HUNGARIAN LABOUR LAW
E - J O U R N A L

Who is an employee in the digital world?

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Abstract

The article highlights the need for updated legal frameworks to address the unique challenges of platform work in the digital age to ensure fair treatment and protection for platform workers. We must consider introducing a new category of labour relations that does not fit into the existing definition of dependent work or a new type of contract that would combine the characteristics of dependent work and self-employment. In either case, we must ensure that the rights and obligations of the employee, as well as the rights and obligations of the employer, are sufficiently protected and that the state's interests in terms of taxation, social security and other contributions are respected.

In any case, it is necessary to update the current legal definition of dependent work, considering the specifics of modern forms of work and the possibility of recognising certain forms of work as a combination of dependent and independent work. This definition must be unambiguous to serve as a reliable guide for determining the scope of labour law and the objects of labour relations. In addition, it is essential to ensure that the principles of equality and non-discrimination concerning work and employment relations are respected. Moreover, it is necessary to ensure appropriate labour law protection for workers who are not protected by traditional labour law regulations.

Keywords: digitisation, worker, dependent work, platform work, economic dependence

1. Introduction

The rise of digital platforms in the shared economy has introduced significant challenges in applying traditional employee rights frameworks to new forms of work that do not fit neatly into existing

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categories of dependent or independent labour. This paper explores these challenges, mainly focusing on the legal ambiguities and the socio-economic implications for platform workers. Because it often brings such a model of work performance that, through a digital platform, calls into question the regulation of business in various industries. The expansion of shared services and the many times' negative responses to the platforms' activity reveal the opportunities and limitations of current contract work and activities that do not correspond to the traditional categories of dependent/independent work. There are concerns about the quality of work offered and the terms of employment for workers[1] involved in platform work. Many platform workers are self-employed and, therefore, cannot access regular benefits such as sickness or unemployment. A European Commission study drafted by independent experts from academia and think tanks identified the following main challenges: unclear employment status, lack of information available to workers about their working conditions, fragmented and unpredictable income and work schedules, precariousness and poor working conditions, lack of or difficult access to adequate social protection, lack of occupational health and safety measures, lack of dispute resolution mechanisms, lack of collective rights and danger of discrimination.[2] The income gained through platform work is typically low, unstable, insecure, and unpredictable. This explains why many platform workers see that work as a way to supplement their income, but only a few are wholly dependent on it or earn enough to make a living.[3] According to a survey by the International Labour Organization (ILO), many platform workers earn below the minimum wage and face significant income volatility.[4] The correct categorisation of relationships is thus essential; the rights and obligations of the parties involved derive from it, as well as the right to social protection (where we recommend the right to the highest permissible amount of working hours or remuneration sufficient to allow them a decent standard of living) or issues of tax- excluding the tax burden.

While digital platforms and gig work present challenges, they also provide significant benefits that appeal to many workers seeking flexibility, autonomy, and diverse opportunities. These advantages include flexibility, autonomy, diverse income opportunities, and access to global markets. Workers can choose when they want to work, allowing them to balance personal commitments, education, or other jobs. Flexibility can improve work-life balance, particularly for those needing to manage family responsibilities or other activities. Autonomy gives workers more control over their work processes,

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1 In most cases, the European Union uses the term "worker" in its documents. In contrast, Slovak Act No. 311/2001 Coll. The Labour Code as amended (hereinafter referred to as the "Labour Code") uses the term "employee" and does not use the term "worker". The term employee in this context is a legal term denoting a person who is a party to a certain type of (employment) legal relationship, which is commonly referred to as an employment relationship. The term worker is a broader term that can be applied to any person performing human work, whether or not they are an employee. For that, see also V. Križan: Pojem zamestnanec – pracovník v slovenskom a európskom pracovnom práve. In: *Súkromné a verejné právo súčasnosti: zborník z vedeckej konferencie doktorandov Pf TU.* Trnava, Právnická fakulta Trnavskej univerzity, 2006. 660–675.

2 Z. Kilhoffer et al.: *Study to gather evidence on the working conditions of platform workers.* Luxembourg, Publications Office of the European Union, 2019.

3 H. Hauben (ed.) – K. Lenaerts – V. Wayaert: *The platform economy and precarious work.* Luxembourg, Policy Department for Economic, Scientific and Quality of Life Policies, 2020. 31.

4 See: World Employment and Social Outlook 2021: The role of digital labour platforms in transforming the world of work. Geneva, ILO, 2021. 135–191.

allowing them to manage tasks without direct supervision. Workers also can select the projects that interest them the most, leading to greater job satisfaction.

The legal order regulates labour relations, and as long as an individual's work falls under the subject of labour law, it is governed by this branch of law. Concerns about proper classification are particularly relevant in the current era when more and more of the workforce is moving into the digital economy. In the European Union alone, around 28 million people work through digital platforms, and this is expected to rise to 43 million by 2025. Of these 28 million, it is estimated that more than 5 million people are incorrectly classified as self-employed.[5] The ILO report states that digital platforms have increased fivefold over the past decade.[6]

Digitisation and the associated expansion of work through information and telecommunications practically enable productive activities to be carried out anywhere and at any time, thanks to which they have removed spatial and temporal boundaries.[7] Thus, the difference between the working time the worker has reserved for himself and his family and the boundaries between the workplace and the employee's household are blurred. The academic and professional public paid attention to the case of Aslam, Farrar, and others v. Uber[8], in which the British courts ruled that the relationship between the platform and the drivers was subject to statutory employment law provisions on minimum wages and paid holidays. The UK Supreme Court unanimously ruled that drivers who provided services through the Uber platform were workers. The Supreme Court rejected Uber's claims that the company acted only as an agent for the drivers, confirming that there were numerous elements of Uber's control of the drivers that showed the drivers were not independent contractors. The High Court thus upheld vital findings of the London Employment Tribunal, pointing out that drivers are workers. Similarly, the Court of Justice of the EU, in the case of Asociación Profesional Elite Taxi, decided that a service whose purpose is to contact non-professional drivers using their vehicle with people who need to be transported within the city for a fee through a smartphone application must be considered inseparable from the transport service, and therefore falls under the qualification of 'transport service'.[9]

Even in this case, however, it is possible to see how, thanks to digitisation, work becomes just an ordinary commodity for the employer, and the worker, especially in jobs requiring low skills, is not essential to him. Therefore, It is a challenge for labour law to react adequately in response to this technological progress and to bring legal relationships that are, based on this, currently incorrectly classified under its purview. Human labour can be performed in an employment relationship in an

5 EU rules on platform work. Council of the European Union, retrieved March 31, 2023, from https://tinyurl.com/3y9wj79k

6 World Employment and Social Outlook 2021: The role of digital labour platforms in transforming the world of work. Geneva, ILO, 2021.

7 R. Krause: "Always-on" – The collapse of the work-life-separation. In.: E. Ales et al. (eds.): *Working in digital and smart organizations. Legal, economic and organizational perspectives on the digitalization of labour relations.* Cham, Palgrave Macmillan, 2018. 224.

8 The Supreme Court. Uber BV and others (Appellants) v Aslam and others, Case ID: UKSC 2019/0029. Retrieved March 31, 2023. https://www.supremecourt.uk/cases/uksc-2019-0029.html

9 Judgment of the Court (Grand Chamber) of 20 December 2017, Asociación Profesional Elite Taxi, C-434/15, ECLI:EU:C:2017:981.

employee's position and in a commercial and civil relationship as a self-employed person performing business activities. However, people need specific protection, regardless of their work or legal status (whether employed, self-employed, or currently in some grey area). It is essential to consider how to ensure everyone has this certainty.

The difference between an employee and a self-employed person is that an employee is subject to the control of an employer. In contrast, a self-employed person is an independent contractor. Self-employment usually means that a person works for themselves and not for someone else, thus having more control over their work and working conditions. On the other hand, working in an employment relationship usually means that a person works for another and depends on the employer to provide work and pay wages. Employees are usually given a fixed wage or salary and are entitled to certain benefits such as vacation, social and health insurance, etc. The self-employed are usually not eligible for these benefits but can set their rates and hours.

Digital workers are typically not subject to the same level of control as employees but are not entirely independent. They are usually paid on a job-by-job basis, have limited bargaining power, and cannot negotiate their work terms. Generally, they could be classified as independent contractors if they are responsible for their taxes, have control over their hours, and are not subject to inspection. On the other hand, digital workers can be classified as employees if they are subject to the same regulations as other employees, are paid a regular wage and are accountable to another party that oversees their work.

The nature of the relationship between the worker and the employer thus determines the position of digital workers. If the relationship is more like an employer-employee relationship, the worker will likely be considered an employee. However, if the relationship is more akin to that of an independent contractor, the worker will likely be considered self-employed. The nature of the relationship is often determined by the length of the job, the extent of the training, and the amount of financial compensation he receives. The legal status of digital workers is also determined by the degree of control the employer has over the work. The degree of control is often determined by the degree of autonomy the worker has in performing the job, the amount of supervision the worker receives, and the amount of financial risk the worker is taking. It is, therefore, possible to say that they are in a kind of grey zone.

2. Slovak perspective

The Slovak Republic's example also shows that the national legislation is short for this situation. Provision Section 2 of Slovak Act No. 513/1991 Coll. the Commercial Code, as amended (hereinafter referred to as the "Commercial Code"), regulates the concept of entrepreneurship, according to which

it is a continuous activity carried out by an entrepreneur independently, in his own name, on his own responsibility and to make a profit. Entrepreneurship is, therefore, only an activity carried out by an entrepreneur, and at the same time, this activity must cumulatively meet all the conceptual features required by the Commercial Code. Even with a cursory glance at the legal definition of entrepreneurship, it is evident that digital workers do not fulfil these features cumulatively. If the platform as a service provider determines the price of the service, performs quality control of the workers' work, sets preliminary conditions for the workers to access the activity and its further execution, and at the same time, the workers do not perform their own independent activity from the platform, it is possible to conclude that the platform controls the economically relevant factors of the service provided. This does not fulfil the sign of independence in the business performance, which must be understood in the sense that the entrepreneur decides on his business activity, so he is not subordinate to another entity.[10] Therefore, from the point of view of the Slovak Commercial Code, this activity cannot be considered independent. Therefore, it is necessary to consider whether it will be dependent work.

The Labour Code defines the essential features of dependent work in the Slovak Republic in Section 1(2). Dependent work is considered to be work performed in the relationship of the employer's superior and the employee's subordination, personally by the employee for the employer, according to the employer's instructions, on his behalf, during the working hours determined by the employer. If the work meets these content elements of dependent work and is performed by a natural person, the latter must have the legal status of an employee.[11] However, it also follows from the current legal definition of dependent work that all signs must be fulfilled cumulatively. However, we must state here that in the case of platform work, the worker determines his working hours himself, although he may be motivated to work as long as possible by the platform operator.

We thus end up in a paradoxical situation. Although the workers provide their work through the platform, through which the platform operator provides his services and makes his profit, according to Slovak law, their activity cannot be defined as entrepreneurship or dependent work. Platform workers thus belong to the middle category of "economically active employees", which is not legally regulated. Despite the deficit mentioned above in the Slovak regulation, the position of the platform worker can be assessed from the point of view of EU law, the ILO or according to jurisprudence. All the above is connected by the performance of work according to the employer's instructions (organisational dependence) and the reward, which is the source of a natural person's income (economic dependence).

According to Section 11 of the Slovak Labour Code, an employee is a natural person who, in employment relations and if a special regulation stipulates this, also in similar employment relations,

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10 Cf. D. Krošlák – Z. Nevolná – A. Olšovská: *Podnikateľské právo.* Bratislava, Wolters Kluwer s.r.o., 2014. 15.

11 H. Barancová: *Pojem závislá práca – pojem zamestnanec a pojem pracovný pomer.* In: Dana Hrabcová (ed.): *Pracovní právo 2012.* Brno, Masarykova univerzita, 2012. 120.

performs dependent work for the employer. Therefore, the reliable determination of signs for the recognition of dependent labour represents a key issue from the point of view of defining the scope of labour law and the objects of labour relations.[12] Work that is the subject of labour law is primarily dependent work.[13] Although the legislation contains a legal definition of the term "dependent work", when considering the definition of dependent work, two characteristic elements can be cited as decisive criteria, whether in a particular case, it is dependent work or not – the employee's organisational subordination to the employer and the employee's economic dependence on the employer.[14]

In the case of organisational scope, it concerns the employer's authorisation to manage the employee's work process. It concerns his work tasks, duties and relationships within the organisation. Specifically, it is a dependence on management structures and management that determine what tasks and activities a worker should perform, when and how they should perform them, how they should behave towards superiors and colleagues, and what their rights and obligations are within the organisation. This dependency is, therefore, primarily linked to the work processes and structures of the organisation and impacts the way the worker performs his work. To assess this criterion, it is possible to apply the so-called actual control test (control test), according to which the employer is the person who determines not only what is to be carried out but also how it is to be carried out.[15] An employee performing dependent work based on this test is one who, while performing work for another, is subject to direct, immediate control by his contracting party.[16] Because digital employers, in many cases, transfer the right to decide on the process and organisation of work to the employee, and in the relationship between the contractual parties, it is no longer possible to clearly and reliably identify the element of direct control,[17] this element can be considered to have been overcome. However, this does not mean that this criterion should be abandoned.

The second criterion – economic dependence – indicates that the worker is bound to his employer in terms of obtaining income, which is of decisive importance for him in terms of securing his basic life needs or the needs of his family. It consists of the worker relying on income from employment to ensure his livelihood and devoting the central part of his activity to one client. He can become economically dependent if it is his only source of income and if he has no other way to secure his income. This can lead to limited freedom of choice and decision-making and, consequently, dependence because he may fear losing his job and financial difficulties. In the case of digital work,

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12 J. Stránský: Základní identifikační znaky závislé práce. In: Eva Žatecká (ed.): *Cofola 2012. Conference Proceedings.* Sborník příspěvků z mezinárodní konference pořádané Právnickou fakultou Masarykovy univerzity 17. - 19. 5. 2012 v Brně, Brno, Masarykova univerzita, 2012.

13 H. Barancová – R. Schronk: *Pracovné právo.* Bratislava, Sprint 2 s.r.o., 2012. 39.

14 J. Pavlátová: *Několik poznámek k vymezení závislé práce* a *práce nelegální*. In: Dana Hrabcová (ed.): *Pracovní právo 2012.* Brno, Masarykova univerzita, 2012. 43.

15 S. Hardy: *Labour law and industrial relations in Great Britain.* Alphen aan den Rijn, Kluwer Law International, ³2007. 88.

16 J. Stránský: Pojem závislá práce a jeho význam pro vymezení předmětu pracovního práva. In: Dana Hrabcová (ed.): *Pracovní právo 2012.* Brno, Masarykova univerzita, 2012. 26.

17 Cf. M. Štefko: Výkon závislé práce. *Časopis pro právní vědu a praxi,* Vol. 16., No. 4. (2008) 341.

there is often no stable counterparty bound by duties and responsibilities.[18] However, even if the loss of this contractual partner would represent a significant impact on the person performing the work, if the person performing the work would distribute the risk associated with the possible loss of the contractual partner among several entities, the sign of economic dependence would not be fulfilled when performing this activity.[19] The attitudes of the Czecho-Slovak science of labour law to the definition of economic dependence as a legal criterion for distinguishing the relationship between dependent work and self-employment range from doubt[20] to acceptance[21].

With the advent of digitisation, the economic dependence of workers has increased due to the rise of automation and the gig economy. Automation has replaced many traditionally performed by humans and reduced worker employment opportunities. The gig economy has created a situation where workers are often employed short-term with little job security or benefits. This has left many workers feeling economically dependent on their jobs, unable to find other sources of income or benefits. Additionally, the digital age has made it easier for employers to exploit workers because they can hire and fire workers without providing them with any benefits or job security, which has become another source of insecurity.

The common denominator for platform work, which falls under digital work, is reputation systems. This indirect control through user evaluation enables just as effective management as control based on formal instructions given by the employer to its employees and direct control of their performance, which fulfils the signs of the worker's organisational dependence on the platform. If the platform operator exercises control over all economically relevant factors of the service that is offered within its platform, the condition of economic dependence can also be considered fulfilled. Platform workers should, therefore, be considered employees, as decided by the British courts in Aslam, Farrar et al. when they individualised the circumstances indicating the existence of an employment relationship. The decision is based on determining the scope of labour law based on the functional relationship between the two entities, regardless of the content of the term employee. Nevertheless, while in legal systems based on the Anglo-American legal system, a similar approach is possible, and thanks to this, the courts have developed a series of different "tests" to determine the application of various legal regulations valid in the employment relationship, Slovak law, like many other continental laws, on this problem still sees through the lens of the definition of an employee, which leads us to a dead end.

The platform's argument that workers are free to accept or decline assigned tasks is not entirely valid. In many cases, there is a quasi-subordinate relationship between the worker and the platform, as

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18 G. Cavallini: *The (Unbearable?) Lightness of Self-employed Work Intermediation*. Academia, Retrieved March 31, 2023. https://www.academia.edu/35106790/The_Unbearable_Lightness_of_Self_employed_Work_Intermediation

19 Cf. G. Davidov: Who is a Worker? *Industrial Law Journal,* Vol. 34., No. 1. (2005) 63.

20 Cf. J. Pavlátová: Několik poznámek k vymezení závislé práce *a* práce nelegální. In: Dana Hrabcová (ed.): *Pracovní právo 2012.* Brno, Masarykova univerzita, 2012. 44–45.

21 Cf. A. Olšovská: Ekonomicky aktívni zamestnanci. In: H. Barancová et al.: *Pracovné právo v európskej perspektíve*. Plzeň, Vydavatelství a nakladatelství Aleš Čeněk, 2009. s. 176 a nasl.

evidenced by the worker's economic dependence, integration into the business organisation, control exercised by the company, and continuity of performance. While it is true that workers can refuse specific tasks, certain conditions and restrictions often apply to them. Platforms may require workers to accept a certain number of tasks to maintain their status as active users, or they may impose certain restrictions on the types of tasks that can be accepted. In addition, platforms may require workers to accept tasks within a specific time frame or complete tasks within a certain period. The idea that workers are free to accept or reject assigned tasks is valid, but this does not necessarily mean there is no subordination. These conditions and restrictions may limit the freedom of workers to accept or reject tasks and thus may create a quasi-subordinate relationship between the worker and the platform. In almost all cases, the platform controls the type and amount of work offered to the worker, meaning it still has the power to decide how much work the worker can accept or reject. This type of control points to a relationship of subordination, as the platform has a major impact on the worker's livelihood and career. In addition, many platforms have developed complex task assignment and evaluation systems that further reinforce the power imbalance between the platform and the worker. Consequently, the reality of subordination in the worker-platform relationship cannot be ignored.

The platform's approach, according to which the worker is a self-employed person for whom platforms only mediate work, is tempting but also misleading. If we accept the traditional definition of self-employment, in this case, the opposite of the worker is the platform itself. Therefore, even if the worker works for different clients, he can be considered to continuously serve the same main client since the platform is ultimately the one that provides services to the client. Although workers may work for multiple platforms or clients, which can make it difficult to distinguish, the platforms are not brokers of work for self-employed individuals but rather the leading employers of these workers. Platforms dictate terms of work, set prices and control working conditions. The worker cannot freely negotiate the terms of employment, and the platform has the power to terminate the contract at any time. The decision-making activity of the Court of Justice of the European Union and national courts ultimately proves this.[22]

In this regard, in reality, platforms are more than just an intermediary. They are a service provider that sets the terms and conditions and provides a platform for the client to find the best worker for their needs and for the worker to find them the best job. They also provide a secure payment system, customer service, dispute resolution and other services. In short, platforms are more than intermediaries; they are service providers facilitating the negotiation and fulfilment of a self-employment contract.

In addition to the challenge, digitisation can represent an opportunity to improve the protection system for self-employed workers. Even in this seemingly precarious situation in which they find themselves, it can be said that they can claim some of their rights. The principles of private law can be

[22] Judgment of the Court (Grand Chamber) of 20 December 2017, Asociación Profesional Elite Taxi v. Uber Systems Spain SL, C-C-434/15, ECLI:EU:C:2017:981. See for that V. Križan: Uber v rozhodovacej činnosti orgánov aplikácie práva. In: H. Barancová – A. Olšovská (eds.): *Pracovné právo v digitálnej dobe*. Praha, Leges, 2017. 112–127.

fully applied to such behaviour that leads to the abuse of subjective rights arising from the contract. For example, some platforms retain the right to deactivate a user's account for various reasons. However, this authorisation can be problematic if the digital workers on that platform are considered employees and deactivating an account is considered a dismissal. However, the dismissal of an employee must be under international[23] and national legal regulations[24], which require that the dismissal be justified and follow the law.

Self-employed persons do not have the same protection as employees in many countries, and this also applies to protection against unauthorised removal from the platform. In their case, deactivation of the account may be considered as termination of the agency contract rather than dismissal. The European Union also responded to this fact when, in the upcoming Directive on improving working conditions in the field of work for platforms, it introduced a requirement for transparency and justification for exclusion from the platform.[25] Based on the upcoming regulation, platform workers should have the right to have the digital work platform explain a decision taken or supported by automated systems that significantly impact their working conditions. For this purpose, the digital work platform should allow them to discuss and clarify the facts, circumstances and reasons for such decisions with a contact person on the digital work platform. In addition, digital work platforms should be required to provide a written statement of the reasons for any decision that limits, suspends or terminates a platform worker's account, refuses to reward work performed by platform workers or affects the contractual status of a platform worker. When the explanation is unsatisfactory, or the platform workers believe their rights have been violated, they will also have the right to ask the digital work platform to review the decision. A reasoned answer must be provided within a week. If the decision has violated the rights of platform workers, digital work platforms must immediately correct the decision or, if this is no longer possible, provide adequate compensation. It should be added, however, that as far as the worker's status is concerned, if the reputation system were to "punish" inactive workers, his status would be closer to that of an employee since such a worker would have to be available to the employer.

3. Conclusion?

The rise of digital platforms and other forms of work has created new challenges for regulators, who must develop new frameworks to protect workers' social rights. These challenges include worker classification issues and enforcement of labour law in the digital realm.

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23 See e.g. Convention of the International Labor Organization on termination of employment at the initiative of the employer no. 158 from 1982 (Notice of the Ministry of Foreign Affairs of the Slovak Republic No. 172/2010 Coll.) or Art. 30 Charter of Fundamental Rights of the European Union

24 For example Art. 36 letter a) of the Constitution of the Slovak Republic

25 2021/0414(COD) Improving working conditions of persons working through digital labour platforms. European Parliament, Legislation Observatory. Retrieved April 1, 2023. from https://tinyurl.com/4wdfzat9

The definition of an employee in the digitalised world is problematic because new forms of work are not clearly defined by traditional labour legislation. The term employee is traditionally associated with the traditional employer-employee relationship, in which the employer controls and directs the employee's work. However, in the case of platform work, such as gig work and crowd work, the worker often acts as an independent contractor and has more autonomy over their work. The problematic application of labour law standards to platform workers should not lead to the conclusion that they should not enjoy any protection. Even today, when applying the principles of private law, it is possible to solve some issues that arise in the performance of self-employment carried out through the platform. However, the length of court proceedings and the status of platforms that can afford expensive lawyers raise doubts.

To distinguish between an employee and a self-employed person, we must consider factors such as work control[26], independence[27], financial security[28] or work performance.[29] However, these factors may overlap in practice, and it may not be easy to distinguish between an employee and a self-employed person.

This is also why new legislation has recently been discussed in the European Union, which should help to determine the employment relationship between platforms and their workers more precisely. In 2021, the European Commission presented new initiatives to protect platform workers and improve their working conditions. Among these initiatives is a proposal for a directive on improving working conditions in platform work to give people the right to certain minimum working conditions and social security. On 8 February 2024, the Council and the Parliament reached a provisional agreement on platform work, which was approved by employment and social affairs ministers at the Council meeting on 11 March 2024. The Directive could significantly impact platform workers' and platforms' labour rights. If the Directive were approved and implemented, platform workers would have access to some labour and social rights currently available to employees in traditional employment relationships. This could help improve the working conditions and financial situation of platform workers who are currently exposed to many risks and uncertainties.

On the other hand, however, such a directive could also harm the platforms themselves. If they had to grant their platform workers the status of employees, this could lead to an increase in wages, social benefits and insurance costs, which could increase the prices of their services and reduce their competitiveness. However, such a directive could ensure fairer economic competition and could

26 If the platform has control over the way work is performed, it can be an employee. The control may concern the time of work, the method of work and the quality of work.

27 If the worker has more independence on the platform, he is probably a self-employed person. The worker can have more control over the time and manner of work.

28 A full-time employee should have a more stable income and less risk of financial loss. A self-employed person usually has to secure his own sources of income and has greater financial insecurity.

29 A worker who must perform work at a certain time and place can be considered an employee. A self-employed person has more freedom in deciding where and when to work.

support the emergence of new business models based on fairer working conditions for platform workers.

Generally, an employee in the digital world works for an organisation in exchange for remuneration, but the specific criteria that define this relationship may vary. Some legal systems may consider a worker an employee if they meet specific criteria, such as the degree of control the employer has over the work, the degree of independence of the worker, or the degree to which the worker is integrated into the organisation's work activities. Other legal systems may require a more nuanced approach, considering the specific characteristics of the given platform. Also, the definition of an employee in the digital world is still evolving and may depend on the specific context and jurisdiction in which the work is performed.

In the case of works mediated by digital platforms, it should be carefully examined whether the content of the relevant relationship does not indicate the existence of dependent work. According to the Employment Relationship Recommendation, 2006 (No. 198), members should consider the possibility of defining in their laws and regulations, or by other means, specific indicators of the existence of an employment relationship. Those indicators might include (a) the fact that the work: is carried out according to the instructions and under the control of another party; involves the integration of the worker in the organisation of the enterprise; is performed solely or mainly for the benefit of another person; must be carried out personally by the worker; is carried out within specific working hours or at a workplace specified or agreed by the party requesting the work; is of a particular duration and has a certain continuity; requires the worker's availability; or involves the provision of tools, materials and machinery by the party requesting the work; (b) periodic payment of remuneration to the worker; the fact that such remuneration constitutes the worker's sole or principal source of income; provision of payment in kind, such as food, lodging or transport; recognition of entitlements such as weekly rest and annual holidays; payment by the party requesting the work for travel undertaken by the worker in order to carry out the work; or absence of financial risk for the worker. Moreover, to facilitate the determination of an employment relationship, members should, within the framework of the national policy referred to in the Recommendation, consider the possibility of providing for a legal presumption that an employment relationship exists where one or more relevant indicators are present.

Although the draft of the Directive grants certain rights to platform workers, it does not regulate their status or labour law status. Likewise, it does not regulate the scope of labour law as such, the subject of which is, after all, the performance of dependent work. In that case, will we also consider a person who does not work as an employee, or will we redefine dependent work? The draft of the Directive considers a platform worker to be *"any person working for a platform who has an employment contract or is in an employment relationship, as defined by legislation, collective agreements or customary practice in force in the Member States, taking into account the case law of the Court of Justice"*. In the example of the Slovak Republic, which subsumes under labour law

relations only relations during the performance of work that cumulatively meets the characteristics of dependent work, it can be shown that the inclusion of such a worker under an employment contract or labour law relationship – taking into account the long unsuccessful Czech and Slovak attempts to suppress the so-called *"švarcsystém"*[30] – can be problematic. So that digital workers are not excluded from social protection in cases where they cannot be classified as employees according to labour law, it may be necessary to create a new category of workers who do not fall under the current division into dependent and independent work or to redefine the work that falls under the regulation of labour law in such a way as to take into account the worker's economic dependence on his employer. It should be a category of economically dependent employees (economic contractors), which should fall under the scope of labour law.

Just as at the beginning of the 19th century, the fundamental social issue – the conflict between labour and capital – was solved in favour of labour; the same should be done in the current period of emerging digitalisation. The opposite approach – prioritising capital over work – is not correct or moral and contradicts the efforts to humanise labour relations and related efforts for decent work.

30 The system is named after Miroslav Švarc, a Czech businessman and tax evader who invented and popularized this system in the 1990s. Švarcsystém is a method of economic (earning) activity in which self-employed persons work for an employer based on self-employment. They perform the same activities as employees in an employment relationship, work in a superior-subordinate relationship, and go to work regularly at the same place and at the set time. Unlike employees in an employment relationship, the employer does not pay social and health insurance contributions for these self-employed persons, but these payments are on the shoulders of the self-employed person. Švarcsystém has expanded mainly in the areas of services, construction, and catering, but also in the IT sector with programmers, marketers, and other areas. Despite the introduction of a legal definition of dependent work in 2007, which was supposed to help combat this negative phenomenon of *"forced self-employment"*, it still occurs in application practice.