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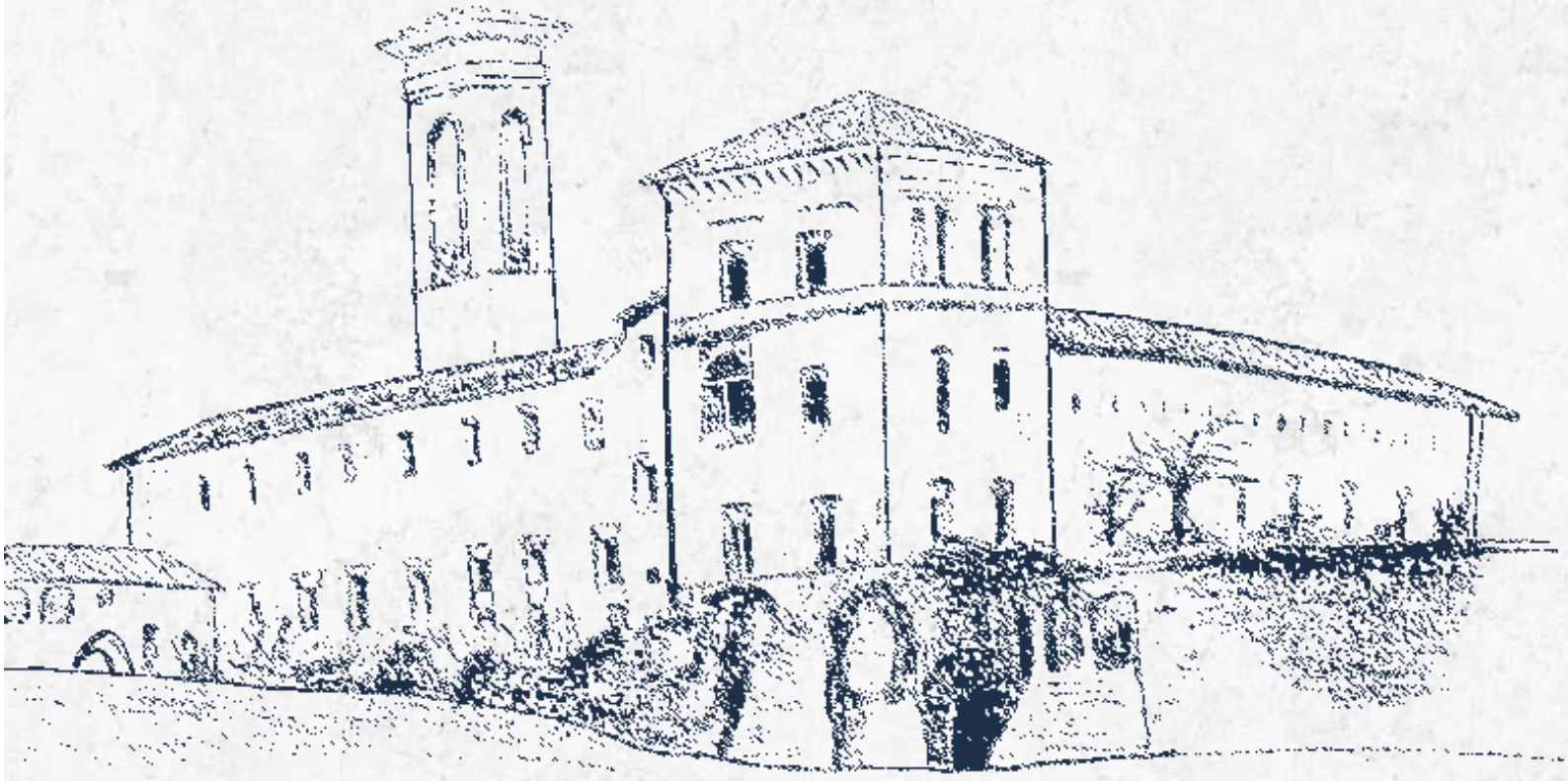

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Gig Workers in Poland: The Quest for a Protection Model

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Abstract

The labor law regulations in force in Poland define two groups of "employees". The first group includes employees performing work within the meaning of Art. 2 of the Labor Code. The second group consists of those to whom the Polish legislator gradually grants certain "employee" rights, i.e. contractors and beneficiaries. At the same time, despite the COVID-19 pandemic, the number of self-employed and working on digital platforms has increased on the Polish labor market, creating a fiction of mandate. Digital employees in Poland sign a mandate contract for three hours a week, and the rest of the remuneration results from the vehicle rental contract, which allows you to avoid almost all public law obligations. The entire scope of the provisions of the Polish Labor Code applies only to employees. As for other working people, in particular the analyzed employees of digital platforms, they are forced to run a business or conclude vehicle rental or mandate contracts and are treated as such by the legislator, i.e. either as self-employed or as a form of semi-independent work. The author of the paper tries to indicate the appropriate model of protection of these employees in Polish labor law

Keywords: *Gig workers, Digital workers, Labor law, Protection model for Poland*

1. Introduction

In all EU Member States, the status of people employed on work platforms is not fully regulated by law and therefore questionable[1]. It is

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necessary to consider the origins of the modern phenomenon of e-employment, which is not subject to regulation in the Union, which is "an area of freedom, security, and justice with respect for fundamental rights"[2]. The employment right to decent work and social protection, with adequate pay, is relatively overlooked. In the discussion on employment platforms, state authorities are more willing to consider issues related to new technologies, processes, and changes caused by the development and application of modern digital technologies (digitization) than the status of employees and the associated employee rights. Entrepreneurs and their organizations, including private institutions and employment platforms, are interested in equal treatment by national legislators on local labor markets. However, this may have a negative impact on maintaining such a status concerning the equality of typical employee rights. Entrepreneurs point out that equal treatment in terms of employee rights of employees of digital platforms may violate the balance favorable to their economic interests caused by the public interest in the possibility of using employment in atypical forms of employment. Employment services provided by employment platforms are less expensive than similar work performed by employees employed under an employment contract[3].

The literature indicates that the emergence of digital platforms has created millions of jobs in response to demographic change, i.e., a growing youth population in some parts of the world and an aging population in others can put pressure on labor markets and social security systems, but in these changes hide new opportunities for care and inclusive, active societies[4].

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[1] V. De Stefano, A. Aloisi, European Legal Framework for 'Digital Labour Platforms. Luxembourg: European Commission Joint Research Centre, 2018, Fundamental Labour Rights, Platform Work and Human-Rights Protection of Non-Standard Workers w: *Labour, Business and Human Rights Law*, red. Janice R. Bellace, Samuel Blank and Beryl Haar, s.359–379. Cheltenham, UK; Northampton, MA 2019; V. De Stefano, M. Wouters,"Should Digital Labour Platforms Be Treated as Private Employment Agencies?" European Trade Union Institute (ETUI) Foresight Brief 2019.

[2] Treaty on the Functioning of the European Union - consolidated text taking into account the changes introduced by the Treaty of Lisbon, Journal of Laws 2004.90.864/2; see (Article 67(1) of the Treaty on the Functioning of the European Union).

[3] J. Drahokoupil, B. Fabo, "The Platform Economy and the Disruption of the Employment Relationship", European Trade Union Institute (ETUI) Policy Brief 2016, Nr. 5.

[4] K. R. Lakhani, David A. Garvin, and Eric Lonstein. 2012. "TopCoder (A): Developing Software through Crowdsourcing", Harvard Business School Case Study 610-032; Katz, Lawrence F., and Alan B. Krueger. 2016, p. 2; The Rise and Nature of Alternative Work Arrangements in the United States, 1995–2015. National Bureau of Economic Research

Thus, the noticeable expansion of the new way of working: digital platforms working as a way of working is gaining importance and transforming labor markets in the EU. It is indicated that in the EU countries, 1.4% of employees declare work on digital platforms as their primary occupation, 4.1% indicate it as an additional source of income, 3.1% consider it a marginal occupation for them, and 2.5% that they perform work on platforms occasionally. Such work is the primary source of income for around 1% of workers in the Czech Republic, Slovakia, Finland, France, Italy, and Sweden, and over 2.5% in Spain and the Netherlands[5].

2. Digital Workers and the Attempts to Clarify their Status at the International Level

International conventions do not regulate the employment platform. At the EU level, work is being carried out to create a legal framework for this form of earning, but the final result is not yet certain. In February 2021, the European Commission launched the first stage of consultations with European social partners on improving the working conditions of people working via digital job platforms[6]. In December 2021, a draft Directive on improving working conditions on digital platforms was published. A broader discussion of this initiative goes beyond the scope of this study (apart from Article 4 of the Directive, which will be discussed in one of the subchapters), but it should be mentioned that the proposal of the Directive contains a rebuttable presumption of employment based on an employment relationship, an obligation to use algorithms that manage work in a more transparent and control over the effects of their operation, as well as information obligations of platforms on employment submitted to the relevant state authorities. The most controversial issue is the exclusion of the self-employed from the personal scope of the Directive. The explanatory memorandum to the Directive states that genuinely self-employed persons are accountable to their clients for how they carry out

(NBER) Working Paper No. 22667. Kenney, Martin, and John Zysman. 2016. "The Rise of the Platform Economy". *Issues in Science and Technology* 32(3) (Spring).

[5] C. Urzì Brancati, A. Pesole, E. Fernández-Macías, Digital Labour Platforms in Europe: Numbers, Profiles, and Employment Status of Platform Workers, Luxembourg: Publications Office of the European Union 2019.

[6] European Commission press release "Protecting people working through platforms: Commission launches a first-stage consultation of the social partners", https://ec.europa.eu/commission/presscorner/detail/en/IP_21_686.

their work and for the quality of the results. The freedom to choose working hours or periods of absence, refuse to perform tasks, use subcontractors, substitute, or working for third parties is a feature of genuine self-employment[7]. This issue is controversial because the Commission omits the concept of a semi-dependent self-employed person functioning, for example, in Austria.

The doubts indicated above are confirmed by the judgment of the UK Supreme Court of 2021, which in the general context appears revolutionary, as it raises doubts regarding the legal status of employees of digital platforms. The appeals court denied that Uber drivers are not employees[8]. In the Deliveroo judgment, the UK Court of Appeal ruled that Deliveroo drivers in the UK are not employees[9]. This statement is in opposition to the judgment of the UK Supreme Court, which ruled that Uber drivers are employees, giving them the right to the minimum wage, holiday allowance, and access to a pension scheme.

The Deliveroo case indicated that this platform works the same way as Uber Eats: customers place food orders online, which are then deliver by Deliveroo drivers using motorbikes or bicycles. Deliveroo operates in twelve other countries (including the UK, Australia, and Spain). Deliveroo has over 100,000 registered users on its platform[10]. The facts of the Deliveroo case were not complicated and concerned one of the fundamental freedoms in labor law, i.e. the freedom of association of employees. The UK Independent Trade Union has asked the court to recognize Deliveroo's right to bargain collectively on behalf of Deliveroo's suppliers. Two lower courts found that because the supplies did not meet the definition of 'employee' in UK employment law, they had no right to

[7] Id., p. 25.

[8] Judgment of the Supreme Court of February 19, 2021, Uber BV and others (Appellants) v Aslam and others (Respondents), [2018] EWCA Civ 2748, Judges criticized controversial contracts Uber asked its drivers to sign saying that "it can be considered that their purpose is to prevent the driver from asserting the rights conferred on employees by applicable law." The court found the drivers were employees due to Uber's level of control over them, including setting fares and not informing them of a passenger's destination until they were picked up. It ruled that Uber must treat drivers as employees from the moment they log into the app until they log out. Employees have more rights than independent contractors but fewer than employees entitled to maternity pay and can, for example, challenge unfair dismissal.

[9] Ruling no. 374 of March 4, 2020 – Appeal no. 19-13.316; Independent Workers Union of Great Britain v. RooFoods Ltd (t/a Deliveroo) TUR1/985(2016).

[10] The Independent Workers Union of Great Britain v. The Central Arbitration Committee [2021] EWCA Civ 952 (24 June 2021); Uber BV and others (Appellants) v Aslam and others (Respondents) [2021] UKSC 5.

form and join trade unions. The UK Court of Appeal ultimately agreed with the lower courts and confirmed that the suppliers were not employees. Providing services in person is required to meet the definition of an 'employee' under UK employment law. It was ascertained that Deliveroo's suppliers are not employees because the contract between Deliveroo and the suppliers does not require the suppliers to make the deliveries personally. Suppliers may use a substitute to make the delivery[11]. The consequence of the judgment is that Deliveroo suppliers do not have the right to freedom of association in trade unions to protect their interests as employees. The judgment of the Court of Appeal is laconic in indicating the components of the freedom of association and does not indicate that suppliers are not entitled to such a right. The very question put to the Court concerned participation in collective bargaining. However, the judgment additionally indicated that suppliers were not prohibited from organizing by means other than a trade union and enjoyed the more general right to freedom of association. Since a higher court issued the Uber judgment than the Deliveroo judgment, the latter judgment does not invalidate the Uber judgment, i.e. Uber drivers in the UK are still classified as employees.

Furthermore, the question before each court differed because Uber drivers were not explicitly asking for the right to form and join a trade union. Therefore, the judgment did not address the issue of associating in trade unions. In the Uber judgment, the Supreme Court noted that the contract between Uber and the drivers requires them to provide services personally. The Supreme Court's decision highlights five aspects of the employment tribunal's findings which supported its conclusion that the applicants were employees; first: Uber sets the fare, and drivers cannot charge more than the fare calculated by the Uber app. Second, the terms of the contracts under which drivers perform their services are imposed by Uber, and drivers have no say in them. Third, once a driver has logged into the Uber app, Uber limits the driver's choice of accepting ride requests. One way this can be done is to monitor the driver's acceptance (and cancellation) rate of ride orders and impose a penalty if too many ride orders are declined or canceled by automatically logging the driver out of the Uber app for ten minutes, thereby preventing how the driver works until he logs on again. Fourth, Uber also exercises considerable control over how drivers deliver their services. The fifth significant factor

[11] Judgement no. 374 of March 4, 2020 – Appeal no. 19-13.316; Independent Workers Union of Great Britain v. RooFoods Ltd (t/a Deliveroo) TUR1/985(2016).

is that Uber limits communication between the passenger and the driver to the minimum necessary to complete the trip and takes active measures to prevent drivers from establishing any relationship with the passenger beyond the individual trip[12].

The position of the British court, which is damaging for suppliers, stands in complete opposition to the famous judgment of the Spanish court[13]. On July 22, 2019, which ruled that those delivering food and other products are employees and not self-employed. The decision was made in a case brought to court by a former employee of Glovo, next to Deliveroo, the most popular food delivery company in Spain. The Supreme Court said "The relationship between the driver and the Glovo business is professional". This is the first time the Supreme Court ruled on working relationships between food suppliers and digital platforms. Glovo is one of many companies taking advantage of what is known in the US and UK as the "gig economy", a term that refers to self-employed workers and temporary, flexible jobs, such as in this case delivering food from different locations to customers, or routing to transportation companies like Uber, or delivering e-commerce packages like Amazon. The court ruled that Glovo is "a company that sets the terms for the provision of its services and holds the assets necessary to perform its services." The court said that Glovo "was not a mere intermediary" between restaurants and suppliers but "a company that sets the terms for the provision of its services and owns the assets necessary to provide its services." These 'assets' or tools for getting work done include a mobile phone app that passengers must have if they are to find a job. The decision is a significant step forward in a long legal battle to grant even marginal labor protection to employees of digital platforms.

The aforementioned Spanish case went to the Supreme Court after Isaac Cuende, a former employee of Glovo, appealed against a judgment of the Madrid Supreme Court that declared food deliverers to be self-employed. To unify the court's response, in this case, the president of the Supreme Court of Madrid decided to send another related issue to all 17 judges in the Labor Division. In this case, the judges found that the riders delivering the food were employees. The ruling comes at an essential time for two reasons: on the one hand, it coincides with ongoing discussions by the European Commission on the concept of employment based on

[12] D. Defossez, The employment status of food delivery riders in Europe and the UK: Self-employed or worker? Maastricht Journal of European and Comparative Law 2022, 29(1), 25–46.

[13] Juzgado de Lo Social No 19 DE Madrid, Autos no. 510/18.

digital platforms in the European Union, and on the other hand, in the face of plans at the national level to further regulate this sector. In recent years, some workers employed to deliver goods through apps such as Glovo have claimed to be considered salaried employees and have applied for appropriate rights such as sick leave and paid holidays. Glovo commented it would respect the court's ruling but expected the government and the European Union to establish a regulatory framework. "Glovo strongly believes that this regulation must be promoted based on dialogue between all actors involved," the statement reads[14]. According to Adrian Todoli-Signes, the legal designation of the employment relationship itself does not remain at the parties' disposal, but depends on the actual content of the obligations arising from it and the fulfillment of legal requirements determining the type of contract in question. Suitably, the Deliveroo judgment considers it irrelevant that the 'courier' accepted and signed the civil contract. Ultimately, legal norms have a superior function over the will of the parties[15].

3. Introduction: The Growing Number of Digital Platforms

Digital platforms have been able to build on some of the distinct features of the digital economy and have penetrated various sectors of the economy. In addition, the increasing reliance on ICT, from smartphones to computers, has created many opportunities for platform companies to emerge and grow. In addition, the nature and organization of the digital economy have further facilitated the rapid development of digital platforms. For example, the availability of reduced-cost digital platform services and venture capital funding has reduced barriers to entry and enabled the rapid growth of digital platforms over the last decade[16]. Digitization has facilitated the development of digital platforms in many countries and regions. Such investments minimize costs, but through platforms in traditional capital assets such as cars, hotels, or warehouses,

[14] Glovo elige Madrid para abrir su tercer 'hub' tecnológico y contratará a más de 100 ingenieros, https://www.telemadrid.es/noticias/madrid/Glovo-Madrid-tecnologico-contratara-ingenieros-0-2331366849--20210412124815.html.

[15] A. Todoli-Signes, Judgment designating Deliveroo 'rider 'an employee and analysis of its impact on the 'gig economy', ETUI 2018, Vol. 24(4), s. 487–490.

[16] N. Countouris, L. Ratti, "The Sharing Economy and EU Anti- Discrimination Law". In The Cambridge Handbook of the Law of the Sharing Economy, edited by John J. Infranca, Michèle Finck and Nestor M. Davidson, 486–498. Cambridge, UK: Cambridge University Press 2018

they are overwhelmingly dependent on the data, skills, ideas, and physical resources their users provide (both customers and employees). For example, Uber does not invest heavily in cars but has been able to grow and scale in 69 countries at an unprecedented rate (in the 11 years since its inception). It has 26,900 employees and 5 million drivers who own or lease cars, most of them self-employed or "driver-partners". Platforms are increasingly redefining, through the use of technology, how to establish economic relationships between employees and clients or customers, many of whom are geographically dispersed around the world[17].

At the same time, digital job platforms are creating job opportunities and gaining ground among policymakers and governments worldwide as a means of boosting economic development with the increased penetration of information and communication technology (ICT) in many countries. In addition, digital job platforms attract workers from many sectors and countries because they provide flexibility in work schedules, the ability to work from anywhere and at any time, and the ability to choose the tasks to be performed[18].

This raises significant concerns about the protection of workers on such platforms, particularly regarding working conditions, ranging from limited access to work and social protection to low wages and income volatility[19]. Delivering decent job opportunities for all requires a better understanding of the platform's workforce experience and employee motivations, opportunities, and challenges across multiple sectors, countries, and contexts. At this point, it will be justified to state that the thesis on extending employee rights remains valid in the context of determining the status of this category of employees. In the Polish legal system, work - in the functional sense, may be provided: (a) on the basis of an employment relationship, (b) on the basis of a civil law contract, (c) as part of self-employment. Work - in the traditional sense, it can be performed: based

[17] Uber 2020a. 2019 Annual Report. 2020b. 2020 Investor presentation, 6 February. 2020c. "What does the background check look for?" https://help.uber.com/ driving-and-delivering/article/what-does-the-background-check-look-for?no- deId=ee210269-89bf-4bd9-87f6-43471300ebf2;
https://s23.q4cdn.com/407969754/files/doc_financials/2021/ar/FINAL-Typeset-Annual-Report.pdf;
https://s23.q4cdn.com/407969754/files/doc_financials/2019/ar/Uber-Technologies-Inc-2019-Annual-Report.pdf.

[18] Ibidem.

[19] R. Florisson, What new EU Commission proposals may mean for platforms and gig workers in the UK, https://www.lancaster.ac.uk/work-foundation/news/blog/what-new-eu-commission-proposals-may-mean-for-platforms-and-gig-workers-in-the-uk 2021.

on an employment relationship, and only such work gives the employee work protection and rights. Regardless of the assessment of the legal status of this category of employees, problems related to this status will not result from the formal qualification of these people by platforms as self-employed, which was criticized in many European Union countries and resulted in extensive jurisprudence of national and European courts on the criteria for determining the legal status of these employees[20].

4. "Determining the Existence of an Employment Relationship": Poland's Litmus Test

When evaluating the employment relationship in Poland in the context of the development of the model of protection for those working based on digital platforms, first, one should analyze the contractual relationship, which may seem to be regulated, although the discussion on the status of dependents, i.e. those working based on an employment contract with those semi-dependent started for good. Making allowances for the differences between employees, partially dependent employees (with a subcategory of employees similar to employees), and self-employed, the provisions of the Labor Code regarding the rights of employees within the meaning of Art. 2 of the Labor Code (e.g. regulations on working time, act on holidays, etc.) do not apply to the second group of workers. It is worth noting that in Poland, since January 1, 2017, the Act on the minimum hourly rate for contractors and persons performing services has been in force[21], and according to the judgment of the Constitutional Tribunal of June 2, 2015, the possibility of associating in trade unions has been extended, e.g. for contractors and self-employed. It is reasonable to ask whether, from a teleological point of view, a different assessment of the self-employed status would be necessary. According to Polish labor law, there are generally three categories of working people: employees within the meaning of the Labor Code, people performing work under civil law contracts, and self-employed. However, regarding the application of certain specific labor law provisions, a further differentiation of the self-employed into semi-dependent and fully independent workers should be made. The categorization done by individual labor law is crucial because it extends to collective labor law and, with some marginal deviations, to social security law.

[20] A. Todoli-Signes, Judgment designating…, a. 487-490.

[21] Act of 22 July 2016 amending the Act on the minimum remuneration for work and certain other acts (Journal of Laws, item 1265, as amended).

The basic definition of "employee" is contained in Art. 2 and 22 of the Polish Labor Code. An employee is a person who benefits from the entire scope of labor law, i.e. protection and employee rights[22]. According to Art. 22 of the Labor Code (employment contract) is a contract where two parties agree that one (employee) provides his/her services to the other (employer) for a certain period, under the direction of the employer and for remuneration. When juxtaposing the terms "employment contract" with the term "service contract or cooperation contract", it should be noted that in the case of the latter, the parties agree that one of them (self-employed) will be provided with performance (delivery of a specific result/completion of a designated task) services personally, i.e. he will provide the contractor with a kind of "success", with the difference that the self-employed person can use the help of "substitutes". Based on the definition contained in Art. 22 of the Labor Code. The doctrine and courts have developed several critical criteria in their jurisprudence that must be met in order to determine whether an obligation relationship is actually an employment contract or a civil law contract[23]. However, it should be noted that the contractual relationship does not have to meet all the criteria set out in Art. 22 of the Labor Code for it to be considered an employment contract, but in general assessment, these criteria must take precedence over others that favor an employment contract or any other contractual relationship. Upon meeting the criteria set out in Art. 22 of the Labor Code, a situation of personal dependence arises, which leads to the classification of the contractual relationship as an employment contract. The main criterion is personal subordination, which means that the person works under the employer's direction, and has the right to decide where, when and under what circumstances to work (i.e. the employer controls the employee's work). Any "employee success" that results from the time and work provided by the employee is the success of the employer, not the employee. At the same time, the employer bears the risk of success/failure, not the employee. In turn, the employee is obliged to perform work diligently, using the tools provided by the employer. More generally, the employee is integrated into the employer's organization.

[22] Article 22 of the Labor Code.

[23] See e.g. Judgment of the Supreme Court of April 4, 2014, I PK 234/13, judgment of the Supreme Court of September 18, 2019, I PK 142/18, resolution of the Supreme Court of April 19, 1988, file ref. III CZP 26/88, OSNC 1989 No. 9, item 140; judgment of the Supreme Court of October 30, 2008, II CSK 233/08, judgment of the Supreme Court of April 1, 2004, file ref. no. II CK 125/03.

The employer has the right to discipline the employee, such as disciplinary penalties (Article 108 of the Labor Code), and, in particular, the employer may terminate the employment relationship by dismissing the employee in disciplinary proceedings for, for example, a serious violation of primary employee duties (Article 52 of the Labor Code). According to the doctrine and jurisprudence of the courts, any general possibility of delegating work to another person, apart from exceptional circumstances, is unacceptable in a traditional employment relationship. Allowing such a possibility may lead to the conclusion that: there is no personal dependence of the employee towards the employer, i.e. the critical element of the employment relationship, i.e. subordination, is missing[24]. There is no legal definition of working people in the Civil Code, i.e. self-employed semi-dependents. It is worth noting that instead of a civil law relationship based, for example, on actions to establish the existence of an employment relationship (Article 189 of the Code of Civil Procedure), the labour courts have, over the years, developed criteria in their jurisprudence to determine the existence of an employment relationship[25]. Any voluntary employment, paid employment, performed under the employer's direction, is treated by law as employment under an employment relationship, regardless of the name of the contract concluded by the parties. Establishing that work of a specific type is performed for the employer, under his supervision, at the place and time specified by him is sufficient to verify the existence of an employment relationship. The employee's subordination to the employer's management in performing work is "a demarcation line, allowing to distinguish the structural element of employment under the employment relationship[26]. The subordination of the employee to the employer consists of the management of the employing entity and the determination of the time and place of work by the employer[27].

The draft EU directive on digital platform work in defining a platform employment relationship in Art. 4 is the closest to the Polish model of

[24] The Act of June 25, 2015 amending the Labor Code and certain other acts was announced on August 21, 2015, Journal of Laws of 2015, item 1220; see more: L. Mitrus, Draft amendment to the Labor Code concerning fixed-term contracts, MoPr 2015, No. 6, p. 285 et seq.

[25] Act of November 17, 1964, Code of Civil Procedure, Journal of Laws 1964 No. 43 item 296.

[26] Judgment of the Supreme Court of June 24, 2015, II PK 189/14, OSP 2016, No. 9, item 89 with a commentary by S. Kowalski.

[27] Judgment of the Supreme Court of April 22, 2015, II PK 153/14, OSP 2016, No. 6, item 6 with a gloss A. Musiała.

establishing an employment relationship, excluding the self-employed and semi-dependent self-employed from this scope. Art. 4 confirms an employment relationship between a digital job platform that controls, within the meaning of para. 2, the performance of work and the person performing work via this platform are legally considered an employment relationship. Great emphasis is placed on the concept of "control" of the employer's specific subordination in the word's narrow sense. Work performance control within the meaning of sec. 1 is to be understood as satisfying at least two of the following conditions:
(a) the actual setting or capping of remuneration levels;
(b) obliging the person performing the work via online platforms to comply with specific binding rules regarding the appearance, conduct towards the recipient of the service or the performance of the work;
c) supervising the performance of work or verifying the quality of work results, including by electronic means;
(d) effectively restricting, including by means of sanctions, the freedom to organize work, in particular the freedom to choose working hours or periods of absence, to accept or decline tasks and to use subcontractors or substitutes;
e) effectively limiting the possibility of expanding the customer base or performing work for third parties.

In the definition of the concept of "control", presented in the draft directive, the limits of subordination have been narrowed down to the direct control of the employee, excluding the indirect dependence that occurs with self-employed semi-dependents, who often remain dependent on one or two contractors, which does not exclude personal subordination, which means that the person works under the direction of the employer, who has the right to decide where, when and under what circumstances he or she is to work (i.e. the employer controls the work of the employee).

5. Mark Freedland's Concept of 'personal employment relationship'

The main problem of the previous considerations is a new challenge or set of challenges for the world of work arising on the one hand from the so-called "digital economy" and, on the other hand, the opportunities offered by the initiative "inclusion of labor protection for semi-dependent self-employed workers (or semi-dependent workers can be used for this study). The concept of granting the self-employed, self-employed semi-dependent, and those working based on civil law contracts a certain scope

of protection that employees are entitled to under traditional labor law is a new labor law challenge and is based on the idea of "personal relationship at work", a concept developed by Freedland[28]. The notion of a personal relationship implies that in modern employment markets, work can be provided in various ways and through various conditions and patterns. They can range from a classic subordinate, bilateral and continuous forms of employment to more varied and complex forms of work involving many parties and economic operators, and ultimately developing in the sphere of autonomy in terms of their legal characteristics and self-reliance in the provision of work[29]. Although the concept of the personal employment relationship was created in 2010, Freedland only in 2019, in his publication devoted to the strategies of trade unions in protecting employees performing work in new forms of employment, emphasized that first of all, it is important to understand the methodology of providing work outside the employment relationship. The author pointed out that currently, there are efforts to shape and present contractual relations in the sphere of employment in such a way that they do not take the form, or at least do not seem to take the form, of permanent and bilateral employment contracts, which constitute the classic paradigm of the traditional definition of the employment relationship[30]. This transformation of commitments places the worker on the other side of the line between 'employees' and 'independent contractors' or 'self-employed', thus affecting the traditional division of the world of work. It is this particular kind of transformation or conceptual relocation of work-related tasks that gives rise to the "new forms of work" that were, among others, the subject of the International Labor Organization Report 2020[31]. The idea of a "personal relationship at work" is a concept developed by M. Freedland and is undoubtedly a critical attempt to re-conceptualize the contractual relationship that connects, for example, a self-employed person and his contractor. The notion of a personal relationship at work captures the fact that in today's work labor markets, one can testify in different ways and on various grounds of employment. They can range

[28] See more: M. Freedland, „The Personal Employment Contract", Oxford University Press 2010.

[29] Id.

[30] M. Freedland, New trade union strategies for new forms of employment – A brief analytical and normative foreword, European Labour Law Journal 2019, Vol. 10(3), pp. 179–182.

[31] See the entire ILO report: Ensuring better social protection for self-employed workers 2020, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---ddg_p/documents/publication/wcms_742290.pdf.

from classic subordinate, bilateral and permanent employment relationships to more varied and complex forms of work, involving many parties and economic operators and ultimately developing in the sphere of autonomy and, in terms of their legal characteristics, self-employment. G. Davidov and others indicate that the concept of "personal employment relationship" can be used to determine the subjective scope of application of labor law concerning any person engaged by another person to perform work unless that person runs his own business.[32]. In this regard, we must make it clear that the concept of the EU directive contradicts the idea of a personal employment relationship and somehow contradicts the ongoing trend of extending protection standards to non-subordinate workers[33].

6. Conclusions

Poland's applicable labor law provisions define two groups of "employees". The first group includes employees performing work within the meaning of Art. 2 of the Labor Code. The second group consists of those to whom the Polish legislator gradually grants some "employee" rights, i.e. contractors and benefit recipients. At the same time, in the Polish labor market, despite the COVID-19 pandemic, the number of self-employed and those working on digital platforms has increased, creating the fiction of a mandate relationship. Digital workers in Poland sign a contract of a mandate for three hours a week, and the rest of the remuneration results from the vehicle rental contract, which avoids almost all public law liabilities.

The entire scope of the provisions of the Polish Labor Code applies only to employees. As for other working people, in particular, the analyzed employees of digital platforms, they are forced to run a business or conclude vehicle rental contracts or contracts of mandate and are treated in this way by the legislator, i.e., either as self-employed or as a form of semi-dependent work. Meanwhile, they perform work based on the characteristics of an employment contract, with the difference that employees of digital platforms do not even enjoy some employment rights

[32] G. Davidov, M. Freedland, N. Kountouris, „The Subjects of Labor Law: Employees and Other Workers", in M. Finkin and G. Mundalak (red.), *Research Handbook in Comparative Labor Law* (Edward Elgar 2015), s. 115.

[33] For instance: C. Behrendt, A. Nguyen, Innovative approaches for ensuring universal social protection for the future of work, ILO Future of Work Research Paper Series 2018, Paper, 12.

specific to employees within the meaning of the Labor Code (working time, holidays, etc.). However, one should consider de lege ferenda the possibility of granting them some employment rights, provided that they are economically dependent on their contractor after a comprehensive assessment of the situation. It can be assumed that due to the existence of an intermediate category of "employees/self-employed" who are economically dependent, it is reasonable to grant them at least some employment rights after verification of the criteria defining the employment relationship by determining the characteristics of the employment relationship or their predominance (Article 22 of the Labor Code). In the face of ongoing social and economic transformations, new forms of work, and especially in the circumvention of labor law, there are reasonable doubts about the role that labor law should play in these phenomena. The European legislator also asks such questions in the draft directive on improving working conditions via online platforms; however, it takes a step backward concerning the intended direction, i.e., the inclusion of the axiology of the protective function on non-employee forms of work. In connection with these doubts, there are demands for a substantial increase in protection standards, and even a kind of deregulation in this area.

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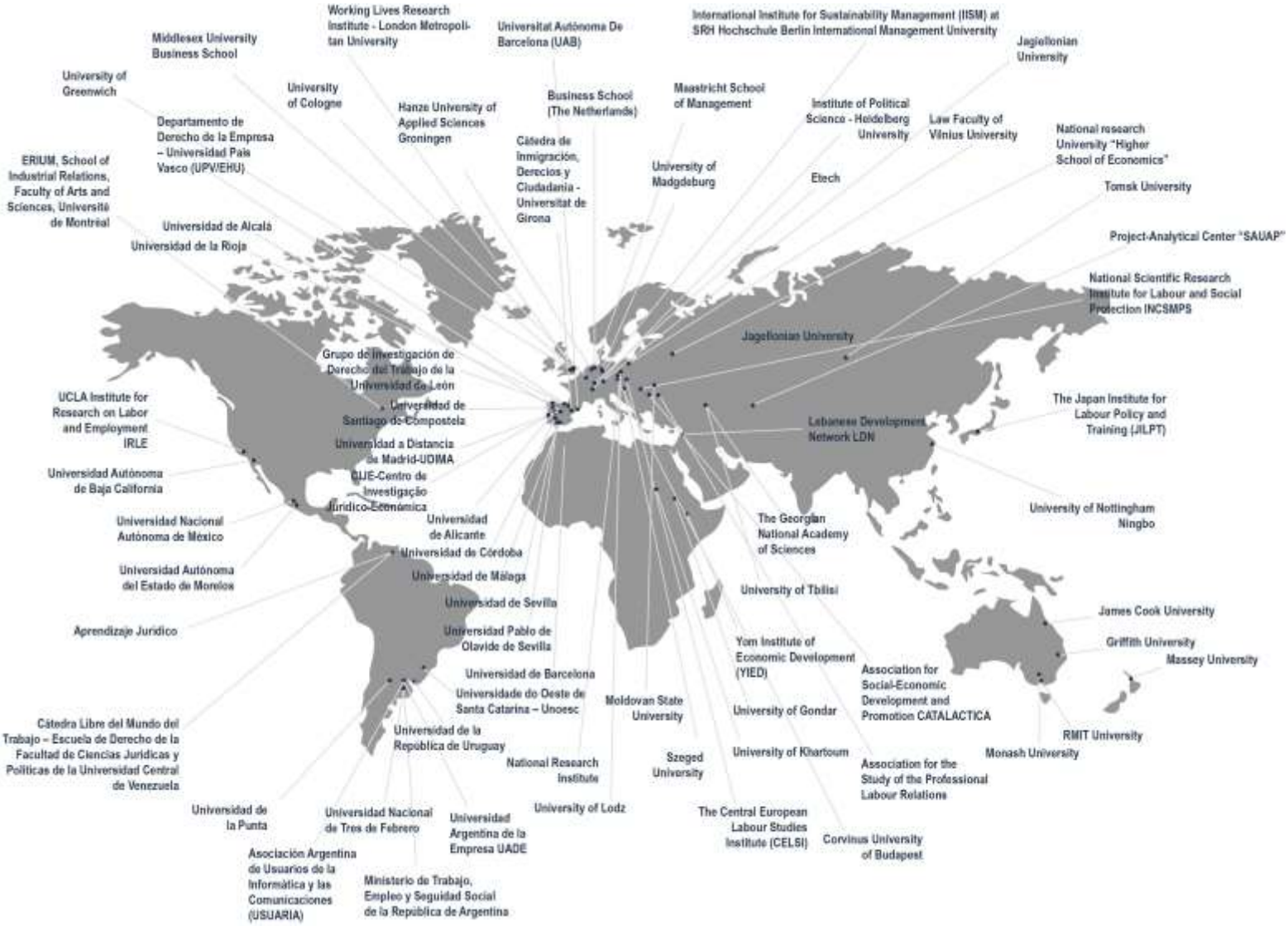

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