| Chapter 7 |

EU Employment Law and Social Policy and the Need to Develop Unitary Electronic Technology of Work by Central and Eastern Member States

Andrzej Marian ŚWIĄTKOWSKI

ABSTRACT

This chapter presents the current situation on the common market caused by the use of electronic employment technologies by entrepreneurs on digital platforms. Its aim is to inspire the Member States of Central and Eastern Europe to take steps to standardize the status of self-employed people on digital platforms. Occasional attempts by the EU institutions to develop a definition of the status of people employed on digital platforms may be treated as a continuation of the practice of multiplying precedents in the jurisprudence of the CJEU. They do not guarantee stable working standards for self-employed people on digital platforms.

KEYWORDS

algorithm, algorithmic management, atypical employments, digital platforms, electronic technologies, employee, self-employed, work, working conditions.

1. Digital Employment Model

The fourth industrial revolution brings about significant changes in the traditional model of labor relations shaped by the International Labor Organization for over one hundred years. The current, relatively stable model of employment based on predictable growth, guaranteeing people who EW even only moderately interested in a career in the labor market, has begun to crumble. Protection guaranteed by the provisions of labor and social security law is starting to be replaced by strictly defined tasks and activities consisting of the provision of organized work—from case to case—by legal entities.[1] Signals in the legal literature warning against a change in the employment model were presented at the beginning of this century. However, they were not taken seriously by specialists in the field of labor law. At that time it was not feared that soon

1 Schoukens and Bario, 2017, pp. 306 et seq.

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they could constitute a strong competition for employment relationships, which were considered standard models of employee employment.

In this art., I will attempt to present the views of the EU on the adjustment of employment conditions in the common market. The legal basis for the operation of EU institutions in this matter is the provisions of Art. 154 TFEU. Dialogue with social partners active at the EU level started on February 24, 2021.[2] In the second phase, it was found to be justified, and therefore desirable in the meaning of Art. 154(3) TFEU, taking measures to improve the conditions of people working through electronic employment platforms. This means a chance to adapt electronic employment to EU standards regulated by the provisions of Directive 2019/1152, adopted by the European Parliament and the Council on June 20, 2019.[3] The self-employed are exposed to the risk resulting from employment conditions in most Central–Eastern EU Member States. Their situation is precarious and does not guarantee protection against dismissal, with marginal fixed-term employment and unclear working hours. Their remuneration for the work they perform is insufficient for a decent living. They also do not benefit from protection against discrimination, mobbing, or other activities prohibited by law. They have very limited opportunities for promotion and professional development.[4] Their work environment usually does not meet the common, mandatory standards of occupational health and safety. In fact, most economically active people under the electronic model of employment implemented through employment platforms are precarious from the first to the last day of work. It does not matter to which category of the common EU labor market they will be classified: work on-demand via apps, remote work (crowdwork), or work in the digital platform (capital platform work).[5] Electronic employment models enable entrepreneurs to coordinate the processes of performing work, bypassing the traditional methods used so far. The latest practices enable global companies using market mechanisms to coordinate peripheral activities. It seemed that such seemingly marginal business behavior and behavior of entrepreneurs had little effect on the replacement with digital technologies of traditional, stabilized, and protection-oriented employees commonly regarded as the 'weaker side of employment relations' methods. However, outsourcing, franchises, and temporary employment agencies result in 'fissured employment relationships.' They also lead to changes in the distribution of risk and obligations toward both employed persons and other entities on the labor market.[6]

2 European Commission, Consultation Document, First phase consultation of social partners under Article 154 TFEU on possible action addressing the challenges related to working conditions in platform work, Brussels, 24 February 2021, COM(2021) 1127 final.

3 Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, OJ L 186, 11.7.2019. (pt. 1), European Judicial Review, 2020, No. 4, pp. 15–21; (pt. 2), European Judicial Review, 2020, No. 7, pp. 22–28.
See Resolution of the European Parliament of 4 July 2017 on working conditions and precarious employment, 2016/2221(INI), OJ C 334, 19 September 2018.

4 See Florczak and Otto, 2019, p. 10; Godlewska and Patulski, 2019, Ibid. pp. 22 et seq.

5 Sanz de Miguel, Bazani and Arasanz, 2021, p. 17.

6 Ibidem, p. 19; Wood, Martindale and Lehdonvirta, 2021.

Digital platforms accelerate the processes of changing the current standard employment relationship model (SERM).[7] Due to the protection of the interests of 63% of men and 24% of women on a global scale (and 47% in developing countries) at the age of full economic activity, it is justified to undertake actions aimed at the unification of atypical employment models.[8] These may be standardized by adapting them to EU standards and by defining the legal term 'employee' in the EU labor law system.

2. Work Management Through an Algorithm

Algorithmic management of work and the people who perform it seems to be the most difficult element in a unified sample of non-typical—electronic—forms of employment. The hypothesis about the autonomy of employment in these platforms is a legal fiction, promoted as a protection of a vision of human work that is impossible to concise legally. The 'autonomy and discretion' of digital platforms is severely limited 'by the principles and design features of the platforms.'[9] Data collection and algorithms appear to be the central elements in shaping the functioning of the platform and in controlling the workforce.[10] They are also key factors that determine the negative working and living conditions of platform workers, as they are associated with greater intensity and longer work hours.[11] Algorithmic human work management can accelerate and extend precarious employment relationships[12] even further during the COVID-19 pandemic through remote control, outsourcing, franchising, temporary work agencies, job brokers and digital work platforms. Algorithmic management contributes to increasing the effort put into work, creates new sources of algorithmic uncertainty, and fuels resistance in the workplace. Algorithms, defined as work processes to be followed in calculating or solving other problems arising from work, have been used since at least the 19th century. Their modern application focuses exclusively on algorithmic technologies. They are defined as 'computer programmed procedures that transform an input into the desired output in a way that makes it more versatile, instantly interactive and opaque.'[13] The traditional typology of managerial management, still used in computer science, distinguishes three dimensions of algorithmic control: direction, evaluation, and discipline.[14] None of the concepts mentioned is related to the freedom and independence in the performance of work by a person providing services consisting of performing various activities ordered, assessed, and enforced by the digital

7 Wood and Lehdonvirta, 2021.
8 International Labor Organization, Report, World Employment and Social Outlook 2021: The role of digital labour platform in transforming the world of work. https://www.ilo.org/wcmsp5/groups/public---dgreports/---dcomm---publ/documents/publication/wcms_771749.pdf.
9 Świątkowski, 2018, p. 106.
10 Wood and Lehdonvirta, 2021; Sanz de Miguel, Bazani and Arasanz, 2021, p. 25.
11 Wood and Lehdonvirta, 2021; Sanz de Miguel, Bazani and Arasanz, 2021, p. 25.
12 Wood, 2021.
13 Joys and Stuart, 2021, p. 158.
14 Edwards, 1979.

platform. Professionally active people in the platforms are subject to the platform to a much greater extent than employees. Digital work platforms use algorithmic control to guide employees and determine what should be done, in what order and time, and with what degree of accuracy.[15] The study reveals the characteristic features used by entrepreneurs managing employment platforms: discipline and subordination. Based on the experiences of employees with the Deliveroo and UberEATS platforms, the authors of this study show how the control of the work process is multifaceted and goes beyond algorithmic management. They point to three distinguishing features of the latest electronic employment technology: panoptical placement of technological infrastructure, the use of information asymmetry to limit the selection of employees, and the unclear nature of performance management systems. Algorithmic assessment is used to control how the platforms record and monitor working time—in particular, the hours spent on the platform. Particular attention was paid to the hours in which professionally active people logged on to the platform to perform work. The algorithms also test the speed of work and the level of task activity in processes consisting of the performance of partial activities and tasks ordered by the organizer of the work. They show that some micro-tasking platforms control employees using computer monitoring programs, and record the progress of employees' work. For example, they use progress tracking instruments that can record screenshots every ten minutes. The programs used by the employee monitoring platforms have access to the employee's webcam.[16] Keystrokes on the computer or keyboard buttons are counted and recorded. The possibilities of controlling the progress indicate that the platforms are not neutral intermediaries between the persons commissioning and performing professional activities. They are business institutions that play an active role in structuring the digital work process and shaping working conditions. Their governance structures are coded, objectified, and stored in seemingly neutral technology infrastructures. Such camouflage maintains the hidden relationship between capital and labor.[17] The use of disciplinary measures against less productive employees is possible thanks to algorithmic work discipline, especially 'disciplining' replacements of less efficient ones with more efficient recipients (algorithmic replacement). Managers of the digital platform warn employees about this possibility. However, they do not inform them of the criteria that determine the making of 'disciplinary decisions' by an electronic device. It is generally known that withdrawal from work takes place when employees do not meet the requirements of people managing digital platforms.[18] The problem is that the requirements of the entities, platform management, and the electronic device that make the decision are neither specified nor communicated to employees. The legal basis for the 'substitution' in the performance of professional duties by people employed on digital platforms is an undocumented ('dry') message about non-compliance with

15 Kellog, Vallentine and Christin, 2020, p. 366.
16 Veen, Barrat and Goods, 2020, p. 384.
17 Gerber and Krzywdziński, 2019, p. 121.
18 Sanz de Miguel, Bazani and Arasanz, 2021, p. 28.

the applicable requirements relating to the performance of tasks. It is formulated and communicated through an electronic device (algorithm).[19] For this reason, the above assessment of compliance with the obligations regarding the maintenance of the work efficiency determined by the digital platform was considered by specialists to be a 'black box.' Many employees are therefore under the impression that they can be automatically deactivated at any time when their performance drops below certain thresholds unknown to them, set by the algorithm. People employed on digital platforms do not have physical contact with any board member or other person holding a managerial position and authority there. Thus, those who accurately investigate the role and significance of algorithms used by digital platforms recognize the applied disciplinary systems as 'a serious enhancement of the algorithm's competences.'[20] According to J. Woodcock, 'the emergence of a ubiquitous and automatic method of supervising and disciplining employees is an illusion of freedom, created by an algorithmic panopticon, along with the possibility of working outside a permanent, formal workplace, be it on a bicycle or moped/motorcycle.'[21] The disciplinary effect related to the perception of the algorithm, known as the 'fear the wizard,'[22] is speculation in the circles of people working on digital platforms about the impact of the 'shadow manager' on their behavior in the workplace. The presented circumstances strengthen the significance of the algorithm, because 'employees absorb the algorithm's performance evaluators and take responsibility for controlling the discipline of their own actions…and [that of] customers.'[23] Algorithms are a management tool that shapes power relations between employees, clients, and platforms.[24] Therefore, it is necessary for the authorities of Central–Eastern EU Member States to develop uniform practices in labor relations and social policy aimed at eliminating the automatic level of mechanical competences and the importance of algorithms. Today, digital and traditional institutions and organizations increasingly use the algorithmic management model. Algorithms can therefore find application in unified digital employment models.

3. Working Conditions—The Illusion of Freedom?

'Working conditions' represent the working hours (time) of persons who have legal or factual relations with the digital platforms, protective standards guaranteeing safe and hygienic working conditions. The relationship with digital platforms has been and continues to be advertised as the main advantage of flexible, independent decision-making by the person associated with the platform at the most convenient time for the employee, allegedly entitled to exercise full freedom to decide when

19 Ibid.
20 Woodcock, 2020, pp. 67 et seq.
21 Ibid.
22 Ibid.
23 Bucher, Schou and Waldkirch, 2021, pp. 44 et seq.
24 Sanz de Miguel, Bazani and Arasanz, 2021, p. 28.

and how long to perform selected tasks, and to complete the portions allocated by the platform. The ethos and freedom of work occupy the main place in the hierarchy of free and voluntary performance of assigned tasks and simple activities that digital platforms are obliged to accomplish when performing obligations consisting of providing employment. Natural persons working on digital platforms exceed the legally permitted and generally applicable working time standards in days, weeks, and months.[25] According to the calculations made by the team of Urzi Brancanti et al., 60-hour standard weekly working hours occur on platform employees twice as often as employees working in the normal, standard, generally applicable working time system. Significantly, 68% of platform employees work at night and 72% work on non-working days. Health and safety at work is no better.[26] The vast majority of employees are not covered by insurance against risks related to the performance of tasks and activities commissioned by the digital platform.[27] Regarding health and safety, most of the platform's digital workforce does not have set rules of health and life standards. Even where certain disease-related financial support programs had been adopted, their applicability proved questionable. Documents required to access treatment programs were impossible to obtain by employees.[28] The controller of employment conditions on digital platforms, according to P. Bérastegui, draws attention to the problem of social isolation resulting from individual work in a competitive atmosphere. These circumstances make it difficult to establish a coherent professional identity between employees. In addition, in the case of working on the platform, the problems are compounded, as I have already written, by the feeling of insecurity of people employed there in matters related to job retention. All the above-mentioned factors have a negative impact—1.6 to 3.6 times the overall average—on the physical and mental health of people employed on platforms.[29] The vast majority of the self-employed are therefore fully responsible for their own insurance. Paradoxically, the health and safety at work of people employed on platforms during the COVID-19 pandemic is slightly better. In the initial period of the pandemic, most platforms refrained from providing any form of protection for their workers. They did not want to undermine the applied classification of people employed on platforms as independent contractors, obliged by law to self-insure themselves. Only—due to the need to protect customers using services provided by platforms—public authorities have obliged entrepreneurs to comply with strict procedures necessary to maintain a license to continue operating.[30] Prevention policies are therefore only focused on customers, not on people employed by platforms. Only after some time, half of the surveyed food delivery platforms—Deliveroo and Amazon in the UK and the US—did the state authorities provide a partial form of

25 Urzi Brancati, Pesole and Fernandez, 2019.
26 Ibid.
27 Bérastegui, 2021.
28 Ibid.
29 Ophir et al., 2020, pp. 65 et seq.
30 Sanz de Miguel, Bazani and Arasanz, 2021, pp. 32–33.

financial support to the employees. The above derogation from the rule applies only to cases of illness due to COVID-19.[31]

4. Status of People Employed on Digital Platforms

The provisions of European Union law do not regulate the status of persons employed on electronic platforms. The restraint of the EU institutions cannot be tantamount to the freedom of the authorities of Central–Eastern European Member States in matters concerning the choice of employment models for professionally active people. Currently, the legal position of these people is primarily shaped by the organizers of electronic forms of employment.[32] Professionally active people connected with employment platforms can act as service recipients whose status is regulated by civil law, who are self-employed and working based on and in the legal framework regulated by the provisions of labor law. The basis of this structure is the freedom of choice of legal forms of employment by the parties to the legal relations under which the work is performed. The disproportions between the rights of persons employed by virtue of performing work under any of the above-mentioned bases and legal frameworks for employment are too large. Therefore, they could not be approved in the past—and cannot be approved now—due to the differences in the legal status of the categories of persons who perform work-related tasks and activities on the platforms. The most favorable, in terms of legal protection, employment stabilization and entitlement to employee and social benefits, was—and still is—the status of an employee. However, in only one EU Member State, Spain, the self-employed workers were economically guaranteed in 2021 on the ride-hailing platforms (*trabajador autónomo dependiente*).[33] Platform employees are allowed to understand the content and principles of the

31 Ibid. Howson et al., 2021.

32 Waas, 2017, pp. 97 et seq. Box 1. National Courts interpretation: the Spanish Case, Sanz de Miguel, Bazani and Arasanz, 2021, p. 40. In the judgment of the labour court in Madrid, No. 53 of February 11, 2019, it was ruled that the subordination of an employee should be understood in a flexible, not formal way. The most common symptoms of the employee's subordination are: the presence of the employee at the workplace of the employer or at the workplace designated by the employer, personal performance of work, cooperation with other employees, except for the possibility of replacing each other without the prior consent of the employer or the person planning and managing the employee's activity and not having a company (enterprises) by an employee. See Todoli-Signes, 2021, pp. 28 et seq. See also Judgment of the Polish Supreme Court of July 20, 2010, appeal No. 3344/2009).

33 *Rider's law*. https://www.eurofound.europa.eu/nl/data/platform-economy/initiatives/riders-law. The new obligation entered into force on 12 August 2021. https://hsfnotes1.com/employment. Przepisy the Riders for Rights movement (Riders por Derechos, RxR) were important in the sector responsible for providing food to customers. The strike organized against the delivery platform Deliveroo in 2017 resulted in the disconnection of the couriers participating in it from the application. The ruling of the Supreme Court, ordering the platform to return to work and pay them compensation, illustrates the state of changes in the Spanish electronic labor law system. See Sanz de Miguel, Bazani and Arasanz, 2021, p. 57. See also Olias, 2021.

algorithms governing their specific employment relationships on digital platforms. An obligation to inform employees about the parameters and rules on which it is based has been introduced. This is because it influences decision-making about access to work and employment conditions. The case of Spain may motivate the authorities of the EU Member States of Central–Eastern Europe to take uniform decisions in matters relating to labor law and social policy, and not yet regulated by the provisions of EU treaties.

5. An Attempt to Work out a Uniform EU Definition of an Employee and an Employer

The concept of an employee, established by the CJEU, is based on the freedom of movement of persons in the common market to seek and perform work. The right to work is treated by EU law as a fundamental human right. In the EU Charter of Fundamental Rights, the term 'employee' appears in Art. 27. This legal rule applies only to persons who work under an employment relationship. It deals with the employees' right to information and consultation in the enterprise. In the TFEU containing separate titles: IX 'Employment' (Arts. 145–150) and X 'Social Policy,' the term 'employee' appears in Art. 157(1), a standard that obliges Member States to respect the principle of equal pay for employees irrespective of their sex. In the general provisions of the EU treaties, references are made to the concepts of 'employment.' its level and the related term 'social protection' (Art. 9 TFEU). However, it cannot be concluded from the above statements that when defining and implementing measures taken and implemented by the EU, 'the requirements related to promoting employment levels, the guarantee of adequate social protection, the fight against social exclusion and a high level of education, training and health protection should be automatically taken into account.'[34] However, I share the views of the authors of the report on the definition of an employee about the need to establish healthy competition rules necessary to ensure the functioning of the common, internal EU market (Art. 3(1)(b) TFEU).[35] It is an undeniable fact, as indicated by the European Trade Union Confederation, that digital platforms use unfair competition for entrepreneurs operating on the market according to traditional rules.[36] A uniform definition of an employee working under an employment relationship, common to all employees, can now be achieved not in a long way, consisting of supplementing EU labor law, but as a result of systematic application to the CJEU with claims for granting the status of employees to persons employed under civil law contracts, be self-employed. For a long time, the CJEU, referring to the obligation of uniform application of labor law and equal treatment of parties to legal relationships under which work is performed, established

34 Sanz de Miguel, Bazani and Arasanz, 2021, p. 62.
35 Ibid.
36 Brockmann et al., 2021, p. 3.

in the EU judiciary, decided that in the EU it is necessary to use autonomous and uniform definitions of legal terms: 'employee'[37] and 'employer.'[38] The creation of such definitions by the CJEU consists of including in the sphere of influence of the European labor law all active professionals: workers, employees, and self-employed individuals, as well employers related by legal employment relationships, based on mutual obligations: provision of work by the employing entity and the obligation to perform it under the employer's management at the time and place indicated by him or her. It is easier and more feasible than the intention to implement the provision of Art. 153(1)(a-k) TFEU on the support of the EU to implement the legal objectives regulated by the provisions of the labor law. The wording of the EU definition of an employee was not included among those listed in this provision. Moreover, the said provision does not authorize the EU to develop an EU definition of a worker. The EU institutions can only support and complement the actions of the Member States. Therefore, it is more justified to apply to the CJEU to issue judgments stating the need for issuing judgments containing autonomous definitions of employees and employers. Thus, precedents may be created in the judicature of the CJEU, guaranteeing the minimum standards of employment for employees who have not worked so far and are self-employed, working on digital platforms. Thus, the conditions for fair and competitive work in the internal EU market, listed in Art. 3(1)(b) TFEU will apply. By following the above guidelines, it will be necessary to comply with the granting principle set out in Art. 5(1) TEU. There will therefore be no legal basis for a possible allegation of infringement of the competences of individual Member States when classifying certain types of persons employed as self-employed, employees or atypically employed by employers or only entrepreneurs. The CJEU can also make a non-conflict setting of a minimum legal basis for the transformation of employed and self-employed workers into employees. The same highest European judicial authority has the power to issue rulings defining employers, employing employed and self-employed people, converted into workers.

37 See Judgments of the CJEU of 14 July 1976, Gaetano Donà v. Mario Mantero, Case 13-76, ECLI:EU:C:1976:115; Judgment of the CJEU (Sixth Chamber) of 5 October 1988, Udo Steymann v. Staatssecretaris van Justitie, Case 196/87, ECLI:EU:C:1988:475; Judgment of the CJEU Court of 15 December 1995, Union royale belge des sociétés de football association ASBL v. Jean-Marc Bosman, Royal club liégeois SA v. Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v. Jean-Marc Bosman, Case 415/93, ECLI:EU:C:1995:463; Judgment of the CJEU of 20 November 2001, Aldona Malgorzata Jany and Others v. Staatssecretaris van Justitie, Case 268/99, ECLI:EU:C:2001:616; Judgment of the CJEU (Second Chamber) of 14 October 2010, Union syndicale Solidaires Isère v. Premier ministre and Others, Case 428/09, ECLI:EU:C:2010:612; Judgment of the CJEU of 13 January 2004, Debra Allonby v. Accrington & Rossendale College, Education Lecturing Services, trading as Protocol Professional and Secretary of State for Education and Employment, Case C-256/01, ECLI:EU:C:2004:18; Judgment of the CJEU (Second Chamber) of 11 November 2010, Dita Danosa v. LKB Līzings SIA, Case C-232/09, ECLI:EU:C:2010:674.

38 Judgment of the Court (CJEU Grand Chamber) of 16 July 2020, AFMB e.a. Ltd v. Raad van bestuur van de Sociale verzekeringsbank, Case C-610/18, ECLI:EU:C:2020:565.

6. Conclusion—"Polish Self-employed Work Pattern"

From the Polish perspective, there is no urgent need to construct complex, separate legal concepts in which self-employed, professionally active people, single persons performing tasks and activities consisting of the provision of work or services for their own account, could act as 'pseudo-workers.' In the provisions of Art. 22 para. 1-1[1] and 1[2] of the Polish Labor Code[39] the legislator formulated 'fuses' limiting or even excluding the possibility of replacing work performed under the employment relationship with non-employee type of work, mainly performed under civil law. The rich jurisprudence of the Supreme Court of the Republic of Poland that has accumulated over the last twenty years plays a role similar to that currently used in Spain. A necessary condition of the lawful work model of self-employment is the care of public institutions, especially the National Labor Inspectorate, for strict compliance with the prohibition of replacing an employment contract with a civil law contract under the conditions specified in Art. 22 para. 1 of the Labor Code. In Polish law, there is no prohibition of employment based on civil law contracts. Therefore, people who do not meet the requirements of performing work under an employment contract may also negotiate with entrepreneurs the rules of using certain rights, called 'employee privileges' guaranteed by the provisions of the Labor Code. However, the problem that needs to be solved is the scope of the benefits which, in the framework of the employee model of self-employment, can already be used by sole proprietorships. This is the main problem that should be discussed and resolved. Self-employed entrepreneurs cannot be considered as 'full-fledged workers' who are currently employed based on employment contracts for an indefinite period, exercising their associated employment and social rights, as they have had a sufficiently long service record. The current Labor Code provides sufficiently clear patterns from the past, enabling the formulation an objective legal structure applicable to self-employed workers. The essence of the intended distinction must therefore apply, on the one hand, to self-employed workers, whose degree of dependency is essentially the same as employees. On the other hand, to real self-employed people who have a sufficiently long and independent status to be treated as able to take care of himself in the right respects.

The current system, however, is used.[40] Therefore, it cannot be ruled out that Polish public authorities are interested in participating in a possible joint venture—undertaken by the EU Central and Eastern countries—to legally protect the self-employed. Other Central and Eastern EU Member States consider whether it is justified to introduce into the national labor system the automatic transformation of self-employed

39 The Act of June 26, 1974, Uniform text, Journal of Laws of 1998, No. 21, item 94 with changes. The amendment to the above-mentioned provisions was announced in the Journal of Laws No. of 2002, No. 135, item 466. See Świątkowski, 2018, pp. 131–147.

40 Consider the proposal for a directive of the European Parliament and of the Council on improving working conditions in platform work, COM/2021/762 final. See https://eur-lex.europa.eu>TXT>ur.

workers into the category of employees. However, one should consider the risk of a change by the CJEU in the status of persons employed beyond that classification. They perform of tasks involving self-employed work in the category of 'employment relationships regulated by labor law.' In fact, one can be sure that only the self-employed who do not employ other people, and thus personally perform all work for their own use and at their own risk, may be classified as self-employed by the national or EU justice system (CJEU).

Bibliography

Bazzani, T. (2021) 'L'Evolution de la Jurisprudance Espagnole sur la Qualification des Cursier Employé par le Platformes,' *Revue de Droit compare du Travail et de la Sécurité sociale,* 2021/1; https://doi.org/10.4000/rdctss.746.

Bérastegui, P. (2021) 'Exposure to psychosocial risk factors in the gig economy: a systematic review', *ETUI Research Paper,* 2021/1; http://dx.doi.org/10.2139/ssrn.3770016.

Brockmann, J., Escande Varniol M.C., Nicod C., Pérez del Prado D. (2021) 'Legal feasibility of the ETCU proposal,' *European Trade Union Confederation (ETUC),* (Research project: Establishing workers representation and social dialogue in the platform and app economy, grant agreement) VP/2018/006/0090, pp. 1–26.

Edwards, R.C. (1979) *Contested terrain: The transformation of the work place in the twentieth century.* New York: Basic Books, London: Heinemann.

Eurofund (2021) *Rider's law* [Online]. Available at: https://www.eurofound.europa.eu/nl/data/platform-economy/initiatives/riders-law (Accessed: 19 November 2021).

Florczak, I., Otto, M. (2019) 'Precarious work and labour regulation in the EU: current reality and perspectives' in Kenner, J., Florczak, L, Otto, M. (eds.) *Precarious Work. The Challenge for Labor Law in Europe.* Cheltenham: Edward Elgar Publishing, pp. 2–21; https://doi.org/10.4337/9781788973267.00008.

Gerber, C., Krzywdziński, M. (2019) 'Brave New Digital Work? New Forms of Performance Control in Crowd Work' in Vallas, S.P., Kovalainen, A. (eds.) *Work and Labor in Digital Age,* Research in Sociology of Work. Vol. 33. Bingley: Emerlad Publishing Limited. pp. 121–143.

Godlewska-Bujok, B., Patulski, A. (2019) 'Precariat: next stage or development or economic predominance in new scene?' in Kenner, J., Florczak, L, Otto, M. (eds.) *Precarious Work. The Challenge for Labor Law in Europe.* Cheltenham: Edward Elgar Publishing, pp. 22–37; https://doi.org/10.4337/9781788973267.00009.

Howson K., Spilda F. U., Bertolini A., Heeks R.F., Herrari F., Katta S., Cole M., Aguera Reneres P., Salem N., Sutcliffe D., Steward S., Graham M. (2022) 'Stripping back the mask: Working conditions on digital platforms during the COVID-19 Pandemic,' *International Labor Review,* 161(3), pp. 1–28; https://doi.org/10.1111/ilr.12222.

International Labor Organization (2021) *World Employment and Social Outlook 2021: The role of digital labour platform in transforming the world of work (Report)* [Online]. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_771749.pdf (Accessed: 11 January 2022).

Joys, S., Stuart, M. (2021) 'Digitalized management. Control and resistances in platform work' in Haidar J., Keune, M. (eds.) *Labor Relations in Global Platform Capitalism.* Cheltenham: Edward Elgar Publishing, pp. 158–184; https://doi.org/10.4337/9781802205138.00017.

Kellog, K.C., Vallentine, M.A., Christin A. (2020) 'Algorithms at work: The new contested terrain of control', *Academy of Management Annals,* 14(1); https://doi.org/10.5465/annals.2018.0174.

Kenner, J., Florczak, I., Otto, M. (2019) *Precarious Work. The Challenge for Labor Law in Europe*. Cheltenham: Edward Elgar Publishing; https://doi.org/10.4337/9781788973267.

Manthorpe, R. (2020) *Coronavirus: Deliveroo riders say they can't access promised hardship fund. Sky news* [Online]. Available at: https://news.sky.com/story/coronavirus-deliveroo-riders-say-they-cant-access-promised-hardship-fund-11959632 (Accessed: 18 March 2020).

Olias, L. (2021) *Deliveroo deberá indemnizar con 6.252 euros a nueve "riders" a los que despidió tras reclamar mejoras labourales* [Online]. Available at: https://www.eldiario.es/economia/deliveroo-debera-indemnizar-6-251-euros-nueve-riders-despidio-reclamar-mejoras-laborales_1_8053451.html (Accessed: 12 January 2022).

Ophir, Y., Sisso, I., Asterhan, C.S., Tikochinski, T., Reichart, R. (2020) 'The Turker Blues: Hidden factors behind increased depression rates among Amazon's Mechanical Turkes', *Clinical Psychological Science,* 8(1), pp. 65–83; https://doi.org/10.1177/2167702619865973.

Risak, M., Dulliner, T. (2018) 'The concept of "worker" in EU law: Status quo and potential for change,' *ETUI Research Paper – Report 140*; https://doi.org/10.2139/ssrn.3190912.

Sanz de Miguel P. (2019) 'Falsos autónomos y falsos becarios: una aproximación institucional al caso español', *Cuadernos de relaciones labourales,* 37(1), pp. 67–89; https://doi.org/10.5209/CRLA.63820.

Sanz de Miguel P., Bazani T., Arasanz J. (2021) 'The definition of worker in the platform economy: Exploring workers' risks and regulatory solutions', *Study for European Economic and Social Committee,* 2021/9, pp. 17–64.

Schoukens, P., Bario, A. (2017) 'The changing concept of work: When does typical work become atypical?', *European Labor Law Journal,* 86(4), pp. 306–332; https://doi.org/10.1177/2031952517743871.

Świątkowski, A.M. (2018) *Kodeks pracy. Komentar.* wydanie 6 [Labor Code. Commentary. 6th edn.]. Warsaw: Publisher C.H. Beck.

Świątkowski, A.M. (2019) *On Line employment Technologies of the post-industrial era.* Krakow: Scientific Publishing House of the Ignatianum Academy.

Todoli-Signes A. (2021) 'Cambios normativos en la digitalización del trabajo: Commentario de la "Ley Rider" y los derechos de información sobre los algoritmos' [Legal Changes Related to Employment Digitalisation: Comment Regarding the "Rider Act" and the Rights of Information Related to Algorithms, *IUSLabor – Revista d'anàlisi de Dret del Treball*, 2021/2, pp. 28–65; https://doi.org/10.31009/iuslabor.2021.i02.02.

Umar, M., Xu, Y., Mirza, S.S. (2021) 'The impact of COVID-19 on Gig economy,' *Economic Research-Ekonomska Istraživanja,* 34(1), pp. 2284–2296; https://doi.org/10.1080/1331677X.2020.1862688.

Urzi Brancati, M.C., Pesole, A., Fernandez Macias, E. (2019) *Digital Labor Platforms in Europe: Numbers, Profiles and Employment Status of Platform Workers.* Luxembourg: European Commission, Publications Office of the European Union, EUR 29810 EN, JRC Research Reports, Joint Research Centre, pp. 2–26 [Online]. Available at: https://publications.jrc.ec.europa.eu/repository/handle/JRC117330 (Accessed: 12 January 2022).

Veen, A., Barrat, T., Goods, C. (2020) 'Platform-capital's "app-ettite" for control: A labour process analysis of food-delivery work in Australia,' *Work, Employment and Society,* 34(3), pp. 388–406; https://doi.org/10.1177/0950017019836911.

Waas, B. (2017) 'The Position of Workers in Collabourative Economy. A view on employment law' in Singer, R., Bazzani, T. (eds.) *European Employment: Current Challenges.* Berlin: BWV-Berliner Wissenschaft Verlag.

Wood, A. J., Lehdonvirta, V. (2021) *Platform Precarity: Surviving Algorithmic Insecurity in the Gig Economy.* pp. 1–48 [Online]. Available at: https://doi.org/10.2139/ssrn.3795375 (Accessed: 11 January 2022).

Wood, A. J., Martindale, N., Lehdonvirta, V. (2021) 'Dynamics of Contention in the Gig Economy: Rage Against the Platform, Customer, or State?', *New Technology, Work and Employment,* Special Issue (7 September 2021); https://doi.org/10.1111/ntwe.12216. (Accessed: 11 January 2022).

Wood, A. J. (2021) Algorithmic Management Consequences for Work Organisation and Working Conditions [Online]. Available at: https://joint-research-centre.ec.europa.eu/publications/algorithmic-management-consequences-work-organisation-and-working-conditions_en (Accessed: 15 September 2022).

Woodcock, J. (2020) 'The algorithmic panopticon at Deliveroo: Measurement, precarity, and the illusion of control,' *Ephemera: theory and politics in organization,* 20(3), pp. 67–95.

Legal Sources

Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, OJ L 186, 11 July 2019.

European Commission, Consultation Document, First phase consultation of social partners under Article 154 TFEU on possible action addressing the challenges related to working conditions in platform work, Brussels, 24 February 2021, C(2021) 1127 final.

Judgments of the CJEU of 14 July 1976, Gaetano Donà v. Mario Mantero, Case 13-76, ECLI:EU:C:1976:115.

Judgment of the CJEU (Sixth Chamber) of 5 October 1988, Udo Steymann v. Staatssecretaris van Justitie, Case 196/87, ECLI:EU:C:1988:475.

Judgment of the CJEU of 15 December 1995, Union royale belge des sociétés de football association ASBL v. Jean-Marc Bosman, Royal club liégeois SA v. Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v. Jean-Marc Bosman, Case 415/93, ECLI:EU:C:1995:463.

Judgment of the CJEU of 20 November 2001, Aldona Malgorzata Jany and Others v. Staatssecretaris van Justitie, Case 268/99, ECLI:EU:C:2001:616.

Judgment of the CJEU of 13 January 2004, Debra Allonby v. Accrington & Rossendale College, Education Lecturing Services, trading as Protocol Professional and Secretary of State for Education and Employment, Case C-256/01, ECLI:EU:C:2004:18.

Judgment of the CJEU (Second Chamber) of 14 October 2010, Union syndicale Solidaires Isère v. Premier ministre and Others, Case 428/09, ECLI:EU:C:2010:612.

Judgment of the CJEU (Second Chamber) of 11 November 2010, Dita Danosa v. LKB Līzings SIA, Case C-232/09, ECLI:EU:C:2010:674.

Judgment of the Polish Supreme Court of 20th July 2010 r., appeal No. 3344/2009.

Proposal for a directive of the European Parliament and of the Council on improving working conditions in platform work, COM/2021/762 final.

Resolution of the European Parliament of 4 July 2017 on working conditions and precarious employment, 2016/2221(INI), OJ C 334, 19 September 2018.