Italian Labour Law, Section: Miscellaneous, 12(1) 2019, pp. 95.-96.

platform workers labor administration recorded several offenses and imposed sanctions on such platforms (e.g., Uber) for violation of social legislation. This initial administrative phase has been followed by judicial proceedings. To this day number of court, rulings have risen quickly. But it is worth noting that there is no consistency in court rulings regarding the employment status of platform workers (Judgement of Social Court No. 6 of Valencia of 1st June 2018 – Deliveroo's riders are salaried workers; Judgement of Social Court No. 39 of Madrid of 3rd September 2018 - Deliveroo's riders are self-employed; Judgement of Social Court no. 11 of Barcelona of 29th May - Take Eat Easy workers are subordinate; Judgement of Social Court no. 39 of Madrid of 3rd September 2018 – Glovo riders are self-employed.

Spanish Supreme Court delivered on 25th September 2020 Judgement no. 805/2020 in which concluded that Glovo riders have an employment relationship. Namely, Glovo is not a mere intermediary in the contracting of services between shops and couriers. It is a company that provides delivery services and couriers, setting the price and payment terms of the service, as well as the essential conditions of it. And it is the owner of the essential assets to carry out the activity. For this uses distributors who don't have their own autonomous business organization, which provide their service inserted in the employer's work organization, subject to the direction and organization of the platform, as evidenced by the fact that Glovo establishes all aspects relating to the form and price of the service of collection and delivery of products. The form of provision of the service and its price and method of payment are established by Glovo. The company has established instructions that allow controlling how the service is provided. Glovo has established means of control that operate on the activity and not only on the result through the algorithmic management of the service, the evaluations of the distributors, and constant geolocation. The delivery person neither organizes the productive activity by himself, nor negotiates prices or conditions with the owners of the establishments it serves, nor does it receive its retribution. The courier enjoys an autonomy limited to only secondary questions: means of transport to use and the route.

4.4. UNITED KINGDOM

Most platform work arrangements in which there is some degree of externalization of the work from the firm are in the form of a contract with an independent contractor or with an agency worker. As there are still no legal interventions in the sphere of platform work courts have taken up the role within employment law of developing the core of unifying categories that define the scope of labor law. Three major cases which appear to be relevant in the domain of platform work have all concerned "worker" status. In those court

judgments platform workers as an intermediate category is granted a limited range of employment rights taking into account their personal work as the main characteristic in relation to the platform. The case of Pimlico Plumbers[24] is of relevance for the status of the platform workers in the sense that there was no consideration of whether the worker might also be an employee when there is no obligation on the parties to provide or accept work. The second case *Uber v Aslam & Others* concerns the status of Uber drivers as workers[25]. In its argumentation, the Court stated the very fact that a platform Uber is able to coordinate a large number of drivers according to broadly the same terms and conditions and distribute work between them while providing the end-users with transport service appears to be very strong evidence in itself of the existence of employment relationship. On the appeal from [2018] EWCA Civ 2748 Uber BV and others (Appellants) v Aslam and others (Respondents) [2021] UKSC 5 from 19th February 2021 the United Kingdom Supreme Court in its judgment[26] emphasizes five aspects of the findings made by the employment tribunal which justified its conclusion that the claimants were working for and under contracts with Uber: first, where a ride is booked through the Uber app, it is Uber that sets the fare and drivers are not permitted to charge more than the fare calculated by the Uber app. It is therefore Uber that dictates how much drivers are paid for the work they do; the contract terms on which drivers perform their services are imposed by Uber and drivers have no say in them; once a driver has logged onto the Uber app, the driver's choice about whether to accept requests for rides is constrained by Uber. One way in which this is done is by monitoring the driver's rate of acceptance (and cancellation) of trip requests and imposing what amounts to a penalty if too many trip requests are declined or canceled by automatically logging the driver off the Uber app for ten minutes, thereby preventing the driver from working until allowed to log back on; Uber also exercises significant control over the way in which drivers deliver their services. One of several methods mentioned in the judgment is the use of a rating system whereby passengers are asked to rate the driver on a scale of 1 to 5 after each trip. Any driver who fails to maintain a required average rating will receive a series of warnings and, if their average rating does not improve, eventually have their relationship with Uber terminated; Uber restricts communications between passenger and driver to the minimum

[24] Pimlico Plumbers Ltd v Smith, 10 Feb 2017 [2017] WLR (D) 120, CA.

[25] Uber v Aslam & Others, 19. December 2018, *c*ase No: A2/2017/3467, [https://www.judiciary.uk/wp-content/uploads/2018/12/uber-bv-ors-v-aslam-ors-judgment-19.12.18.pdf], accessed 02/03/2022.

[26] Appeal from [2018] EWCA Civ 2748 Uber BV and others (Appellants) v Aslam and others (Respondents) [2021] UKSC 5 from 19 February 2021, [https://www.supremecourt.uk/cases/docs/uksc-2019-0029-judgment.pdf], accessed 02/03/2022.

necessary to perform the particular trip and takes active steps to prevent drivers from establishing any relationship with a passenger, capable of extending beyond an individual ride.

The last relevant case is set before the Central Arbitration Committee regarding the trade union rights of Deliveroo riders represented by the Independent Workers Union of Great Britain (IWUGB). The Committee held that riders were not employees considering the fact that they did not have to perform service personally, and could use substitutes in the performance of the delivery. The Committee ruled that they weren't 'workers' under s. 296(1) of the Trade Union and Labour Relations (Consolidation) Act 1992. The riders had a genuine right to use a substitute to carry out deliveries and this was incompatible with an obligation to provide personal service. Whilst for workers, the right to collectively bargain (and seek recognition) is part of art. 11 rights under the European Convention on Human Rights (ECHR), this particular right did not extend to independent contractors. The IWUGB applied for judicial review of the Committee's decision where the High Court rejected its challenge. None of the ECHR case law extended art. 11 rights outside an employment relationship, and the riders were not in such a relationship with Deliveroo. IWUGB then appealed to the Court of Appeal which dismissed the appeal. The court rejected IWUGB's argument that art. 11 applies to everyone and that therefore no part of its protections can be restricted to any specific class of person, such as those in an employment relationship. The Committee had been entitled to find that the riders were genuinely under no obligation to provide services personally and that they had a virtually unlimited right of substitution. The obligation of personal service is an 'indispensable feature of the relationship of employer and worker' and, as such, the court could see no reason why its importance should be any the less in the context of art. 11 rights. The issue of how often in practice a worker exercises the right to provide a substitute was not relevant (save for the issue of whether the right is a genuine one) and it cannot be the case that whether riders working on identical terms fall to be treated as workers depends on how often they choose to take advantage of their right to do the work via a substitute.

So, from the above-mentioned legal perspective of some comparative countries, we can conclude that the amount of litigation around the world on the classification of platform work arrangements has been steadily increasing. We find a variety of approaches taken by national courts to determine the employment status of such workers. Courts reach different outcomes, not just from one country to the next, but also within the same legal system, even when it concerns the same platform. One of the reasons is arguably the extensive nature of certain multi-factor tests, where they are adopted, as a result of which the courts have to deal with many criteria, all of which are subject to interpreta-

tion. Moreover, considering the courts' overall broad discretion as to weighing the various factual circumstances and legal criteria against each other, courts can arguably reach different outcomes completely within the boundaries of the law[27] (ILO 2021). National courts have in many instances adapted the concept of the worker as defined under national law, and in some countries, this has led to a more elaborated set of criteria to be considered when establishing the status of the worker. Administrators and inspectorates have also challenged the legality of the employment status of certain people working through platforms and issued decisions on employment status as it concerns labor or social law. Still, most evidence suggests that substantial legal uncertainties on the employment status of people working through platforms remain within the Member States and across the EU. While EU law applies a binary distinction between worker and other statuses such as self-employed, in some countries (e.g., Germany, France, Italy, Spain, and Portugal) one or more additional categories or subcategories of these two statuses exist for the purposes of national law. In other countries, there is an ongoing debate on introducing such third status for people working through platforms.[28] Regarding CJEU jurisprudence it is important to stress that the Court shed light on the importance, from a judicial perspective, of the control exerted by a digital labor platform over the provision of the service it nominally intermediates, for determining whether said digital labor platform should be considered as a provider of an underlying service and therefore be subject to a sector-specific regulation.

5. EU EMPLOYMENT POLICY PERSPECTIVE

The Council of the European Union in October 2019 called on the Member States and the Commission to strengthen efforts and take appropriate action as regards platform work, in line with the ILO's Centenary Declaration for the Future of Work.[29] In November 2020 the European Parliament released a report on "A Strong Social Europe for just transitions" calling on the Commission to propose a directive on decent working conditions and rights in the

[27] See ILO 2021, World Employment and Social Outlook The role of digital labour platforms in transforming the world of work, International Labour Office, Geneva, 2021, [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_771749.pdf], accessed on 01/04/2022.

[28] European Commission, Protecting people working through platforms: Commission launches second-stage consultation of social partners, 2021, p. 8, [https://ec.europa.eu/commission/presscorner/detail/en/IP_21_2944], accessed 05/01/2022.

[29] Council of the European Union Conclusion, The Future of Work: the European Union promoting the ILO Centenary Declaration, 13436/2019, [https://data.consilium.europa.eu/doc/document/ST-13436-2019-INIT/en/pdf], accessed 13/06/2021.

digital economy, also covering non-standard workers, workers on digital labor platforms, and the self-employed [30] In line with Article 154 TFEU, the European Commission was carrying out a two-stage consultation of social partners. The result is the Proposal for Directive of the European Parliament and the Council on improving working conditions in platform work which was put forward on 8th December 2021. The general objective of the proposed Directive is to improve the working conditions and social rights of people working through platforms, including with the view to support the conditions for the sustainable growth of digital labor platforms in the EU. The specific objectives through which the general objective will be addressed are: (1) to ensure that people working through platforms have – or can obtain – the correct employment status in light of their actual relationship with the digital labor platform and gain access to the applicable labor and social protection rights; (2) to ensure fairness, transparency, and accountability in algorithmic management in the platform work context; and (3) to enhance transparency, traceability, and awareness of developments in platform work and improve enforcement of the applicable rules for all people working through platforms, including those operating across borders.[31]

Furthermore, we must say that as a follow-up to *The European Pillar of Social Rights*, the Council of the EU adopted a Directive on Transparent and predictable working conditions (Directive 2019), which also covers all new forms of work and stated that the CJEU has established criteria for determining the status of a worker and in case those criteria are met, platform workers could fall within the scope of this Directive. The Directive 2019 updates and replaces the Written Statement Directive 91/533/EEC (Directive 1991) which aim is to provide employees with improved protection, avoid uncertainty and insecurity about the terms of the employment relationship and achieve greater transparency on the labor market.

6. PLATFORM WORK AND PERSPECTIVES OF LABOUR LAW

From previous discussion and chosen litigation cases, the best solution for the protection of the on-demand platform workers in our opinion is renewal and adaptation of employment relation (contract of employment) tests. Obviously,

[30] European Parliament Report on a strong social Europe for Just Transitions (2020/2084(INI)), 24.11.2020, para. 27 & 40.

[31] Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work, Brussels, 9.12.2021 COM(2021) 762 final 2021/0414 (COD), p. 3, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0762&from=EN], accessed 02/05/2022.

classical tests and indicators for the identification of employment relationships cannot any longer serve their function in the context of on-demand platform workers. This approach gives us a flexible judicial test that can easily be adapted to new conditions on the market and new forms of work. Also, what is more important, it is not legally binding making its application more promising. In the creation of these tests, we should take a broad purposive approach focusing on the individual need for protection, but also on the market role of the platform (functional approach). An individual approach is needed in individual borderline cases (formally independent contractors, but in reality, match employment status). But we should stress that economic dependency (subordination) of on-demand platform workers is not a decisive factor in the identification of employment relations. Namely, the work of on-demand platform workers for the platform could be marginal and ancillary to other sources of income. But in this context, the decisive factor is personal dependence (subordination) of on-demand platform workers in the form of supervision and control of work performance be it directly by the platform or indirectly through the customers' evaluation and ratings.

Regarding the functional approach, we should take into account that the contract of employment serves a very important function in labor market regulation. As we previously said, it is a getaway to labor law protection. So, in this approach, we need to observe the platform's market role in protecting this function of the contract of employment. But the question is: Who bears responsibility for the obligations implied by these protective rules? In other words, who is the employer?[32] So, in defying the employer we should focus on the traditional function performed by the employer and look at how far this could be applicable to the platform. So, the platform could be the sole employer or multiplicity of employers sharing employers' functions which are as follows: inception and termination of the employment relationship; receiving labor and its fruits; providing work and pay; managing the enterprise's internal market and managing the enterprise's external market.[33]

Although the authors strongly support the requirement of renewal and adaptation of employment relation (contract of employment) tests, we believe that it should become part of employment policy recommendations in order to avoid

[32] Loffredo, A., Tufo, M.: *Digital work in the transport sector: in search of the employer, Work organization, Labour and globalization,* Digital Economy and the Law, 12(2) 2018, pp. 23-37.

[33] Prassl, J, Risak, M.: *Uber, Taskrabbit, and Co.: Platforms as Employers? Rethinking the Legal Analysis of Crowdwork*, Comparative Labour & Policy Journal, 37(3) 2016, p. 639 [http://www.labourlawresearch.net/sites/default/files/papers/15FEB%20Prassl_Risak%20Crowdwork%20Employer%20post%20review%20copy.pdf] accessed 03/04/2022.

arbitrary judicial decisions. Furthermore, from the latest court decisions, it has become obvious that on-demand platform workers have been regarded with employment status. So, in order to avoid costly and long-lasting judicial processes, we suggest that on-demand platform workers should be assigned employment status in EU Labour law, as well as in the national labor legal systems of EU member states. In that situation special protection in the sphere of labor law is guaranteed for them by several EU Directives, namely: the Directive on Part-time (Directive 1997), Fixed-term work Directive (Directive 1999), Directive on Temporary Agency Work (Directive 2008), and the previously mentioned Directive 2019.

7. PLATFRM WORK IN CROATIA

In this chapter, the authors will give a short introduction to the challenges of platform work in Croatia[34] and a review of the legal framework for the performance of the on-demand platform work. Then the empirical research on how the on-demand platform work is being performed in Croatia is provided and then the final part of the chapter is focused on the future amendments of the Labour Act announced by the Croatian Government in that regard.

7.1. DE LEGE LATA *SITUATION IN CROATIA*

As an introduction, we must highlight that the Croatian Labour Act (hereinafter: LA),[35] in force since 2014 with two amendments does not regulate the on-demand platform work at all.

On the other hand, it does determine the work at the alternative workplace, although even that incompletely. Employment at the alternative workplace is regulated by 3 articles of the LA. This means that general rules are being applied, but as will be elaborated *infra 7.2.*, the concrete legal framework for platform work brings a lot of problems in practice, especially for the protection of platform workers.

[34] Please for Croatia consult in this regard Bjelinski Radić, I.: *Novi oblici rada kao suvremeni izazov za radno pravo – slučaj Uber*, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, 38(2) 2017, pp. 881-905; Grgurev, I., Vukorepa, I.: Flexible and New Forms of Employment in Croatia and their Pension Entitlement Aspects, in: Sander, G. G., Tomljenovic, V., Bodiroga-Vukobrat, N. (eds.), *Transnational, European, and National Labour Relations* / Heidelberg, Berlin, 2018, pp. 241-262; Bejaković, P., Håkansson, P.G.: *Platform Work as an Important New Form of Labour in Croatia*, Zagreb International Review of Economics & Business, 24(2) 2021, pp. 159-171.

[35] Labour Act (Official Gazette of the Republic of Croatia No. 93/2014, 127/2017 & 98/2019)

In the LA Art. 17 *Mandatory content of the written contract of employment at the alternative workplace* it is determined that in addition to the information referred to in Art. 15 (Mandatory content of the written employment contract or the letter of engagement), a written employment contract or a letter of engagement for works to be performed at the worker's home or outside the employer's premises, must contain additional information concerning (1) working hours, (2) machinery, tools, and equipment required that the employer is obliged to provide, install and maintain, (3) the use of worker's own machinery, tools, and other equipment, and reimbursement of costs related thereto, (4) reimbursement of other worker's costs related to the performance of works, (5) method of worker's education and training. The information referred to the duration of paid annual leave to which the worker is entitled or, where this cannot be indicated when the contract is concluded or the letter of engagement is given, the procedures for allocating and determining such annual leave; the length of the periods of notice to be observed by the worker and the employer or, where this cannot be indicated when the contract is concluded or the letter of engagement is given, the method for determining the periods of notice; the basic salary, the bonuses, and the frequency of remuneration paid to which the worker is entitled; and lastly the duration of a regular working day or week may in the employment contract or the letter of engagement be given in the form of a reference to the laws, other regulations or administrative provisions, collective agreement or working regulations governing those particular points. The remuneration to the worker with whom the employer concludes the contract may not be determined in the amount below the remuneration to the worker engaged in the employer's premises in the same or similar tasks. The contract may not be concluded either for the performance of jobs involving exposure to harmful effects despite the implementation of health and safety at work protection measures, the working time shall be shortened in proportion to the harmful effects on the worker's health and capacity for work (Short-time work, LA Art. 64) or any other works determined as such by the LA or any other laws and regulations. The employer shall be obliged to ensure safe working conditions for the worker, and the worker shall be obliged to comply with all safety and health protection measures in accordance with specific provisions. The provisions of the LA concerning the organization of working time, overtime, reorganization of working time, night work, and break shall also apply to these contracts unless otherwise provided for in specific provisions, a collective agreement, or an agreement entered into between the works council and the employer or in the employment contract. The amount of work and periods for the works performed under the contracts may not impact the worker's entitlement to daily, weekly, and annual periods of rest.

The second article which mentions the alternative workplace is LA Art. 226 (Administrative measures) which determines that during labor inspection, an

inspector shall, by means of oral decision, which shall be stated in the inspection report, order the employer to perform, within the time limits determined by the inspector, the following activities:…(7) to offer to the worker with whom he has concluded a contract of employment at the alternative workplace that does not contain all the elements prescribed by the LA, to amend the contract or the certificate of engagement so as to include the missing elements (LA Art. 17, para. 1).

The third and the last article regulates the Penal provisions. It is one of the most serious offenses by employers, as determined by Art. 229 (4), if the employer concludes a contract of employment at the alternative workplace for works that may not be subject to such agreement (Art. 17, para. 4). A fine in an amount ranging from HRK 61,000.00 to 100,000.00[36] shall be imposed on the employer who is a legal person or a fine in an amount ranging from HRK 7,000.00 to 10,000.00 for such an offense shall be imposed on the employer who is a natural person and the responsible person in the employer who is a legal person.

7.2. REVIEW OF ON-DEMAND PLATFORM WORK IN CROATIA – EMPIRICAL RESEARCH

In this part of the paper, the authors will elaborate on the state of facts in Croatia regarding platform companies such as *Uber, Glovo, and Wolt* collected by empirical research. The facts and findings have been researched by law students from Split and Rijeka during the period April – September 2021.[37] The data were collected by a questionnaire which was given to 73 persons performing platform work for those companies. The questionnaire had the following questions:

1) *In what contractual obligation do you work: labor law relationship, civil law relationship, students work, or no contract at all?*
2) *If working in an employment relationship, how are determined the working hours, is the overtime work or night work paid and is the night work paid more compared to day work?*
3) *Is the remuneration fixed or is paid accordingly to the provided services; is it a minimum wage or is higher; is it connected to the number of deliveries; is it paid once a month, twice, or more than two times a month?*

[36] 1 € = 7,5 HRK

[37] Students of the University of Split, Faculty of Law: Nikola Prce, Stanka Mamić, Petra Duvnjak, Tea Kuret, Ivan Velić, Filip Sedmak, Yvone Ljubičić, Boško Medvid, Karla Kuzmanić, Bruna Lucić, Dora Gulin, Toni Trumbić, Ana Ptiček, Lucija Kljenak; Students of the University of Rijeka, Faculty of Law: Marko Dabo, Matea Golem.

4) *Do you have the right to annual leave; is it paid; when you may use it; are you free to determine it or is it the "employer's" exclusive right; do you use it at once or fragmented?*
5) *Do you have the right to associate in a trade union?*
6) *Do you have the pension and social security insurance; are the contributions paid by the "employer"?*
7) *Do you have more rights in an employment relationship or a civil law one?*

In the next part of this article, we will focus on the most interesting and relevant facts which have been highlighted by the interviewed persons for a specific platform company.

7.2.1. GLOVO

Platform workers may work in additional work according to the Labour Act, with a maximum of 8 hours a week, although there are cases that such workers perform their work two or three days a week, and consequently in the next week sometimes they do not work at all. Mostly, they have a labor contract with the aggregator.

To be a platform worker for *Glovo* a person first needs to register for *Glovo,* which then invites such a person to attend an introductory lesson (basic) which may be followed by the advanced lessons. In those lessons a person gets the most important information on how to use the app, what are the conditions for work, etc. Then is essential to find the aggregator on a list offered by *Glovo* with whom a contract is signed.

The working schedule is made on a 4 days basis with two days per week work performance in a way that the platform worker chooses the schedule he/she likes. The working schedule opens first to those platform workers who have better marks.

There are bonuses available for work during the rush hours, on rainy days, or on hot days. The fee is counted on a start of 7,00 HRK flat (could be 10,00 HRK in the rush hours) + 2,00-3,00 HRK for every km according to Google Maps. In case a platform worker knows very well the local streets and does not need to use the application for driving directions, there is a possibility to earn a bit more because of that.

The aggregator takes a commission of 5,00% or in some cases even 10,00% and 400,00 HRK for registration. The aggregator registers the platform worker for the mandatory pension system and social security (health insurance),

although some platform workers confirmed that they were obliged to pay their pension contribution.

Glovo may terminate the relationship in case the platform worker has not paid the money he/she has received the day before or in case the platform worker declines the orders. In fact, the platform worker may decline one offer without giving motivation while for other offers' the platform worker has declined he/she must give a motivation. Furthermore, *Glovo* may terminate the relationship in case the worker texts a message to a client and the client reports that behavior or if the platform worker schedules the working time and does not perform the services in that period.

7.2.2. WOLT

Platform workers who work for *Wolt*, except in the case when they are students, work in an employment relationship of 2 hours of work per day, but in reality, they work much more although the aggregator pays the salary for those 2 hours plus the mandatory contributions since it is the working time that is registered. The aggregator, depending on which aggregator company it is, takes between 5-10% of the platform worker's monthly earnings.

For the work costs, for fuel, the platform worker pays the fuel costs and at the end of the month gets the reimbursement of a bit less than 1,00 HRK per km.

Regarding the rest period, it is not provided for the worker as a paid 30 minutes rest, it is not calculated in the daily working hours period and the worker may use it when he/she prefers. The annual leave, although determined in the contract, is used by the worker when he/she prefers but is not paid. There is no overtime work being paid and the work stops at 23:00 since then the restaurants regularly stop working.

The remuneration for every delivery which is basic for students at 13,00 HRK + fee for every 1 km which is 5,00 HRK, while in case of bad atmospheric conditions (heavy rain, snow, etc.) may rise to 16,00 HRK. Furthermore, there are periods in which there is a rush hour 12:00 – 15:00 (lunch time) or 19:00-22:00 (dinner time), together with work on Saturday and Sunday when it is 16,00 HRK for every delivery. There are also bonuses for the number of deliveries in a week, i.e. 100 deliveries: 400,00 HRK; 125 deliveries: 500,00 HRK.

There are two models of work. The first one is called "classical" – connected deliveries, meaning that the platform worker may not decline the delivery and may collect more deliveries and in such a way earn more. The other model is a "delivery after delivery", where the platform worker may choose which delivery will be taken, but has no possibility of a connected delivery.

7.2.3. UBER

In Croatia, there is registered the company UBER Croatia Ltd. since 2015. It does collaborate with the aggregators called also "Uber Partners".

Platform workers may work in an employment relationship, even for an indefinitive time. Usually, the platform workers are employed for 40 hours per week or 12 hours per week, but the app does not limit the working time. The minimum working salary is determined in the contract although the salary depends on the efficiency. The aggregator takes a commission of 10,00%, and 25% goes to Uber. There is no possibility of bonuses except in cases of rush hours or in cases of lack of drivers when they may earn a bit more due to more interest in the drives.

The annual leave is used by the worker when he/she prefers but is not paid. There is no overtime work being paid nor is paid more than the night work, the work on Sunday, or during holidays. Some platform workers have even declared that they have never received any written contract or a confirmation of a written contract.

The platform workers for Uber must pay their salary, mandatory contribution, and taxes like autonomous workers. There were also a few platform workers that have admitted that as persons in pension work 4 hours a day some under employment contracts while others under civil law contracts or a student's contract. For students who work as platform workers, Uber provides a car with fuel and a service fee of 25,00 HRK with a potential bonus of up to 10,00%.

There were also platform workers that confirmed that do possess a fictive contract (civil law one) just in case of any kind of control by the inspectorate and that are being paid for their services "on-hand" by the aggregator and such payment is called "payment for the reimbursement of the fuel costs". Furthermore, all platform workers confirmed that they have never received any payrolls, although those are mandatory by the Labour Act and it is a misdemeanor offense if the employer does not issue the payroll.

7.2.4. CONCLUSION OF EMPIRICAL RESEARCH

To sum up we may say those platform workers, depending on which platform company they are contracted with, rarely enjoy a real employment status. Mostly, if they are not students with students' contracts, they are in a civil law relationship without deserved labor and social security protection. Only in the case of *Glovo,* the interviewed platform workers were mostly in an employment relationship. Platform workers are obliged to open their own business as

crafts for food delivery or to be contractually related to a platform company partner called aggregator in line to perform the delivery services.

The working hours are mostly determined "on a paper" but in reality, almost all the platform workers work more than was scheduled since they are motivated with more income if they work more in a day. The overtime work or night work is not being paid more compared to regular work. The remuneration is paid accordingly to the provided services and there are bonuses in certain cases such as rush hours or bad weather conditions. The remuneration is being paid every two weeks and this is a standard for all platform companies. Although some platform workers have a right to a paid annual leave, there was not a single platform worker who confirmed that he/she enjoyed his annual leave. They have the possibility to go for an annual leave but it will not be paid.

At the time of the research, the platform workers did not have the possibility to enjoy trade union protection since there wasn't an association of platform workers in Croatia. In the meantime, in September 2021 a Trade union has been formed for the worker on digital platforms,[38] which mean that things are improving, although slowly. Regarding pension and social security (health) insurance, a vast majority of platform workers confirmed that they are obliged to pay their own contributions which put them in a disadvantageous condition as autonomous workers.

In the end, most platform workers use the bicycles for their deliveries since it is the cheapest transport means but what all face, except those who use the rent-a-car, is that they bear the costs of maintenance of the vehicles or it is their cost in cases a car, a motorcycle or a bicycle broke down. So, they do not enjoy the possibility to work on means of work provided by the "employer". All the risks and costs are on the platform workers' side. No social security law and deserved labor law protection are granted which is a serious threat and without a serious and detailed legal framework platform workers will be a category of not recognized "workers" living and working in precarious work.

[38] New reinforcement of the SSSH: The first union of digital platform workers in Croatia is established (In Croatian: Novo pojačanje SSSH: Osnovan prvi sindikat radnika digitalnih platformi u Hrvatskoj), [https://www.sssh.hr/hr/vise/aktivnosti-75/novo-pojacanje-sssh-osnovan-prvi-sindikat-radnika-digitalnih-platformi-u-hrvatskoj-4857], accessed 01/03/2022.

7.3. DE LEGE FERENDA *DEVELOPMENT*

To understand the future of platform work, the European Commission in its study[39] has focused on the following problems:

- Misclassification of the employment status of people working through platforms who operate as independent contractors but are in a *de facto* subordinate employment relationship. The goal is to ensure the correct classification of workers and reduce the 'grey area' that exists between dependent employment and self-employment.
- The fairness and transparency of algorithmic management practices applied by labor platforms. The goal is to provide workers with the necessary information on how their work and assignments are allocated, how their accounts are ranked or terminated, and other important aspects, as well as to ensure human oversight of decisions that are important to platform workers.
- Enforcement, transparency, and traceability of platform work, including in cross-border situations. The goal is to increase transparency and facilitate easier access to information by regulators, enforcement authorities, platform workers, and other relevant stakeholders.

In dealing with the misclassification, the Commission's preferred policy package would include the combination of "*a shift in the burden of proof and the rebuttable presumption of employment that will lead to the reclassification of a substantial share of people working through platforms who are currently misclassified*". The Commission hopes that this will lead to the reclassification of a relatively high share of people working through platforms who are at risk of being misclassified, while, at the same time, providing certainty for both platforms and the people working through them regarding the criteria for genuine self-employment.

The Government of the Republic of Croatia has noted the importance and the risks of unregulated forms of new labor relationships and has initiated the procedure of the enactment of the new LA. One of the most important novelties will be the regulation of the platform work in Croatia. According to their data, the Ministry of Labour, Pension System, Family, and Social Policy announced that in Croatia there are 20.000 – 30.000 platform workers and it was highlighted that with the regulation of precarious work and not registered work the Republic of Croatia will regulate these new forms of employment s more as

[39] Study to support the impact assessment of an EU initiative to improve the working conditions in platform work, Final Report, 2021, p. 4, 7, [https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8428&furtherPubs=yes], accessed 02/04/2022.

possible. Platform work has been recognized as a new form of employment.[40] On the other hand, according to Eurofound 10,7% of the Croatian population (around 400.000 persons) has worked in a form of platform work and 1.4% do it as their main job (around 50.000 persons).[41]

The new LA has not yet entered into public consultation but in May 2021 the procedure for the enactment of the new Act has officially started with the Consultation in the form of a Preliminary assessment of the impact of regulations on the draft of the Labour Act.[42] The regulation of platform work and protection of platform workers is recognized as one of the priorities, as was announced by the Ministry of Labour, Pension System, Family and Social Policy.

The authors here suggest that the new LA should regulate platform work and the protection of the platform workers in the following manner. Namely, the main characteristics of the platform work that should be characterized as an employment relationship should be foreseen.[43] These are:

1. voluntarily agreement between employer and worker regarding platform work,
2. *faciendi necessitas* or the duty of personal work of the worker,
3. onerosity or the duty of the employer to pay remuneration for the work performed by the,
4. subordination or the duty of the worker to obey employers' directions regarding the organization of work and the way the work is carried on and in line with the nature and type of work.

Taking into account the aforementioned main elements of every employment relation it is necessary to define the platform work: Platform work is paid work organized through a registred online platform between three parties – the online platform, the client, and the worker in which the worker personally perform the work on demand of user following the instructions provided by the employer regarding the place and the manner of performing the work, in line with the nature and type of work. Also, platform work should be consid-

[40] Aladrović za NOVU TV: Zakon o radu želi smanjiti sve oblike prekarnog i neprijavljenog rada, [https://vlada.gov.hr/vijesti/aladrovic-za-novu-tv-zakon-o-radu-zeli-smanjiti-sve-oblike-prekarnog-i-neprijavljenog-rada/33194], accessed on 02/04/2022.

[41] Eurofound, New forms of employment: 2020 update, New forms of employment series, Publications Office of the European Union, Luxembourg, p. 17.

[42] Consultation on the form of Preliminary assessment of the impact of regulations for the draft of the Labour Act, [https://esavjetovanja.gov.hr/ECon/MainScreen?entityId=16671], accessed 03/05/2022.

[43] Bilić, A., *Radno pravo*, Školska knjiga, Zagreb, 2021, pp. 97-100.

ered employment relation independently of the following facts: organization of work is solely through the on-line platform or combination of involvement of on-line platform and directly between all stakeholders of the business process; organization of work in predictable or unpredictable time schedule; ownership of the machinery, tools and equipment, vehicles, etc, the complexity of the work.

To avoid misclassification of platform work it is of surmounting importance to define who the employer is and also his/her obligation in this relation. So, as we previously said, in defying the employer we should focus on the traditional function performed by the employer and look at how far this could be applicable to the platform. The platform could be the sole employer or multiplicity of employers sharing employers' functions which are as follows: inception and termination of the employment relationship; receiving labor and its fruits; providing work and pay; managing the enterprise's internal market and managing the enterprise's external market. So, the definition of a digital labor platform as an employer should read as follows: it is any natural or legal person providing a commercial service that meets all of the following requirements: (a) it is provided, at least in part, at a distance through electronic means, such as a website or a mobile application; (b) it is provided at the request of a recipient of the service; (c) it involves, as a necessary and essential component, the organization of work performed by individuals, irrespective of whether that work is performed online or in a certain location;

Digital labor platform controls the performance of work and a person performing platform work through that platform in the following manner: controlling the performance of work could mean: with regard to appearance, conduct towards the recipient of the service or performance; of the work; supervising the performance of work or verifying the quality of the results of the work including by electronic means; effectively restricting the freedom, including through sanctions, to organize one's work, in particular, the discretion to choose one's working hours or periods of absence, to accept or to refuse tasks or to use subcontractors or substitutes; effectively determining, or setting upper limits for the level of remuneration; requiring the person performing platform work to respect specific binding rules; effectively restricting the possibility to build a client base or to perform work for any third party.[44]

Platforms' ability to control workers' performance of work and the worker performing work means that the platform worker is subordinate in that relation which brings us to the legal presumption of the existence of the employment

[44] Proposal for a Directive of the European Parliament and of the Council on working conditions in platform work, art. 4, para 2.

relation. To ensure the effective implementation of the aforementioned legal presumption it is important to: ensure that information on the application of the legal presumption is made publicly available in a clear, comprehensive, and easily accessible way; develop guidance for digital labor platforms, persons performing platform work and social partners to understand and implement the legal presumption; develop guidance for enforcement authorities to proactively target and pursue non-compliant digital labor platforms; strengthen the controls and field inspections conducted by labor inspectorates or the bodies responsible for the enforcement of labor law, while ensuring that such controls and inspections are proportionate and non-discriminatory.[45] In taking these activities it is important not to jeopardize the sustainable growth of digital labor platforms and to avoid capturing the genuinely self-employed.

Where the digital labor platform argues that the contractual relationship in question is not an employment relationship as defined by the law, collective agreements, or practice in force the burden of proof shall be on the digital labor platform.

8. CONCLUSION

Intending to improve the working conditions of these platform workers, one such challenge includes the clarification of the employment status of platform workers. For the time being, none of the EU Member States has clear regulations specifying the employment status of platform workers. As a result, workers fall back on the existing regulatory framework and adopt one of the employment statuses it recognizes. Typically, a distinction is made between employees and self-employed workers. In the absence of clear regulations, in practice, the terms and conditions of the platform determine the employment status, and in most cases, this means that platform workers are considered self-employed. The ambiguity of the employment status of platform workers has been the subject of court cases in several countries. Rulings are made on a case-by-case basis, with the courts considering the specific circumstances. This suggests that the courts could arrive at different conclusions for workers active on the same platform and in the same sector or country. We should stress that the clarification of the employment status of platform workers is relevant as it influences the workers' employment rights, including social protection.

Regarding platform work in Croatia we should stress that the Croatian Government, considering the fact that Croatia is a member of the European Union, has

[45] Proposal for a Directive of the European Parliament and of the Council on working conditions in platform work, art. 4. para. 3.

to propose to the Croatian Parliament either a new LA or an amendment to the existing one in which regulation of the platform work would be harmonized with the Directive on platform work, which we strongly hope, would be adopted in the near future.

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