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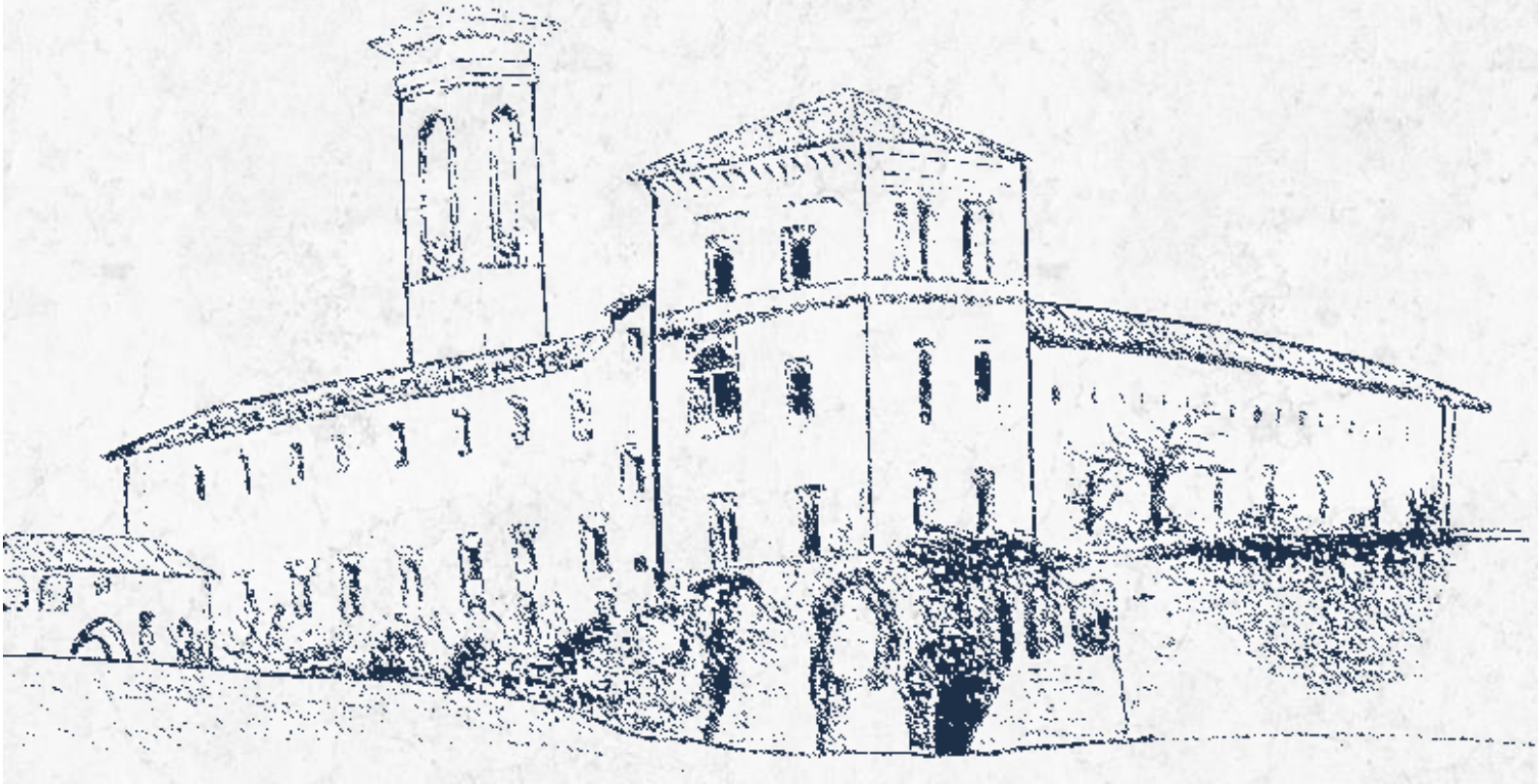

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Digital Platform Work and its Effects on Youth Employment in Italy: Insights for a More Effective System of Protection

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Abstract: Digital platform work, typical of modern business organisation, can offer new opportunities on the employment side for young people, but at the same time raises many questions about the protections to be afforded to the large group of workers concerned.
These reflections, starting from the work on the digital platform and the relative legal framework of reference, intend to highlight the lights and shadows of the phenomenon investigated and suggest, without any claim to exhaustiveness, some possible lines of intervention capable of guaranteeing the numerous workers involved truly decent and quality employment.

Keywords: *Digital platform work; Youth employment; Italy; Labour exploitation; Worker protections.*

1. Introduction

This paper aims to contribute to the understanding of work through digital platforms and its effects on youth employment[1].

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[1] This contribution is a reworking and update of the paper presented at the "XXIV ISLSSL World Congress - Work in a Changing World: The Quest for Labour Rights and Social Justice," Rome, 17-20 September 2024. It is attributable to the activity carried out by the local research unit of the University of Messina (CUP J53D23018860001), as part of the PRIN PNRR 2022 "YES - Youth Employment Strategy" (P.I. Prof. Carmela Garofalo, Code: P2022H89ZS), funded as part of Mission 4 "Education and Research"

Digital platforms represent a typical and essential organisational model in modern enterprises[2], through which the process of producing goods and services takes on a new form[3].

Focusing these reflections on the pairing of "digital platform work – youth employment," it can be stated that, within the current production context, this type of work[4] undoubtedly represents an opportunity for young people seeking employment[5].

The employment options offered by platforms are, in fact, particularly attractive to the younger segments of the workforce, who are often looking for flexible jobs or, in some cases, for their first job.

However, the new form assumed by the process of producing goods and services, while appealing and offering increasing opportunities, raises numerous questions about working conditions and the protections to be provided to the large group of workers involved.

The job opportunities offered by digital platforms are often characterised by irregularity and marginality, leading to an increasing number of so-

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of the PNRR (component C2 - investment 1.1, Fund for the National Research Programme and Projects of Significant National Interest - PRIN), utilising the European funds from the NextGeneration EU Programme.

[2] It has been observed in the literature that "the changes in the organisational models of companies, resulting from the ongoing processes of digitalisation, profoundly alter the way of working and producing – in terms of the role of the human being in the production process, the times and methods of performance, and the professional content – involving all workers across the board. However, in this new phase, the human being, with their knowledge, skills, and abilities, is placed at the centre of the production system, as they are capable of managing the new forms of production" (my translation) – (L. Ferluga, *Nuove tecnologie e professionalità*, in A. Bellavista, R. Santucci, eds., *Tecnologie digitali, poteri datoriali e diritti dei lavoratori*, Giappichelli, Torino, 2022, p. 160 s.).

[3] As highlighted by U. Carabelli, *Presentazione del Convegno e introduzione dei lavori*, in *Riv. giur. lav. prev. soc.*, 2, 2017, p. 12, digital platforms represent, in any case, «only one facet of the polyhedron of the global digitalization of production processes» (*my translation*).

[4] Numerous contributions have been made on digital platform work, e.g., G. Pisani, *Piattaforme digitali e autodeterminazione. Relazioni sociali, lavoro e diritti al tempo della "governabilità algoritmica"*, Mucchi Editore, Modena, 2023; M. Novella, P. Tullini, eds., *Lavoro digitale*, Giappichelli, Torino, 2022; R.E. Restelli, *Le piattaforme digitali. Dall'intermediazione all'impresa*, Giuffrè, Milano, 2022; P. Loi, ed., *Il lavoro attraverso piattaforme digitali tra rischi e opportunità*, Edizioni Scientifiche Italiane, Napoli, 2021; A. Donini, *Il lavoro attraverso le piattaforme digitali*, Bologna University Press, Bologna, 2019. Also, reference is made to G. Toscano, *Il lavoro digitale. Prime riflessioni*, Edas, Messina, 2021.

[5] See, in particular, the reflections of T. Treu, *La digitalizzazione del lavoro: proposte europee e piste di ricerca*, in *federalismi.it*, 9, 2022, p. 190 ff.; A. Pizzoferrato, *Digitalisation of work: new challenges to labour law*, in *ADL*, 6, 2021, p. 1329 ff.; G. Santoro-Passarelli, *Civiltà giuridica e trasformazioni sociali nel diritto del lavoro*, in *Dir. Rel. Ind.*, 2, 2019, p. 421; P. Ichino, *Le conseguenze dell'innovazione tecnologica sul diritto del lavoro*, in *Riv. it. dir. lav.*, 4, 2017, p. 525 ff.

called working poor, even among younger generations, who are forced to work under suboptimal conditions and without the necessary protections[6]. This paper, without any claim to exhaustiveness, will therefore attempt to highlight the pitfalls surrounding digital platform work and, at the same time, identify potential protection tools for the large number of workers involved, with particular attention to younger generations.

2. The New Frontier of Labour Exploitation: The so-called "Digital Gangmasters"

Among the primary risks associated with digital platform work, the most concerning is labour exploitation. The application of information systems, algorithms, and automated decision-making mechanisms in the workplace has not only profoundly transformed the organisation of labour relations but has also heightened the risk of illicit behaviour, fostering the emergence of increasingly sophisticated methods of exploiting workers[7].
In particular, recent judicial cases have highlighted phenomena that legal scholars have not hesitated to classify as forms of "digital gangmasters"[8], where the abusive conduct of employers is carried out through the mechanisms and tools typical of the gig economy[9].

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[6] On the topic, see B. Caruso, *I diritti dei lavoratori digitali nella prospettiva del Pilastro sociale*, in *WP CSDLE "Massimo D'Antona".IT - 146/2018*, especially p. 18 ff.

[7] See A. Bellavista, *Intervento alla tavola rotonda "Innovazioni tecnologiche e nuovi lavori: quali tutele per i lavoratori?"*, in *Riv. giur. lav. prev. soc.*, 2, 2017, p. 165.

[8] See P. Ichino, *Il nuovo «caporalato digitale». La faccia scura della Gig economy*, in *L'avvenire*, April 29, 2018. Additionally, another form of gangmasters has been identified, referred to as "grey gangmasters." The term is used by E. Tomasinelli in *Intermediazione illecita e sfruttamento del lavoro: una recente pronuncia del Tribunale di Milano in tema di "caporalato grigio"*, in *Giur. Pen. Web*, 12, 2019, p. 1 et seq. Specifically, with this term, the author refers to a situation "in which workers are forced to work without any protection and/or guarantee, to sign blank resignation forms, to suffer wage and treatment abuses in a state of constant anxiety due to the possibility of losing their job if they do not passively accept the conditions imposed" (my translation) – (ibid., p. 20).

[9] The gig economy is characterised by occasional or marginal work engagements and develops through digital platforms that facilitate the matching of supply and demand for labour, as well as manage, on an algorithmic basis, the relationship between the parties. However, the gig economy should not be confused with the sharing economy, despite both sharing the use of digital platforms. The latter constitutes a model of collaborative economy, in which the parties, through specific digital platforms, create an open market for the temporary use of goods or services (e.g., Uber's car-sharing services or Airbnb's accommodation sharing). In this regard, for further insights, reference is made to the European Commission Communication No. 356 of 2016 titled *"A European Agenda for the Collaborative Economy."*

Thus, digital gangmasters join their traditional counterparts in agriculture or construction, sharing several common characteristics, particularly the exploitation of the workforce. Indeed, digital gangmasters, much like their "traditional" counterparts, embody elements typical of the criminal offence outlined in Article 603-bis of the Italian Penal Code, which addresses the crime of "Illicit Intermediation and Labour Exploitation"[10]. It is no coincidence that, under this provision, a recent ruling saw the conviction of a manager from a company engaged in recruiting riders for a well-known food delivery company[11].

More specifically, during the trial, a concerning picture emerged, offering significant insights into the nature of the labour dynamics under review. Workers were hired by intermediary companies through pre-agreements or occasional collaboration agreements and paid "per delivery," approximately three euros net per delivery, sometimes in cash, and in some cases, even for amounts lower than those agreed upon[12]. A strict "punitive" system also emerged, whereby riders, to avoid penalties, were forced to endure gruelling working hours.

In light of this scenario, the Court of Milan identified the elements of the crime of illicit intermediation and labour exploitation under Article 603-bis of the Penal Code, issuing the first conviction for "digital gangmasters."

Although this is a first-instance judgment and, as such, is generally not final, the facts outlined in the ruling still represent an alarming signal of the degradation that often characterises such labour practices. Beyond the specific outcome of the case, these facts underscore—on a broader level—how digital platforms, in addition to revolutionising labour dynamics, have helped transcend the stereotypical image of exploitation as a phenomenon tied exclusively to rural settings, thereby opening the door to new forms of the "reification" of the worker, reduced to a mere object of another's action[13].

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[10] See A. Andronio, *Il reato di intermediazione illecita e sfruttamento del lavoro: evoluzione normativa e giurisprudenziale*, in *Dir. lav. merc.*, 3, 2019, p. 431 et seq.; M. Miscione, *Caporalato e sfruttamento del lavoro*, in *Lav. giur.*, 2, 2017, p. 113 et seq.

[11] Trib. Milano, sez. G.I.P./G.U.P., October 15, 2021, n. 2805, in *Sist. pen.*, 3, 2022, p. 149 et seq., with a note by P. Brambilla.

[12] During the proceedings, it was also established that the tips paid by the customer through the app were not distributed, and even the amounts paid by the workers as a deposit to obtain the thermal bag and thereby begin their activity were withheld.

[13] See P. Brambilla, *"Caporalato tradizionale" e "nuovo caporalato": recenti riforme a contrasto del fenomeno*, in *Riv. trim. dir. pen. ec.*, 1-2, 2017, p. 191 et seq.

Moreover, as appears to emerge from the referenced judicial case, "digital gangmasters" are not only equally harmful to the legal good protected by the traditional criminal offence but also manifest in even more insidious ways, as they are concealed by the platforms themselves.
In light of these pathological developments in labour relations, lawmakers must necessarily intervene to establish a protection system suitable for this category of workers, or risk facilitating—if not failing to effectively counter—the proliferation of such forms of labour exploitation. In this regard, it is essential to assess whether the need to protect the workers involved requires the introduction of a broader protective framework than the one currently in place, one capable of providing responses not only from a reparative perspective but also from a preventive one, intervening before labour exploitation occurs and harm is inflicted upon the worker.
In such cases, any subsequent compensation, even of a compensatory nature[14], would hardly represent the most effective solution, as it would be impossible to ensure specific protection for the victim.

3. The Controversial Legal Qualification of Digital Labour Relations in Light of the Recent Directive (EU) 2024/2831

Given the premises outlined above, the first and perhaps most complex issue to address concerns the legal qualification of digital labour relations. The interpretative effort required to properly categorise such relationships is closely linked to the system of protections intended for the workers involved.
Considering the complexity of the issue, the scope of this contribution does not allow for a general reconstruction of the phenomenon. Therefore, the investigation will be limited to the paradigmatic case of riders, for whom, even today, there are diametrically opposed positions in both legal scholarship and case law, with a debate that reveals an almost excessive approach to the qualification dilemma.
The first significant ruling on the legal qualification of the labour relationship of riders and the protections to which they are entitled is, as is well known, from the Court of Turin[15], which categorised the relationship

[14] On this topic, a rather controversial aspect is the compensability of so-called "punitive damages." Since it is not possible to provide an in-depth analysis of this issue in this context, it seems appropriate to refer to the detailed reflections of I. Alvino, *Sulla questione della risarcibilità dei c.d. «danni punitivi» alla vittima di una discriminazione fondata sul sesso*, in *Arg. dir. lav.*, 3, 2016, p. 579 et seq.
[15] Trib. Torino, May 7, 2018, in *Law. Dir. Eur.*, 2018, p. 1, with a comment by P. Tullini.

as self-employment. In the second instance, however, the Court of Appeal chose a different qualification, classifying these relationships as "collaborations organised by the principal," under Article 2 of Legislative Decree No. 81/2015, an approach that was later confirmed, albeit with different reasoning, by the Court of Cassation[16].

However, shortly after the ruling by the Supreme Court, several subsequent rulings established the existence of an employment relationship with subordination[17]. From the brief outline above, it is clear that uncertainty remains regarding the legal qualification of the situation at hand, despite the introduction of specific legislation aimed at protecting digital platform work[18].

In this case, a new trend in labour law also emerged, aiming to reduce the boundaries between autonomy and subordination[19], by introducing a minimum level of protections even for platform workers[20], formally

[16] Cass. Civ., January 24, 2020, n. 1663, in *Lav. Dir. Eur.*, 1, 2020, pp. 2 et seq. This ruling has sparked significant interest in legal scholarship, as evidenced by the numerous contributions dedicated to it. Among others, by way of example, V. Maio, *I riders nella "terra di mezzo", tra crisi dei rimedi e necessità logica della fattispecie*, in *Giur. it.*, 7, 2020, p. 1797 et seq.; M. Persiani, *Osservazioni sulla vicenda giudiziaria dei "riders"*, ivi, p. 1801 et seq.; ID., *Note sulla vicenda giudiziaria dei riders*, in *Lav. Dir. Eur.*, 1, 2020, p. 2 et seq.; M. Biasi, *Le (in)attese ricadute di un approccio rimediale al lavoro tramite piattaforma digitale*, in *Giur. it.*, 2020, p. 1806 et seq.; P. Ichino, *La stretta giurisprudenziale e legislativa sulle collaborazioni continuative*, in *Riv. it. dir. lav.*, 2020, p. 90 et seq.; A. Maresca, *La disciplina del lavoro subordinato applicabile alle collaborazioni etero-organizzate*, in *Dir. Rel. Ind.*, 1, 2020, p. 146 et seq.; O. Mazzotta, *L'inafferrabile etero-direzione a proposito di ciclofattorini e modelli contrattuali*, in *Labor*, 1, 2020, p. 5 et seq.; A. Perulli, *Collaborazioni etero-organizzate, coordinate e continuative e subordinazione: come "orientarsi nel pensiero"*, in *Dir. Rel. Ind.*, 2, 2020, p. 267 et seq. Also noteworthy is the Focus titled *«La sentenza di Cassazione n. 1663 sui riders. Un approdo e un punto di partenza»* in *Lav. Dir. Eur.*, n. 1/2020 and the special issue n. 2/2020 entirely dedicated to this ruling in the journal *Mass. Giur. lav.*

[17] The first, in chronological order, is Trib. Palermo, November 24, 2020, n. 3570, in *Guida dir.*, 49, 2020, p. 54, to which reference is made in G. Fava, *Nota alla sentenza del Tribunale di Palermo n. 3570/2020 pubbl. il 24/11/2020*, in *Lav. Dir. Eur.*, 1, 2021, p. 2 et seq. ed E. Puccetti, *La subordinazione dei* Riders. *Il canto del cigno del tribunale di Palermo*, in *Lav. Dir. Eur.*, 1, 2021, p. 2 et seq.

[18] The reference is to d.l. n. 101 del 2019 (the so-called "decreto imprese"), converted into l. n. 128 del 2019, which added a new Chapter V-*bis* to d.lgs. n. 81/2015, entitled «*Tutela del lavoro tramite piattaforme digitali*».

[19] On this point, see F. Carinci, *La subordinazione rivisitata alla luce dell'ultima legislazione: dalla "subordinazione" alle "subordinazioni"?*, in *ADL*, 4-5, 2018, p. 961 et seq.

[20] In this regard, the regulation seems to align with Directive n. 2019/1152 of the European Parliament and Council of June 20, 2019, on transparent and predictable working conditions in the European Union, which establishes «*minimum rights that apply to all workers in the* Union *who have an employment contract or a working relationship as defined by law,*

classified as "self-employed"[21]. It is evident, however, that this intervention cannot be considered a final solution. While it represents progress in terms of protections, it still leaves many questions unanswered and invites further reflection on the need for solutions aimed at more comprehensive and functional regulation of platform workers – a category that is continuously expanding and goes well beyond the figure of the rider.

In this context, it will also be crucial to assess the impact of the recent directive on improving working conditions within digital platforms[22], which introduces, among other things, a legal presumption of subordination "when facts indicate direction and control, in accordance with national law, collective agreements, or prevailing practices in the Member States, taking into account the case law of the Court of Justice" (Article 5, paragraph 1).

The introduction of a simple presumption of subordination represents a significant test, both for the legal qualification of labour relations and for defining the protections to be granted to digital platform workers[23]. The

collective agreements, or practices in force in each Member State, taking into account the case law of the Court of Justice». For an in-depth examination of these provisions, see, among others, the detailed reflections of D. Garofalo, *La prima disciplina del lavoro su piattaforma digitale,* in *Lav. giur.*, 1, 2020, p. 5 et seq.

[21] Beyond the legislator's intentions, however, it does not seem that the qualifying doubts raised in legal scholarship and emerging in practice have been dispelled by this provision, and consequently, the protections provided do not appear to be certain and effective. As evidence of this, several positions taken by early commentators can be noted: see, among others, M.T. Carinci, *Il lavoro etero-organizzato secondo Cass. n. 1663/2020: verso un nuovo sistema dei contratti in cui è dedotta un'attività di lavoro, in Dir. Rel. Ind.,* 2, 2020, p. 488 et seq.; A. Perulli, *La nuova definizione di collaborazione organizzata dal committente e le tutele del lavoro autonomo tramite piattaforme digitali. Note al d.lgs. 81/2015*, in *Riv. it. dir. lav.*, 4, 2019, p. 163 et seq.; P. Tosi, *Le collaborazioni organizzate dal committente nel decreto crisi*, in *Guida Lav.*, n. 47, 2019, p. 10 et seq.

[22] At the time of the report, the text of the directive had not yet been definitively approved. Only recently was the final approval of Directive (EU) 2024/2831 of the European Parliament and the Council of October 23, 2024, concerning the improvement of working conditions in platform-based work. The Directive, published in the Official Journal of the European Union on November 11, 2024, will enter into force on December 1, 2024, and must be transposed by December 2, 2026. For an initial commentary on the directive, see G. Smorto, A. Donini, *L'approvazione della Direttiva sul lavoro mediante piattaforme digitali: prima lettura*, in *Labour* & *Law Issues*, 10, 1, 2024, p. 25 et seq.

[23] As for contractual relationships established before December 2, 2026, and still ongoing on that date, Article 5, paragraph 6, of the directive expressly provides that «*the legal presumption set out in this article applies only to the period starting from that date*».

issue, as can be easily inferred, has an urgent character, as it involves the protection of the rider's person and dignity[24].
While digital platform work appears to open new possibilities for young people entering the labour market, the lack of clear legal qualification and adequate protections risks relegating these new forms of employment to a legal limbo, exposing especially young workers to precarious working conditions and forms of exploitation that are difficult to counter.

4. Possible Future Scenarios for a "Digital" Occupation that is Dignified and of High Quality

At this point, it is necessary to take a step forward and consider potential future scenarios, offering insights that, in the humble opinion of the author, could contribute to the development of a more effective system of protections for the numerous workers in this sector.
The scenario with which labour law scholars are confronted, as outlined previously, undoubtedly involves considerable systematic and interpretative efforts to comprehensively address (and attempt to overcome) the numerous pitfalls present in digital platform work. The task of the legislator, from this perspective, is just as difficult, not only due to the intrinsic complexity of the subject but also because of the continuous technological innovations that risk quickly rendering any regulatory framework obsolete.
While awaiting developments on the legislative front, it can still be stated that the variety of solutions that have emerged thus far, while illustrating the uncertainty surrounding the qualification of digital platform work, offers a potential compromise[25]. In fact, in the absence of the requirements for subordination, the regulation of collaborations organised by the principal[26] (at least until the adoption of Directive (EU)

[24] As noted by P. Passaniti, *La dignità nell'ordinamento italiano. Un percorso storico*, in *Variaz. Temi Dir. Lav.*, 3, 2020, p. 514, «dignity represents the exact point of intersection between the person and their work: the dignity of the person is also the dignity of their work, because through work, people can elevate themselves» (*my translation*). On this topic, see also G. Santoro Passarelli, *Dignità del lavoro e civiltà digitale*, in *Riv. giur. lav. prev. soc.*, 1, 2023, p. 53 et seq. and L. Ratti, *Funzione della dignità e regolazione del rapporto individuale di lavoro*, in *Variaz. Temi Dir. Lav.*, 3, 2020, p. 607 et seq.
[25] See C. De Marco, A. Garilli, *L'enigma qualificatorio dei* riders. *Un incontro ravvicinato tra dottrina e giurisprudenza*, in *WP CSDLE "Massimo D'Antona".it* – 435/2021, p. 3.
[26] See V. Filì, *Le collaborazioni organizzate dal committente del d.lgs. n. 81/2015*, in *Lav. giur.*, 12, 2015, p. 1091 et seq. For a comparison of the main positions that have emerged in legal

2024/2831) could represent a reasonable point of balance between the need for worker protections, to which subordinate work rules would apply, and the productivity efficiency of the platforms.
With the introduction of a simple legal presumption of subordination, as outlined in Article 5 of the directive, this compromise approach will seem less satisfactory for platform workers. The European legislator's choice has the advantage of relieving the worker of the difficult burden of proof[27] regarding the existence of a subordinate employment relationship between the parties[28]. Given that labour trials inherently involve two opposing spheres of interest with different contractual powers[29], this provision is significant and should undoubtedly be welcomed.
To ensure the effectiveness of the protections for the parties involved, the procedural rules must, in fact, necessarily be balanced with the substantive data. Too often, however, especially in labour law, the legislator has not fully grasped the impact of procedural law in labour law, and thus the interplay between substantive and procedural norms[30], with inevitable negative effects on the protection of the weaker party in the relationship.
The key issue will be to understand how the legislator will implement the directive and how it will reconcile the new provisions with those already outlined in Articles 47 bis et seq. of Legislative Decree No. 81/2015, which establish minimum protections for self-employed workers performing delivery services *through digital platforms*[31]. These provisions,

scholarship, see A. Vallebona, ed., *Il lavoro parasubordinato organizzato dal committente*, in *Colloqui Giuridici sul lavoro*, 2015.

[27] The burden of proof has been the subject of numerous studies, e.g., G. Verde, *L'onere della prova nel processo civile*, Jovene, Napoli, 1974; G.A. Micheli, *L'onere della prova*, Cedam, Padova, 1942; G. P. Augenti, *L'onere della prova*, Soc. Ed. del Foro italiano, Roma, 1932. With particular reference to labour law, see A. Vallebona, *L'onere della prova nel diritto del lavoro*, Cedam, Padova, 1988, and more recently, F. De Michiel, *Questioni sull'onere della prova nel diritto del lavoro*, Cedam, Milano, 2019.

[28] The simple presumption indeed results in a reversal of the burden of proof, meaning that, in this case, the platform is required to provide evidence to counter the fact or indicative evidence presented by the worker, namely the subordinate nature of the relationship.

[29] In labour proceedings, in fact, "the burden of proof is closely related to an issue of material inequality" (my translation) – (G. Nicosia, *Onere della prova e 'canone inverso' nel processo del lavoro*, in C. Romeo, ed., *Processo del lavoro*, Giappichelli, Torino, 2016, p. 471).

[30] On this point, see C. Romeo, *Il difficile rapporto tra processo e diritto del lavoro*, in *Lav. giur.*, 1, 2020, p. 14.

[31] Article 47 *bis*, paragraph 2, of d.lgs. n. 81/2015, defines digital platforms as «*the programs and computer procedures used by the client which, regardless of their place of establishment, are instrumental to the activities of goods delivery, setting the compensation and determining the methods of performance of the work*» (*my translation*).

while representing a commendable attempt to ensure minimum protections for workers in the sector, present numerous controversial aspects. For example, one might consider the extension of certain protections of subordinate work to workers classified as "self-employed" in the absence (at least) of a compatibility clause, or the fact that these provisions have been limited solely to the category of riders, excluding others working through digital platforms[32].

While awaiting a legislative harmonisation intervention, it is not far-fetched to hypothesise that, with the implementation of the directive, unless repealed or significantly amended, the provisions contained in Articles 47 bis et seq. of Legislative Decree No. 81/2015 will become closing provisions in the system. They will apply only on a residual basis, whenever the platform is able to overcome the simple legal presumption of subordination and demonstrate the autonomous nature of the relationship.

Apart from qualification aspects, legislative efforts must also focus on a more incisive valorisation of the functional phase of the employment relationship to ensure the certainty of legal relationships and the effectiveness of protections[33]. This valorisation becomes even more crucial when considering young workers, whose vulnerability is heightened by the general lack of previous work experience, making them more exposed to poorly protected working conditions and forms of exploitation often masked by the facade of presumed autonomy, as occurred in the case examined by the Milan court.

To effectively combat such exploitation, it will then be necessary to focus on preventive protections for the numerous workers involved, before they become "victims" of exploitation, thus avoiding serious harm to their

[32] On this latter aspect, however, the authoritative position taken by D. Garofalo, *La prima disciplina del lavoro su piattaforma digitale,* cit., p. 7, is shared, who believes that such regulation can be extended to other categories of workers operating on digital platforms by means of an analogous interpretation, as these are situations characterized by the eadem ratio. Indeed, in the author's view, «to affirm the opposite, invoking the literal text or the voluntas legis, would open the door to a constitutional issue regarding the provision, at least for violating Article 3 of the Constitution, by regulating in an unreasonably differentiated manner situations that deserve the same treatment» (*my translation*).

[33] Similarly, C. Romeo, *Le nuove regole del diritto del lavoro tra algoritmi e incertezza delle tutele*, in *Lav. giur.*, 2, 2021, p. 139, observes that «the issue at hand could be usefully framed by considering the functional phase of the execution of the employment relationship, rather than focusing on the frantic search for a nomen iuris to be necessarily assigned to the specific facts of the various forms of work» (*my translation*).

well-being. In this sense, concrete actions for raising awareness about the phenomenon will be necessary, ensuring full application of the provisions already provided for by the relevant national and international legislation, including enhanced controls by competent authorities.

In this regard, from a preventive perspective, special attention should be paid to provisions that impose specific obligations on employers, even within digital platforms, such as risk assessment, training, monitoring, and health surveillance[34]. Moreover, the informational obligations introduced by the so-called "Transparency Decree"[35], partially amended by the "Labour Decree"[36], in cases involving fully automated decision-making or monitoring systems, are of particular importance.

While it is not possible to examine these changes in detail here[37], the key point to highlight is the centrality of information in the (decidedly asymmetric) context of digital labour, much as has already occurred in other sectors of the legal framework[38]. The introduction of specific

[34] The reference is to Articles 47 *bis* et seq. of d.lgs. n. 81/2015 on «*Labour protection through digital platforms*» and, in particular, to Article 47 *septies*, paragraph 3, which extends the application of the provisions of d.lgs. n. 81/2008 to the client using digital platforms as well.

[35] D.lgs. n. 104 of June 27, 2022, which introduced Article 1 *bis*, within d.lgs. n. 152 of May 26, 1997, titled «*Additional disclosure requirements in the case of the use of automated decision-making or monitoring systems*» (*my translation*).

[36] D.l. n. 48 of May 4, 2023, converted into l. n. 85 of 3 July 3.

[37] For a thorough and accurate examination of the innovations introduced by the so-called "Transparency Decree", reference is made to D. Garofalo, M. Tiraboschi, V. Filì, A. Trojsi, eds., *Trasparenza e attività di cura nei contratti di lavoro. Commentario ai decreti legislativi n. 104 e n. 105 del 2022*, ADAPT University Press, 2023. In the literature, among others, see A. Zilli, *La trasparenza nel lavoro subordinato. Principi e tecniche di tutela*, Pacini Editore, Pisa, 2022; R. Rainone, *Obblighi informativi e trasparenza nel lavoro mediante piattaforme digitali*, in *federalismi.it*, 3, 2024, p. 279 et seq.; G. Peluso, *Obbligo informativo e sistemi integralmente automatizzati*, in *Labour & Law Issues*, 9, 2, 2023, p. 100 et seq.; G. A. Recchia, *Condizioni di lavoro trasparenti, prevedibili e giustiziabili: quando il diritto di informazione sui sistemi automatizzati diventa uno strumento di tutela collettiva*, *ivi*, 9, 1, 2023, p. 34 et seq.; M.T. Carinci, S. Giudici, P. Perri, *Obblighi di informazione e sistemi decisionali e di monitoraggio automatizzati (art. 1*-bis *"Decreto Trasparenza"): quali forme di controllo per i poteri datoriali algoritmici?*, in *Labor*, 1, 2023, p. 7 et seq.; A. Zilli, *Condizioni di lavoro (finalmente) «trasparenti e prevedibili»*, in *Labor*, 6, 2022, p. 661 et seq.; M. Faioli, *Trasparenza e monitoraggio digitale. Perché abbiamo smesso di capire la norma sociale europea*, in *federalismi.it*, 25, 2022, p. 104 et seq. For a comparison with the German legal system, reference is also made to M. Corti, *L'intelligenza artificiale nel decreto trasparenza e nella legge tedesca sull'ordinamento aziendale*, in *federalismi.it*, 29, 2023, p. 163 et seq.

[38] Consider, by way of example, the legislation protecting consumers, which imposes specific informational obligations on the professional. In any case, regarding the role of

informational obligations in the use of fully automated decision-making or monitoring systems can, in fact, reduce the informational asymmetries typical of employment relationships, create more transparent management of labour relations, and ultimately improve working conditions.

The second direction to pursue is more repressive and punitive. In this respect, it is necessary to emphasise the efforts made by the legislator in attempting to counteract labour exploitation. In this sense, the innovations introduced in 2016, especially in extending the applicability of Article 603 bis of the Penal Code to include the user of labour services, are commendable[39].

At the same time, it cannot be denied that the excessive openness to intermediary schemes, combined with the proliferation of platform work, has triggered worrying phenomena of digital "gangmasters" (exploitation). From this perspective, to address the problem comprehensively, more rigorous limits on intermediary schemes will be necessary (though not sufficient).

The challenge faced in protecting and promoting workers in this sector requires, however, a comprehensive revision of the entire system of protections, starting with a reduction in flexibility policies. In our legal system, the lack of an effective active labour policy system has contributed to an exponential increase in precarious work. It will also be indispensable not to overlook collective bargaining in the relevant sectors—currently absent in some areas of production—and to begin paying more attention, albeit with the necessary adaptations, to the exercise of trade union rights in the gig economy context[40].

In this direction, for instance, the introduction of a legal minimum wage[41], now also promoted at the European level through EU Directive

information in asymmetric relationships, see F. Rende, *Informazione e consenso nella costruzione del regolamento contrattuale*, Giuffré, Milano, 2012.

[39] In the version currently in force, anyone who «*recruits labour with the aim of assigning it to work for third parties*» (intermediary) or «*uses, hires, or employs labour, even through intermediary activity*» (user) is sanctioned, pursuant to Article 603 bis of the Italian Criminal Code.

[40] On this aspect, in particular, see A. Bellavista, *L'unità produttiva digitale*, in *Labour & Law Issues*, 9, 1, 2023, p. 97 et seq. e R. Di Meo, *I diritti sindacali nell'era del caporalato digitale*, *ivi*, 5, 2, 2019, p. 65 et seq.

[41] On this topic, reference is made to V. Bavaro, *«Adeguato», «sufficiente», «povero», «basso», «dignitoso»: il salario in Italia fra princìpi giuridici e numeri economici*, in *Riv. giur. lav. prev. soc.*, 4, 2023, p. 510 et seq.; R. Santucci, *L'appalto e il lavoro: interessi e tecniche di tutele*, in G. Proia, ed., *Appalti e lavoro: problemi attuali*, Giappichellli, Torino, 2022, p. 137 et seq.; G. Proia, *La proposta di direttiva sull'adeguatezza dei salari minimi*, in *Dir. Rel. Ind.*, 1, 2021, p. 26 et seq.; M. Biasi, *Il contrasto al "lavoro povero" e i nodi tecnici del salario minimo legale*, in *Lav. Dir. Europa*, 1,

2022/2041 on adequate minimum wages in the European Union, would guarantee support for low-income workers, especially in sectors without a reference collective agreement[42].

In conclusion, it can be asserted that the continued growth of digital platform work, if not accompanied by a more effective system of protections, risks fuelling precariousness and, in the most severe cases, translating into forms of labour exploitation, with diverse and significant harmful effects for the workers involved[43]. Indeed, what seems to emerge from the framework just outlined is a tendency toward the progressive commodification of labour[44], which can only be avoided through incisive and targeted legislative interventions aimed primarily at ensuring the value of work, the protection of the worker's dignity, and the pursuit of full and quality employment[45].

2021, p. 1 et seq.; A. Bellavista, *Il salario minimo legale*, in *Dir. Rel. Ind.*, 3, 2014, p. 741 et seq.

[42] EU Directive 2022/2041 of the European Parliament and the Council of 19 October 2022 on adequate minimum wages in the European Union.

[43] On this point, the reflections of A. Bellavista, *Intervento alla tavola rotonda "Innovazioni tecnologiche e nuovi lavori: quali tutele per i lavoratori?"*, cit., p. 165, are fully shareable, in which he states «the factual examination of the new modes of work, made possible by technological innovations and exemplified by the models of the digital economy or the gig economy, reveals a peculiar blend of old and original forms of labor utilization that raise many doubts about their alignment with the fundamental principles of personal protection. The originality essentially lies in the fact that we are always dealing with a work organization managed through information systems, algorithms, and automated decision-making mechanisms. The old aspect is that, nevertheless, the realization of a society where work is fully valued and properly regarded is not clearly evident, but rather the specter of exploitation looms» (*my translation*).

[44] The reference is to the guiding principle of the *Philadelphia Declaration* of the ILO 1944, according to which «*work is not a commodity*». L. Gallino, observes in *Il lavoro non è una merce. Contro la flessibilità*, Editori Laterza, Bari, 2007, p. 59, that «in those six words, the principle is condensed that labor cannot be considered a commodity, as it is an integral and defining element of the person who performs it, of their identity, self-esteem, position in the community, and their present and future family life» (*my translation*). This principle is also present in the reflections of M. Tiraboschi, *«Il lavoro non è una merce»: una formula da rimeditare*, in *Var. Temi Dir. Lav.*, 1, 2021, p. 1163 et seq.; V. Bavaro, *Sul concetto giuridico di Lavoro fra merce e persona*, in *Lav. dir.*, 1, 2021, p. 41 et seq.; U. Romagnoli, *Il lavoro non è una merce, ma il mercato del lavoro è una realtà*, in *Dir. lav. mer.*, 1, 2019, p. 17 et seq.; F. Scarpelli, *"Esternalizzazioni" e diritto del lavoro: il lavoratore non è una merce*, in *Dir. Rel. Ind.*, 3, 1999, p. 351 et seq.; M. Grandi, *Il lavoro non è una merce: una formula da rimediare*, in *Lav. dir.*, 4, 1997, p. 557 et seq.

[45] Emblematic in this regard are the reflections of A. Bellavista, *Appalti e tutela dei lavoratori*, in G. Proia, ed., *Appalti e lavoro: problemi attuali*, cit., p. 84, according to whom,

Only then will it be possible to ensure that digital platform workers, particularly younger ones, have access to truly dignified and high-quality employment.

«the value of work, the protection of the worker's person, the pursuit of "full and good employment"» must represent «the guiding star of any change» (*my translation*).

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