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The case of a platform worker before the Hungarian Court

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According to Daniel Bell the transformation of a productive society sensitive to the production of goods began in the 1960's. The so-called information and knowledge society came into being in this post-industrial turn where, due to the use of new technologies, the production of information goods became the engine of economics.[1] Interpreting the term of information society might be difficult, since a universal concept of social scientific approaches has not been created, thus there is no generally accepted definition for the subject.[2] In order to make an interpretation we need to choose an approach of understanding, as it can be defined differently by the otherwise indistinctive economic-employment, political and cultural pillars[3], nevertheless informatics, anthropology, sociology, political science and jurisprudence all relate to the matter according to different paradigms.[4]

From the point of view of our actual topic, information society can be related to such technological development[5], thanks to which the created materialized tools and programs developed, enhance human ability, or on the contrary, render them needless, in such a way that the execution of tasks, which could not be carried out otherwise without the help of these tools, becomes available. The possibility of developing physical tools with computers and later the production of information in a digital form[6] came into our information society as an inherent element of technological development. As a result of this, interaction between people switched from a traditional analogous world into a digital sphere.[7] The extraordinary rate of information-flow in economic, political and cultural processes is required by the pace of the production of information goods, since nowadays the operation of the society without the production, spreading and delivery of information is unimaginable.[8]

Owing to the constant development of info-communication technology based on the achievements of the third industrial revolution such innovative solutions have

[1] Bell Daniel, The Coming of Post-Industrial Society, Basic Books, 1976 [1973] p. 487.
[2] Vajkai András, Az információs társadalom pillérei (1.rész), (Infokommunikáció és Jog, 2007/4., (20.), p. 129. [Pillars of the information society] (Part 1), [Infocommunication and law, 2007/4., (20) p. 129
[3] Ződi Zsolt, Az információs társadalom és a jog, (Gazdaság és Jog 2002/7-8., p. 25.) [Information society and the law, Economics and the law]
[4] Szathmáry Zoltán, Bűnözés az információs társadalomban, Alkotmányos büntetőjogi dilemmák az információs társadalomban [Crime in the information society, Constitutional Criminal law dilemmas in the information society], Phd dissertation, Budapest, 2012, p. 15.
[5] Avornicului Mihai and Seer László and Benedek Botond (2016) Identitás a XXI. század információs társadalmában, az internet hatásai [Identity in the information society of the 21st century, effects of the internet], Logisztika - Informatika - Menedzsment, 2016 (1). p. 70.
[6] Dr. Görög Katalin, Fogyasztói jog az információs társadalomban [Consumer law in the information society] Magyar Jog, 2003/8., p. 507.
[7] Blahó, András, Czakó, Erzsébet, Poór, József, Nemzetközi menedzsment [International management]
[8] Szathmáry Zoltán, A számítástechnikai bűncselekmények és rendszertani elhelyezésük [Computer-related offences and their taxonomic classification] Jogtudományi Közlöny [Law journal] 2012/4., p. 169.

been born that led to the fourth industrial revolution the main characteristics of which are mass production, communication devices, the establishment of autonomous robots, the development of decentralized production networks and fragmented supply chains.[9]

At the same time, technical development resulted in the fact that by now our daily life is driven by computerised solutions, which have brought with them distinctive changes and have now become an indispensable tool of working life. [10]Added to this is the fact that during the pandemic period the so far seemingly distant IT improvements suddenly became part of our everyday lives.

As for the process, the question, what role should the lawmaker take, arises inevitably. Should they let the digital reshaping take place and then codify the developed state or should they proactively take part in shaping the direction of the evolution by regulating the occurring problems with legal means? The first approach is supported by the fact that in this way ad hoc lawmaking can be prevented so that it can give its assent to the structure previously set and regulated by the market. In comparison, the second approach, from the point of view of lawmaking, has a greater risk: lawmaking in the early stages of evolution undoubtedly raises the possibility that certain provisions might have to be revised and reconsidered in the future. On the whole, according to our position the second approach should be followed. Apparently, lawmaking based on the analysis of short periods carries risks. Nevertheless, as shown in the case presented at the end of our article, the lack of regulation or the lawmaker's failure to act may lead to the consequence that legal entities in need of legal protection end up in a vulnerable situation for a relatively long time and whether they can protect their rights is up to the maturity or courage of judicial practice.

Therefore, this article aims to urge the lawmaker to regulate the field of platform work for the sake of the management of the labour market.

In our study, we intend to examine what impact constantly evolving technological improvements have on law, or more accurately, on jurisprudence- typically following a rapidly responding practice- and what answers it can give on these changes. We consider the analysis of this process very crucial, because we hypothesise that legal responses to IT solutions have a developmental role in themselves. This is because the establishment of legal frameworks essentially shapes practice, even if technological sciences, which provide the foundation of this, anticipate jurisprudence in a technical sense.

In our study we are going to pay particular attention to the first Hungarian so-called "platform lawsuit", where the court had to take a stand on the legal relationship of a food delivery man.

[9] Török Emőke, Munka és társadalom – A munka jelentésváltozásai a bérmunkán innen és túl [Work and society – Changes in the meaning of work inside and beyond wage employment] L'Harmattan Publishing house, Budapest, 2014. p. 109.

[10] Dobos-Bunford Krisztina, A rugalmas munkavégzés és digitalizációs megoldások a versenyszféra egyes intézményeiben [Flexible working and digitalization solutions in some competitive institutions], Magyar Jog [Hunagrian law], 2021/7-8., p. 481.

I. Digitalization and the law

Jurisprudence had to come up with a reaction on the "computerized" and "digitalized" transformation of the society. If we imagine our present IT, digitalized society as a huge chessboard on the surface of which there is continuous play, it is not from the devil to say that digitalization pervading our society, is winning out against legislation.

The relationship of the law and law-digitalization is the outcome of a decades-old evolution. The penetration of digitalization into the society is such a process which has been equally promoted by globalization, market economy and the governing norms of the legislator. The production, spreading and delivery of information goods can hardly be upheld on a nation-state level, with special regard to the organization of the European Union, and the objectives stipulated in its founding deeds (globalization). When interpreting available norms that formulate legal frameworks, it can be seen that they are not "nation-state specific" in their content, thus it is impossible to keep up the directions within the state borders. As a consequence of the effect of globalization on law, legislators while making norms, do not expressly react on breaches of law and do not manage the ex-post settlement of legal remedies, but they promote the achievement of concrete goals in such a way that they require a particular conduct from legal entities (compliance). [11]Due to the rapid spread of information goods and the use of tools created as a result of technological progress, law and related services have become part of the market. Legal service has become an activity pursued with large-scale methods, automatization, outsourcing, reasonable work-management and assembly line-like mass-operations (marketing).[12]

Initially, the effect of digitalization on the law manifested itself in the fact that the exchange of information was carried out without paper, happened digitally on the internet with the use of a device appropriate for the purpose.[13] Later on, we got acquainted with the process of automation peaking in public law norms. Nowadays, it is expressed in the administration of justice completely pervading the legal relationships of the parties in the field of Private law and Labour law and which brought about the manifestation of digitalization in the competitive sector.

According to Zsolt Ződi, due to digitalization, the future image of the law, is being shaped along a phenomenon called five "subversive tendencies" having an effect on all legal areas. [14]Ződi is the first one to mention the Big Data phenomenon, which is about the constant production, storing and use of data and their effect on information

[11] Ződi Zsolt: A digitalizáció hatása a jogászi szakmára [The impact of digitalization on the legal profession], Gazdaság és Jog 2018/12., p. 3.
[12] Ződi Zsolt: A digitalizáció hatása a jogászi szakmára [The impact of digitalization on the legal profession], Gazdaság és Jog, p. 4.
[13] Vámosi Vivien Cintia, Digitalizáció és büntetőjog, különös tekintettel a pénzmosás bűncselekményre [Digitalization and Crimal law, in particular with regard to the offence of money laundering], Miskolci Jogtudó, 2022/3., p. 90.
[14] Ződi Zsolt, A digitalizáció hatása a jogászi szakmára [The impact of digitalization of the legal profession], p. 5.

society.[15] The relationship of this phenomenon and the law can be studied from various aspects: in the first place, considering the Big Data as the subject to legal regulation; furthermore, as a means in the hand of legislators and the law enforcement authorities; in addition, as the object to jurisprudence; and finally as a possible new method of jurisprudential researches. [16]

It is not a far cry from reality to say that we are living in the age of artificial intelligence and robots, which completely imbue our lives. Artificial intelligence (in short AI in English, and MI in Hungarian) is the ability of a digital computer or a computer-controlled robot, to undertake such tasks which are typically associated with intelligent entities. [17]Thus, AI is an algorithm undertaking such cognitive operations, which can adapt to the external environment, therefore, is capable of learning. Artificial intelligence in a narrower sense differs from AI as it has a certain form of physical appearance.[18] By now, AI has completely transformed our life. The goal of our actual study is not to give a comprehensive overview of AI having an impact on the law, however when considering issues related to Labour law, certain phenomena, like programming robotic workforce, HR robots and the delegation of the employer's rights to AI, can arise. [19]

Pursuing the classification by Zsolt Ződi, the following can be listed under subversive tendencies: embedded rules, self-executing algorithms and smart contracts. Concerning this phenomenon, it is crucial to mention that rules stored on computers are similar to legal norms, therefore, legal rules appear on computers in the form of codes, let us just consider that in business management software the coding of accounting and labour law norms can be recognized. Legislation and the execution of law must catch up with this phenomenon, since the transformation of legal norms into automatized codes (e.g. company registration) can raise several problems.[20] Converting legal provisions into codes can be detected in private law-relationships too. Drafting contracts in an electronic way has become extremely frequent. Nowadays, an agreement which is established in an electronic form bearing a computer code, can be executed by the usual legal means.[21] Accordingly, the phenomenon of digitalization has had an impact on the administration of justice, as the legislator recognized that the traditional

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[15] Ződi Zsolt: Big Data a jogtudományban és a jogalkalmazásban [Big Data in Jurisprudence and in law enforcement], Közjegyzők Közlönye, 2019/1., p. 23.

[16] see more Ződi, Zsolt, Jog és jogtudomány a Big Data korában [Law and Jurisprudence in the age of Big Data], Állam és Jogtudomány, 2017/1., pp. 95-114.

[17] Dr. Katona Csaba: Felválthatja-e a bírákat a mesterséges intelligencia? [Can artificial intelligence replace judges?], Jogászvilág internet magazine, 2023. https://jogaszvilag.hu/szakma/felvalthatja-e-a-birakat-a-mesterseges-intelligencia/

[18] Ződi Zsolt A digitalizáció hatása a jogászi szakmára [The impact of digitalization on the legal profession], p. 7.

[19] see more Mélypataki Gábor, A mesterséges intelligencia munkajogi és munkaerőpiaci hatásai. Lehet-e a mesterséges intelligencia főnök? [The impact of artificial intelligence on labour law and the labour market. Can AI be the boss?] Infokommunikáció és Jog, 2019/2. (73.), pp. 10-14.

[20] Ződi Zsolt, A digitalizáció hatása a jogászi szakmára [The impact of digitalization on the legal profession] p. 7.

[21] Szuchy Róbert, A kötelmi jog kihívásai az új technológiák nyomán - okosszerződések és a blokklánc-technológia [The challenges of Contract law in the wake of new technologies -smart contracts and blockchain technology] Glossa Iuridica, 2019/1-2., p. 151.

written form has been gradually replaced by digital smart contracts and, in line with this process, by pieces of evidence available in digital form, which has raised various questions in legal dogmatics, causing uncertainties in the administration of justice. Owing to the importance of private law relationships, raised by the matter, the Advisory Board of the Curia commenced examinations. As for the practical application of Section 6:7 (3) of Act V of 2013 of the Civil Code[22], the "majority" of the Board took a position according to which, legal declarations made in an electronic form, or even via an electronic letter, can comply with the requirements of the written form, if *"the form of declaration and communication in question, is capable of reproducing the content without changing it, and identifying the maker and the time of the declaration."*[23]

Currently, the most often invoked blockchain technology may also present jurisprudence with challenges, since it is about such a divided database through which contracts can be made with the exclusion of fraud and the possibility for modifications. The technology is based on the fact that the constantly growing data-blocks, and transactions can be registered both within the blockchain or (temporarily) outside of it, with the help of so-called secondary (tertiary etc.) layers that exist besides the blockchain. With the help of the blockchain technology any assets can be transferred and legal transactions can be established through the internet confidentially and securely in almost real time, without the cooperation of a third party.[24]

As one of the products of the fading of personal interactive relations, the birth of information society required the development of online platforms. The conceptual classification of these computerized programs can take various forms. The expression of 'online (or digital) platform', in the lack of an autonomous and universally accepted definition, is used to describe a wide range of services available on the internet, including marketplaces, search engines, social media, creative content providers, app stores, communication service providers, payment systems and many more.[25]

According to Zsolt Ződi, these platforms are *"websites, which connect people to other people and/or other resources with the help of data streams driven by algorithms, and to which an appropriately huge number of users are connected in order to have a significant social impact."*[26] Zsolt Ződi understands the structuring of online platforms on two levels. He distinguishes

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[22] Pursuant to Section 6:7 (3) "A juridical act shall also be considered written if it has been presented in a form that allows for the content being properly recalled in and for the person who made the statement and the time when the statement was made being identified."

[23] The position of the Advisory Body of the Curia concerning *"the requirements of written form for juridical acts" applicable under section 6:7 (3) of the Civil Code*, see https://kuria-birosag.hu/hu/content/jognyilatkozat-irasbelisegenek-kovetelmenyei-ptk-67ss-3-bekezdesenek-az-alkalmazasaban

[24] Szuchy Róbert, A kötelmi jog kihívásai az új technológiák nyomán - okosszerződések és a blokklánc-technológia [The challenges of Contract law in the wake of new technologies -smart contracts and blockchain technology] Glossa Iuridica, 2019/1-2., p. 157.

[25] Dr. Papp János Tamás, A közösségi média platformok szabályozása a demokratikus nyilvánosság védelmében [The regulation of social media platforms to protect the democratic public] PhD. dissertation, 2021, p. 16.

[26] Ződi Zsolt, Platformok, robotok és a jog [Platforms, robots and the law] Gondolat, Budapest, 2018, p. 103.

the so-called horizontal platforms[27], which he identifies as online ecosystems, in other words, websites cooperating with one another, web infrastructures and systems of services. Besides, he identifies vertical platforms too, which he places in the business sphere. In his understanding, vertical platforms have completely subverted the economic sectors and they connect supply and demand by involving the resources of everyday people into the supply side.[28]

II. The effects of digitalization in labour law

It is natural that digitalization gained ground rapidly in the world of labour law as well. The reason for this is that in many cases, communication and command and control as well, have greatly been revolutionized by digitalization. In other words, it placed such a means into the hands of employers that was unimaginable earlier. It turned out, relatively soon, that the enhancement of efficiency has its price: the protection of personal rights set obstacles to enhancing control. As for home-office work, we can talk about severe healthcare and psycho-social hazards, in addition to which the need has arisen for a balance between working and private life and for "the right to go offline".[29] Thus, the digitalization of labour law is challenging the everyday limits of employment, providing a greater latitude to employees and employers alike and, by this, rendering the entirety of the employment relationship more elastic.[30] Evaluating the rights and obligations of the characters of today's more elastic employment relationships has become pretty complicated, as a result of which more attention is paid to lawmakers due to cries by academic literature to provide a remedy for the actual situation.

In the opinion of György Lőrincz, *"the character of employment"* referred to as atypical *"is basically affected and transformed"* by technological development *"in such a way that the personal contact of the subjects of the legal relationship is pushed into the background. The personal relationship of the employee and the employer is replaced by a relationship between the employee and the digital environment. An additional change, necessarily affecting the content of regulation, is the loosening of the constraints (primarily of the place and time) of working.*[31]

The technological development of mankind is practically provoking the progress of jurisprudence. Due to the growing increase of computerized processes, already back in 2000 Zoltán Bankó, in his article, made a remark on the fact that the achievements of the 20th century can allow the employee to perform their tasks without

[27] Ződi Zsolt: Az információs társadalom legújabb kihívásai a jog számára - Horizontális platformok [Recent challenges for law in the information society], Gazdaság és Jog [Economics and law] 2017/9., p. 27.

[28] Ződi Zsolt: Az információs társadalom legújabb kihívásai a jog számára [Recent challenges for law in the information society] Gazdaság és Jog [Economics and law] 2018/1-2., pp. 41-46.

[29] Rácz Ildió PhD

[30] Dobos-Bunford Krisztina: A rugalmas munkavégzés és digitalizációs megoldások a versenyszféra egyes intézményeiben [Flexible working and digitalization solutions in some competitive institutions], Magyar Jog [Hungarian law], 2021/7-8., p. 481.

[31] Dr. Lőrincz György, Kommentár a munka törvénykönyvéről szóló 2032. évi I. törvényhez Munkajogi sci-fi [Commentary to Act I ont he Labour Code, Labour law sci-fi] Munkajog [Labour law], 2018/4., pp. 1-2.

being present in their workplace in a condition fit to work.[32] As a result of the unprecedented growth of technological development, there is a growing need for the intervention of legislature and, in the lack of that, of law enforcement, to tip the balance in legal dogmatic disputes, since in the view of academic literature, digitalization is reshaping employment to a lesser or greater degree.[33]

István Horváth and Zoltán Petrovics summarized the impact of digitalization on labour law from three particular aspects. In their understanding, thanks to digitalization, the traditional workplace gets replaced with (where work conditions render it possible) a location, separate from the employer, by applying the atypical "teleworking" in everyday work context, or "home-office" work, which is not explicitly regulated by the labour code. Automation and robotics render certain scopes of activities unnecessary, or they change work conditions and new forms of dependant work come into being that do not fit in the category of employment relationships.[34]

In connection with the above discussion of Horváth and Petrovics, we must mention those computerized circumstances which cannot factually fit into any of the above list, or on the contrary, can fit with all three points of it. In itself, the digitalization of certain labour law processes is crucial, which might result in the termination of some jobs, but at the same time it may render the performance of certain tasks within the jobs easier. With regard to the relevant permissive rule in section 24 (2) a) of the Labour Code[35], a multitude of corporations established declaration processes in electronic form, in order to optimize employment-relation procedures. A great deal of employers make use of various applications, the development of which was given rise, on the one hand, by the need to facilitate the work of employees, and on the other hand to widen the possibilities of employers to organize and control work.[36] Such an application, for instance, is the fleet tracking system in the case of employees using company vehicles for work purposes, or other supporting solutions for the employer to access their computer systems from a distance.[37]Naturally, it logically follows that the employer is required to have a basic knowledge of communication devices and modern technologies. The digitalization of work processes is required by both the employee and the employer. In case of the employee, the earlier nature of employment can take different forms, as rights and duties can be exercised and performed in a more transparent way.[38]

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[32] Bankó Zoltán, Távmunka - az információs társadalom munkajogi kérdései az Európai Unióban és Magyarországon [Teleworking- Labour law issues of the information society in the European Union and Hungary], Jogtudományi Közlöny [Law gazette], 2000/6., p. 220.

[33] Brynjolfsson, Erik–McAfee, Andrew, The Second Machine Age. Work, Progress, and Prosperity in a Time of Brilliant Technologies. W.W. Norton&Company, New York–London, 2014, p. 8.

[34] Horváth István – Petrovics Zoltán, Digitalizáció a munkában: táguló horizontok joghézagokkal[Digitalization at work: Expanding horizons with legal loopholes], Pro Futuro; 2021/2. p. 62.

[35] Act I of 2012 on the Labour Code

[36] Dr. Czirók Andrea - Dr. Nyerges Éva. Digitalizáció a munkajogban II. Távmunka a gyakorlatban [Digitalization in Labour law, Teleworking in practice] Munkajog [Labour law], pp. 34-38.

[37] Dr. Necz Dániel, Applikációalapú munkavégzés a gyakorlatban [Application-based working in practice], Munkajog [Labour law], 2018/3., pp. 39-40.

[38] Dobos-Bunford Krisztina, ibid 482.

III. Automation and robotics in labour law

The further development of technology may eventually lead to a situation where the above-mentioned digitalization of the work process falling outside the areas outlined above by Horváth and Petrovics, which also assists human activities, results in the termination of an entire job.

By now, it has become commonplace in labour law to say that digitalization has the effect, although not with an ultima ratio character, of replacing human workforce[39], or it has a fully "busting" effect on certain tasks. Jácint Ferencz uses a neat film analogy according to which, robots are capable of learning anything anytime so fast that the human mind cannot cope with this factor.[40] This might explain why there is a growing need on the part of companies to replace human workforce with robots, that is to "robotize" the employees' tasks.[41] In this regard, Horváth and Petrovics talk about Robotic Process Automation (RPA), in which processes that can be standardized are pursued by software robots, as a result of which the employer dealing with administrative tasks is replaced by a software robot.[42]

At this point we have to mention how artificial intelligence penetrates into the area of labour law, since ultimately, robotized work processes are governed by AI. Thus, these two interweave[43] and can become the subject for our examination.[44] Although, the labour law aspects of AI are in their infancy yet, academic literature has started to pursue a study on such labour law areas where its intervention may raise problems.
Owing to the existing subordination in the employment relationship, the employer's powers of control, their measure and their competence, as required issues, have a great significance.

IV. The change of the place of work; "teleworking" and "home office"

As a consequence of the development of telecommunication and computer technology, the majority of tasks within a job, can be performed on a telecommunication device, which offers an alternative work organization method for the employer. Thanks to the COVID-19 pandemic the place of work distances itself

[39] Mélypataki Gábor, A robotizáció munkajogi és foglalkoztatáspolitikai kihívásai [The challenges of robotisation in labour law and employment policy] Infokommunikáció és Jog [Infocommunication and law, E-special edition] 2020

[40] Ferencz Jácint: Man vs. Robot – Vision of the modern luddism in. Law 4.0 – Challenges of the Digital Age ed. Glavanits Judit – Király Péter Bálint, vol. I, Győr, 2019, p. 27.

[41] see more Jakab Nóra, Robotika és a jog - A robotika munkajogot érintő kapcsolódásai, különös tekintettel a munkavállalói jogalanyiságra II [Robotics and the law - The links of robotics to labour law, with a special focus on the legal personality of employees II], Miskolci Jogi Szemle [Miskolc law review], 2020/2., pp. 7-20.

[42] Horváth István – Petrovics Zoltán ibid p. 65.

[43] Ződi Zsolt: A robottanácsadók jogi problémái: hogyan szabályozzuk a robotokat? [Legal problems for robot advisors: How do we regulate robots?] Állam és Jogtudomány [State and jurisprudence], 2020/4., p. 108.

[44] Jakab Nóra, 2020: Robotika és a jog – A robotika munkajogot érintő kapcsolódásai, különös tekintettel a munkavállalói jogalanyiságra I. [Robotics and the law - The links of robotics to labour law, with a special focus on employees as subjects of law I], Miskolci Jogi Szemle [Miskolc Law Review], 15/1, p. 52.

from the employer. New jobs have come into being, demanding alternative regulations and the adoption of atypical work forms have been spread. "Home office" work has expanded more and more as well as complete or partial telework, which is based on an express agreement.[45] It is a peculiar increment of digitalization that in the labour community the usual human interaction at the workplace has narrowed down, however at the same time, considering the nature of telework and "home office" work, a tighter fiduciary relation is assumed between the subjects of the employment relationship. [46]

The performance of tasks in the form of telework casually, partially or continuously[47] took place and is still taking place behind the desk, the product of which can be forwarded in electronic form.[48] The classification of the legal institution of "home office", which became so popular as a result of the pandemic, initially faced difficulties, as it was not defined and regulated on the legislative level and, in practice, work was carried out from home in the lack of a written agreement.[49]

For a long time, the distinction between telework and "home office" was considered quite differently by academic literature. In the following we are going to highlight the two most prominent positions. Lajos Pál was among the first ones to have a discourse on the legal possibility to establish "home office"[50]. In his understanding, work at home can be carried out in such a way that the employer, under a commitment made under section 16 of the Hungarian Labour Code, transfers the right to the employee to choose the place of performance. The ideas formulated by Lajos Pál have been shared by Zoltán Bankó too.[51] Contrary to these thoughts, other such viewpoints were published, according to which the feasibility of working from home could be found in an employment-related legal institution other than the employment contract. According to Gyula Berke[52] home office is the product of emergency legislation. Previously, its legal basis was provided by section 53 of the Labour Code, namely, an employment other than one based on an employment contract, in case it was established

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45 Ferencz Jácint, Atipikus foglalkoztatási formák [Atypical forms of employment]. Dialóg Campus, Budapest-Pécs, 2015. p. 87.

46 Bankó Zoltán: Távmunka - az információs társadalom munkajogi kérdései az Európai Unióban és Magyarországon [Teleworking- Labour law issues of the information society in the European Union and Hungary], Jogtudományi Közlöny [Law gazette], 2000/6., pp. 223-224.

47 Forgács Tamás, A távmunka elmélete és gyakorlati alkalmazásának lehetőségei[The theory of teleworking and the possibilities of its practical application], PhD thesis – University of Pécs, Faculty of Economics, Regionális Doctoral School of Politics and Economics, Pécs, 2009.

48 Dr. Czirók Andrea - Dr. Nyerges Éva, Digitalizáció a munkajogban II. Távmunka a gyakorlatban [Digitalization in Labour law, Teleworking in practice] Munkajog [Labour law], 2018/4., pp. 42-43.

49 Cséffán József, A Munka Törvénykönyve és Magyarázata [The Labour Code and its explanation]. Szegedi Rendezvényszervező Kft., Szeged, 2014. p. 550.

50 Pál Lajos, A szerződéses munkahely meghatározása - a "home office" és a távmunka [Definition of the contract workplace – "home office and teleworking]. Munkajog [Labour law], 2018/2., pp. 58-59.

51 Sipka Péter, A munkáltató felelőssége az otthoni munkavégzés során [The employer's responsibility when working from home], in ed. Pál Lajos - Petrovics Zoltán, Visegrád 17.0 - A XVII. Magyar Munkajogi Konferencia szerkesztett előadásai [Visegrád 17.0 – Edited presentations of the XVII Hungarian Labour law conference] Wolters Kluwer, Budapest, 2020. 119., Bankó, ibid. 2020. 359-360., Bankó, ibid 2019. p. 27.

52 Berke Gyula, Munkajog veszélyhelyzetben, [Labour law in emergency], in ed. Pál Lajos - Petrovics Zoltán, Visegrád 17.0 - A XVII. Magyar Munkajogi Konferencia szerkesztett előadásai [Visegrád 17.0 – Edited presentations of the XVII Hungarian Labour law conference], Wolters Kluwer, Budapest, 2020, pp. 34.

by a unilateral arrangement. Similar to this is Bence Molnár's[53] approach, according to which "home office is just a designation and, in practice, it means work carried out at a place other than the usual place of work." Henriett Rab and István Herdon share this opinion.[54]

Considering "home office" and the recognition of the fact that this form of work was not dealt with by the then effective labour law, a need emerged for some legislative regulations. Rules relevant to telework were amended by bill T/17671[55] of the legislator in such a way that "home office" was not raised to the level of a standalone sui generis legal institution, instead the category of telework was expanded.[56] Thus, the practical separation of employment forms has been still left for the court.[57]

Based on the experience of the last few years, we can see that the rules of working from home have been established de facto via the available labour law means, primarily as a result of the market pressure. With special regard to the most sensitive points of this form of work, that is, health and safety protection, measuring the working hours and the control over the employee, employers elaborated individual solutions in compliance with their organizational culture and size. Within the above framework they can apply this form of employment partially or entirely, this way minimizing legal risks. It leads us to the conclusion that legislation did not effectively contribute to the establishment of working from home in a generative way, it merely codified the already developed status of the workforce market.

V. The expansion of the segments of employment

There is a consensus in academic literature in respect of the fact that the turnover of the classical employment environment is the increment of digitalization, where the ordinary labour law dogmas cannot prevail, or else these rules have to prevail in a different way.

Adapting to technological changes, besides the traditional employment forms, more and more new forms come into being. The 2019 report of the OECD, prepared in this topic, distinguished six new types of employment form: platform-based employment; self-employment (entrepreneur without an employee); employment based on a definite or flexible contract; employment based on a typically part-time contract,

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[53] Molnár Bence, Gondolatok a home office-ról általában és vírus idején [Thoughts on home office in general and during the virus]
Magyar Munkajog E-folyóirat [Hungarian Labour law – E-journal] 2020/1. p. 38., http://hllj.hu/letolt/2020_1/03_MolnarB_M_hllj_2020_1.pdf (2021. augusztus 18.).

[54] Herdon István - Rab Henriett, Megvalósítható-e jogszerűen a home office? A home office fogalmi ismérvei és munkajogi keretei [Is home office legally feasible? The concept and labour law framework of home office], Pro Futuro, 2020/3.

[55] Act CXXX of 2021 on certain regulatory issues related to emergency situations

[56] Szekeres Bernadett, A home office dilemmái a távmunka régi és új szabályai tükrében[1] [The dilemmas of home office in the light of old and new rules on teleworking], Infokommunikáció és Jog [Infocommunication and law], 2022/1., (78.), pp. 25-26.

[57] Dr. Kárpáti Csenge, "Home office" napjainkban - Az otthoni munkavégzés jelensége, széles körű elterjedésének munkajogi vetületű problémái ["Home office today" – The phenomenon of working at home and the problems of its widespread use in Labour law], Munkajog [Labour law], 2022/2., pp. 30-31.

containing indefinite working hours; other forms of part-time work; and other forms of casual employment.[58]

According to the report of the European Commission, due to technological development, the workforce market has been going through a transformation based on extensive tendencies the elements of which are the globalization of the workforce market through outsourcing, the polarization of workplaces and the formation of extraordinary employment segments.[59]

Non-classified forms of work that generate changes in the workforce market, impact on economic transformation and can be carried out on the internet, via various applications and online platforms, in which different approaches to resource distribution and forms of large-scale employment can be seen, have plenty of definitions in international academic literature, often used as synonyms.[60]

In her PhD. dissertation, Ildikó Rácz intended to summarize these conceptual approaches. In her understanding, conceptual definitions are bidirectional, that is, on the one hand they emphasize the impact on economics and on the other hand, they are definitions capable of describing new work forms.

Regarding the concept called "crowdsourcing", the terms collaborative economy, digital economy, gig economy, platform economy, on-demand economy and sharing economy are mentioned.

Based on the research carried out by Eurofund, the term "platform work"[61] has spread as a form of performing work, which is referred to as "virtual work"[62] by Erika Kovács, and defined as "internet-based" work performance[63] by Tamás Gyulavári, , within which academic literature distinguishes by considering who the addressees of particular (sub)tasks disclosed and performed exclusively on online platform are. According to Eurofund the main characteristic of platform work is that work is outsourced through online platforms often broken down into subtasks, with services provided on demand.[64]

If on online platforms an indefinite crowd of people are addressed to carry out tasks, which in this case is work requiring particular special knowledge, we talk about

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[58] OECD (2019), Policy Responses to New Forms of Work, OECD Publishing, Paris

[59] Codagnone, Cristiano – Abadie, Fabienne – Biagi, Federico, The Future of Work in the 'Sharing Economy'. Market Efficiency and Equitable Opportunities or Unfair Precarisation? Institute for Prospective Technological Studies, JRC Science for Policy Report EUR 27913 EN

[60] Makó Csaba – Illéssy Miklós – Pap József, Munkavégzés a platformalapú gazdaságban. A foglalkoztatás egy lehetséges modellje? [Working in the platform-based economy. A possible model for employment?] Közgazdasági Szemle [Economic review], 67. 2020. pp. 1112–1129.

[61] Eurofound, Employment and working conditions of selected types of platform work, Publications Office of the European Union, Luxembourg, 2018.

[62] Kovács Erika, Regulatory Techniques for 'Virtual Workers', Hungarian Labour Law E-Journal, 2017/2. pp. 1-2.

[63] Gyulavári Tamás: Hakni gazdaság a láthatáron: az internetes munka fogalma és sajátosságai [Gig economy on the horizon: the concept and characteristics of internet work], Iustum Aequum Salutare, 2019/1., 25-51., 26. old

[64] Rebecca Florisson - Irene Mandl (Eurofound): Digital age. Platform work: Types and implications for work and employment - Literature review. Working paper, Eurofound, 2018. https://www.eurofound.europa.eu/sites/default/files/wpef18004.pdf (2022. november 19.).

"crowdwork".[65] The expression "crowdwork" or "crowdsourcing" was first mentioned in the magazine Wired following Jeff Howe.[66] *"To simply define it, crowdsourcing covers such an activity, when a business or organization outsources a function, earlier performed by its employees, to a not precisely defined (typically big) group in form of a public invitation. The task can be performed as joint work, or it is also typical that it is carried out individually. Though, public invitation and the huge network of potential participants are crucial conditions."*[67] Technically, "crowdwork" is about the outsourcing of micro and macro tasks on an online platform for and among natural persons, who are not employees.[68]

If work perceived in an everyday sense, offered by an online platform that is downloaded on the mobile phone, is addressed to a particular person (contracting party) we talk about application-based work.[69] In case of app-based work, work is carried out in the traditional sense, with powers of management and control being reserved. [70] The digital marketplace has a significant role in arranging the business between the client and the service provider.[71] The idea is that the distribution of means available shall happen on market grounds and that utilization shall be continuous and assured. During app-based work performance, traditional services are put up for sale, but the service is not provided and the product is not sold in the usual way, since the interaction between the client and the service provider is materialized via governed and controlled computer processes.

VI. On platform work in general

The present paper focuses on platform work, without venturing on to explore the differences between its two large segments mentioned above.

The most common characteristic of platform work is that, in contradistinction to two-party obligations that may be considered classic, it involves three or more actors[72]. Its specificity in a private law sense derives from the fact that the relations between the online platform operator, the platform worker and the client involved in the legal relationship, as a whole or in separation, may be evaluated based on the characteristic criteria of different legal relationships. Typically, the rights and obligations

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[65] Gyulavári Tamás, Internetes munka a magyar jogban – Tiltás helyett szabályozás? [Internet work in Hungarian law - Regulation instead of prohibition?], Pro Futuro, 8. 2018/3. 84.

[66] Tóth Hilda: Az algoritmikus menedzsment a platform alapú munkavégzésben [Algorithmic management in platform-based work], Miskolci Jogi Szemle [Miskolc law review], 2022., 1. Special edition, pp. 449-450.

[67] https://hu.wikipedia.org/wiki/Crowdsourcing

[68] Irene Mandl - Maurizio Curtarelli - Sara Riso - Oscar Vargas Llave - Elias Gerogiannis, New forms of employment. Eurofound, Publication Office of the European Unio, Luxembourg, 2015, pp. 13-15.

[69] Dr. Rácz Ildikó, A digitalizáció hatása a munkajog egyes alapintézményeire [The impact of digitalisation on some key institutions of Labour law, PhD thesis, Budapest, 2020. 12. 20., pp. 23-31.

[70] Tóth Hilda, Az algoritmikus menedzsment a platform alapú munkavégzésben, [Algorithmic management in platform-based work], ibid p. 450.

[71] Mélypataki Gábor, 2019c; Tóth Hilda, 2018, A változó munkajogi környezet hatása az innovációra [The impact of the changing Labour law environment on innovation]. Miskolci Jogi Szemle [Miskolc law review], 13/2, pp. 65-77.

[72] Juan Jose Diaz-Granados - Benedict Sheehy: "The Sharing Economy & The Platform Operator-User-Provider »PUP Model«: Analytical Legal Frameworks" Fordham Intellectual Property, Media and Entertainment Law Journal 2021/4. (31) 997-1041., https://doi.org/10.2139/ssrn.3681158.

of the actors involved in the legal relationship(s) are well-known, but it is by no means black and white how this contractual relationship should be treated from the aspect of the interrelations between the actors or, in a given case, in relation to a public entity. Proceeding from the economic effect of this peculiar legal relationship, one may state that in platform work the platform operator takes on an intermediary, organizing role, in consideration of which it generally requires both the platform worker and the client to pay a commission. The platform operator looks on the platform worker as a co-ordinated business partner, therefore, in contrast with traditional employers, the platform operator shifts the burden of the costs and risk of performance of the economic activity pursued in the frames of this legal relationship primarily on the platform worker.[73]

Platform work has a significant social-economic impact, since in the changed working environment, the distinction between the subject of civil law (usually agent, contractor) and the subject of labour law (employee) becomes rather problematic. It adds further nuance to the picture that no straightforward norms have been established by legal regulation regarding the new working environment built on the ground of digitalization and, thus, regarding platform work.

In this grey area[74] platform workers are economically dependent self-employed workers, they generally carry out their work in person and continuously, they are available, they work for one client/platform operator, their whole income – or, at least, its major part – comes from platform work[75]. The platform worker's legal relationship may be placed somewhere between an employment relationship and actual self-employment, independent work[76]. Those involved in platform work are normally characterized by independence, however, their economic dependence is similar to that of employees, they form part of the platform operator's organizational system structurally, they are tiny cogs in the machinery of the business, they are under constant control[77]. In a legal sense, they are actors co-ordinated with the platform operator and the end user, however, economically they are highly dependent on the platform operator commissioning or ordering the service[78].

Upon careful consideration one may see that the first and foremost issue to be decided is the classification of the position of the parties involved in the legal relationship aimed at the performance of actual work, the completion of a task, which

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[73] Dr. Radnai Veronika: A platformmunka elhelyezése a versengő jogviszonyok rendszerében [The place of platform work in the system of competing legal relations] (Munkajog, 2022/4., pp. 23-24.)

[74] For more detail, see: Prassl, Jeremias – Risak, Martin: Uber, TaskRabbit & Co: Platforms as Employers? Rethinking the Legal Analysis of Crowdwork. Oxford Legal Studies Research Paper, 2016/8. http://www.labourlawresearch.net/sites/default/files/papers/15FEB%20Prassl_Risak%20Crowdwork%20E mployer%20post%20review%20copy.pdf (2020. 12. 14.)

[75] Gyulavári Tamás: A szürke állomány. Gazdaságilag függő munkavégzés a munkaviszony és az önfoglalkoztatás határán. [Grey matter. Economically dependent work on the border between employment and self-employment] Pázmány Press, Budapest, 2014, pp. 166-167.

[76] Gyulavári Tamás: A foglalkoztatási jogviszonyok magyar rendszere. [The Hungarian system of employment statuses] Jogtudományi Közlöny, 2010. No. 7-8, p. 342.

[77] Jakab Nóra: Munkavégzők a munkavégzési viszonyok rendszerében. [Workers in the system of work relationships] Jogtudományi Közlöny, 2015. 9. szám, p. 422.

[78] Gyulavári Tamás: Munkaviszony, önfoglalkoztatás, és a közöttük levő szürke zóna. [Employment, self-employment and grey area in between] Esély, 2009. No. 6, p. 83.

logically leads to the problem of classification of the legal relationship itself, which, in turn, causes further uncertainty, as the question arises: what level legal protection may the parties be afforded in the case of a legal dispute? The sharp raising of this undeniable problem has brought into the limelight the individual side of platform work, the question of classification of the legal relationship and the assertion of the collective rights of the platform worker – if employee - involved in the legal relationship.[79]

The present paper is focussed primarily on the individual side of platform work, however, related to that, a non-negligible and, at the same time, unexplored area is how the collective rights of the platform worker performing in platform work are given effect.

The interests of the platform operator, platform worker and, of course, public law entities (tax authority, social security authority, employment supervision authority) are not balanced. Platform workers involved in a co-ordinated civil law legal relationship are not entitled to the traditional protection granted by labour law (rules relating to working time, wages, termination of the legal relationship and several other conditions of work), the parties do not sign an employment contract with each other, consequently, pursuant to the norms considered applicable, the platform operator is under no obligation to provide the platform worker with the range of guarantees laid down in legislation in spite of the fact that, on careful analysis of the established legal relationship, it may be definitely concluded that the position of the platform worker is to a great extent comparable to that of an employee employed under an employment contract. When deciding about the position occupied by a platform worker and an employee in their respective legal relationships, no opinion "with certainty of a court judgment" may be formed by legal academic literature, however, György Kiss's opinion may be considered forward-looking and suggestive, according to which the legal basis for rights applicable and enforceable within the frames of collective labour law cannot stem from the same dogmatic consideration[80], therefore until platform workers are classified at the level of norms under the system of either civil law or employment law relations, they must be ensured the possibility of collective interest enforcement for the mere reason of the peculiar nature of the type of employment[81].

During the performance of tasks within the frames of platform work, a situation of constant competition persists between platform workers, their daily performance, in general, depends on how fast they are capable of performing the task „offered" by the platform operator through the application used and confirming the call. Although platform workers are closely linked to the organizational system of platform operators, their position in relation to each other is far from identical. The majority of platform operators rank platform workers based on their readiness and ability to perform, the quality of task completion and client feedback, resulting in different conditions of work for the participants involved in the legal relationship.

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[79] Rácz Ildikó: Platform munkavégzés Magyarországon, Munkajogi és egyéb jogági dilemmák; [Platform work in Hungary, Dilemmas in labour law and other areas] MAGYAR MUNKAJOG E-journal 2021/1.; p. 3.

[80] Kiss György: Alapjogok kollíziója a munkajogban, [Conflict of fundamental rights in labour law] Pécs, Justis Bt., 2010. 232.

[81] Rácz Ildikó: A kollektív jogok érvényesülésének lehetőségei a platform-munkavégzés esetében [Possibilities of enforcing collective rights in platform work] op. cit. 147.

Even before the 2000s, preceding the proliferation of technological development impacting labour law as well and essentially rewriting its structure, there had been manifest expressions of norms in international documents guaranteeing collective rights protection also for workers in "non-typical" employment. The 1998 ILO (International Labour Organisation) Declaration raises to the level of norm the right to freedom of association and the right to collective bargaining. According to the authoritative proclamation by Mark Freedland and Nicola Kountouris, the principles and rights published in the above-mentioned ILO declaration are to be regarded as having general application and therefore constitute principles to be extended to all those performing work for and in the interest of a third party, regardless of the designation of the legal relationship and the physical or intellectual nature of the work.[82]

Mark Freedland and Nicola Kountouris state that the original English ILO text contains not the word 'employee' – literally meaning a person employed by an employer - but the term 'worker', based on which legal academic literature has concluded that the norms and rights laid down in the convention are not exclusively aimed at those employed in an employment relationship.[83] In Tamás Gyulavári's view, EU norms and the case-law of the European Court of Justice use the term 'worker' to refer to a person performing work for and in the interest of a third party for the very reason to render unambiguous the legislator's intention to provide collective protection for a wider range of persons than those covered by the term 'employee' taken in its everyday meaning and also meant by domestic legal terminology, therefore the use of the term 'worker' renders unambiguous that the personal scope of EU law is wider[84].

For this reason, one might think that, under EU law, collective rights protection is de iure afforded to any person performing work in an everyday sense, despite the fact that it is not explicitly stated in the text of the norm. Nevertheless, platform work and the platform worker are still a central issue and the question as to whether the platform worker is entitled to collective protection and collective rights still remains unanswered. It is undebatable that alongside its harmful impact on human health, the COVID-19 pandemic has accelerated and encouraged the information technological development of employer businesses[85], as a result of which revenues from platform work (economy) have significantly increased on the European Union's labour market[86]. Based on the DESI 2022 index applied by the European Union (which is based on the DESI 2021 survey), it may be stated that the coronavirus pandemic greatly contributed to the

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[82] Mark Freedland – Nicola Kountouris: Some Reflections on the 'Personal Scope' of Collective Labour Law, Industrial Law Journal, 46 (2017) 1., p. 66.

[83] Rácz Ildikó: A kollektív jogok érvényesülésének lehetőségei a platform-munkavégzés esetében [Possibilities of enforcing collective rights in platfom work], MISKOLCI JOGI SZEMLE Year 13 (2018) No. 2. Volume 1. pp. 145-146.

[84] Gyulavári Tamás: A "worker" fogalma az Európai Bíróság esetjogában [The concept of 'worker' in the case law of the European Court of Justice] (Miskolci Jogi Szemle, 2022., 1. Special Issue, pp. 141-149.)

[85] See McKinsey's report https://www.mckinsey.com/capabilities/strategy-and-corporate-finance/our-insights/how-covid-19-has-pushed-companies-over-the-technology-tipping-point-and-transformed-business-forever (04. 11. 2023.)

[86] De Groen W., Kilhoffer Z., Westhoff L., Postica D. and Shamsfakhr F. (2021). Digital Labour Platforms in the EU: Mapping and Business Models. https://op.europa.eu/en/publication-detail/-/publication/b92da134-cd82-11eb-ac72-01aa75ed71a1/language-en (05. 11. 2023.)

development of the digitalization capabilities of human capital and the use of digital means[87].

Due to the digital transformation fully permeating and also changing the labour market of the Member States, in 2020 the Commission examined by what means the situation of platform workers could be improved[88]. The Commission's working plan of 2021[89] dealt with platform work and its impact on the labour market in several parts. As a result of the lack of regulation, in October 2020, the European Commission published its work program for 2021 under the title "*A Union of vitality in a world of fragility"*[90], which concerned platform work to a great extent and in which in order „*to ensure dignified, transparent and predictable working conditions*" it has taken on the obligation to present a legislative proposal "*to improve the working conditions of people providing services through platforms […] with a view to ensuring fair working conditions and adequate social protection."*[91]

Acting upon the commitment made by it, in December 2021, the Commission elaborated its Proposal for a directive on improving working conditions in platform work[92]. The Commission's primary aim in legislation was to improve the working conditions of persons having the status of a 'worker' engaged in platform work, to recognize workers employed in a de facto employment relationship and their due social rights arising from their legal status. The reason for the expansion of collective protection under labour law, also affecting platform workers, was to ensure the sustainability of platform-based work already in operation and prevailing in the European Union. For this very reason, the proposal prescribes as a primary aim to ensure that persons working through platforms may be granted a legally recognized employment status as a result of their legal relationship with the platform operator, with respect to which they could enjoy the applicable labour and social protection rights.

It is a result of development in information technology that in digitalized forms of employment and, as a matter of course, in platform-based employment as well, algorithms play an enormous role, since the allocation of tasks basically takes place through an application installed on a smart phone or computer. Since the employer's power to determine the employment tasks, which power also results from the

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[87] See: https://digital-strategy.ec.europa.eu/en/policies/desi

[88] State of the Union Address by President von der Leyen at the European Parliament Plenary. Brussels, 16 September 2020 https://ec.europa.eu/commission/presscorner/detail/hu/SPEECH_20_1655 (7 February 2022).

[89] https://eur-lex.europa.eu/resource.html?uri=cellar:91ce5c0f-12b6-11eb-9a54-01aa75ed71a1.0007.02/DOC_1&format=PDF (04. 11. 2023.)

[90]https://eur-lex.europa.eu/resource.html?uri=cellar:91ce5c0f-12b6-11eb-9a54-01aa75ed71a1.0007.02/DOC_1&format=PDF (04. 11. 2023.)

[91] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions; Commission Work Programme 2021, Brussels, 19.10.2020 COM(2020)690 final, page 5, point 2.2.
accessed at: https://eur-lex.europa.eu/resource.html?uri=cellar:91ce5c0f-12b6-11eb-9a54-01aa75ed71a1.0007.02/DOC_1&format=PDF (2023.11.05.)

[92] Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work, Brussels, 9.12.2021, COM(2021) 762 final, 2021/0414 (COD). The full text of the Directive may be accessed here: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6605 (22. 05. 2022.).

subordination involved in the employment relationship, becomes automated due to the algorithmic management, therefore, in the changed working environment with the presence of artificial intelligence, the vulnerable position of platform workers in relation to platform operators and the platforms themselves seems to become clear. Algorithmic management, while pushing aside raw human power, takes three main functions of human management over to platform-based work relations: assessment, control and discipline. In the "traditional" employment relationship, functions replaced here by algorithms constitute the fundamental and indisputable rights of the employer – rights typically inherent in the employment relationship. It may be stated that platforms, almost without exception, maintain an evaluation system, based on which the platform worker becomes a registered "contractual partner" of the platform operator ranked on the basis of customer feedback. Therefore, algorithms are utilized in maintaining a reputation system, which is closely connected with the platform operator's disciplinary system. The evaluation of the contracted platform worker is the guiding thread of quality assurance regarding the platform operator's intermediary service provided to third parties, since if a given platform worker has a rather low evaluation, then the platform operator will "remove" him from "work" and he may not continue to perform, as a result of which he will receive no remuneration. Exclusion from the performance of tasks is some kind of right granted to the platform operator that has the consequence of terminating the legal relationship, however, due to the atypical nature of the legal relationship, academic literature[93] is divided on whether it is possible to make such a declaration. Probably the most relevant role of algorithmic management may be detected in controlling the platform worker, since during platform work platform operators allocate tasks through an application, usually allowing a rather short time frame for the platform worker to accept those tasks. The possibility of freely deciding whether to accept the task might also place a significant psychological burden on the platform worker, since repeated refusal to perform the assigned tasks may lead to disciplinary action as stated above, moreover, in the case of non-performance, the platform worker receives no remuneration. However, it is a fact that the short time frame does not allow the platform worker to assess the nature of the task or the conditions of its performance, therefore his failed "business decision" may ultimately lead to a situation where, despite receiving consideration for the performance of the task, his activity is not profitable[94]. Due to the foregoing, the Commission's second specific objective is to ensure the fairness, transparency and accountability of algorithmic management in the context of platform work.

The majority of those operating as contractual partners of platform operators carry out their work in self-employment – under an agency or contractor relationship – as a consequence of which the boundaries between self-employment and the employee status become blurred. This is explained by the fact that platform workers do not conclude an employment contract, they create a differently named contract with the platform operator, they can register for so-called „shifts" published in an application

[93] see above 224

[94] Tóth Hilda: Az algoritmikus menedzsment a platform alapú munkavégzésben [Algorithmic management in platform work] (Miskolci Jogi Szemle, 2022., Special Issue 1. pp. 449-458.)

with certain set functions that must be used by them, which displays the time periods when the platform worker must be available and perform tasks.

Conspicuous negative consequences of the "lack of placement" in the legal system of platform workers involved in a platform-based work relationship include unresolved questions of liability under the given legal relationship and unequal conditions of competition in relation to businesses and platform operators that classify their workers correctly. Due to these circumstances, a continuously widening gap may be observed between private law interests resulting from the public law (taxation law, social security law and social welfare law) norms of the Member States[95]. Therefore, the last objective of the proposal is to promote transparency and consciousness regarding developments in platform-based work and to improve the implementation of the applicable norms with regard to all platform workers.

The third objective of the Proposal regarding platform workers concerns the question of classification, the most impulsive area affecting labour law, since it ensures the correct definition of the work relationship. In platform work, collective labour law protection is connected to a large extent with the individual side mentioned above, therefore the Member States must elaborate the procedural norms, on the basis of which the correct definition of the work relationship of platform workers may be supervised and ensured. The norm may provide assistance in determining whether the given person has an employment relationship under the effective regulation of the given Member State, having regard to the case law of the European Court of Justice, and ensuring that these persons may enjoy the rights derived from EU law that are applicable to workers.[96]

In most states labour law has a binary system approach[97], based on which the person carrying out work is either an employee or a "self-employed" person performing a task or activity under another type of private law contract. It goes without saying that where entities endeavour to evade the state system of rules in such a way that, on purpose, they contract with their business partners in a form disguising the employment relationship in content by a contract with a different name, then the concealed legal relationship is also qualified as an employment relationship, but revealing and establishing this is, in general, declared to be a right granted to the investigating authority. Therefore, in a binary model, even a contract aimed at concealment is deemed an employment relationship, however, establishing this and classification constitute a separate task. At the same time, there are also such states that have created a borderline field in their legal norms. In this zone that may be called neutral, the persons performing

[95] Dr. Horváth István - Dr. Petrovics Zoltán: A jogvédelem irányában - Irányelvtervezet a platformmunka körülményeinek javításáról [Toward legal protection – Draft of the directive on improving working conditions in platform work] op. cit. 37-39.

[96] Proposal, Article 3 (1)

[97] For more detail on the characteristics of binary models, see: Freedland, Mark – Kountouris, Nicola: The Legal Construction of Personal Work Relations. Oxford University Press, Oxford, 2011. 112–116.

work have an "intermediate employment status", similarly to workers as mentioned earlier[98], parasubordinati[99], arbeitnehmerahnliche Personen[100].

The Proposal may also provide a solution to the polemics that had dominated legal academic literature[101] even before the sudden infiltration of digitalization into labour law, since delimiting an employment relationship and a civil law legal relationship requires or may also require the expansion of the – albeit unwritten - concept of 'employee' and 'employment relationship', because it is definitely not possible to maintain the conceptual framework of 'employee' aligned with a prescribed type of contract in the case of legal relationships aimed at the performance of work that are seemingly becoming „legally typified". Resolving the relationship between labour law and civil law has set such a high standard for the labour law development of civil law countries that no success has been made in meeting it so far, in spite of the fact that according to one part of the positions, the legal dogmatical institutional framework of the employment relationship is an adaptation of the basic structure of civil law contractual relationships. On the other hand, the other prevalent position excludes the idea of the adoption of civil law traditions due to the basically cogent rules of labour law[102].

The issue of the application of civil law axioms in individual labour law and, therefore, of the blending of these two areas of law often comes up, however, one cannot encounter any finished product embodied in legal regulation yet[103].

Platform work starts with the conclusion of a contract between the platform worker and the platform operator with the proposition that business partners may enter into contracts freely and they may fill the legal relationship with any content without restrictions while in compliance with cogent provisions. When projecting this to Hungarian relations, one must highlight the following: The principle of freedom to contract has been raised to the level of a fundamental right by the Constitutional Court in several of its decisions[104]. In labour law the private law principle of freedom to

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98 Davidov, Guy: Who is a worker? Industrial Law Journal, Vol. 34., 2005/1. 57-58.

99 Fontana, Giorgio: Dependent Workers and the Self-Employed in the Italian Experience. In Caruso, Bruno – Fuchs, Maximilian (eds.): Labour Law and Flexibility in Europe – The Cases of Germany and Italy, Baden-Baden, Nomos Verlagsgesellschaft, 2004.

100 Neuvians, Nicole: *Die arbeitnehmerähnliche Person, Duncker & Humblot*, Berlin, 2002

101 For more detail, see: Bankó Zoltán: AZ ATIPIKUS MUNKAJOGVISZONYOK; A munkajogviszony általánostól eltérő formái az Európai Unióban és Magyarországon, [ATYPICAL EMPLOYMENT RELATIONSHIPS; Non-standard forms of employment relationships in the European Union and in Hungary], Phd dissertation, Pécs, February 2008. pp. 25-35.

102 Kiss György: Foglalkoztatás gazdasági válság idején – a munkajogban rejlő lehetőségek a munkajogviszony tartalmának alakítására (Jogdogmatikai alapok és jogpolitikai indokok) [Employment during an economic crisis – possibilities in labour law for shaping the content of the employment relationship (Legal doctrinal foundations and legal policy considerations), Állam- és Jogtudomány Year 5. No. 1. / 2014., 36-76.

103 Kiss György: Az új Ptk. és a munkajogi szabályozás, különös tekintettel az egyéni munkaszerződésekre [The new Civil Code and labour regulation, with special regard to individual employment contracts] (PJogtudományi Közlöny, 2000/1., 3-17.)

104 [Decision No. 13/1990. (VI. 18.) AB, Decision No. 32/1991. (VI. 6.) AB, Decision No. 6/1999. (IV. 21.) AB, Decision No. 109/2009. (XI. 18.) AB of the Constitutional Court]. According to the unwavering practice of the Constitutional Court, the freedom to contract is also protected by Article M) of the Fundamental Law (Decision No. 3192/2012. (VII. 26.) AB of the Constitutional Court, Opinion [18]).

contract has a limited application, the statutory declaration of which has greatly hindered the spread of contractual liberalism[105]. In the economic and social reality under transformation due to information-technological development, the present-day regulation in labour law of norm-level derogation from private-law self-determination can no longer properly reflect the distinction between „employees" and „self-employed persons" in platform work[106].

There is no harmony between the traditional concepts of labour law and digital platform work, for this very reason, in Nóra Jakab's view, the subjective scope of the Labour Code and thus the statutory concept of 'employee' as used today cannot properly reflect the actual actors of the labour market and the position of platform workers.[107]

Attila Kun – based on Davidov's work – argues that „employees*' rights laid down by legislation must – with a few exceptions – necessarily be of obligatory, non-derogable, cogent nature*", therefore, it is erroneous to justify in labour law the existence of the civil law principle of freedom to contract – with reference to private law being the substantive law of labour law – and of free disposition, instead, it is necessary to guarantee a prohibition of fully 'opting out' of employees' rights even despite the employee's will.[108]

In György Kiss's view, in countries applying the binary-system labour law model regarding platform work and platform workers, the "concepts" of 'employment relationship' and 'employee' are to be at least rewritten and at most broadened. The process of classification as an employment relationship must be carried out in accordance with the actual content of the work relationship, in compliance with the provisions of the Labour Code, applying the system of criteria set up due to the challenges of digitalization. Under the auspices of the old Labour Code, it was possible to detect tendencies of "flight from labour law", primarily induced by rules imposing a higher tax burden on the employment relationship. Due to this circumstance, the need has emerged to create a regulation that would ensure flexibility concerning the work relationship and sustained security for workers. The classification of the legal relationship of employment cannot be restricted to the content of the labour contract, but it should also have regard to other rules of conduct enshrined in legislation as well as the parties' declarations[109].

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[105] Kiss György: Az új Ptk. és a munkajogi szabályozás, különös tekintettel az egyéni munkaszerződésekre i.m. [The new Civil Code and labour law regulation, with special regard to individual employment contracts] op.cit.

[106] Bankó Zoltán: AZ ATIPIKUS MUNKAJOGVISZONYOK; A munkajogviszony általánostól eltérő formái az Európai Unióban és Magyarországon [ATYPICAL EMPLOYMENT RELATIONSHIPS; Non-standard forms of employment relationships in the European Union and in Hungary] op. cit. 25.

[107] Jakab Nóra: Rendszerszerű gondolkodás a munkavállalói jogalanyiságról [Systemic thinking about the employee as a legal subject] (Jogtudományi Közlöny, 2018/4., p. 185.)

[108] Kun Attila: Munkajogi elvi kérdések: a felek (munkáltató és munkavállaló) egyéni megállapodásainak mozgásteréről [Questions of principle in labour law: on the scope for action in individual agreements between the parties (employer and employee)] (Glossa Iuridica, 2020. Special edition, pp. 149-152.)

[109] Kiss György: Új foglalkoztatási módszerek a munkajog határán – az atipikus foglalkoztatástól a szerződési típusválasztási kényszer versus típusválasztási szabadság problematikájáig [New methods of employment on the borderline of labour law – from atypical employment to the problem of compulsory versus free choice of type of contract (Magyar Jog, 2007/1.) 11.

Theoretical and practical discussions regarding atypical legal relationships have grown more intensive in the context of platform work, and it is of utmost importance to determine the status of platform workers calling for collective protection in the changed working environment. In the European Union there is an active discourse going on between employment lawyers whether there is a need to define platform workers as a new category of employees[110].

As an employee the worker is entitled to statutory guarantees, however, if he operates as a self-employed person[111], then the protection afforded to him is more restricted.

Frictions along economic problems and problems of rights enforcement have materialized in classification lawsuits.

In these lawsuits, workers typically applied for a declaratory judgment, requesting the court to establish their employee or „worker" status, since then they would be entitled to all or part of the protection granted under labour law rules, such as minimum wages, protection against unfair dismissal or other entitlements prescribed by national legislation.

For the time being, it is not possible to clearly point out a uniform, coherent guideline, court practice or trend even at the national level. Since – as it seems –in different cases concerning the same platform, the courts of the same State have come to different conclusions, establishing employee status at one time and self-employed status at another time.

In one of the most significant cases, namely, in the case of "Uber BV and others (Appellants) v Aslam and others (Respondents)" adjudicated in 2021, the UK Supreme Court examined the circumstances of employment from five aspects:

1. First, the Court attributed utmost importance to the fact that the workers were not permitted to set their fares, which were also fixed in the legal relationship between the claimant and defendant, the claimant had no say in the remuneration, it was fixed in the contractual relationship between the parties, therefore, the claimant was not permitted to charge the end user or the contractual partner of the defendant a higher amount than the fees set by the defendant, thus the fees were dictated by the defendant. [Judgment, para 94].
2. Second, the Court stated that it was also of utmost importance regarding the relationship between the claimant and the defendant that the contractual terms on which drivers perform their services were dictated by the defendant, moreover, the defendant also imposed such terms (uniform) that constituted a basic condition for the employment. [Judgment, para 95].
3. The third argument raised by said judgment concerned a circumstance that could be considered a qualifying feature constituting a peculiar element of the

[110] Countouris, N.. De Stefano, V. M.New trade union strategies for new forms of employment. ETUC. https://www.etuc.org/en/publication/new-trade-union-strategies-new-forms-employment.,2019. (accessed: 19. 11. 2023.)

[111] Prugberger Tamás: Az önfoglalkoztatás intézménye a nyugat-európai és a magyar munkajogban. [The institution of self-employment in Western-European and Hungarian labour law.] Magyar Jog, 2014/2. 65–71.

legal relationship between the claimant and the defendant, namely, requests for a ride submitted through the defendant's app could be declined at any time by the defendant, namely, before forwarding the request to the claimant, the defendant had discretion over whether to allow the claimant to perform the task. [Judgment, para 96].

4. Finally, in para 98 and para 100 of the judgment, in an unorthodox manner, the court regards it as a circumstance in favour of establishing the existence of an employment relationship if under a contract of agency or a service contract exercises control over and monitors the employee and restricts the employee's communication with the end user or the employer's customer to the minimum.

It is to be emphasized that the factors cited and accepted in the legal relationship established between the claimant and defendant can be clearly demonstrated, since the defendant exercised control over the service provided by the claimant, the completion certificate styled as an "invoice" – serving as a basis for accounting between the parties – could be issued solely in respect of the performed trips under the condition that the claimant did not know the contact details and had no contact with their "contractual partners" (end user or the defendant's customer).

In evaluating the aspects of work through digital platforms, the recently emerging polemics seems to be coming to a conclusion, increasingly, those positions are growing stronger that view the aspects of this legal relationship as a whole and its classification is becoming tilted to the side of employees.[112]

VII. The first Hungarian platform lawsuit

In Hungary, the first case evaluating platform work and resulting in a binding judgment was concluded on 13 December 2023.

During the procedure the plaintiff applied for a declaratory judgment requesting the court to establish that an employment relationship had been created between him and the defendant operating a platform for the intermediation of delivery services from restaurants. In argument, he cited the fact that, regarding its content, the legal relationship existing between the parties could in essence be classified as an employment relationship, since the platform exercised control over all relevant aspects of the legal relationship, and apart from that, the relationship involved regularity and an obligation to perform the work in person. In its defence, the defendant submitted that the structure of the relationship established between the parties, which was not in dispute, did not go beyond the frames of ordinary civil law legal relationships.

The court hearing the case at first instance dismissed the claim, while the regional court of appeal proceeding at second instance declared that an employment relationship had been established between the parties. Finally, the Curia agreed with the decision of the first instance court and concluded that it was not possible to establish the existence of an employment relationship in the legal relationship between the parties. In its decision, the Curia expounded that, when entering into their legal

[112] Gyulavári Tamás: az Uber sofőrök és társaik: munkavállalók vagy önfoglalkoztatók [Uber drivers and their likes: employees or self-employed people] (Jogtudományi Közlöny, 2019/3., p. 108)

relationship, the parties did not agree on a job function, since neither the individual contract, nor the GTC contains the enumeration of responsibilities, based on which the content of the delivery activity could be established. (In this regard, it may be raised as a criticism that on today's job market it is an everyday phenomenon that job functions are designated as "driver", "salesperson", "woodman", etc. without the specification of their content, therefore, that reasoning of the Curia is rather distanced from labour market practices.)

Apart from this, the Curia also attributed outstanding importance to the fact that, in their view, the claimant was under no obligation of performance, so basically it was up to the claimant to decide the timing and amount of the work to be performed. In this regard, the judgment emphasized that, without the specification of the requirement of availability and working time, it was not possible to establish an employment relationship, therefore, the Court could not make a finding to that effect in the case in question.

In the decision it also appears as a counterargument that the worker carried out work using his own equipment (as well), the equipment provided by the defendant (jacket, insulated delivery bag, etc.) was merely a marketing tool.

In its judgment, the Curia noted that the so-called platform directive was underway, pursuant to which platform-based work would indeed be deemed an employment relationship, however, the Curia also pointed out that the directive would also provide for the possibility of rebutting this presumption. Nonetheless, in the given lawsuit, it was not possible to establish on the side of the defendant any comprehensive instruction extending to the place, time and manner of carrying out the work and a right of supervision ensuring compliance, which would verify the existence of subordination constituting the primary criterion of an employment relationship involving dependent work.

VIII. Summary

The present paper has attempted to present the most relevant cornerstones of platform-based work. In this regard, it has touched upon the individual positions in academic literature, which uniformly point in the direction of a need for some form of legal regulation of this form of employment. At the same time, it is to be emphasized that during this process the legislator does not merely have to take a stand on a form of carrying out work, but essentially, it has to broaden or narrow down the scope of labour law. It is undebatable that the arguments emphasizing the protective role of labour law and, therefore, endeavouring to classify platform-based work rather as an employment relationship have very serious implications: benefits that are the necessary concomitants of an employment relationship (social security, paid holidays, limited working time, a wage threshold, etc.), beyond doubt, also pose a problem with regard to competition. In many cases, not even the labour market actors themselves wish that the legal relationship they have opted for was evaluated as an employment relationship, the primary reason being the increased costs and the high degree of inflexibility compared to civil law relationships.

On the other hand, the socially more responsible viewpoint emphasizes that several decades of labour law achievements are lost if parties are granted the possibility to opt out from under the scope of labour law, since it is these very non-derogable provisions that create social security for workers.

It may also be imagined that platform work will enter the world of labour in the future as a kind of hybrid legal relationship: these workers will benefit from a minimum level of protection (e.g. protection from termination), but from other aspects (e.g. availability, obligation to carry out work), they will be granted a level of freedom similar to that in civil law relationships.

In our view, one should not in any case adopt the first, purely market-based approach, since it would annul all the achievements of labour law development and, to a great extent, it would also go against endeavours in European labour law. At the same time, one may also accept the argument that, in some situations in the market, labour law restrictions cannot mean the right option. It flows from this that it would be expedient to elaborate a graduated approach that would constitute transition between the system of rules of labour law and civil law.

The platform work directive referred to above requires Member States, in the first place, to implement the given norm, thus, in doing so, legislature is given the chance to resolve this issue, which chance has sadly been missed by judicature.