Оригиналан научни рад 331.103:004
349.24
doi:10.5937/zrpfns58-55227

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IMPLEMENTATION OF DECENT WORK STANDARDS ON PLATFORM WORKERS: DIFFERENT APPROACHES*

Abstract: *The question of the legal status of platform workers has occupied the attention of the professional public for quite a time, but still remains without an unified answer. Thus, in judicial practice there are situations where different courts make different decisions under the same or similar factual circumstances. On the other hand, there are different views in the labour law theory regarding the aformentioned question. They start from equating platform workers with the employees. This approach is undoubtedly the most favorable for platform workers because it implies that they enjoy all the employment relationship rights. Opposite to this position is the idea of introducing a certain scope of rights that would be enjoyed by platform workers. In this connection, the question arises as to what rights would that entail and to what is their scope? The answer contains several alternatives.*

The first is based on establishing a special legal category for platform workers, for whom the enjoyment of a limited set of rights from the employment relationship is foreseen. Second alternative comes from the ILO. In this organization's study on digital platforms, the ILO lists three groups of rights that can and have

* This paper is the result of research conducted as part of the project of the Faculty of Law University of Novi Sad, under the title "Legal Tradition and New Legal Challenges."

to be applied to platform workers, citing specific sources of ILO in this regard. Although certain instruments that ensure the protection of the social and economic position of platform workers are aimed at particular occupations, the study concludes that it is about the rights that are necessary to protect the specific position of platform workers.

But still the main question remains unanswerd – how to ensure the application of all those instruments and the rights contained in them to platform workers?

Keywords: *platform work, subordination, decent work, legal pressumption.*

1. INTRODUCTION

Information technology brought a series of changes to our everyday life. The widespread use of digital technology has led to all aspects of social life being digitized to such an extent that modern production relations are referred to as a *digital economy*.[1]

It is clear that even the sphere of labor relations could not remain outside of those changes. Due to the mass use of information and communication technologies, the world of work is also changing drastically. Certain jobs cease to exist, new ones appear. New forms of work are also emerging. Workers and employers appear in new roles, and in addition to them, new subjects in the world of work with insufficiently clear functions, rights, obligations and especially insufficiently clear (legal) responsibilities.[2]

The changes that are taking place are happening quickly and labor legislation is not coming fast enough to adjust. However, as it usually happens in the field of labor relations, the changes that take place leave more drastic and unfavorable consequences on workers. The realization of basic rights of workers such as (minimum) wages, annual leave, rights in case of temporary disability for work (sick leave), protection against dismissal, rights from the sphere of social security is being questioned.

In this regard, we particularly emphasize the emergence of (relatively) new, multilateral relationships related to work, embodied in the work through digital labour platforms. The legal regulation of those relations is particularly challenging, especially the legal position of persons who perform work through platforms. Their status ranges from self-employed persons, through special forms of legal

[1] Senad Jašarević, „Uticaj digitalizacije na radne odnose“, *Zbornik radova pravnog fakulteta u Novom Sadu 4/2016*, 1104; UNCTAD, *Digital Economy Report: Value creation and capture: Implications for developing countries*, 2019, 4.

[2] Ajay Agrawal, John Horton, Nicola Lacetera, Elizabeth Lyons, *Digitalization and the contract labour market: a research agenda*, National Bureau Of Economic Research, 2013, http://www.nber.org/papers/w19525.pdf.

status to employees. Each of these legal positions implies a different volume of labor-based rights. In paper, we will present the positive and negative aspects of different labor law statuses of platform workers and their impact on (decent) rights based on work.

2. THE COMPLEXITY OF THE RELATIONS IN PLATFORM WORK

By entering the market, digital platforms have greatly changed the way of how business is run in a large number of economic activities. The reason for this is the specific functioning of these digital services. In the broadest sense, online platform refers to an undertaking operating in two (or multi)-sided markets, which uses the Internet to enable interactions between two or more distinct but interdependent groups of users so as to generate value for at least one of the groups.[3] It is actually a new business model where temporary needs for certain goods or services, which are mainly provided by private entities, are realized through the platform, which is a *window* to the open market. As important features of digital platforms, we can single out the fact that: 1) they operate online, i.e. on the Internet and through the Internet; 2) they represent a virtual market that gathers several different participants who can not enter into a direct relationship on their own (*Multi-Sided Market*);[4] 3) the connection of participants in such a market is done through the algorithm of the platform. Thus, the digital platform acts as a catalyst for the realization of various social needs, whereby, it should be noted that today, for almost every social need, there is a platform that combines supply and demand to satisfy a specific need. Of course, the need for work is not an exception.

The digital platform through which the work takes place is actually an internet service, i.e. an application, which is accessed, on the one hand, by entities that have a need for a certain work to be done (hereinafter: the clients), and on the other hand, by entities that can perform the required work, i.e. those who need to find a job (hereinafter: platform workers). And right between them stands the digital platform itself. In fact, the specificity of the relationship that is established within and on the occasion of work through digital platforms is the core of the (labor law) problem.

[3] European Commission, *Public Consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy*, Brussels, September 2015, 5.

[4] According to Evans and Schmalensee „a multi-sided platform has (a) two or more groups of customers; (b) who need each other in some way; (c) but who cannot capture the value from their mutual attraction on their own; and (d) rely on the catalyst to facilitate valuecreating interactions between them." David S. Evans, Richard Schmalensee, „The antitrust analysis of multi-sided platform businesses", *National Bureau of Economic Research*, NBER working paper series, Working Paper 18783, 7. https://www.nber.org/system/files/working_papers/w18783/w18783.pdf

In this form of work, a specific relationship is established in which three entities participate – the client, the digital platform and the platform worker. The traditional understanding of the relationship between people regarding (subordinate) work is based on a bipartite model, which implies two parties – a person who performs work for the appropriate financial compensation on the one hand, and on the other hand a person who has a need for that work and who pays for that work (employer), issues orders – where, (by) when and in what way to perform the necessary work. If we were to transfer this to the field of platform work, a platform worker would be in the role of a person who performs the work, and in the role of a person who has a need for work would be a client. However, between them, in platform work, there is no direct, immediate relationship, but a digital platform appears between them.[5] Both entities, the client and the platform worker, are essential users of the platform through which the worker performs work, and the client makes payment for the work performed. The client makes the payment for the work to the platform, which then forwards the certain amount to the platform worker, keeping a part of that amount for itself as a commission for matching the worker and the client.

However, the platform's role in this triangle of complex relationships does not end there.[6] They do not act as mere intermediaries between participants in the labor market, but have a far more active position and essentially share with the client certain roles that the employer has in the traditional understanding of employment. Thus, the digital platform (can) perform the selection of platform workers and match them with clients, monitor the results and evaluate the work of platform workers, and also determines the amount of financial compensation that platform workers receive for their work.[7]

From the above, it can be concluded that platform workers are not independent entrepreneurs (self-employed persons) because their social and economic position primarily depends on the (algorithmic) decisions of the platform itself. For this reason, the need for precise determination of the status of platform workers and their rights, obligations and responsibilities based on the work they perform through digital platforms is imposed.

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[5] On the impossibility of applying the traditional bipartite model of regulating relationships related to platform work, see: Jeremias Prassl, Martin Risak, „Uber, Taskrabbit, And Co.: Platforms As Employers? Rethinking The Legal Analysis Of Crowdwork", *Comparative Labor Law & Policy Journal 3/2016*.

[6] European Commission, *Study to gather evidence on the working conditions of platform workers*, final report, Luxembourg, 2020, 42.

[7] All these activities are carried out by the digital platform through the so-called algorithmic management. More about algorithmic management of digital platforms as well as its impact on rights based on the work of platform workers: Darko Božičić, *Na šta mislimo kada kažemo... Algoritamski menadžment i prava radnika*, Edicija Trg, Institut za filozofiju i društvenu teoriju, Beograd, 2022. https://ifdt.bg.ac.rs/wp-content/uploads/2022/05/Darko-Bozicic.pdf

3. DIFFERENT (LEGAL) APPROACHES IN ESTABLISHING DECENT WORK STANDARDS ON PLATFORM WORKERS

Both in labor law practice and in theory, there are different answers to the question of how to regulate the legal status of platform workers and thus ensure the exercise and protection of labor-based rights. However, each of these legal approaches has its positive and negative sides. We will try to analyze the positive and negative aspects of these approaches through the prism of their effectiveness.

3.1. Legal assumption: platform workers are employees

From the point of view of the worker's social and economic position, the employment relationship represents the most adequate form of exercising the right to work because this form of work provides the highest quantity and quality of rights based on work.[8] The implementation of the legal assumption that platform workers are actually employees of the platform is based on the concept of examining the fulfillment of certain criteria based on which in each individual case it is assessed whether a specific worker in a specific situation is an employee of the platform or a self-employed person. Thus, if in a specific situation the necessary number of certain criteria are met, it will be considered that the worker is in an employment relationship with the platform.

Observing the legal practice, the courts in the USA were the first to encounter the problem of determining the legal status of platform workers. This should not be a surprise considering that the most popular digital platforms started their activity precisely in the USA, where they have their headquarters. The main problem faced by the courts is how to apply the norms intended for bilateral labor relations to modern tripartite relations. Or as the judge in case *McGillis vs. LLC Uber*, stated that the main task of the court was that "we must decide whether a multi-faceted product of new technology should be fixed into either the old square hole or the old round hole of existing legal categories when neither is a perfect fit."[9]

The next question that arises by itself is what are the criteria on the basis of which, in each individual situation, it is determined whether a worker has the status of an employee of the platform or a status of a self-employed person. In

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[8] Although the employment relationship is the central subject of labor law, in theory, legislation and international standards, there is no universal, generally accepted definition of it. In the broadest sense, "The employment relationship is a legal notion widely used in countries around the world to refer to the relationship between a person called an employee (frequently referred to as a worker) and an employer for whom the employee performs work under certain conditions in return for remuneration." ILO, *The employment relationship*, International Labour Conference, 95th Session, International Labour Office, 2006, para. 5, 3.

[9] *Darrin E. McGillis v Department of Economic Opportunity*; and Rasier LLC, d/b/a UBER Florida DC Appeal, 3d No. 3D15-2758, 01.02.2017, 7.

American judicial and legislative practice, various criteria in the form of tests were used, such as the Borello test,[10] the ABC test,[11] or the ten-factor test in the aforementioned *McGillis vs. LLC Uber*. All these tests, i.e. the criteria contained in them, are essentially aimed at assessing whether in a specific case the worker is in a subordinate position in relation to the platform, more precisely, whether the platform has the relevant degree of control in relation to the work and results of the work of the platform worker. If the existence of subordination, as the main characteristic of the employment relationship, i.e. the appropriate degree of control, is determined, the worker is considered to be in employment relationship with the platform regardless of how their business relation is formally defined.

This concept based on the criteria for assessing the existence of subordination in the relationship between the platform and the workers is, of course, also present in Europe and is applied both by national courts of European countries and by EU courts.

When it comes to EU courts, we particularly highlight the case *B v Yodel Delivery Network Ltd*,[12] where the court considered that the existence of the status

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[10] Borello test is used in the case *Uber Technologies, Inc. v. Barbra Berwick* which was the first case of determining the employment status of a platform worker. The test itself proceeds from the decision in the case *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989), [48 Cal. 3d 341] from 23/03/1989. This test consists of several criteria on the basis of which it is assessed whether the employer had an appropriate degree of control in relation to the work of worker, on the basis of which it is determined whether in this particular case it is an employment relationship or not. Borrell test consists of the following criteria: 1) whether the worker performs tasks that are from the main activity of the employer or not; 2) whether the worker uses his own resources for work or the employer provides those funds for the execution of the work; 3) Whether it is necessary for the performance of tasks that the worker possesses special skills and knowledge; 4) Whether the employer issues detailed orders as necessary to carry out the work; 5) whether the worker only bears the risk to his business; 6) whether the work carried out is short-lived or of a permanent character; 7) whether the payment is made for the work carried out or by the hour; 8) whether, when entering into a business relationship, the parties could have been convinced that they were entering into an employment relationship.

[11] ABC test has been established by California Supreme Court in a case *Dynamex Operations West, Inc., v. The Superior Court of Los Angeles County and Charles Lee, Real Party in Interest*. It is a three factor test which include: a) Is the worker free from the control and direction of the hiring entity in the performance of the work, both under the contract for the performance of the work and in fact; b) Does the worker perform work that is outside the usual course of the hiring entity's business; c) Is the worker customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity?; More on ABC test in Abigail S. Rosenfeld, „ABC to AB 5: The Supreme Court of California Modernizes Common Law Doctrine in Dynamex Operations West, Inc. v. Superior Court", *Boston College Law Review 9/2020*; Braden Seibert, „Protecting the Little Guys: How to Prevent the California Supreme Court's New "ABC" Test from Stunting Cash – Strapped Startups", *Journal of Business, Entrepreneurship and the Law 1/2019*.

[12] C-692/19, *B v Yodel Delivery Network Ltd,* 22.04.2020. See more in: Elena Gramano, „On the notion of 'worker' under EU law: new insights", *European Labour Law Journal 1/2021*, 26-47.

of an employee exists if two conditions are met: 1) if the platform worker's independence in performing tasks is only fictitious, or 2) if subordination is present in the relationship between the platform and the worker. In which, it is important to point out, the court set these two conditions as alternatives.[13] The court then singled out four circumstances through which it tried to determine the fulfillment of one or other condition. When it comes to the latter condition (the subordination), the Court established four criteria on the basis of which the national court should determine in a specific case whether subordination of the platform worker is present.[14]

The groundbreaking moment was the establishment of a legislative framework for this normative approach. The first country to introduce a legal assumption of the existence of an employment relationship between a platform worker and a platform is Spain. This was done on May 11, 2021, with the adoption of the so-called *Riders Law*, which entered into force on August 12 of the same year. This legislative act brings two important innovations in improving the position of the platform worker. The first is that it establishes the assumption that platform workers working through platforms that provide delivery services are actually its employees. This (rebuttable)[15] assumption is based on the fulfillment of three cumulative criteria. Namely, it will be considered that the platform worker is in a working relationship with the platform if: 1) the activities consist of the delivery or distribution of any consumer product or merchandise; 2) employers who exercise directly, indirectly or implicitly business powers of organization, management and control through a digital platform or tool; 3) through the use of algorithms to manage the service or to determine the working conditions.[16] Another novelty concerns the introduction of transparency in connection with the functioning of

[13] Christina Hießl, *Case law on the classification of platform workers: Cross-European comparative analysis and tentative conclusions*, Report prepared for the European Commission, Directorate DG Employment, Social Affairs and Inclusion, Unit B.2 – Working Conditions, within the framework of the European Centre of Expertise in the Field of Labour Law, Employment and Labour Market Policies (ECE), 2021, 53.

[14] These are the following criteria: 1) whether the worker can independently and freely decide to hire a subcontractor for the performance of his duties through the platform or to find a replacement (para 38 and 39); 2) whether the worker enjoys the freedom of choice regarding the acceptance of a specific work assignment, i.e. delivery (para 40. In this place , we express concern that the court has not engaged in a deeper analysis of the actual existence of freedom of choice of work in the context of the way the platform algorithm that allows the establishment of hidden subordination works); 3) whether the worker can perform tasks simultaneously through other similar digital platforms (para 41); 4) whether the worker independently decides on his working hours, only taking into account the nature of the work carried out through the payment (para 42).

[15] In theory, there are arguments that it is not fully defined whether this is a rebuttable or irrebutable assumption. Adrian Todoli Signes, „Cambios normativos en la digitalización del trabajo: comentario a la 'Ley Rider' y los derechos de información sobre los algoritmos", *IUSLabor 2/2021.*

[16] European Agency for Safety and Health at Work, *Spain: The 'Riders' Law', New Regulation on Digital Platform Work*, Policy Case Study, 2022, 4. https://osha.europa.eu/en/publications/spain-riders-law-new-regulation-digital-platform-work

the platform algorithm. In this sense, the law establishes an obligation for digital platforms that provide delivery services, to inform unions of all relevant indicators on the basis of which the platform's algorithm functions, and which concern the working conditions of platform workers.

The initial act for the adoption of this legal solution was the decision of the highest judicial instance in Spain from September 25, 2020,[17] regarding the lawsuit of a platform worker who worked through the Glovo platform. In the claim, the plaintiff stated the Court to adjudge and declare the existence of an employment relationship between him and Glovo. The first-instance court did not accept the claim, and after the appeal, the competent second-instance court confirmed the first-instance decision. In the end, the Supreme Court, as the highest court instance in that country, overturned the decision of the lower courts, and adjudged and declared that in the specific case exists an employment relationship between the worker and the platform that provides delivery service. The Supreme Court based its judgment on the existence of a subordination relationship between the worker and the platform. In its reasoning, the court started from the position that the concept of subordination, as a key criterion for determining the existence of an employment relationship, should be interpreted flexibly, in order to adapt to the modern way of business, which is largely based on digital technology. Starting from how the business model of digital platforms works, in this particular case the court derived the existence of subordination from the way of evaluating platform workers, i.e. the principles on which the construction of the rating of the platform worker on an individual platform is based upon, which were determined to represent a special form of supervision, which is based on a pronounced subordination of the platform worker. In addition, although the platform worker himself owns the means of work, in the form of a means of transport (in this particular case, the plaintiff used a motorcycle to make deliveries) and a mobile phone, the court held that the key tool for the work of a platform worker is actually the platform itself, i.e. the application. Because, if the worker does not own the application and is not present on it, he cannot perform work tasks in the form of providing delivery services. As another core point of its reasoning, the court singled out the judgment of the Court of Justice of the European Union which found that the company Uber does not provide software services, as it declares itself, but that it is *de facto* a company that provides taxi transportation services.[18] In this sense, the Supreme Court of Spain points out that the true nature of Glovo's activity is the provision of delivery services, and given that the platform worker performs

[17] Tribunal Supremo of 25.9.2020, rec. 4746/2019, the judgement is available on the website http://www.poderjudicial.es/search/AN/openCDocument/f0956b14a72ff217df076c0e9ad89c79ceb6f15323e93ff2

[18] C-434/15, *Asociación Profesional Élite Taxi v. Uber Systems Spain*, 20.12.2017.

tasks that directly concern the company's activities, he should be considered an employee and not a self-employed person.

In addition to all of the above, the Court highlighted several other circumstances that further strengthen its opinion that the particular case is about an employment relationship, and not a relationship between two independent business entities. Those circumstances are as follows: 1) Glovo company makes all important business decisions; 2) the price of the delivery service to clients, as well as the price paid to the platform worker for each individual delivery service, is determined exclusively by the Glovo company; 3) platform workers are not paid directly by the client as a user of the service, but the client pays for the service to the company, which then pays a part of that price to the platform worker, and keeps a part for itself as a commission for the work provided; 4) the platform worker is not involved in the relationship with the business entities whose products are delivered.[19]

Originating from court practice, and then receiving its legislative form, there is no doubt that this normative approach, based on the existence of the legal assumption that platform workers are in a working relationship with the platform, ensures the highest quality and scope of work-based rights for platform workers. However, we see the problem with this approach in its implementation. Past practice has already shown that there is a considerable possibility that the same criteria for assessing the existence of a relationship of (labor) subordination between the platform and the worker who works through it, are interpreted differently and consequently applied differently even by the same courts in the same or similar factual circumstances.[20] In addition, in countries such as the USA, an additional problem for the courts, but it seems even more for the platforms and the platform workers, is the fact of that there is a presence of a large number of seemingly similar criteria, packed in different tests to assess the existence of control powers of the platforms in relation to workers.[21] All of this contributes to a high degree of legal insecurity for all actors involved in this issue, but it on the other hand

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[19] On the analysis of the aforementioned judgment and the importance it has produced for the position of platform workers in Spain more in: Adrian Todolí-Signes, *Notes on the Spanish Supreme Court Ruling That Considers Riders to Be Employees* (23.10.2020.). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3717599.

[20] Alberto Barrio, „Contradictory decisions on the employment status of platform workers in Spain", dispatch, *Comparative Labor Law&Policy Journal, January 2020*; Grant E. Brown, „An Uberdilemma: Employees and Independent Contractors in the Sharing Economy", *Maryland Law Review Endnotes 2016*, 23-25.

[21] In addition to a large number of tests for determining employment relationship, there is also a large number of tests for determining discrimination, tax treatment of earned income, fulfillment of conditions for achieving achieving social security rights that also use it for the purpose of assessing the employment status of platform workers. More about all these tests: Megan Carboni, „A New Class of Worker for the Sharing Economy", *Richmond Journal of Law and Technology 4/2016*, 13-14.

lacks certainty in the socio-economic position of workers, which should be the one of the main features of the employment relationship.

3.2. Special legal category for platform workers on the basis of which they enjoy a limited set of rights

As an alternative to the previously presented approach, the idea of introducing a certain scope of rights that would be enjoyed by platform workers based on their work.[22] With this concept of providing decent work for platform workers, we can distinguish two modalities. Their difference between these modalities rests on how and which rights are exercised by platform workers.

The first option rests on the establishment of a special legal category for platform workers, according to which they are expected to enjoy a limited set of rights from the employment. Thus, some states have provided a special status in their legislation for entities that perform work outside of the employment, and therefore enjoy certain rights based on work. The reason for the introduction of special categories is to, prevent abuses in terms of work engagement and evasion of the employer‘s obligations in this regard, with a wider field of application of labor legislation.[23] This has been done, for example, in United Kingdom, whose labor legislation recognizes several types of persons who perform work. In addition to the traditional term *employee*, which denotes a person who performs work in an employment based on a concluded employment contract, there is also the category *worker*, which includes any person who earns a living through his work.[24] Persons categorized as workers enjoy the right to a minimum wage and the right to a paid vacation.[25]

A similar legal category exists in Spain. An *economically independent entrepreneur*, as a category that is between an employee and an entrepreneur. Economically independent entrepreneur is a person who fulfills all the requirements for an entrepreneur, but unlike them, does not employ or hire other persons and 75% of their total annual income comes from only one (main) client.[26] For entities exercising the right to work within the category of economically independent entrepreneur, a narrower volume of rights is provided in relation to persons in employment. It is about the right to paid annual leave, the right to union organiz-

[22] Miriam Kullmann, „Work-related Securities: An Alternative Approach to Protect the Workforce?“, *International Journal of Comparative Labour Law and Industrial Relations 4/2018*, 395-412.

[23] Senad Jašarević, „Uređenje radnog odnosa u Srbiji u kontekstu novih okolnosti u svetu rada“, *Zbornik radova Pravnog fakulteta u Novom Sadu 3/2015*, 1062.

[24] Astra Emir, *Selwyn’s Law of Employment*, Oxford University Press, 2016, 36-44.

[25] Well-known case is *Uber BV and others (Appellants) v Aslam and others (Respondents),* Supreme Court, UK (19.02.2021.) in which Uber drivers are categorized as Worker, and on that basis exercise certain employment rights provided for this legal category.

[26] Ley 20/2007, de 11 de julio, del Estatuto del Trabajo Autónomo, Article 11.

ing and collective bargaining, the right to financial compensation in case of unemployment, the right to compensation for material damage if the main client does not fulfill his contractual obligations. Labor courts, not courts of general jurisdiction, are competent for disputes in which they participate.

However, everything that we expressed as concerns regarding the implementation of the legal assumption that platform workers are employed, applies here as well. Namely, the assessment of this specific status is also based on the application of various criteria that serve to determine the existence of an appropriate degree of subordination of workers, and their application is associated with the same risks.

A particularly interesting solution is present in France, where the so-called *El Khomri law* was adopted in 2016,[27] which guarantees certain rights to platform workers.[28] Platform workers, in the light of this law, are self-employed workers, who are economically and technically subordinate to the digital platform,[29] where the digital platform entails a company that, regardless of its headquaters, operates through the Internet and connects people in relation with the sale of goods, providing services or otherwise exchanging goods and services.[30] For digital platforms determined in this way, a kind of social responsibility towards platform workers is introduced.[31] This social responsibility is reflected in the duties of the platform to provide insurance for workers in case of injury at work and occupational disease, as well as the right to training and further professional development, but also the right to establish and be a member of a union, as well as the right to collective bargaining.[32] Therefore, we see that it is a limited set of rights, but what is significant, bearing in mind the conceptual definition of a platform worker, is that almost everyone is covered by these protective norms.

Second alternative comes from the ILO. Namely, in this organization's study on digital labour platforms,[33] the ILO lists three groups of rights that can and must be applied to platform workers, citing specific sources of ILO rights in this regard.

[27] Loi n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels.

[28] On the development of French labour legislation towards expanding the field of application to platform workers see more in: Isabelle Daugareilh, Christophe Degryse, Philippe Pochet, *The platform economy and social law: Key issues in comparative perspective*, ETUI, Brussels, 2019, 52-53.

[29] On the legal concepts of economic and technical subordination see in: European Commission, *Study to gather evidence on the working conditions of platform workers*, final report, Luxembourg, 2020, 106.

[30] Article 242 of the aforementioned law, which received the aforementioned formulation of Article 10 (V) of the Law on Amendments to the Law from 23.10.2018. LOI n°2018-898 du 23 octobre 2018 – art. 10 (V).

[31] *Ibidem*.

[32] *Ibidem*.

[33] ILO, *The role of digital labour platforms in transforming the world of work*, World Employment and Social Outlook, Geneva, 2021.

The first group of rights includes those contained in the Declaration on Fundamental Principles and Rights at Work.[34] As it is a question of fundamental human rights, their realization should not evade platform workers. The second group of rights includes those, that in addition to the aforementioned basic rights, are considered minimal elements of decent work. Those are the right to safety and health at work, the right to social security, the right to employment, and the right to inspection protection.

And while the rights from the first and second groups are presented in the function of ensuring decent work for platform workers, which the ILO sees as the minimum level of their labor law protection, in the third group of rights, the ILO classifies those rights that directly concern the circumstances in which platform workers perform work and which are necessary to improve the working conditions of platform workers. Although certain instruments that ensure the protection of the social and economic position of platform workers are aimed at specific occupations, the study indicates that it is about the rights that are necessary to protect the position of platform workers.[35] Those instruments are ILO sources concerning the right to compensation for performed work, protection against termination of employment, the right to access information and protection of personal data, the right to transparent working conditions, the right to labor mobility, and the right to effective legal protection.

Although the ILO points to its key instruments that contain solutions for the establishment of labor law protection for platform workers, it does not answer the question of how to practically ensure the application of all those instruments and rules contained in them, to platform workers, but states that "the subject of their application should be the subject of professional discussion in the future."[36] We believe that this conclusion is a consequence of the ILO's awareness that the effective implementation of its instruments depends exclusively on member states, assuming that they have previously ratified specific conventions. There is no possibility of ILO standards to be directly applied to digital platforms, unless digital platforms incorporate those standards into their acts, which we doubt will ever happen.

Finally, the issue of regulating platform work (by convention or recommendation) was also put on the agenda by the International Labor Organization, for the session of the General Conference in June 2025).[37] In the mentioned document

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[34] It is about freedom of association and the right to collective bargaining. abolition of all forms of compulsory or forced labor; abolition of child labor; elimination of discrimination in relation to employment and occupation.

[35] ILO, *The role of digital labour platforms in transforming the world of work*, *op. cit*, 206.

[36] *Ibidem*, 208.

[37] See point 876 of the document: *Governing Body, Minutes of the 347th Session of the Governing Body of the International Labour Office,* 347th Session, Geneva, 13–23 March 2023,

of the Administrative Board of the ILO, in point. 810. talks about the need to adopt a new convention that would ensure "decent work" for workers on digital platforms. Also, in the exact 813 of the document, the need to "protect, recognize and realize the rights of platform workers and improve their working conditions" is highlighted.[38]

4. EU ACTION AS AN ADEQUATE SOLUTION?

Faced with the fact that the volume of platform work is growing intensively, and that as such platform work leaves significant economic consequences, both positive ones on the overall economy, and negative ones on the social and economic position of those who perform such work, on October 23rd 2024 a European Union (hereinafter: EU) adopted Directive on improving working conditions in platform work.[39] The purpose of this document can be guessed from its very name – improving the social and economic position of platform workers while ensuring the sustainable development of the gig economy in the EU. This objective is ensured through three sets of measures provided by this directive: 1) measures to determine the adequate employment status of persons who perform work through digital platforms (assumption of the existence of an employment relationship); 2) measures that ensure fairness, transparency and accountability of the use of algorithmic management of digital platforms; and 3) measures that improve the transparency of platform work, with a particular emphasis on cross-border cases of platform work.[40] For this paper, the analysis of the first group of measures is crucial – bearing in mind the different modalities of work for platform workers, the question arises whether the measures provided in the directive can contribute to improving their employment position.

The second chapter of the directive is devoted to the norms for determining the adequate legal status of platform workers. In this regard, Article 4 of the directive introduces an obligation for Member States to establish an appropriate legal framework for the correct determination of the employment status of persons working through digital platforms. The essence is that this legal framework should

International Labour Organization,GB.347/PV(Rev.),https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_884393.pdf

[38] The latest ILO study, which was prepared for the mentioned conference in 2025, can be found in*: Realizing decent work in the platform economy,* International Labor Conference 113th Session, 2025, International Labor Organization, 2024.

[39] Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work, OJ L, 2024/2831, from 11.11.2024.

[40] Annika Rosin, „Towards a European Employment Status: The EU Proposal for a Directive on Improving Working Conditions in Platform Work", *Industrial Law Journal 2/2022*, 478.

be based on the concept of primacy of facts,[41] which means that the decision on the employment status of persons working through platforms must be based primarily on facts related to the actual performance of the work, regardless of how the relationship between the platform and the worker is determined in their (eventual) contractual relationship. Then, the directive foresees the existence of a legal presumption that it is an employment relationship if facts are established that point to the existence of direction and control of the platform worker's work by the platform. In this case, the assessment of the existence of the relationship of direction and control of work is determined in accordance with national law, collective agreements or practice applicable in the member states and taking into account the case law of the European Court of Justice.

And here is the main problem in the text of the directive, which is why we express doubts about the effectiveness of this presumption. Namely, different countries will have different criteria for assessing the existence of the relationship of direction and control of work, while it is a particularly open question when countries that do not already have such legal criteria will introduce them. Those different criteria can potentially be viewed differently by the national courts that will be competent to decide in the procedures for determining the existence of an employment relationship between the platform worker and the platform. All of this will result in uneven judicial practice in similar factual situations, and the need for a significant period of time to pass before the interpretation of national criteria is standardized by the courts.

After all, the normative solution regarding the legal presumption of the existence of an employment relationship from the adopted text of the directive differs to a significant extent from the solution from the proposal of the directive.[42]

Article 4 from the proposal of the directive introduces the assumption of the existence of an employment relationship between platform worker and digital platform if two of the five criteria for assessing the existence of an employment relationship in platform work are met. These are the following criteria: 1) effectively determining, or setting upper limits for the level of remuneration; 2) requiring the person performing platform work to respect specific binding rules with regard to appearance, conduct towards the recipient of the service or performance of the work; 3) supervising the performance of work or verifying the quality of the results of the work including by electronic means; 4) effectively restricting the freedom, including through sanctions, to organise 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; 5) effectively restricting the

[41] Valerio DE Stefano, „The EU Commission's proposal for a Directive on Platform Work: an overview", *Italian Labour Law e-Journal 1/2022*, 108-111.

[42] Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work COM/2021/762 final, 9.12.2021.

possibility to build a client base or to perform work for any third party. This solution seems more favorable to platform workers because it sets clear criteria for evaluating their factual relationship with the platform itself. In addition bearing in mind the given criteria on the one hand, and the way digital platforms function, and above all the role played by their algorithmic management in this regard, on the other hand, it would be hinted that in most cases of platform work, regardless of the modality of work engagement of the platform workers, there will be a realization of the stated assumption about the existence of an employment relationship.

5. CONCLUDING REMARKS

From the previous parts of this paper, we have seen that, both in practice and among researchers in the field of labor law, there are different solutions regarding the status of platform workers and consequently their rights based on work. Each of these solutions has its advantages and disadvantages, depending on the social, economic or legal aspect from which they are viewed. In the end, the professional public expected a saving solution from the EU through the Directive on improving the working conditions of platform workers, believing that it will contribute to the unification of rules which will lead to a clear and efficient determination of the legal position and rights of platform workers. Considering that the member states are obliged to adopt national regulations for its implementation within a period of two years from the date of entry into force of this directive, it remains for us to see whether the described expectations are really justified. In this momentum, for authors of this paper a pessimistic view prevails regarding the realization of the described expectations, primarily due to the significant divergence about the specific criteria for the assessment of the relationship of direction and control of the work of platform workers from the text of the proposal of the directive, which we consider a key factor for the effective application of the pressumption of the employment relationship between platform workers and the digital platform.

REFERENCES

Senad Jašarević, „Uticaj digitalizacije na radne odnose“, *Zbornik radova pravnog fakulteta u Novom Sadu 4/2016*.

UNCTAD, *Digital Economy Report: Value creation and capture: Implications for developing countries*, 2019.

Ajay Agrawal, John Horton, Nicola Lacetera, Elizabeth Lyons, *Digitalization and the contract labour market: a research agenda*, National Bureau Of Economic Research, 2013, http://www.nber.org/papers/w19525.pdf.

European Commission, *Public Consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy*, Brussels, September 2015.

David S. Evans, Richard Schmalensee, „The antitrust analysis of multi-sided platform businesses“, *National Bureau of Economic Research*, NBER working paper series, Working Paper 18783. https://www.nber.org/system/files/working_papers/w18783/w18783.pdf

Jeremias Prassl, Martin Risak, „Uber, Taskrabbit, And Co.: Platforms As Employers? Rethinking The Legal Analysis Of Crowdwork“, *Comparative Labor Law & Policy Journal 3/2016*.

European Commission, *Study to gather evidence on the working conditions of platform workers*, final report, Luxembourg, 2020.

Darko Božičić, *Na šta mislimo kada kažemo... Algoritamski menadžment i prava radnika*, Edicija Trg, Institut za filozofiju i društvenu teoriju, Beograd, 2022. https://ifdt.bg.ac.rs/wp-content/uploads/2022/05/Darko-Bozicic.pdf

ILO, *The employment relationship*, International Labour Conference, 95th Session, International Labour Office, 2006.

ILO, *Realizing decent work in the platform economy,* International Labor Conference 113th Session, 2025, International Labor Organization, 2024.

Abigail S. Rosenfeld, „ABC to AB 5: The Supreme Court of California Modernizes Common Law Doctrine in Dynamex Operations West, Inc. v. Superior Court“, *Boston College Law Review 9/2020.*

Braden Seibert, „Protecting the Little Guys: How to Prevent the California Supreme Court's New "ABC" Test from Stunting Cash – Strapped Startups“, *Journal of Business, Entrepreneurship and the Law 1/2019.*

Elena Gramano, „On the notion of 'worker' under EU law: new insights“, *European Labour Law Journal 1/2021.*

Christina Hießl, *Case law on the classification of platform workers: Cross-European comparative analysis and tentative conclusions*, Report prepared for the European Commission, Directorate DG Employment, Social Affairs and Inclusion, Unit B.2 – Working Conditions, within the framework of the European Centre of Expertise in the Field of Labour Law, Employment and Labour Market Policies (ECE), 2021.

Adrian Todoli Signes, „Cambios normativos en la digitalización del trabajo: comentario a la 'Ley Rider' y los derechos de información sobre los algoritmos“, *IUSLabor 2/2021.*

European Agency for Safety and Health at Work, *Spain: The 'Riders' Law', New Regulation on Digital Platform Work*, Policy Case Study, 2022, https://osha.europa.eu/en/publications/spain-riders-law-new-regulation-digital-platform-work

Adrian Todolí-Signes, *Notes on the Spanish Supreme Court Ruling That Considers Riders to Be Employees* (23.10.2020.). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3717599.

Alberto Barrio, „Contradictory decisions on the employment status of platform workers in Spain“, dispatch, *Comparative Labor Law&Policy Journal, January 2020.*

Grant E. Brown, „An Uberdilemma: Employees and Independent Contractors in the Sharing Economy“, *Maryland Law Review Endnotes 2016*.

Megan Carboni, „A New Class of Worker for the Sharing Economy“, *Richmond Journal of Law and Technology 4/2016*.
Miriam Kullmann, „Work-related Securities: An Alternative Approach to Protect the Workforce?“, *International Journal of Comparative Labour Law and Industrial Relations 4/2018*.
Senad Jašarević, „Uređenje radnog odnosa u Srbiji u kontekstu novih okolnosti u svetu rada“, *Zbornik radova Pravnog fakulteta u Novom Sadu 3/2015*.
Astra Emir, *Selwyn's Law of Employment*, Oxford University Press, 2016.
Isabelle Daugareilh, Christophe Degryse, Philippe Pochet, *The platform economy and social law: Key issues in comparative perspective*, ETUI, Brussels, 2019.
European Commission, *Study to gather evidence on the working conditions of platform workers*, final report, Luxembourg, 2020.
ILO, *The role of digital labour platforms in transforming the world of work*, World Employment and Social Outlook, Geneva, 2021.
Annika Rosin, „Towards a European Employment Status: The EU Proposal for a Directive on Improving Working Conditions in Platform Work“, *Industrial Law Journal 2/2022*.
Valerio DE Stefano, „The EU Commission's proposal for a Directive on Platform Work: an overview“, *Italian Labour Law e-Journal 1/2022*.

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Различити нормативни приступи у погледу обезбеђивања услова достојанственог рада за платформске раднике

***Сажетак**: Питање правног статуса платформских радника већ дуже време окупира пажњу стручне јавности, али и даље остаје без јединственог одговора. Најповољније решење за саме платформске раднике темељи се на идеји о њиховом изједначавању са запосленима из разлога што претпоставља да уживају сва права из радног односа. Насупрот овом ставу је идеја о успостављању одређеног (ограниченог) обима права која би уживали радници платформе. С тим у вези поставља се питање која су то права и који је њихов обим, са чим у вези се у радноправној теорији јавља неколико алтернатива. Прва се заснива на успостављању посебне правне категорије за платформске раднике, за које је предвиђено уживање ограниченог скупа права из радног односа. Тако су поједине земље, попут Велике Британије, предвиделе посебан статус за лица која обављају послове ван радног односа, па самим тим и уживају одређена права по основу свог рада. Друга алтернатива долази од Међународне организације рада која сугерише три групе права која се могу и морају применити на платформске раднике, наводећи у том контексту своје специфичне изворе којима се успостављају међународни стандарди у погледу појединих права. На крају, свој нормативни одговор на предметно питање даје и Европска унија кроз усвајање Директиве о побољшању услова рада платформских радника. Аутори кроз ово истраживање анализирају поменута различита решења за имплементирање услова достојанственог рада платформих радника.*

***Кључне речи**: платформски рад, субординација, достојанствен рад, правна претпоставка.*

Датум пријема рада: 06. 12. 2024.
Датум прихватања рада: 23. 1. 2025.