

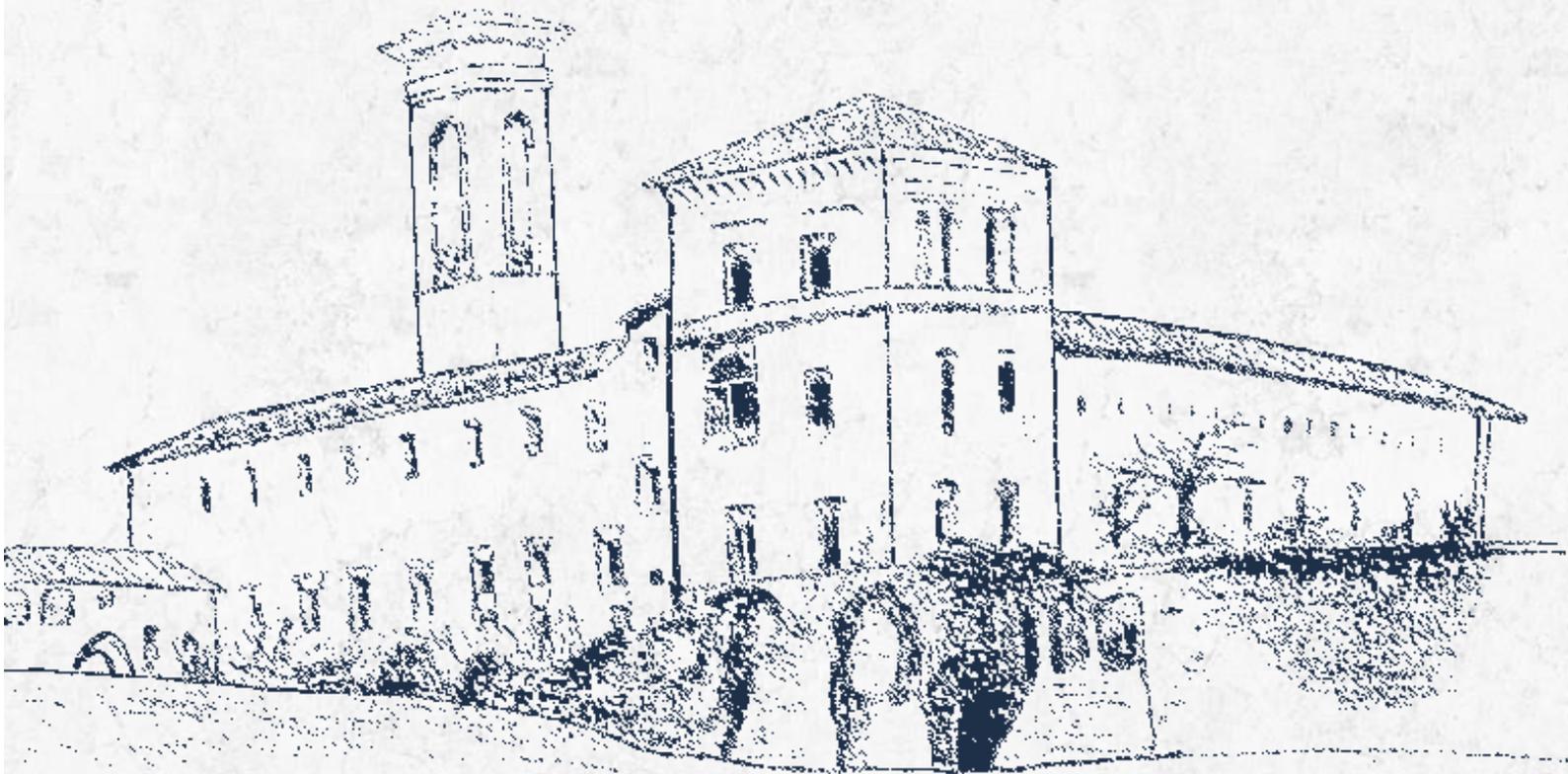
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Collective Relations in the Gig Economy

Matthieu Vicente ¹

Abstract: This contribution aims at analyzing the collective actions of platform workers through the prism of classical industrial relations law structures, and in relation with international standards.

Design/methodology/approach: A mapping exercise is conducted to distinguish between platform-based and sector-based actions. This brings up questions related to the international protection of the right to collective bargaining and the right to strike, particularly in relation to competition law within the European Union. Particular attention is drawn to the British case-law *IWGB v. Deliveroo*.

Findings: It appears that judges may play a major role in the protection of platform workers pursuing collective action. A dynamic interpretation of freedom of association might thus be necessary to guarantee the effectiveness of those collective rights, especially by widening the scope of application of the personal work contract.

Research limitations/implications: The research presents some assumptions and invites to pay particular attention to the development of case-law, especially from the European Court of Justice.

Originality/value: The paper develops an analysis of international collective labour rights in relation with domestic contractual arrangements in the European Union.

Paper type - Conceptual paper.

Keywords: *Gig Economy, Platform Workers, Industrial Relations, Collective Bargaining, Freedom of Association, Competition Law, Independent Workers Union of Great Britain (IWGB)*

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Introduction

Digitalisation and robotization seem to be shaping a new world of work². As technology is increasingly used as a support for work relations, relations of production and conditions of employment are evolving. The so-called “sharing economy”³, or “platform-mediated work”⁴, is on the rise⁵. While it is still in an embryonic stage, some have argued that it is “an early glimpse of what capitalist societies might evolve into over the coming decades”⁶. Such a stance implies that both employment law (i.e. the legal framework regulating the personal work relation based on an employment contract between a worker and an employer) and industrial relations law (i.e. the legal framework regulating relations between a group of workers often institutionalised by a union, and one or many employers) are to be seen as relics from the industrial age⁷. This contribution aims at putting into perspective the regulation of workers’ collective actions within platform capitalism⁸ in the European Union. While “sorting the old from the new”⁹, it seeks to demonstrate that industrial relations law may ultimately be suitable for gig workers – especially for on-demand workers using platforms.

1. Organising Platform-mediated Work: A Mapping Exercise

Platform-mediated work has given birth to an unusual structuring of the workforce. At first glance, digitally or platform-intermediated work appears as

² *Shaping the new world of work*, Conference report, ETUI-ETUC Conference, Brussels, 2016. C. DEGRYSE, *Digitalisation of the economy and its impact on labour markets*, ETUI Working Paper, 2016.

³ A. SUNDARARAJAN, *The Sharing Economy: The End of Employment and the Rise of Crowd-Based Capitalism*, MIT Press, 2016.

⁴ A. ALOISI, *Commoditized Workers. Case Study Research on Labour Law Issues Arising from a Set of ‘On-Demand/Gig Economy Platforms*, *Comp. Labor Law Policy*, 2016, vol. 37, no. 3, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2637485

⁵ J. PRASSL, *Humans as a Service. The Promise and Perils of Work in the Gig Economy*, Oxford University Press, 2018.

⁶ A. SUNDARARAJAN, *op. cit.*

⁷ J. BARTHELEMY, G. CETTE, *Travailler au XXIe siècle: L’ubérisation de l’économie ?*, Odile Jacob, 2017.

⁸ S. ABDELNOUR, S. BERNARD, *Vers un capitalisme de plateforme ? Mobiliser le travail, contourner les régulations. Présentation du Corpus*, Vv. Aa., *Le salariat : mort ou vif ?*, J. DIRINGER, *Quel droit social en Europe face au capitalisme de plateforme ?*, *Nouv. Rev. Trav.*, 2018, n° 13.

⁹ G. VALENDUC, P. VENDRAMIN, *Work in the digital economy: sorting the old from the new*, ETUI Working Paper, 2016, no. 3, <https://www.etui.org/Publications2/Working-Papers/Work-in-the-digital-economy-sorting-the-old-from-the-new>

a sub-genre of a wider category: non-standard work¹⁰. However, the concept of labour platform marks a paradigm change: whereas non-standard work is defined in contrast to standard contractual arrangements (particularly in accordance with the national legal taxonomies of personal work relations¹¹), platform-mediated work encompasses a wide range of contractual arrangements, from the traditional employment contract to atypical arrangements. In most cases however, platforms outsource their principal activity to a group of self-employed workers¹². Moreover, platforms generally comply with the following pattern¹³: 1) a digital platform connects a client and a service provider; 2) the service provider is an independent contractor; 3) the platform sets the price and the main characteristics of the service provided. This pattern applies to the individual relationship between an independent contractor and the platform. Theoretically, as this is a bilateral contract, there should be room for individual negotiation. In fact, pre-formulated standard contracts are imposed by the platform, leaving no scope for individual negotiation.

In response to this unilateral relation, platform *workers*¹⁴ collective actions have flourished. From the “Independent Drivers Guild” in New York City¹⁵ to Amazon Mechanical Turk’s Facebook feeds, the so-called sharing economy has given birth to a great diversity of coalitions¹⁶. Exhaustive classifications of the main categories of platform workers’ collectives have been proposed. To that end, a distinction must be made between “crowdsourcing” and “on-demand

¹⁰ *Non-standard employment around the world: understanding challenges, shaping prospects*, INTERNATIONAL LABOUR ORGANISATION, 2016, International Labour Office.

¹¹ M. FREEDLAND, N. KOUNTOURIS, *The Legal Construction of Personal Work Relations*, Oxford Monographs on Labour Law, 2011.

¹² For that reason, platforms have systematically been suspected of purposely attempting to avoid domestic and international regulatory frameworks related to personal work relations. At the EU level: CJEU, *Asociación Profesional Elite Taxi/Uber Systems Spain SL*, case C-434/15, 20 December 2017. Prassl, *Uber devant les tribunaux. Le futur du travail ou juste un autre employeur ?*, *Revue de Droit du Travail*, 2017, p. 439. Very recently: Cour de cassation, Chambre sociale, 28 November 2018, case no. 17-20.079.

¹³ B. GOMES, *Le crowdworking: essai sur la qualification du travail par intermédiation numérique*, *Revue de Droit du Travail*, 2016, vol. 7, p. 464.

¹⁴ “Notwithstanding the challenges surrounding employment classification, we hold that labour performed under the banner of apps and platforms should be recognized as work, and that the people performing on-demand labour must be recognized as workers”, H. JOHNSTON, C. LAND-KAZLAUSAS, *Organizing On-Demand: Representation, Voice, and Collective Bargaining in the Gig Economy*, INTERNATIONAL LABOUR ORGANISATION, Conditions of Work and Employment Series, n°94, 2018.

¹⁵ <https://drivingguild.org/about/>

¹⁶ H. JOHNSTON, C. LAND-KAZLAUSAS, *op. cit.*

work”¹⁷. “Crowdsourcing” is the performance of micro-tasks through online platforms on a global scale¹⁸. Considering how scattered these workers are, crowdsourcing is organised mostly informally (for example through online forums¹⁹ and worker centers). By contrast, “on-demand work” refers to localised activities, mostly services such as transportation, delivery, cleaning or repairing. A real appetite for collective organisation has been observed among on-demand workers²⁰. Consequently, institutionalized groups of interests, such as cooperatives and, naturally, unions²¹, are booming.

During the last few years, renewed forms of strike and, to a lesser extent, of collective bargaining²², have become topical. These can be divided into two categories. As a first step, a number of platform-based collective actions were launched. In the wake of the emblematic protests of Uber drivers, which began in 2014, coalitions and strikes have flourished. Indeed, food delivery couriers launched their first strike in London in 2016²³; it then spread to Brighton in 2017²⁴, Brussels²⁵ and Paris²⁶; soon all the main cities across Europe followed suit. New methods have been experimented, such as massive “log-offs”, which

¹⁷ V. DE STEFANO, *The Rise of the ‘Just-in-Time Workforce’: On-Demand Work, Crowd Work and Labour Protection in the ‘Gig-Economy’*, Social Science Research Network, 2015, <https://papers.ssrn.com/abstract=2682602>.

¹⁸ The most emblematic example is undoubtedly Amazon Mechanical Turk. D. CARDON, A. CASILLI, *Qu’est-ce que le Digital Labor ?*, INA Éditions, 2015.

¹⁹ E. g. <http://www.wearedynamo.org/>

²⁰ S. GREENHOUSE, *On Demand, and Demanding Their Rights*, American Prospect, 2016.

²¹ H. JOHNSTON, C. LAND-KAZLAUSAS, *op. cit.* About the unions’ strategies: K. VANDAELE, *Les syndicats sur le qui-vive pour soutenir les travailleurs des plateformes : l’exemple des livreurs de repas*, Chronique Internationale de l’IRES, 2017, no. 160, 85.

²² E. g. “historic” collective agreement between the Danish platform Hilfr.dk and the trade union 3F. <https://blog.hilfr.dk/en/historic-agreement-first-ever-collective-agreement-platform-economy-signed-denmark/>. V. DE STEFANO, *Collective bargaining of platform workers: domestic work leads the ways*, *Regulating for Globalization*, Wolters Kluwer, 2018. <http://regulatingforglobalization.com/2018/12/10/collective-bargaining-of-platform-workers-domestic-work-leads-the-way/>. Or recently: <https://www.gmb.org.uk/news/hermes-gmb-groundbreaking-gig-economy-deal>

²³ For a detailed analysis: C. CANT, *The wave of worker resistance in European food platforms 2016-17*, Notes From Below, <https://notesfrombelow.org/article/european-food-platform-strike-wave>

²⁴ C. CANT, *Brighton Deliveroo Workers Strike Against Exploitation*, Transnational Social Strike Platform, <https://www.transnational-strike.info/2017/11/28/brighton-deliveroo-workers-strike-against-exploitation/>

²⁵ RTBF Info, https://www.rtb.be/info/societe/detail_plus-de-130-coursiers-de-deliveroo-en-greve-a-bruxelles-et-a-liege?id=9810361

²⁶ G. KRISTANADJAJA, *Mobilisation des livreurs Deliveroo : « On était là la semaine dernière, on reviendra la semaine prochaine »*, Libération, 2018, https://www.liberation.fr/france/2018/10/19/mobilisation-des-livreurs-deliveroo-on-etait-la-la-semaine-derniere-on-reviendra-la-semaine-prochain_1686538

could be defined as wildcat strikes with the aim to disrupt the platform's algorithm, or, more classically, demonstrations at the firm's headquarters. This first *genre* of collective actions may thus correspond, from a teleological perspective, to plant-based collective actions.

A step towards wider action was subsequently made: the shift from platform-based action to sector-based action. This was the case for example when UberEats, Deliveroo, Stuart, Glovo and Foodora couriers simultaneously went on strike in Paris during the 2018 World Cup²⁷. Even more significant were the events that took place on 4 October. On that day of "historic coordinated fast food strike action"²⁸, strikes were simultaneously launched by food delivery couriers (Deliveroo and UberEats), who are formally independent contractors, and employees of traditional fast food franchises (McDonalds and TGI Fridays) across the United Kingdom²⁹. Joint picket lines were held³⁰. This industry-wide phenomenon has significant implications in terms of legal analysis. Indeed, the bargaining counterpart switched from a single platform to a group of platforms³¹, or, more accurately, to *a group of employers including platforms*. This finding dramatically reduces the specificity of platform-based work. Joining workers from a well-established economic sector, platform workers have contributed to the resurgence of industry-wide collective action³² in a well-established economic sector³³.

2. Regulating Collective Relations: Between Human Rights and Competition Law

"Strike", "plant-based", "industry-wide"; using this terminology without further specifications would be a source of errors. Indeed, all actions engaged by platform workers do not fall into the realm of the legal regulation of industrial actions in national systems. They do match the historical definition

²⁷ <http://www.leparisien.fr/economie/deliveroo-ubereats-les-livreurs-a-velo-appeles-a-la-greve-pendant-le-mondial-07-07-2018-7810941.php>

²⁸ BBC News, <https://www.bbc.com/news/business-45734662>

²⁹ C. CANT, *McNetworks: Two current modes of struggle*, Notes From Below, 2018, <https://notesfrombelow.org/article/mcnetworks-two-current-modes-struggle>

³⁰ J. WOODCOCK, L. HUGUES, *The View from the Picket Line: Reports from the food platform strike on October 4th*, Notes From Below, 2018, <https://notesfrombelow.org/article/view-picket-line-reports-food-platform-strike-octo>

³¹ E.g. the "Carta de Bologna" bringing together food delivery platforms, http://bologna.repubblica.it/cronaca/2018/05/25/news/bologna_carta_rider-197310179/

³² "'The fact that UberEats drivers have decided to strike on the same day as us shows that low pay is an issue that affects people across the industry'" said a spokesman from the Bakers, Food and Allied Workers Union (BFAWU).", BBC News, *ibid*.

³³ In the matter at hand, the fast food service sector.

of strikes “in the broad sense”, that is to say “collective stoppages of work undertaken in order to bring pressure to bear on those who depend on the sale or use of the products of that work”³⁴, but still remain on the margins of labour law. This applies even more to collective bargaining. As long as the workers gathered in the union are independent contractors, no collective agreement between the workers and the platform could legally bind the bargaining parties – this might actually be prohibited. In a broader perspective, independent contractors who simultaneously agree to cease work, or to enter into collective bargaining, may be subject to another set of rules. On the one hand, they may fall within the scope of competition law; on the other hand, they may be protected by collective fundamental rights. Those two perspectives will be briefly analysed below.

Part of the European Union’s body of economic regulation targets unfair price-fixing that could harm the consumers’ rights: this is the role of competition law. According to article 101 of the Treaty on the Functioning of the European Union (“TFEU”), “all agreements between undertakings, decisions by associations of undertakings and concerted practices”, in particular those which “directly or indirectly fix purchase or selling prices or any other trading conditions”, “shall be prohibited”. Whether platform workers are “undertakings” remains doubtful. The European Court of Justice (“ECJ”) defines an undertaking as “any entity carrying on an economic activity regardless of its legal status”³⁵. This broad definition includes, among others, self-employed persons³⁶. The equation is clear: if the platform workers getting together in a union are categorised as self-employed persons, the agreement signed with the platform will be considered as a prohibited association of undertakings. A minimum piece rate fixed by such an agreement will be analysed as a “purchase or selling [price]”. In other words, it would constitute a *cartel*.

Still, in a more recent case the ECJ stated that if the service providers are in fact “false self-employed”, “they can be part of a collective labour agreement”³⁷. This precision is not strictly limited to bogus self-employment according to national legal systems. A substantial margin for interpretation is left to the judges. To this end, the ECJ has developed a “functional”

³⁴ K. G. J. C. KNOWLES, *Strikes: a study in industrial conflict, with special reference to British experience between 1911 and 1947*, New York: Philosophical Library, 1952.

³⁵ ECJ, Joined cases C-180/98 to C-184/98, *Pavlov and others*, [2000] ECR I-6451.

³⁶ Commission Decision of 30 January 1995 relating to a proceeding under Article 85 of the EC Treaty, 95/188/EC, Official Journal L 122. See also A. J. BRAAKMAN (ed.), *The Application of Articles 85 and 86 of the EC Treaty by National Courts in the Member States*, European Commission, 1997.

³⁷ ECJ, case C-413/13, *FNV Kunsten Informatie en Media*.

approach³⁸ of the “worker” under the meaning of EU law, which is not affected by formal national legal classifications³⁹. A “worker”, according to the ECJ, is not free to choose the time, place and content of his work⁴⁰, does not share his employer’s commercial risks⁴¹, has no capacity to determine his own conduct on the market independently⁴² or, more significantly, is incorporated into the undertaking concerned and forms an economic unit with it⁴³. Therefore, and considering the latter, the ECJ could still recognize independent contractors using platforms as workers under the meaning of EU law, through an interpretative approach. Given that recognition, they would be legally allowed to engage in industrial actions.

The protection of collective rights as fundamental rights may lead the judges in Luxembourg to rule in that direction⁴⁴. Collective bargaining and collective actions are recognised as fundamentals within the EU legal order⁴⁵. The ECJ has confirmed that the right to take collective actions is a fundamental right in a series of famous cases, albeit with the aim to restrict its exercise⁴⁶. Many other international organisations affirm the fundamental dimension of collective labour rights in order to protect workers. Most notably, the International Labour Organisation (ILO) seeks to guarantee due application of both freedom of association and the right to collective bargaining⁴⁷, in line with

³⁸ A. ALOISI, E. GRAMANO, *Non-standard workers and collective rights*, Industrial Relations in Europe Conference (IREC), Leuven, 10-12 September 2018.

³⁹ ECJ, case C-256/01, *Debra Allonby v Accrington & Rossendale College and Others*.

⁴⁰ *Ibid.*

⁴¹ ECJ, case C-3/87, *The Queen v Minister of Agriculture, Fisheries and Food, ex parte Aggate Limited*.

⁴² ECJ, case C-217/05, *Confederación Española de Empresarios de Estaciones de Servicio*.

⁴³ ECJ, case C-22/98, *Becu*. This criterion is somewhat similar to the notion of business integration developed by the United States District Court, Northern District of California, No. C-13-3826 EMC, *Douglas O’Connor et al. v. Uber Technologies*.

⁴⁴ V. DE STEFANO, *Non-Standard Work and Limits on Freedom of Association: A Human Rights-Based Approach*, *Industrial Law Journal*, Vol. 46, No. 2, 2017.

⁴⁵ Community Charter of the Fundamental Social Rights of Workers, art. 11, 12 and 13. V. PAPA, *The Dark Side of Fundamental Rights Adjudication?: The Court, the Charter and the Asymmetric Interpretation of Fundamental Rights in the AMS Case and beyond*, *European Labour Law Journal*, 2015, vol. 6, n° 3, 190.

⁴⁶ “Although the right to take collective action must therefore be recognised as a fundamental right which forms an integral part of the general principles of Community law the observance of which the Court ensures, the exercise of that right may none the less be subject to certain restrictions”, ECJ, case C-341/05, *Laval*. Also, ECJ, C-438/05, *Viking Line*. B. BERCUSSON, *The Trade Union Movement and the European Union: Judgment Day*, *European Law Journal*, 2007, vol. 13, n° 3, 279.

⁴⁷ Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). Right to Organise and Collective Bargaining Convention, 1949 (No. 98). ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998. The Committee on Freedom of Association, established in 1951, is fully dedicated to examining complaints pertaining to collective rights violations.

the Declaration of 1998. In this way, a collective agreement negotiated with artists unions on minimum tariffs, and including freelancers, was considered as violating Irish competition law in 2004. This elicited a debate within the Committee on the Applications of Standards (“CAS”) of the ILO, during which the Vice-Chairperson of the CAS called for specific collective rights for independent contractors⁴⁸. Even if no consensus was reached on that matter, this opinion reflects the commitment of the ILO in the protection of collective rights⁴⁹. Finally, the European Court of Human Rights, alongside the ILO⁵⁰, plays a major role in enforcing freedom of association in Europe and beyond. Article 11 of the European Convention of Human Rights (ECHR) has in particular been used to allow platform workers to enter into collective bargaining in the United Kingdom. This case law will require further scrutiny.

3. Towards a Dynamic Approach of Collective Fundamental Rights

In 2016 couriers grouped in the Independent Workers’ Union of Great Britain (“IWGB”) submitted an application in North London in order to be recognized for collective bargaining purposes with the Deliveroo platform. In November 2017, the Central Arbitration Committee (“CAC”) denied their right to collective bargaining⁵¹. In December 2018, the High Court dismissed the claim for judicial review⁵². While it may seem anecdotal, this case is arguably emblematic for two main reasons.

So far, two major arguments have been legitimately formulated by scholars: as a fragmented or “dispersed” workforce⁵³, platform workers would be unlikely

⁴⁸ J.-B. MAISIN, *L'Irlande, l'occasion d'un débat sur la liberté de négociation des travailleurs indépendants. Confrontation entre la jurisprudence de l'UE et les principes de l'OIT*, Bulletin social et juridique, Vol. 570, 7, 2016.

⁴⁹ The Irish Competition Act was amended in 2017, and now provides collective bargaining rights for the concerned categories of self-employed workers. H. JOHNSTON, C. LAND-KAZLAUSAS, *op. cit.*

⁵⁰ European Court of Human Rights, 34503/97, *Demir and Baykara v. Turkey*. For a detailed analysis on Article 11 ECHR: F. DORSEMONT, *The Right to Form and to Join Trade Unions for the Protection of his Interests under Article 11 ECHR. An Attempt “to Digest” the Case-Law (1975-2009) of the European Court on Human Rights*, European Labour Law Journal, Volume 1, 2010, No. 2, 185.

⁵¹ *IWGB v. Deliveroo*, [2018] I.R.L.R. 84. M. VICENTE, *The right to collective bargaining and the worker category in the UK*, *Regulating for Globalization*, Wolters Kluwer, 2018. <http://regulatingforglobalization.com/2018/07/20/right-collective-bargaining-worker-category-uk/>

⁵² *IWGB v. CAC*, [2018] EWHC 3342.

⁵³ A. ALOISI, V. DE STEFANO, *Digital Age. Employment and working conditions of selected types of platform work. National context analysis. Italy*. European Foundation for the Improvement of Living and Working Conditions (Eurofound), 2018.

to organise in an independent, lasting association; and, even if they were willing to do so, the platform's discretionary power to terminate the workers' contract would prevent them to move forward in this direction. While these are insightful points, they do not entirely hold water.

On the one hand, Deliveroo couriers have demonstrated that platform workers are able to meet classical industrial relations criteria. According to the Trade Union and Labour Relations (Consolidated) Act of 1992 ("TULRCA"), the location and the contours of the bargaining unit must be identified precisely⁵⁴. To this end, the IWGB successfully demonstrated that the platform's algorithm defines delivery zones, with proper pay structures⁵⁵, proper management, and within which each courier is assigned to perform his work. "The need for the unit to be compatible with effective management"⁵⁶ was thus fulfilled. The Union then had to prove it had sufficient support. For that purpose, the CAC had to determine whether members of the Union made up at least 10% of the workers in the bargaining zone, and whether a majority of couriers *would be likely to favour recognition* of the Union as a bargaining agent, for example if a poll were to be taken. Considering this rather high level of unionisation (19,16%), the CAC recognised that the IWGB met these conditions.

On the other hand, this success is to be assessed in light of Deliveroo's active anti-Union strategy. Undoubtedly, the structure of the platform's workforce and the risks of discriminatory "logouts" constitute major obstacles. Platform workers remain unprotected against anti-union discrimination⁵⁷. Yet, the CAC's analysis, which noted a strong "appetite and interest in collective bargaining" among the couriers, also proved that the platform was unable to successfully prevent the couriers to organize. Although a disinformation campaign was staged, and vouchers have been offered to divert couriers from attending union meetings, unionizing rates have continued to grow. This has demonstrated that industrial relations law is flexible enough to accommodate the specificities of gig workers, and that discrimination campaigns are not sufficient to prevent those workers from unionising.

None of the CAC's formal requirements have been reconsidered by the High Court. The CAC's decision reaffirmed the centrality of the worker's status in the application of collective rights. Dismissing the claim for a full judicial

⁵⁴ TULRCA, 1992, Schedule A1, 19A (2).

⁵⁵ For example, in the "Camden-Kentish-Town" zone, couriers were paid £3.75, whereas in the "Battersea" zone, riders were paid £7 an hour.

⁵⁶ TULRCA 1992, Schedule A1, para. 19B.

⁵⁷ N. MOIZARD, *La frontière entre « travailleurs » et « travailleurs indépendants » et le droit des discriminations de l'Union européenne*, in S. BARBOU DES PLACES, E. PATAUT, P. RODIERE (eds.), *Les Frontières de l'Europe Sociale*, Cahiers européens, n°11, Editions Pedone, 2018.

review, the High Court confirmed the narrowness of the definition of the personal work contract in the UK⁵⁸. The CAC underlined the existence of a significant personal dimension in the formal engagement between Deliveroo and the drivers. However, as the platform formally allowed couriers to engage a substitute, their engagement was no longer considered to be of a personal nature. To that extent, Deliveroo couriers could not be qualified as ‘workers’ and were excluded from the scope of application of industrial relations law⁵⁹. This reasoning brought to light the contradiction between the wide scope of application of fundamental collective rights and the strait gate of the “worker” category. Union Counsel John Hendy argued that the right to collective bargaining is underpinned by Article 11 ECHR, according to which “Everyone has the right to form and to join trade unions for the protection of his interests”. The Human Right Act 1998 (“HRA”) incorporates Convention rights set out in the ECHR into UK domestic law, and Section 3 of the HRA provides that “So far as it is possible to do so” domestic legislation must be read “in a way which is compatible with the Convention rights”. The due implementation of international protection of collective human rights might require a less narrow definition of the “worker” category. However, the proper dynamics of Article 11 ECHR did not succeed in shaking the grounds of the cornerstone of industrial law, i.e. the personal work contract. Personal service requirements were thus reinforced. The restrictions imposed by the TULRCA were declared necessary “to the objective of preserving freedom of business and contract”⁶⁰.

Regardless of the outcome, lessons can be learned from this jurisdictional encounter between platform-based work and the industrial relations system. There certainly are many obstacles standing in the way of effective implementation of the right to strike and the right to collective bargaining in the gig economy. Practical difficulties such as the dispersion of the workforce, harsh anti-union discriminations, or legal hurdles such as the narrow definition of the personal work contract and competition law are hindering platform workers from fully benefiting from the industrial relations legal framework. However, leaving aside value judgements, the rise of collective actions within the gig economy is indisputable. As the classical frameworks of industrial action based on trans-sectorial workforce coordination are resurfacing, new forms of action involving the algorithms’ functions are spreading. Platform workers did not choose between the “old world” of industrial relations and the

⁵⁸ M. FREEDLAND, N. KOUNTOURIS, *Some Reflections on the ‘Personal Scope’ of Collective Labour Law*, *Industrial Law Journal*, Volume 46, March 2017, 52.

⁵⁹ TULRCA, 1992, Schedule 296 (1).

⁶⁰ *IWGB v. CAC*, *op. cit.*, no. 41.

“new world”⁶¹ of the sharing economy: they come from both. In this respect, the foundation of the Transnational Federation of Couriers, bringing together 34 organisations from 12 European states, in October 2018, is part of a constant broader reorganization of industrial relations law⁶².

⁶¹ A world where “*work is rebranded as entrepreneurship, and labour sold as a technology*”, J. PRASSL, *Humans as a service, op. cit.*, 4.

⁶² S. LAULOM (ed.), *Collective Bargaining Developments in Times of Crisis*, Bulletin of Comparative Labour Relations, Wolters Kluwer, 2017. And notably A. LAMINE, J. PRASSL, *Collective Autonomy for On-Demand Workers? Normative Arguments, Current Practices and Legal Ways Forward*, in S. LAULOM, *ibid.*

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